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## I. INTRODUCTION

1. This trial has commonly been referred to as the Civil Defence Forces (“CDF”) trial. In fact, it was not a trial of the CDF organisation itself, but rather a trial of three individuals, alleged to be its top leaders. Samuel Hinga Norman was the “National Coordinator” of the CDF, Moinina Fofana was its “Director of War”, and Allieu Kondewa was its “High Priest”.

2. The CDF was a security force comprised mainly of “Kamajors”, traditional hunters, normally serving in the employ of local chiefs to defend villages in the rural parts of the country. The CDF fought in the conflict in Sierra Leone, between November 1996 and December 1999. In general terms, it can be said that the CDF supported the elected Government of Sierra Leone in its fight against the Revolutionary United Front (“RUF”) and the Armed Forces Revolutionary Council (“AFRC”). Leaving aside the motives behind the conflict, it is clear that atrocities of all sorts were committed by members of all the Parties to the conflict.

3. Each of the three Accused was charged with eight counts of war crimes, crimes against humanity and other serious violations of international humanitarian law, relating to atrocities allegedly committed by them during the conflict. The charges included murder of civilians; violence to life, health and physical and mental well-being; inhumane acts; cruel treatment; pillage; acts of terrorism; collective punishments and enlisting children under the age of 15 or using them to participate actively in hostilities.

### 1.1 The Case against Samuel Hinga Norman Deceased First Accused

4. The first Accused, Samuel Hinga Norman, died untimely in hospital on 22 February 2007, after the completion of trial but before pronouncement of Judgement.

5. In a decision dated the 21st of May, 2007, on the Registrar’s Submission of Evidence of the Death of Accused Samuel Hinga Norman and Consequential Issues, We held that “the trial proceedings against Accused Samuel Hinga Norman are hereby terminated by reason of his death”. We further held that “the judgement of the Chamber in relation to the 2 remaining Accused Persons will be based on the evidence that was adduced on the record by all the parties”.

6. In this regard, we recall, for the record, that Samuel Hinga Norman, the deceased First Accused, in the conduct of his defence before his death, testified on his behalf, was cross examined

by all the Parties and re-examined by his Counsel. In accordance with this Decision, We have, in our deliberations as a Chamber, considered the entire evidence on the record including that given by the deceased Accused.

7. In addition, in arriving at this decision, we were guided by the legal principle that no finding of guilt or of innocence should be made against a deceased person because he no longer has the status nor is he in a position to exercise his right to challenge such a finding by any legally recognised process since the issue of responsibility in criminal matters is personal and personified.

8. Following this Decision, the deceased Accused's Defence Team filed an application asking for an extension of time within which to file an application with the Chamber for leave to appeal against it. The Chamber, by a unanimous decision dated the 19th of July, 2007, dismissed the application for want of merit.

#### 1.2 Accused Moinina Fofana and Allieu Kondewa

9. The Chamber would also like to mention for the record, and as we have already indicated, that in the conduct of the case for the defence, the late First Accused Samuel Hinga Norman testified and gave evidence on his behalf, was cross examined and re-examined. The two remaining Accused Persons, Moinina Fofana and Allieu Kondewa however, did not testify in their defence.

10. As a Chamber, in this regard, we have cautioned ourselves and while we only make mention of this fact for the record, we desist, as the law requires, from attaching any meaning to it nor should we, in so doing, be understood or be seen to be drawing any adverse inferences one way or the other on the exercise by the Accused, of their right as provided under Article 17(4)(g) of the Statute of this Court.

#### 1.3 President Kabbah's Role in the Conflict

11. In the course of these proceedings, persistent references and allusions were made by the Defence Teams to President Kabbah and his alleged involvement in the conflict on the side of the CDF. Specifically and significantly, the Chamber recalls here that the Accused Persons all along, in the course of the trial raised, as a defence, that all they did and stand indicted for was as a result of their struggle to restore to power, President Kabbah's democratically elected Government that had been ousted in a coup d'Etat by the Armed Forces Revolutionary Council (AFRC) on the 25th of May, 1997.



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12. The Chamber, in this Judgement, will consider the nature and the extent of this alleged involvement so as to determine whether the President's alleged role, viewed in the light of his political status and that of his Government in-Exile, constitutes a legal defence that is available to the Accused Persons.

1.4 Deletion of the Name of the Late First Accused from the Heading of this Judgement

13. Following our unanimous decision of 21 May 2007 where we held that "The trial proceedings against the deceased First Accused Samuel Hinga Norman are terminated by reason of his death" and a consequential direction by a Chamber Majority (Hon. Justice Benjamin Mutanga Itoe dissenting) that the name of the deceased Accused should no longer feature on the cover sheet of all Court processes and decisions.

14. The Chamber will now proceed to pronounce Judgement in this case but only in respect of Moinina Fofana and Allieu Kondewa, the two remaining Accused Persons.

## II. PRELIMINARY ISSUES

### 1. Challenges to the Form of the Indictment

#### 1.1. Introduction

15. In their Final Trial Briefs, Norman and Fofana raised challenges to the form of the Indictment. As stated above, as a result of the death of Norman, the Chamber cannot make a final pronouncement on his guilt or innocence and will therefore not consider any of the specific arguments that were raised in his defence. The Chamber will therefore only consider the arguments raised by Counsel for Fofana.

16. Fofana has been charged pursuant to Article 6(1) for having personally committed, planned, ordered, instigated and aided and abetted the crimes charged under all eight counts of the Indictment and with having committed them as part of a Joint Criminal Enterprise ("JCE"). In addition, he has been charged pursuant to Article 6(3) of the Statute with the crimes specified in all eight counts of the Indictment. Counsel for Fofana has challenged the form of the Indictment in relation to the manner in which his liability pursuant to both of these Articles has been pleaded.

## 1.2. Applicable Law

17. Under Article 17(4)(a) of the Statute, an Accused has the right to be informed promptly and in detail in a language that he or she understands of the nature and cause of the charge against him or her. Article 17(4)(b) provides that every Accused has the right to adequate time and facilities for the preparation of his or her defence.

18. As to the sufficiency of the Indictment, Rule 47(C) of the Rules of Procedure and Evidence of the Special Court (the Rules) provides that:

The indictment shall contain, and be sufficient if it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence. It shall be accompanied by a Prosecutor's case summary briefly setting out the allegations he proposes to prove in making his case.

19. Another relevant provision is Rule 26bis. It provides, *inter alia*, that:

The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted...with full respect for the rights of the Accused and due regard for the protection of victims and witnesses.

20. This Chamber has considered the specificity with which the Prosecution should plead indictments in the following decisions: *Sesay Decision*,<sup>1</sup> *Kanu Decision*,<sup>2</sup> *Kondewa Decision*<sup>3</sup> *Kamara Decision*<sup>4</sup> and in its *Admissibility of Evidence Decision*.<sup>5</sup>

21. In its *Admissibility of Evidence Decision*, the Chamber held that the Indictment is the fundamental accusatory instrument that sets in motion the criminal adjudicatory process and must be framed in such a manner that it is not repetitive, uncertain or vague.<sup>6</sup> Justice Itoe, in his separate concurring opinion, held that the Indictment is the foundation upon which every

<sup>1</sup> *Prosecutor v Sesay*, SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 13 October 2003 [*Sesay Decision*].

<sup>2</sup> *Prosecutor v Kanu*, SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 19 November 2003 [*Kanu Decision*].

<sup>3</sup> *Prosecutor v Kondewa*, SCSL-2003-12-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 27 November 2003 [*Kondewa Decision*].

<sup>4</sup> *Prosecutor v Brima, Kamara and Kanu*, SCSL-04-16-PT (TC), 1 April 2004 [*Kamara Decision*], para. 49.

<sup>5</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence (TC), 24 May 2005 [*Admissibility of Evidence Decision*].

<sup>6</sup> *Ibid.*, para. 18.

prosecution stands and the agenda upon which criminal prosecutions are brought. It is the instrument by which the Prosecution informs the Accused promptly and in detail, in a language that he or she understands of the nature and cause of the charges against him or her, and in so doing, limits the number and nature of the offences on which it has decided to base its prosecution against an Accused.<sup>7</sup> The Indictment should therefore clearly spell out the offences that the Prosecution has selected to prosecute.<sup>8</sup>

22. The Chamber has held that the basic principle emanating from both international and national criminal law on the issue of sufficiency of the Indictment is that an Indictment must embody a concise statement of the facts underpinning the specific crimes such that the Accused is provided with sufficient information to adequately and effectively prepare his defence.<sup>9</sup>

23. The Chamber has held further that, as a general rule, less specificity is required when pleading indictments in international criminal law than is required in national criminal law due to the fact that international criminal law involves the commission of mass crimes, reconfirming, at the same time, that the rights of the Accused must be upheld.<sup>10</sup>

24. Expounding the law further, the Chamber laid down these general principles:<sup>11</sup>

Allegations in an Indictment are defective in form if they are not sufficiently clear and precise so as to enable the Accused to fully understand the nature of the charges against him.

The fundamental question in determining whether an Indictment was pleaded with sufficient particularity is whether an Accused had enough detail to prepare his defence.

The Indictment must state the material facts underpinning the charges, but need not elaborate on the evidence by which such material facts are to be proved. What is material depends on the facts of the particular case and is not decided in the abstract.

<sup>7</sup> *Ibid.*, Separate Concurring Opinion of Judge Itoe, para. 25.

<sup>8</sup> *Admissibility of Evidence* Decision, Separate Concurring Opinion of Judge Itoe, para. 38.

<sup>9</sup> *Sesay* Decision, para. 6; *Kanu* Decision, para. 6; *Kondewa* Decision, para. 6; *Kamara* Decision, para. 32. See also *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber Decision (AC), 18 December 2006, para. 21 [*Bagosora* Appeal Decision], *Prosecutor v. Kupreskic, Kupreskic, Kupreskic and Santic*, IT-95-16-A, Judgement (AC), 23 October 2001, para. 114 [*Kupreskic et al.* Appeal Judgement], *Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 114 [*Ntagerura et al.* Appeal Judgement].

<sup>10</sup> *Sesay* Decision, para. 9.

<sup>11</sup> *Sesay* Decision, *ibid.*, para. 6; *Kanu* Decision, paras 6 and 10; *Kamara* Decision, para. 33.





25. In addition, the Chamber has held that the degree of specificity required in an Indictment must be determined with reference to the relevant variables, which include:<sup>12</sup>

- (a) the nature of the allegations;
- (b) the nature of the specific crimes charged;
- (c) the scale or magnitude on which the acts or events allegedly took place;
- (d) the circumstances under which the crimes were allegedly committed;
- (e) the duration of time over which the said acts or events constituting the crimes occurred;
- (f) the totality of the circumstances surrounding the commission of the alleged crimes;
- (g) the Indictment as a whole and not isolated and separate paragraphs.

### 1.3. Timing of the Objections Raised by Counsel for Fofana

26. The Chamber notes that Counsel for Fofana has raised its objections to the form of the Indictment for the first time in its Final Trial Brief. Rule 72(b)(ii) of the Rules indicates that challenges to the form of the Indictment should be raised as preliminary motions. The Chamber notes that Counsel for Kondewa raised its objections to the form of the Indictment by way of such a preliminary motion.<sup>13</sup> Counsel for Fofana did not raise these objections by way of such a preliminary motion, nor did it raise any objections during the trial. It has provided no explanation for its failure to object to defects in the form of the Indictment prior to its Final Trial Brief.<sup>14</sup>

27. Generally, if defects in the Indictment are alleged, the Prosecution has the burden of demonstrating that the Accused's ability to prepare his case has not been materially impaired. However, where the Defence has raised no objections during the course of the trial, and raises the

<sup>12</sup> *Sesay* Decision, para. 8; *Kanu* Decision, para. 42; *Kondewa* Decision, para. 6. See also *Prosecutor v Kvočka*, IT 98-30/1-A, Judgement (AC), 28 February 2005, para. 28; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment (TC), 29 November 2004, para. 28 [Decision on the Consolidated Indictment]; Dissenting Opinion of Judge Thompson, para. 10.

<sup>13</sup> *Prosecutor v. Kondewa*, SCSL-03-12-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 27 November 2003 [*Kondewa* Decision].

<sup>14</sup> The Chamber notes that the Prosecution, in its closing arguments, objected to the timing of when these objections were raised by Counsel for Fofana. The Prosecution argued that a challenge to the Indictment should, as a general rule, be raised as a preliminary motion. It submitted that it was only in exceptional circumstances that a party should be allowed to bring such a challenge at a later stage, and Counsel for Fofana had not raised any such arguments. (Transcript of 28 November 2006, Prosecution's closing argument, pp. 46-47).

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matter only in its closing brief, the burden shifts to the Defence to demonstrate that the Accused's ability to defend himself has been materially impaired,<sup>15</sup> unless it can give a reasonable explanation for its failure to raise the objection at trial.<sup>16</sup>

28. The Chamber is of the view that preliminary motions pursuant to Rule 72(b)(ii) are the principal means by which objections to the form of the Indictment should be raised, and that the Defence should be limited in raising challenges to alleged defects in the Indictment at a later stage for tactical reasons.<sup>17</sup> The Chamber is of the opinion, therefore, that Counsel for Fofana should have raised these arguments by way of a preliminary motion, or by raising objections during the course of the trial.

29. However, mindful of its obligations under Rule 26bis to ensure the integrity of the proceedings and to safeguard the rights of the Accused, the Chamber will nonetheless consider the objections raised by the Counsel for Fofana at this stage in the proceedings. It notes however, that given that Defence has provided no explanation for its failure to raise the objections at trial, the

<sup>15</sup> *Bagosora* Appeal Decision, paras 45-47. In several cases dealing with the situation where an accused has raised an objection to the form of the Indictment for the first time on Appeal, the Chamber has considered what form of an objection would suffice for the burden to remain with the Prosecution. In *Prosecutor v. Niyitegeka*, ICTR-96-14-A, Judgement (AC), 9 July 2004, para. 199, the Appeals Chamber held that, unless the Defence had made specific objections at the time the evidence was introduced, the burden would shift to the Defence. In *Prosecutor v. Gacumbitsi*, ICTR-01-64-A, Judgement (AC), 7 July 2006, the Chamber held that any objection during the course of the trial, including during a 98bis application, would be sufficient (para. 54) and in *Ntagerura et al.* Appeal Judgement, para. 138, the Chamber held that a general pre-trial objection to the form of the Indictment would suffice. See also *Prosecutor v. Simic*, IT-95-9-A, Judgement (AC), 28 November 2006, para. 25. In this case, Counsel for Fofana has raised no previous objection of these kinds.

<sup>16</sup> In the *Bagosora* Appeal Decision, the Appeals Chamber of the ICTR held that "[...] an objection raised later at trial will not automatically lead to a shift in the burden of proof; the Trial Chamber must consider relevant factors, such as whether the Defence provided a reasonable explanation for its failure to raise the objections at the trial" (para. 47).

<sup>17</sup> *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal (AC), 11 March 2005, para. 10. The Fofana Defence submits that in the Sesay Oral Rule 98 Decision, this Chamber held that the appropriate time to raise objections to the form of the Indictment was during final submissions (para. 24, referring to *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Oral Decision on RUF Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 25 October 2006 [*Sesay et al.* Rule 98 Oral Decision]). The Chamber notes that in this Decision, the Chamber made it clear that the primary instrument for challenging the form of the Indictment was by way of a preliminary motion pursuant to Rule 72(b)(ii). It held, however, that this was without prejudice for the Defence to raise such issues in its final closing arguments. The Chamber notes that unlike Fofana, Sesay had already raised its objections to the form of the Indictment by way of a preliminary motion [*Prosecutor v. Sesay*, SCSL-03-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 13 October 2003]. The Chamber is of the view that, while it has the discretion to consider objections to the form of the Indictment at the end of the trial, the burden will shift to the Defence to demonstrate that it has been materially prejudiced if it has not raised any prior objections at trial.





burden has shifted to the Defence to demonstrate that the Accused's ability to defend himself has been materially impaired by the alleged defects.

#### 1.4. The Specific Challenges Raised by Counsel for Fofana

##### 1.4.1. Challenges to the manner in which the Prosecution has pleaded the Article 6(1) modes of liability of committing, planning, instigating, ordering, aiding and abetting and participation in a joint criminal enterprise

###### 1.4.1.1. Fofana's Arguments

###### 1.4.1.1.1. The Prosecution should have pleaded the different heads of liability under Article 6(1) separately

30. Counsel for Fofana admits that in pleading liability under Article 6(1), the Prosecution has simply repeated the language of the Statute and that it is required to do more.<sup>18</sup> The Indictment should describe the particular course of conduct through which Fofana could be understood as having committed, planned, instigated, ordered, aided and abetted or participated in a JCE.<sup>19</sup> Counsel for Fofana argues that Fofana's name is not mentioned in the factual descriptions preceding each count, creating the impression that he has only been charged as a superior, which is contradicted by the repeated references to Article 6(1).<sup>20</sup>

###### 1.4.1.1.2. The Prosecution should have pleaded the identities of victims and co-perpetrators

31. The Defence contends that the Indictment should also contain the identities of the victims and of the principal or co-perpetrators, which aside from Norman and Kondewa and unidentified Kamajors, it does not.<sup>21</sup> It submits that the Indictment is therefore defective in these respects.

###### 1.4.1.1.3. The Prosecution should have pleaded Fofana's participation in the JCE with greater specificity

32. With regards to Fofana's alleged responsibility for having participated in a JCE, Counsel for Fofana argues that it is necessary to plead (i) the form of JCE upon which the Prosecution intends to rely; (ii) the alleged criminal purpose of the JCE; (iii) the identity of the co-perpetrators,

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, para. 44.

<sup>20</sup> *Ibid.*, para. 43.

<sup>21</sup> *Ibid.*, para. 44.

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particularly those who physically perpetrated the crime; and (iv) the nature of the Accused's participation in the enterprise.<sup>22</sup>

33. Counsel for Fofana also contends that the third requirement has not been met because the Indictment does not refer clearly to the identities of alleged co-participants, but rather that it refers vaguely to the three Accused and "subordinate members of the CDF." Counsel for Fofana argues further that neither the Pre-Trial Brief nor the Supplemental Pre-Trial Brief cured this defect.<sup>23</sup>

34. In addition, Counsel for Fofana submits that the failure to specify the identities of the other participants in the JCE, in particular those who had personally carried out the crimes, is a material defect and has resulted in the Accused not being able to answer the charges against him.<sup>24</sup>

#### 1.4.1.2. Analysis

##### 1.4.1.2.1. The Prosecution should have pleaded the different heads of liability under Article 6(1) separately

35. In the *Sesay* Decision, this Chamber held that it may in certain cases be necessary to plead the different heads of liability under Article 6(1) separately and that that the material facts to be pleaded would depend on the mode of Article 6(1) liability pleaded.<sup>25</sup> It held further that the degree of specificity that was required would depend on some or all of the factors which it had identified, particularly where the crimes are of an international character and dimension.<sup>26</sup>

36. In the *Kondewa* Decision and the *Kamara* Decision, the Chamber held that the Accused in those cases had not been prejudiced by the Prosecution's failure to plead the different modes of Article 6(1) liability separately.<sup>27</sup> The Chamber held further that the Prosecution possessed the discretion to plead all the different heads of responsibility under Article 6(1) and that where it chose to do so it carried the burden of proving each one at trial.<sup>28</sup>

37. The Chamber therefore rejects Fofana's argument that the Indictment should have pleaded the different heads of Article 6(1) liability separately.

<sup>22</sup> *Ibid*, para. 212.

<sup>23</sup> *Ibid.*, para. 218.

<sup>24</sup> *Ibid.*, para. 223.

<sup>25</sup> *Sesay* Decision, para. 12.

<sup>26</sup> *Ibid.* See note *supra* 12 and the accompanying text for the list of relevant factors enunciated by the Trial Chamber.

<sup>27</sup> *Kondewa* Decision, para. 10; *Kamara* Decision, para. 49.

<sup>28</sup> *Ibid.*

1.4.1.2.2. The Prosecution should have pleaded the identities of victims and co-perpetrators

38. This Chamber has previously recognised that in the cases before it, the sheer scale of the offences may make it impossible to identify the victims.<sup>29</sup> The Chamber therefore rejects the argument that the Indictment is vague because it failed to identify the victims. The Chamber has also previously acknowledged that it is sufficient to plead the identities of the perpetrators by reference to their category or group.<sup>30</sup> The Chamber therefore also rejects the argument that it was not sufficient to refer to the co-perpetrators as Kamajors without identifying them any further.

1.4.1.2.3. The Prosecution should have pleaded Fofana's participation in the JCE with greater specificity

39. Regarding the argument that the identities of the co-participants in the JCE should have been pleaded with greater specificity and that the Indictment is vague as a result, in the *Sesay* Decision and the *Kamara* Decision, this Chamber held that identifying co-participants in the JCE by reference to their membership of particular groups, for example the Junta, the RUF and/or the AFRC was sufficient.<sup>31</sup> The Chamber therefore also dismisses this argument.

1.4.1.3. Conclusion

40. The Chamber therefore rejects the specific arguments raised by Counsel for Fofana in relation to Article 6(1). In addition, in the *Kondewa* Decision, the Chamber held that "given the international character and dimension of the crimes alleged in the Indictment and the totality of the circumstances surrounding the commission of the alleged crimes, gathered from a review of the Indictment, *as a whole*, the Chamber finds that the Accused is in no way prejudiced by the present state of the pleadings in relation to Article 6(1) [...]."<sup>32</sup>

41. The Chamber also finds similarly that the Fofana has not been prejudiced by the manner in which the Prosecution has pleaded his alleged responsibility under Article 6(1) of the Statute when considering the international character and dimension of the crime in the light of the Indictment viewed as a whole.

<sup>29</sup> *Sesay* Decision, paras 7(ix) and 7(x) and 20; *Kanu* Decision, para. 24; *Kamara* Decision, paras 33(x) and 33(xi) and 46.

<sup>30</sup> *Sesay* Decision, para. 7(vii); *Kamara* Decision, para. 33(vii).

<sup>31</sup> *Sesay* Decision, *ibid*, para. 23; *Kamara* Decision, para. 23.

<sup>32</sup> *Ibid.*, *Kondewa* Decision



1.4.2. Challenges to the manner in which the Prosecution has pleaded the Second Accused's alleged command responsibility under Article 6(3)

1.4.2.1. Fofana's Arguments

42. Counsel for Fofana admits that the Indictment does contain references to Fofana's alleged leadership position within the CDF. Despite this however, the Prosecution has failed to plead the conduct by which Fofana may be found to have known or had reason to know that crimes were about to be committed, or had been committed, by his alleged subordinates and by which he could be considered to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.<sup>33</sup>

1.4.2.2. Analysis

43. In the *Sesay* Decision, the Chamber held that the relevant indictments did specify the conduct by which it had been alleged that Sesay was responsible for the acts of his subordinates.<sup>34</sup> In the *Kamara* Decision, the Chamber held that the Indictment had pleaded with sufficient particularity the acts or crimes of subordinates for whom the Accused was alleged to be responsible.<sup>35</sup> In addition, the Chamber held that the Indictment had pleaded the acts by which the Accused could be considered to have known or have had reason to know about the crimes of his subordinates and the acts by means of which the Accused failed to take the necessary and reasonable measures to prevent or punish such crimes.<sup>36</sup> The Prosecution has pleaded Fofana's alleged superior responsibility in this case with an analogous degree of specificity to the manner in which the alleged superior responsibility of the Accused was pleaded in those cases.<sup>37</sup> This leads the Chamber to conclude that the Prosecution has pleaded Fofana's alleged superior responsibility with the requisite degree of specificity in the present case.

44. The Chamber is of the opinion that an analysis of the Indictment in the present case confirms this conclusion. Taking into account the material facts of this case, the Pre-trial brief, the totality of the circumstances of the case and the Indictment as a whole, the Chamber finds that

<sup>33</sup> Fofana Final Trial Brief, para. 45.

<sup>34</sup> *Sesay* Decision, para. 16.

<sup>35</sup> *Kamara* Decision, para. 55(iv).

<sup>36</sup> *Ibid.*, para. 55(v).

<sup>37</sup> See in this regard *Prosecutor v Norman, Fofana and Kondewa*, SCSL-2004-14-PT, Indictment, 4 February 2004, paras 14-18 and 21; *Prosecutor v Kamara*, SCSL-2003-10-1, Indictment, 26 May 2003, paras 20-21 and 26; *Prosecutor v Sesay*, SCSL-2003-05-1, Indictment, 7 March 2003, paras 20-23.





Fofana has been provided with adequate notice of the acts by which he could be considered to have known or had reason to know about the crimes of his subordinates and the acts by which he failed to take the necessary and reasonable measures to prevent or punish such crimes.

45. The Chamber therefore rejects the arguments of Counsel for Fofana in this regard.

#### 1.5. Conclusion

46. The Chamber accordingly concludes that Fofana's alleged criminal responsibility under Articles 6(1) and 6(3) of the Statute has been pleaded in the Indictment with the required degree of specificity. In light of this finding, there is no need for the Chamber to determine whether any defects in the Indictment have been "cured" by subsequent information.<sup>38</sup>

47. The Chamber therefore finds that the Defence has not satisfied its burden of demonstrating that the Accused's ability to defend himself has been materially impaired by the alleged defects, and rejects the challenges to the form of the Indictment as devoid of merit.

#### 2. Interpretation of the Indictment

48. In its Admissibility Decision, the Trial Chamber dismissed evidence of sexual violence that the Prosecution attempted to adduce at trial in support of Counts 3-4. The Chamber held that it would be prejudicial to the Accused to allow such evidence to be admitted, as acts of sexual violence were not plead in the Indictment under these Counts, and the Accused had therefore not been put on notice that they were facing such charges.<sup>39</sup> In line with the reasoning in this Decision, the Chamber has considered only those acts which are listed in the Indictment in relation to Counts 3 and 4 (mental suffering). The Chamber will therefore consider only the following acts for the purposes of its legal findings on Counts 3 and 4:

- (i) screening for collaborators;
- (ii) unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- (iii) illegal arrest and unlawful imprisonment of collaborators;

<sup>38</sup> See *Kupreskic et al.* Appeal Judgement, where the Chamber held at para. 114 that certain defects in the Indictment may be cured "if the Prosecution provides the Accused with timely, clear and consistent information detailing the basis underpinning the charges". See also *Kvočka et. al.* Appeal Judgement, para. 33.

<sup>39</sup> Admissibility Decision, para. 19(iv).

- (iv) the destruction of homes and other buildings;
- (v) looting and threats to unlawfully kill, destroy or loot.<sup>40</sup>

49. The Trial Chamber has also adopted a limited interpretation of Counts 6-7. It will consider, under those Counts, only those crimes which are charged and are found to have been committed under Counts 1-5 in the Indictment. If, for example, the Chamber has made a finding about a specific crime (i.e. a murder in Tongo) under another Count in the Indictment (i.e. as a War Crime under Count 2), it will consider this act in relation to Counts 6-7, but it will not consider other killings which may have occurred elsewhere in relation to these Counts.

### III. CONTEXT

#### 1. The Conflict Areas

50. Sierra Leone is comprised of the Western Area and three Provinces, namely, the Northern Province, Eastern Province and Southern Province. However, the areas relevant to the Indictment are Bo, Moyamba and Bonthe Districts in the Southern Province and Kenema District in the Eastern Province.

##### 1.1. Kenema District

51. Kenema District is located in the Eastern Province of Sierra Leone.<sup>41</sup> The headquarter town of Kenema District is Kenema Town, which is in Nongowa Chiefdom. Kenema District is composed of 16 chiefdoms with headquarters towns; those relevant to the Indictment are listed below:<sup>42</sup>

<u>Chiefdom</u>	<u>Headquarter Town</u>
Dama	Giema
Gaura	Joru
Kandu Leppeama	Gbando
Koya	Baoma
Lower Bambara	Panguma

<sup>40</sup> Indictment, para. 26(b).

<sup>41</sup> Exhibit 119B.

<sup>42</sup> Exhibit 119B.

Niawa	Sendumei
Nongowa	Kenema
Small Bo	Blama
Tunkia	Gorahun
Dodo	Dodo

52. The towns of Tongo Field are located in Lower Bambara Chiefdom.

### 1.2. Bo District

53. Bo District is one of four Districts comprising the Southern Province of Sierra Leone, along with Pujehun, Bonthe and Moyamba Districts. The headquarters town of Bo District is Bo Town which is in Kakua Chiefdom. The main road in Bo District is the highway that links Freetown with Kenema Town.<sup>43</sup>

54. Bo District is composed of 15 Chiefdoms. Those relevant to the Indictment are listed below:<sup>44</sup>

<u>Chiefdom</u>	<u>Headquarter Town</u>
Baoma	Baoma
Bumpeh	Bumpeh
Jaima Bongor	Telu
Kakua	Bo
Lugbu	Sumbuya
Valunia	Mongere

55. The town of Koribondo is located in Jaima Bongor Chiefdom.

### 1.3. Moyamba District

56. Moyamba District is one of the four Districts in the Southern Province of Sierra Leone. The headquarter town, Moyamba Town, is located in Kaiyamba Chiefdom in the centre of Moyamba District. There are 14 chiefdoms in Moyamba District.<sup>45</sup> Those relevant to the Indictment are listed below:<sup>46</sup>

<u>Chiefdom</u>	<u>Headquarter Town</u>
Bagruwa	Sembehun
Bumphe	Rotifunk

<sup>43</sup> Exhibit 119A.

<sup>44</sup> Exhibit 119A.

<sup>45</sup> Exhibit 119G.

<sup>46</sup> Exhibit 119A.

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Kagboro	Shenge
Kaiyamba	Moyamba
Ribbi	Bradford

#### 1.4. Bonthe District

57. Bonthe District is located in the south-west of the Southern Province of Sierra Leone. It is the only District in the Southern Province that shares boundaries with the other three Districts in the Province, namely Moyamba and Bo Districts in the north and Pujehun District in the south and east. Bonthe District is bordered by the Atlantic Ocean to the west.

58. Although it is located on Sherbro Island, the Headquarter Town of Bonthe District is not part of the two chiefdoms of the island (Sittia and Dema Chiefdoms). Rather, it is part of another administrative structure, the Sherbro Rural District.

59. There are 11 chiefdoms in Bonthe District. Those relevant to the Indictment are listed below:<sup>47</sup>

<u>Chiefdom</u>	<u>Headquarter Town</u>
Dema	Tissana
Jong	Matru
Kpanda Kemo	Matuo
Sittia	Yonni
Sogbini	Tihun
Yawbeko	Talia

## 2. Background to the Armed Conflict and the Political Context in Sierra Leone

### 2.1. Origin of Kamajors/Role in the Conflict

60. The term "Kamajor"<sup>48</sup> was originally used to refer to "a Mende"<sup>49</sup> male who possessed specialised knowledge of the forest and was an expert in the use of medicines associated with the bush". Kamajors were responsible "not simply for procuring meat but for protecting communities from both natural and supernatural threats said to reside beyond the village boundaries".<sup>50</sup> While

<sup>47</sup> Exhibit 119B.

<sup>48</sup> In the Mende language, traditional hunters are called Kamajoisia, which is the plural of Kamajoi. Transcript of 9 February 2006, Albert Joe Demby, p. 106.

<sup>49</sup> Mende is an ethnic group in Sierra Leone.

<sup>50</sup> Exhibit 165, para. C.1.b.

the Mende referred to them as Kamajors, other ethnic groups referred to them by different names.<sup>51</sup>

61. The genesis of the Kamajor Society<sup>52</sup> can be traced from the Eastern Region Defence Committee (hereinafter ERECOM), which had the late Dr. Alpha Lavalie as Chairman and Dr. Albert Joe Demby as Treasurer. The Kamajor Society at the local level was formed in 1991 and it was structured by Doctor Lavalie in 1992, immediately after the President Strasser's National Provisional Ruling Council took over.<sup>53</sup>

62. When the civil conflict started in 1991, the military decided to enlist Kamajors to use as vigilantes to scout the terrain.<sup>54</sup> Community elders had already suggested to their various chiefs that the hunters should be allowed to protect the communities against the rebels. Due to their limited numbers, arrangements were made by the community leaders and their chiefs to encourage the hunters<sup>55</sup> to expand their defence by increasing manpower through initiation.<sup>56</sup>

63. The Kamajors in their respective chiefdoms were placed at the disposal of the soldiers by their paramount chiefs and acted as allies in the defence of the area. After each deployment, the

<sup>51</sup> The Kono call them Donsos, and the Korankos, Yalunkas, Madingos call them Tamaboros. In Temne land, the inland Temnes call them Kapras and the river Temnes call them Gbethis. In Freetown, they were referred to as the Organised Body of Hunting Societies (commonly known as OBHS) - which included companies of Ojeh Ogugu hunting society or Padul Ojeh. The latter are confined to the Western Area and are called Western Area hunters, which includes Freetown, Waterloo, and Lumpa. This organization in the Western Area predated the war: Transcript of 24 January 2006, Samuel Hinga Norman, pp. 62-65.

<sup>52</sup> It has variously being described as the Kamajor Society, the Kamajor Movement, the Kamajor Group and the Kamajor Organisation. Initially, it was known as the Kamajor Organisation and later became known as the Kamajor Society when it began to conduct initiations. According to Samuel Hinga Norman, the terms Kamajor Society, Organization and Group are all the same, and refer to "Kamajors". Transcript of 3 February 2006, Samuel Hinga Norman, pp. 36-38.

<sup>53</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 5-8; Transcript of 9 February 2006, Albert Joe Demby, pp. 107-108; Transcript of 17 February 2005, TF2- 222, pp. 10-18 (CS). The Chamber granted protective measures to almost all Prosecution witnesses. The pseudonym assigned to each witness begins with the letters "TF2".

<sup>54</sup> Transcript of 9 February 2006, Albert Joe Demby, pp. 101-102; Transcript of 27 January 2006, Samuel Hinga Norman, p. 37.

<sup>55</sup> Transcript of 27 January 2006, Samuel Hinga Norman, pp. 40-42; The hunter system was a process by which traditional societies prepared their members for their entry into manhood or womanhood. This preparation involved training men to fight, and to be unafraid of the battlefield. The aim of this "preparation" was for traditional warfare, which was initially for the defence of people and property.

<sup>56</sup> Transcript of 27 January 2006, Samuel Hinga Norman, pp. 39-40. The hunters went through a process of initiation, which included military training, and was required before they could be referred to as "soldiers". The initiation would take a few days, weeks or months. The aim of the initiation was to teach recruits not to be afraid, and not to flee from the battlefield.





Kamajors would be returned to their respective communities.<sup>57</sup> This cooperation worked well and the soldiers trained some of the Kamajors.<sup>58</sup>

64. In the Southern regions, Chief Lebbie Lagbeyor of Komboya Chiefdom was the head of the Kamajors.<sup>59</sup> After Chief Lagbeyor's death in 1996, the paramount chiefs in the region decided to appoint Regent Chief Samuel Hinga Norman as Chairman of the Kamajors for the region.<sup>60</sup>

## 2.2. Coup

65. By November 1996, the Abidjan Peace Accord had been signed between the Government of Sierra Leone and the RUF. However, less than two months later, the war resumed. There was general dissatisfaction in the military mostly among the Soldiers, primarily based on complaints about their welfare.<sup>61</sup>

66. Before the coup took place in 1997, directives came from the government to the army. The army was however unwilling to implement some of these directives. These eventually led to suspicion and distrust from the army.<sup>62</sup>

67. In February / March 1997 the then Vice President Albert Joe Demby organized two meetings. The first was between senior military officials and ministers, while the second was between ministers and non-commissioned officers in the army. The purpose of these meetings was to determine how best to address the needs of the army. At the second meeting, it became apparent that there was dissatisfaction in the army over rice supply and distribution. While senior officers were getting from 50 to 500 bags of rice per person, junior officers were getting one bag for every two people. Demby tried to convince them that they should be paid with money instead of rice. However, all of the sections in the army present at the reception rejected this proposal.<sup>63</sup>

68. Later, at a meeting in late April, President Ahmad Tejan Kabbah expressed concern over the conflicting figures of whether there were 15,000 or 8,000 soldiers in the army. President

<sup>57</sup> Transcript of 9 February 2006, Albert Joe Demby, p. 107.

<sup>58</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 43-44.

<sup>59</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 10.

<sup>60</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 10-11.

<sup>61</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 20-21.

<sup>62</sup> Transcript of 24 January 2006, Samuel Hinga Norman, pp. 69-71.

<sup>63</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 20-21; Transcript of 8 February 2006, Peter Penfold, p. 9.

Ahmad Tejan Kabbah then ordered that the rice rations be reduced given that so many were being obtained illegally. In this light, Brigadier Conteh proposed to reduce rice rations of the privates and the non-commissioned officers but not those of the senior officers. This decision contributed to the unrest in the army.<sup>64</sup>

69. In April 1997, on the recommendation of Norman, Parliament unanimously passed a decision legitimizing the use of arms by hunters.<sup>65</sup>

70. In April 1997, there was a meeting between President Kabbah, Vice President Demby, Deputy Minister of Defence Norman, Chief of Defence Staff Hassan Conteh, Chief of Army Staff Colonel Max Kanga, Chief of Navy Staff Commander Sesay and the Inspector General of Police Mr. Teddy Williams. During the meeting, Norman Accused two army officials, Hassan Conteh and Colonel Max Kanga of planning a coup, which they both denied.<sup>66</sup>

71. On the morning of 17 May 1997, the British High Commissioner, Peter Penfold, the American Ambassador, John Hirsch and the United Nations Special Representative Ambassador, Berhanu Dinka held a meeting with President Ahmad Tejan Kabbah and warned him about a possible coup against his government. President Ahmad Tejan Kabbah told them that he already had heard these rumours and that he would be talking to the military.<sup>67</sup>

72. At around 5:30 a.m. on 25 May 1997, a coup took place.<sup>68</sup> President Ahmad Tejan Kabbah and other members of his Government were forced to leave Sierra Leone and many of them proceeded to Conakry, Guinea.<sup>69</sup>

### 2.3. Kamajors after the Coup

73. After the overthrow of Kabbah's government on the 25 May 1997, the Kamajors went underground in the bush. Some of the Kamajors based in Pujehun District, Southern Province

<sup>64</sup> Transcript of 8 February 2006, Peter Penfold, pp. 7-9.

<sup>65</sup> Transcript of 24 January 2006, Samuel Hinga Norman, pp.75-77.

<sup>66</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 22-23; Transcript of 24 January 2006, Samuel Hinga Norman, pp. 80-83.

<sup>67</sup> Transcript of 8 February 2006, Peter Penfold, pp. 9-10.

<sup>68</sup> Transcript of 24 January 2006, Samuel Hinga Norman, pp. 83-84; Transcript of 8 February 2006, Peter Penfold, p.10.

<sup>69</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp. 14 and 20-21.



went to Bo Waterside and some stayed in Bo. Those who were in Kenema went to Tunkia Chiefdom.<sup>70</sup>

74. However, the Kamajors were assembled again after an announcement by Eddie Massalay on BBC rallying Kamajors, Kapras, Gbethis, Tamaboros and the Donsos to assemble at Gendema in Pujehun District and to take up arms to fight against the AFRC.<sup>71</sup>

75. One week after the BBC announcement by Eddie Massalay, Norman joined the Kamajors in Gendema. Eddie Massalay relinquished his position and Norman, in his capacity as Deputy Minister of Defence and Chairman of the Kamajors in the Southern Province, became the National Coordinator of the Kamajors.<sup>72</sup>

#### 2.4. President Ahmad Tejan Kabbah in Exile

76. Whilst in Conakry, there were some differences between President Kabbah and Norman, especially after Norman had granted a BBC interview condemning the coup and soliciting the assistance of hunters in reinstating the government.<sup>73</sup>

77. To resolve these disagreements, the Ambassadors of the USA, Great Britain and Nigeria to Sierra Leone and the UNDP representative arranged a meeting with Norman and the President in Conakry.<sup>74</sup> At the meeting, these Ambassadors offered assistance from their respective countries only if both the President and Norman would agree to work together in the interests of Sierra Leone.<sup>75</sup> At the same meeting President Kabbah was told that the Chairman of ECOWAS, General President Sani Abacha of Nigeria, was prepared to support Sierra Leone and convince the rest of the ECOWAS members to assist Sierra Leone, but only he was convinced that it was the wish of the people of Sierra Leone not to accept a military government. President Ahmad Tejan

<sup>70</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 11-13; Transcript of 26 May 2005, TF2-079, pp. 16-17;

<sup>71</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 11-13; Transcript of 26 May 2005, TF2-079, pp. 16-17.

<sup>72</sup> Transcript of 10 March 2005, Albert J Nallo, p. 14; Transcript of 17 November 2004, TF2-008, pp. 25-28.

<sup>73</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp.14-17; Transcript of 8 February 2006, Peter Penfold, pp. 24-25.

<sup>74</sup> Transcript of 8 February 2006, Peter Penfold, pp. 24-25.

<sup>75</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp. 21-24.





Kabbah said that the hunters of Sierra Leone were needed to support the people in rejecting the military government.<sup>76</sup>

78. After this meeting, Norman flew to Monrovia. On 17 June 1997, Norman was briefed on the situation of the Kamajors in Sierra Leone by Eddy Massallay.<sup>77</sup> A meeting was held between General Victor Malu and other senior Nigerian officers with Norman and two leaders of the Kamajors, Eddie Massallay and Bobor Tucker.<sup>78</sup>

79. As a result of the meeting, Norman was charged with mobilizing as much manpower as possible. He was also to be responsible for coordination, especially supply and distribution. Arms and ammunition were brought by helicopter to Gendema.<sup>79</sup>

## 2.5. Formation of CDF

80. While in exile in Conakry, President Kabbah established the CDF. The creation of the CDF stemmed from the need to coordinate the activities both within these various civil militia groups and with ECOMOG. In addition, President Kabbah, in Conakry, needed a means by which to exercise control over efforts in Sierra Leone to re-establish his government. The Chairman of the CDF was to be the Vice-President, Dr. Demby, who had remained in Lungi and who was to answer directly to President Kabbah.<sup>80</sup>

81. Norman was appointed by President Kabbah as the National Coordinator of the CDF.<sup>81</sup> As the CDF Coordinator, his role was to coordinate the activities of the civil defence/ Kamajors in supporting the military operations of ECOMOG to reinstate the government of President Kabbah. He was also responsible for obtaining assistance and logistics from ECOMOG in Liberia.<sup>82</sup>

<sup>76</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp. 24-29.

<sup>77</sup> Transcript of 3 May 2006, Arthur Koroma, pp. 7-9.

<sup>78</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp. 34-36.

<sup>79</sup> Transcript of 3 May 2006, Arthur Koroma, p.14; Transcript of 25 January 2006, Samuel Hinga Norman, pp. 37-38.

<sup>80</sup> Transcript of 8 February 2006, Peter Penfold, pp. 25-29; Transcript of 10 February 2006, Albert Joe Demby, p. 17.

<sup>81</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp. 25-27; Transcript of 10 February 2006, Albert Joe Demby, pp. 17-18; Transcript of 8 February 2006, Peter Penfold, pp. 27-28.

<sup>82</sup> Transcript of 8 February 2006, Peter Penfold, pp. 27-29; Transcript of 25 January 2006, Samuel Hinga Norman, p. 27; Transcript of 10 February 2006, Albert Joe Demby, p. 25.





## 2.6. ECOMOG

82. Upon President Ahmad Tejan Kabbah's arrival in Conakry, the OAU designated ECOWAS to restore Kabbah's government. ECOWAS in turn designated ECOMOG.<sup>83</sup> In furtherance of the ECOWAS policy, the British Government assisted by providing equipment to ECOMOG.<sup>84</sup>

83. In around July 1997 at Bo Waterside, ECOMOG donated logistics to the CDF, including a truck and two Mitsubishi pick-up vans. ECOMOG also provided food and all that was needed for a guerrilla fighting force.<sup>85</sup>

84. In August 1997, ECOMOG provided 430 arms (G3, FN RPG and GPMG) and ammunition to the Kamajors. In addition they provided USD 10,000 for rations and miscellaneous expenses.<sup>86</sup>

85. On 13 August 1997, President Kabbah sent a plan to ECOMOG about action between ECOMOG and the CDF under the coordination of Norman. He also requested logistics for the planned operation.<sup>87</sup>

86. ECOMOG collaborated with the CDF operationally, especially in the Bo-Kenema axis. The Nigerian contingent also supplied arms and ammunition, fuel, food and cash in hard currency, as well as sharing intelligence and medical care with the CDF.<sup>88</sup>

## IV. APPLICABLE LAW

### 1. Introduction

87. The applicable laws of the Special Court include the Statute, the Agreement, and the Rules. The Chamber may also consider customary international law and treaty law. Where

<sup>83</sup> Transcript of 8 February 2006, Peter Penfold, p. 25.

<sup>84</sup> Transcript of 8 February 2006, Peter Penfold, p. 37.

<sup>85</sup> Transcript of 5 May 2006, Mustapha Lumeh, p. 71; Transcript of 3 May 2006, Arthur Koroma, pp. 15-16.

<sup>86</sup> Exhibit 157.

<sup>87</sup> Exhibit 158.

<sup>88</sup> Exhibit 159.

appropriate, the Chamber may also look to national law, including the laws of the Republic of Sierra Leone.<sup>89</sup>

88. In order to respect the principle of *nullum crimen sine lege*, the Chamber is bound to consider whether the crimes charged in the Indictment were crimes under customary international law at the time they were committed.<sup>90</sup> In determining the state of customary international law, the Chamber has found it useful to consider decisions of the International Criminal Tribunals for Rwanda and the former Yugoslavia. Such decisions have persuasive value, although modifications and adaptations may be required to take into account the particular circumstances of the Special Court.<sup>91</sup>

## 2. Jurisdiction

89. The Special Court is empowered to prosecute “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.”<sup>92</sup> Thus, the Chamber has well-defined jurisdictional limitations within which to try cases, notably:

- i. Persons who bear the greatest responsibility;
- ii. For serious violations of international humanitarian law and Sierra Leonean law;
- iii. Committed in the territory of Sierra Leone;

<sup>89</sup> Provided that they are not inconsistent with the Statute, Agreement, Rules, customary international law and internationally recognised norms and standards. See Rule 72 bis.

<sup>90</sup> See the Chamber’s ruling on this point: *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment (TC), 1 April 2004, para. 24 [Kamara Decision on Form of Indictment]. See also Report of the Secretary-General on the Establishment of the Special Court, S/2000/915, 4 October 2000, paras 9 and 12 [Report of the Secretary-General on the Establishment of the Special Court], which provided that the “applicable law [of the Special Court] includes international as well as Sierra Leonean law” and in relation to the crimes under international law specifically noted that: “[i]n recognition of the principle of legality, in particular *nullum crimen sine lege*, and the prohibition on retroactive criminal legislation, the international crimes enumerated, are crimes considered to have the character of customary international law at the time of the alleged commission of the crime.”

<sup>91</sup> *Kamara Decision on Form of Indictment*, paras 24-25.

<sup>92</sup> Statute, Article 1(1).

iv. Since 30 November 1996;

90. All crimes charged are alleged to have been committed in the territory of Sierra Leone since 30 November 1996, therefore the limitations listed in (iii) and (iv) need not be discussed here further.

### 2.1. Greatest Responsibility

91. In its Decision on Personal Jurisdiction, the Chamber considered the requirement in Article 1(1) that the Accused be "persons who bear the greatest responsibility". The Chamber clarified that this requirement was not solely a matter of prosecutorial discretion, but was also a jurisdictional limitation upon the Court, the determination of which is a judicial function.<sup>93</sup> The proper exercise of this judicial authority is made by the Confirming Judge who should, in reviewing the Indictment and accompanying material, apply the test of "whether sufficient information [exists] to provide reasonable grounds for believing that the Accused is a person who bears the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law".<sup>94</sup>

92. The Chamber recalled that the Indictment was reviewed by Judge Bankole Thompson, who, in confirming the Indictment, found that sufficient information did indeed exist.<sup>95</sup> The Chamber therefore found that it had personal jurisdiction to try the Fofana as one of the persons who bear the greatest responsibility for the crimes committed in Sierra Leone during the relevant period.<sup>96</sup> Whether or not *in actuality* the Accused could be said to bear the greatest responsibility can only be determined by the Chamber after considering all the evidence presented during trial.<sup>97</sup> However, the Chamber is of the view that given its finding that this is a jurisdictional issue only, the issue of whether or not the Accused in fact bear the greatest responsibility is not a material element that needs to be proved beyond a reasonable doubt.

<sup>93</sup> Prosecutor *v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana, 3 March 2004, para. 27 [Decision on Personal Jurisdiction].

<sup>94</sup> *Ibid.*, para. 38.

<sup>95</sup> *Ibid.*, paras 41 and 47.

<sup>96</sup> *Ibid.*, para. 48.

<sup>97</sup> *Ibid.*, para. 44.

## 2.2. Serious Violations of International Humanitarian Law and Sierra Leonean Law

93. No crimes under Sierra Leonean law are charged in the Indictment.<sup>98</sup> The Chamber will therefore consider only serious violations of international humanitarian law.<sup>99</sup>

94. The Chamber must satisfy itself that the crimes charged in the Indictment amount to violations of customary international humanitarian law which would have attracted individual criminal responsibility at the time of the alleged violation. Additionally, in order for the Accused to incur liability under the Statute, any violation must be a serious violation. Such is the case where a rule protecting “important values” is breached, resulting in “grave consequences” for the victim.<sup>100</sup>

### 2.2.1. Customary Status of Crimes under International Humanitarian Law

95. The Chamber notes that the Appeals Chamber has held that the core provisions in Article 3 of the Statute formed part of customary international law at the relevant time,<sup>101</sup> and that “[a]ny argument that these norms do not entail individual criminal responsibility has been put to rest in ICTY and ICTR jurisprudence.”<sup>102</sup> Furthermore, the Appeals Chamber has also held that

<sup>98</sup> The Statute grants the Special Court power to try certain violations of Sierra Leonean criminal law (Statute, Article 5). None are alleged.

<sup>99</sup> Crimes against Humanity (Statute, Article 2); Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II (Statute, Article 3); and Other Serious Violations of International Humanitarian Law (Statute, Article 4);

<sup>100</sup> *Prosecutor v. Tadic*, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (AC), 2 October 1995, para. 94 [*Tadic* Appeal Decision on Jurisdiction]. The Appeals Chamber held “[t]hus, for instance, the fact of a combatant simply appropriating a loaf of bread in an occupied village would not amount to a ‘serious violation of international humanitarian law’ although it may be regarded as falling foul of the basic principle laid down in Article 46, paragraph 1, of the Hague Regulations (and the corresponding rule of customary international law) whereby ‘private property must be respected’ by any army occupying an enemy territory” (para. 94).

<sup>101</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR72(E), Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict (AC), 25 May 2004, paras 21-24 [Appeal Decision on Nature of Armed Conflict], citing *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement (TC), 2 September 1998, paras 601-617 [*Akayesu* Trial Judgement]; *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, (1986) ICJ Reports 14, paras 218-219, 255; *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-T, Judgement (TC), 16 November 1998, para. 298 [*Celebici* Trial Judgement]; *Tadic* Appeal Decision on Jurisdiction, paras 102, 137; *Prosecutor v. Delalic, Mucic, Delic and Landzo*, Judgement, IT-96-21-A, Judgement (AC), 20 February 2001, paras 143, 147, 150 [*Celebici* Appeal Judgement].

<sup>102</sup> Appeal Decision on Nature of Armed Conflict, para. 24, citing *Tadic* Appeal Decision on Jurisdiction, paras 128-136, *Celebici* Trial Judgement, para. 307; *Celebici* Appeal Judgement, paras 159-174. See also Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, para. 14: “Violations of common article 3 of the Geneva Conventions and of article 4 of Additional Protocol II thereto committed in an armed conflict not of an international character have long been considered customary international law, and in particular since the

customary international law “represents the common standard of behaviour within the international community, thus even armed groups hostile to a particular government have to abide by these laws”.<sup>103</sup>

96. The Chamber concurs with the reasoning of the ICTY Appeals Chamber in *Tadic* on the issue of the evolution of Common Article 3 and Additional Protocol II from conventional into customary international law, where it held:

Since the 1930s, the aforementioned distinction [between belligerency and insurgency] has gradually become more and more blurred, and international legal rules have increasingly emerged or have been agreed upon to regulate internal armed conflict [...]

The emergence of international rules governing internal strife has occurred at two different levels: at the level of customary law and at that of treaty law. Two bodies of rules have thus crystallised, which are by no means conflicting or inconsistent, but instead mutually support and supplement each other. Indeed, the interplay between these two sets of rules is such that some treaty rules have gradually become part of customary law. This holds true for common Article 3 of the 1949 Geneva Conventions [...], but also applies [...] to the core of Additional Protocol II of 1977.

Attention must also be drawn to Additional Protocol II to the Geneva Conventions. Many provisions of this Protocol can now be regarded as declaratory of existing rules or as having crystallised emerging rules of customary law or else as having been strongly instrumental in their evolution as general principles.

[C]ustomary international law imposes criminal liability for serious violations of Common Article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict [...]<sup>104</sup>

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establishment of the two International Tribunals, have been recognized as customarily entailing the individual criminal responsibility of the accused.”

<sup>103</sup>*Prosecutor v. Norman, Kondewa and Fofana*, SCSL-04-14-AR72(E), Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment) (AC), para. 22 [Appeal Decision on Child Recruitment], citing Jean-Marie Henckaerts, *Binding Armed Opposition Groups through Humanitarian Treaty Law and Customary Law in Relevance of International Humanitarian Law to Non-state Actors*, Proceedings of the Brugge Colloquium, 25-26 October 2002, which states “[I]t is well-settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties”.

<sup>104</sup> *Tadic* Appeal Decision on Jurisdiction, paras 97-98, 117, 134. See also para. 126: “[t]he emergence of the aforementioned general rules on internal armed conflicts does not imply that internal strife is regulated by general international law in all its aspects. Two particular limitations may be noted: (i) only a number of rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts; and (ii) this

97. The Chamber is also mindful of the finding of the ICTR Trial Chamber in *Akayesu* which relied on *Tadic* and examined specifically Article 4(2) of Additional Protocol II. It held that:

[I]t should be recalled that the relevant Article in the context of the ICTR is Article 4(2) (Fundamental Guarantees) of Additional Protocol II. All of the guarantees, an enumerated in Article 4 reaffirm and supplement Common Article 3 and, as discussed above, Common Article 3 being customary in nature, the Chamber is of the opinion that these guarantees did also at the time of the events alleged in the Indictment form part of existing international customary law. [...]

The list of serious violations which is provided in Article 4 of the Statute is taken from: Common Article 3 - which contains fundamental prohibitions as a humanitarian minimum of protection for war victims - and Article 4 of Additional Protocol II, which equally outlines "Fundamental Guarantees". The list in Article 4 of the Statute thus comprises serious violations of the fundamental humanitarian guarantees which, as has been stated above, are recognized as part of international customary law. In the opinion of the Chamber, it is clear that the authors of such egregious violations must incur individual criminal responsibility for their deeds.<sup>105</sup>

98. The Chamber notes that the Appeals Chamber has examined the issue of the nature of the conflict with regard to the applicability of Common Article 3 and Additional Protocol II. The Appeals Chamber of the SCSL held that:

Any obstacle to the application of Article 3 to crimes committed during an international armed conflict is nevertheless overcome if the actual violations included in Article 3, sub-paragraphs (a) to (h), are found to be part of customary international law applicable in an identical fashion to both internal and international conflicts.<sup>106</sup>

99. To this end, the Appeals Chamber has held that:

It has been observed that 'even though the rules applicable in internal armed conflict still lag behind the law that applies in international conflict, the establishment and work of the *ad hoc* Tribunals has

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extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the general essence of those rules, and not the detailed regulation they may contain, has become applicable to internal conflicts."

<sup>105</sup> *Akayesu* Trial Judgement, paras 610, 616 [footnotes omitted]. A series of other ICTR Trial Chamber decisions have followed this finding, although some have chosen to address the crime only on the basis of treaty law. See, for example: *Prosecutor v. Musema*, ICTR-96-13-T, Judgement and Sentence (TC), 27 January 2000, para. 240 [*Musema* Trial Judgement]; and *Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003, para. 353 [*Semanza* Trial Judgement].

<sup>106</sup> Appeal Decision on Nature of Armed Conflict, para. 21.



significantly contributed to diminishing the relevance of the distinction between the two types of conflict'. The distinction [between the rules applicable in internal armed conflict and the rules applicable in international conflict] 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*. Crimes during internal armed conflict form part of the broader category of crimes during international armed conflict.<sup>107</sup>

100. In this connection, the ICTY Appeals Chamber has stated that “[i]t is logical that this minimum be applicable to international conflicts as the substance of these core rules is identical. In the Appeals Chamber’s view, something which is prohibited in internal conflicts is necessarily outlawed in an international conflict where the scope of the rules is broader”.<sup>108</sup> Article 4 of Additional Protocol II provides for “fundamental guarantees” of humane treatment and the Chamber is satisfied that this provision is also meant to provide for minimal guarantees in armed conflict. As a result, the Chamber finds that the reasoning of the ICTY Appeals Chamber is also applicable as it pertains to the provisions of Additional Protocol II relevant to this case.

101. The Chamber notes that the list of crimes against humanity in Article 2 of the Statute follows the enumeration included in the Statutes of the ICTY and ICTR, which were patterned on Article 6 of the Nürnberg Charter.<sup>109</sup>

102. In this regard the Chamber recalls the ICTY Trial Chamber Decision in *Tadic* which states:

The customary status of the Nürnberg Charter, and thus the attribution of individual criminal responsibility for the commission of crimes against humanity, was expressly noted by the Secretary-General [in his Report on the Establishment of the ICTY]. Additional codifications of international law have also confirmed the customary law status of the prohibition of

<sup>107</sup> *Ibid.*, para. 25, citing Frits Kalshoven and Liesbeth Zegveld, *Constraints on the Waging of War, and Introduction to International Humanitarian Law* (Geneva: ICRC, 2001), p. 188; Rodney Dixon and Karim Khan, eds., *Archbold: International Criminal Courts, Practice, Procedure and Evidence* (London: Sweet & Maxwell, 2003), paras 11-26 [*Archbold: International Criminal Courts*].

<sup>108</sup> *Celebici Appeal Judgement*, para. 150. *See also* Appeal Decision on Child Recruitment, para. 28 (footnotes omitted): “[t]he Special Court Statute, just like the ICTR Statute before it, draws on Part II of Additional Protocol II entitled ‘Humane Treatment’ and its fundamental guarantees, as well as Common Article 3 to the Geneva Conventions in specifying the crimes falling within its jurisdiction. All the fundamental guarantees share a similar character. In recognizing them as fundamental, the international community set a benchmark for the minimum standards for the conduct of armed conflict”.

<sup>109</sup> Report of the Secretary-General on the Establishment of the Special Court, para. 14. However, unlike Article 3 of the ICTR Statute and Article 5 of the ICTY Statute, Article 2 of the Statute of the Special Court incorporates sexual slavery, enforced prostitution, forced pregnancy and any other forms of sexual violence in addition to rape in paragraph (g) and includes ethnic grounds as grounds for persecution in paragraph (h).

crimes against humanity, as well as two of its most egregious manifestations: genocide and apartheid.

Thus, since the Nürnberg Charter, the customary status of the prohibition against crimes against humanity and the attribution of individual criminal responsibility for their commission have not been seriously questioned. It would seem that this finding is implicit in the [*Tadic*] Appeals Chamber Decision [on Jurisdiction] which found that “[i]t is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict”. If customary international law is determinative of what type of conflict is required in order to constitute a crime against humanity, the prohibition against crimes against humanity is necessarily part of customary international law [...]<sup>110</sup>

103. The Chamber concurs with this position, and finds that each of the Crimes against Humanity as charged in the Indictment was a crime under customary international law at the time of its alleged commission.

104. The Chamber notes that the Accused are charged with only one count of an “other serious violation of international humanitarian law”, namely enlisting children under the age of 15 into armed forces or groups or using them to Participate Actively in Hostilities, pursuant to Article 4(c) of the Statute. The Appeals Chamber has already dismissed a Defence Motion objecting to the jurisdiction of the court on crimes under Article 4(c) of the Statute. It found that that the recruitment of child soldiers below the age of 15 did in fact constitute a crime under customary international law which entailed individual criminal responsibility prior to the time frame of the Indictment.<sup>111</sup>

105. Whilst Sierra Leone has ratified both the Geneva Conventions and the Additional Protocols, there is no national implementing legislation.<sup>112</sup> However, since the Chamber has found that these offences constituted crimes under customary international law at the time of their alleged commission, the Chamber need not further consider the issue.

<sup>110</sup> *Prosecutor v. Tadic*, IT-94-I-T, Judgement (TC), 7 May 1997 [*Tadic* Trial Judgement], paras 622-623 [original footnotes omitted].

<sup>111</sup> Appeal Decision on Child Recruitment, para. 53. See also paras 184-197.

<sup>112</sup> Sierra Leone acceded to the Geneva Conventions of 12 August 1949 on 10 June 1965 and to Additional Protocol II on 21 October 1986. The *Sierra Leone Act No 26 of 1959* entitled “An Ordinance to enable effect to be given to certain International Conventions done at Geneva on the 12<sup>th</sup> day of August, 1949 and for purposes connected therewith” is the only related legislation. However, this legislation predates Sierra Leone’s accession to the Conventions and Additional Protocol II.

### 2.2.2. “Serious” Violations

106. The Chamber is also satisfied that all of the crimes charged in the Indictment qualify as *serious* violations of international humanitarian law. Crimes against Humanity and Violations of Common Article 3 to the Geneva Conventions and of Article 4(2) of Additional Protocol II (“War Crimes”) have all been held to be serious violations of international humanitarian law during a period prior to the temporal jurisdiction of this Tribunal.<sup>113</sup> The crimes listed under Article 4 of the Statute (Other Serious Violations of International Humanitarian Law) are serious violations of customary international humanitarian law by definition.

107. Whether or not the acts alleged against the Accused would, if proven, amount to the crimes charged, is a matter for legal findings.

## 3. Law on the Crimes Charged

### 3.1. Introduction

108. The Indictment charges the Accused with several counts each of Crimes against Humanity and of War Crimes and with one count of Other Serious Violations of International Humanitarian Law. Proof of these crimes requires proof both of the underlying offence (such as Murder) and of the general requirements of the category of crimes of which the underlying offence forms part.

### 3.2. General Requirements

109. The Chamber notes that the term “Accused” used in the enumeration of the general requirements for each category of crimes under the Statute, was chosen for purposes of convenience and should be understood in a broad sense. The general requirements, including the

<sup>113</sup> Regarding Crimes Against Humanity, see *Tadic* Trial Judgement, paras 622-623 (referring therein to *Tadic* Appeal Decision on Jurisdiction, para. 14.); regarding Crimes under Common Article 3 to the Geneva Conventions, see *Prosecutor v. Blaskic*, IT-95-14-T, Judgement (TC), 3 March 2000, para. 176 [*Blaskic* Trial Judgement]. The ICTR Trial Chambers have made it clear that violations of Article 4(2) of Additional Protocol II are, by definition of their nature, violations of fundamental humanitarian guarantees and are thus serious: *Akayesu* Trial Judgement, para. 616; *Semanza* Trial Judgement, paras 370-371; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgement (TC), 21 May 1999, para. 184 [*Kayishema and Ruzindana* Trial Judgement]; *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999, para. 106 [*Rutaganda* Trial Judgement].





appropriate mental elements therein, apply, *mutatis mutandis*, to the direct perpetrator of the crime as well as all those whose criminal responsibility may fall under Article 6(1) and (3) of the Statute.

### 3.2.1. Article 2: Crimes against Humanity

110. The general requirements which must be proved to show the commission of a Crime against Humanity are as follows:

- (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; and
- (v) The Accused knew or had reason to know that his or her acts constitute part of a widespread or systematic attack directed against any civilian population.

#### 3.2.1.1. Attack

111. The Chamber adopts the definition of attack as meaning a “campaign, operation or course of conduct”<sup>114</sup> and notes that, in the context of a Crime against Humanity, the said term is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.<sup>115</sup> The Chamber further notes that an attack can precede, outlast, or continue during an armed conflict. Thus it may, but need not, be part of an armed conflict.<sup>116</sup> Therefore, in the Chamber’s opinion, the distinction between an attack and an armed conflict reflects the position in customary international law that crimes against humanity may be committed in peace time and independent of an armed conflict.<sup>117</sup>

<sup>114</sup> *Prosecutor v. Brima, Kanu and Kamara*, SCSL-03-16-T, Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 31 March 2006, para. 42 [*Brima et al.* Rule 98 Decision]. See also *Prosecutor v. Naletilic and Martinovic*, IT-03-66-T, Judgement (TC), 31 March 2003, para. 233 [*Naletilic and Martinovic* Trial Judgement]; *Akayesu* Trial Judgement, para. 581.

<sup>115</sup> *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1-A, Judgement (AC), 12 June 2002, para. 86 [*Kunarac et al.* Appeal Judgement]; *Prosecutor v. Limaj, Bala and Musliu*, IT-03-66-T, Judgement (TC), 30 November 2005, para. 182 [*Limaj et al.* Trial Judgement]; *Prosecutor v. Vasiljevic*, IT-98-32, Judgment (TC), 29 November 2002, paras 29-30 [*Vasiljevic* Trial Judgement].

<sup>116</sup> *Kunarac et al.* Appeal Judgement, para. 86; *Limaj et al.* Trial Judgement, para. 182; *Vasiljevic* Trial Judgment, para. 30; *Naletilic and Martinovic* Trial Judgement, IT-03-66-T, para. 233.

<sup>117</sup> *Prosecutor v. Tadic*, IT-94-1-A, Judgement (AC), 15 July 1999, para. 251 [*Tadic* Appeal Judgment]; *Tadic* Appeal Decision on Jurisdiction, para. 141; *Kunarac et al.* Appeal Judgment, para. 86. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions for Judgment of Acquittal pursuant to Rule 98 (TC), 21 October 2005,

### 3.2.1.2. Widespread and systematic

112. In the Chamber's view, the requirement that the attack must be either widespread or systematic is disjunctive and not cumulative.<sup>118</sup> The Chamber is of the opinion that the term "widespread" refers to the large-scale nature of the attack and the number of victims, while the term "systematic" refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>119</sup> The Chamber adopts the view that "[p]atterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence"<sup>120</sup> and further subscribes to the interpretation of the ICTY Appeals Chamber in the *Kunarac et al.* case which stated 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.<sup>121</sup>

113. The existence of a policy or plan, or that the crimes were supported by a policy or plan to carry them out, may be evidentially relevant to establish the widespread or systematic nature of the attack and that it was directed against a civilian population, but it is not a separate legal requirement of crimes against humanity.<sup>122</sup> Furthermore, the Chamber is of the view that

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para. 66 [Rule 98 Decision]: "[c]rimes against humanity may be committed in times of peace or times of armed conflict".

<sup>118</sup> *Limaj et al.* Trial Judgement, para. 183; *Kunarac et al.* Appeal Judgement, para. 97; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement (AC), 17 December 2004, para. 93 [*Kordic and Cerkez* Appeal Judgement]. The Chamber notes that, according to the ICTY Appeals Chamber, once it is convinced that either requirement is met, a Chamber is not obliged to consider whether the alternative qualifier is also satisfied: *Kunarac et al.* Appeal Judgement, para. 93.

<sup>119</sup> Rule 98 Decision, para. 56. See also *Kunarac et al.* Appeal Judgement, para. 94; *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Judgement (AC), 29 July 2004, para. 101 [*Blaskic* Appeal Judgement]; *Limaj et al.* Trial Judgement, para. 183.

<sup>120</sup> Rule 98 Decision, para. 56, citir.g, *inter alia*, *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1-A, Judgement (TC), 22 February 2001, para. 429 [*Kunarac et al.* Trial Judgement]; *Kunarac et al.* Appeal Judgment, para. 94.

<sup>121</sup> *Kunarac et al.* Appeal Judgement, para. 95 (original footnotes omitted).

<sup>122</sup> *Kunarac et al.* 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





customary international law does not presuppose a discriminatory or persecutory intent for all crimes against humanity.<sup>123</sup>

### 3.2.1.3. Directed against any civilian population

114. The attack must be directed against any civilian population. This requires that the civilian population “be the primary rather than an incidental target of the attack”.<sup>124</sup> Accordingly, the Chamber recalls its adoption of the interpretation of the ICTY Appeals Chamber in *Kunarac et al.* which stated that:

[T]he expression ‘directed against’ is an expression which ‘specifies that in the context of a crime against humanity the civilian population is the primary object of the attack’. In order to determine whether the attack may be said to have been so directed, the Trial Chamber will consider, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, 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. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.<sup>125</sup>

115. The Chamber concurs with the view of the ICTY Appeals Chamber in the *Blaskic* case that there is an absolute prohibition against targeting civilians in customary international law.<sup>126</sup>

116. The term “civilian population” must be interpreted broadly.<sup>127</sup> The Chamber is satisfied that customary international law, determined by reference to the laws of armed conflict, has

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plan, but it may be possible to prove these things by reference to other matters.” *Blaskic* Appeal Judgement, paras 100, 120. While there had previously been some uncertainty in the jurisprudence of the ICTY and ICTR, this was resolved by the *Kunarac et al.* Appeal Judgement.

<sup>123</sup> *Tadic* Appeal Judgement, para. 292. See also *Prosecutor v. Akayesu*, ICTR-96-4-A, Judgement (AC), 1 June 2001, para. 465 [*Akayesu* Appeal Judgement]: “[i]n the case at bench, the Tribunal was conferred jurisdiction over crimes against humanity (as they are known in customary international law), but solely when committed as part of a widespread or systematic attack against any civilian population on certain discriminatory grounds; the crime in question is the one that falls within such a scope. Indeed, this narrows the scope of the jurisdiction, which introduces no additional element in the legal ingredients of the crime as these are known in customary international law”.

<sup>124</sup> Rule 98 Decision, para. 57, citing, *inter alia*, *Kunarac et al.* Appeal Judgement, para. 92.

<sup>125</sup> Rule 98 Decision, para. 57, citing *Kunarac et al.* Appeal Judgement, para. 91.

<sup>126</sup> *Blaskic* Appeal Judgement, para. 109.

established that the civilian population includes all of those persons who are not members of the armed forces or otherwise recognised as combatants.<sup>128</sup>

117. In order for a population to be considered “civilian”, it must be predominantly civilian in nature; the presence of certain non-civilians in their midst does not change the character of the population.<sup>129</sup> In determining whether the presence of soldiers within a civilian population deprives it of its civilian character, the Chamber must examine, among other factors, the number of soldiers as well as their status.<sup>130</sup> The presence of members of resistance armed groups or former combatants who have laid down their arms, within a civilian population, does not alter its civilian nature.<sup>131</sup>

118. The Chamber recognises that the protection of Article 2 of the Statute extends to “any” civilian population including, if a state takes part in the attack, that state’s own population<sup>132</sup> and that there is no requirement that the victims are linked to any particular side.<sup>133</sup> It is also our view that the existence of an attack upon one side’s civilian population would not justify or cancel out that side’s attack upon the other’s civilian population.<sup>134</sup>

<sup>127</sup> *Prosecutor v. Jelusic*, IT-95-10-T, Judgement (TC), 14 December 1999, para. 54 [*Jelusic* Trial Judgement]; *Prosecutor v. Kupreskic, Kupreskic, Kupreskic, Josifovic and Santic*, IT-95-16-T, Judgement (TC), 14 January 2000, para. 547 [*Kupreskic* Trial Judgement].

<sup>128</sup> *Blaskic* Appeal Judgement, paras 110-113.

<sup>129</sup> Rule 98 Decision, para. 59, citir g *Tadic* Trial Judgement, para. 638; *Kayishema and Ruzindana* Trial Judgement, para. 128; See also *Limaj et al.* Trial Judgement, para. 186; *Jelusic* Trial Judgement, para. 54; *Kupreskic et al.* Trial Judgement, paras 547-549.

<sup>130</sup> *Blaskic* Appeal Judgement, para. 115; *Limaj et al.* Trial Judgement, para. 186.

<sup>131</sup> *Blaskic* Appeal Judgement, para. 113, which states that “Common Article 3 of the Geneva Conventions provides that ‘Persons 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, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.’ That these persons are protected in armed conflicts reflects a principle of customary international law”. See also Rule 98 Decision, para. 58.

<sup>132</sup> *Kunarac et al.* Trial Judgement, para. 423; *Tadic* Trial Judgement, para. 635.

<sup>133</sup> *Limaj et al.* Trial Judgement, para. 186; *Kunarac et al.* Trial Judgement, para. 423; *Vasiljevic* Trial Judgement, para. 33.

<sup>134</sup> *Kunarac et al.* Appeal Judgement, para. 87: “when establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent’s civilian population. The existence of an attack from one side against the other side’s civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side’s forces were in fact targeting a civilian population as such. Each attack against the other’s civilian population would be equally illegitimate and crimes committed as part of this attack could, all other conditions being met, amount to crimes against humanity.”

119. The Chamber concurs with the interpretation that “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”.<sup>135</sup> However, the targeting of a select group of civilians – for example, the targeted killing of a number of political opponents – cannot satisfy the requirements of Article 2.<sup>136</sup> It would therefore be sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.<sup>137</sup>

#### 3.2.1.4. The acts of the Accused must be part of the attack

120. The requirement that the acts of the Accused must be part of the attack is satisfied by the “commission of an act which, by its nature or consequences, is objectively part of the attack.”<sup>138</sup> This is established if the alleged crimes were related to the attack on a civilian population, but need not have been committed in the midst of that attack.<sup>139</sup> A crime which is committed before or after the main attack or away from it could still, if sufficiently connected, be part of that attack. However, it must not be an isolated act. “A crime would be regarded as an ‘isolated act’ when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.”<sup>140</sup> Only the attack, not the individual acts, must be widespread or systematic.<sup>141</sup>

#### 3.2.1.5. Mens rea

<sup>135</sup> *Kunarac et al.* Appeal Judgement, para. 90; *Limaj et al.* Trial Judgement, para. 187; *Blaskic* Appeal Judgement, para. 105; *Prosecutor v. Galic*, IT-98-29-T, Judgment (TC), 5 December 2003, para. 143 [*Galic* Trial Judgement].

<sup>136</sup> *Limaj et al.* Trial Judgement, para. 187.

<sup>137</sup> *Kunarac et al.* Appeal Judgement, para. 90.

<sup>138</sup> *Kunarac et al.* Appeal Judgement, para. 99; *Kunarac et al.* Trial Judgement, para. 434. See also *Limaj et al.* Trial Judgement, para. 188; *Tadic* Appeal Judgement, para. 271.

<sup>139</sup> *Kunarac et al.* Appeal Judgement para. 100; *Limaj et al.* Trial Judgement, para. 189.

<sup>140</sup> *Kunarac et al.* Appeal Judgement, para. 100 referring to *Kupreskic* Trial Judgement, para. 550, *Tadic* Trial Judgement, para. 649 and *Prosecutor v. Mursic, Radic and Slijivancanin*, IT-95-13-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence (TC), 3 April 1996, para. 30 [*Mursic* Rule 61 Decision]; see also *Limaj et al.* Trial Judgement, para. 189; *Tadic* Appeal Judgement, para. 271; *Kunarac et al.* Appeal Judgement, para. 100.

<sup>141</sup> *Limaj et al.* Trial Judgement, para. 189; *Tadic* Appeal Judgement, para. 251; *Kordic and Cerkez* Appeal Judgement, para. 94.



121. The last general requirement for establishing a Crime against Humanity is the knowledge that there is an attack on the civilian population and that the acts of the Accused are part thereof.<sup>142</sup> The Prosecution must show that the Accused either knew or had reason to know that his acts comprised part of the attack. Evidence of knowledge depends on the facts of a particular case. The manner in which this legal element may be proved may therefore vary from case to case.<sup>143</sup> The Accused must have known or had reason to know that there is an attack on the civilian population and that his acts comprised part of that attack. The Accused needs to understand the overall context in which his acts took place,<sup>144</sup> but need not know the details of the attack or share the purpose or goal behind the attack.<sup>145</sup> The motives for the Accused's participation in the attack are irrelevant.<sup>146</sup> It is also irrelevant whether the Accused intended his acts to be directed against the targeted population or merely against his victim, as it is the attack, and not the acts of the Accused, which must be directed against the targeted population.<sup>147</sup>

### 3.2.2. Article 3: War Crimes

122. The general requirements which must be proved to show the commission of War Crimes pursuant to Article 3 of the Statute are as follows:

- (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;<sup>148</sup>
- (iii) The victim was a person not taking direct part in the hostilities at the time of the alleged violation;<sup>149</sup> and

<sup>142</sup> See *Kunarac et al. Appeal Judgement*, para. 102; *Kunarac et al. Trial Judgement*, para. 434.

<sup>143</sup> *Blaskic Appeal Judgement*, para. 126.

<sup>144</sup> *Limaj et al. Judgement*, para. 190; *Kordic and Cerkez Trial Judgement*, para. 185.

<sup>145</sup> *Kunarac et al. Appeal Judgement*, paras 102-103.

<sup>146</sup> *Limaj et al. Trial Judgement*, para. 190; *Tadic Appeal Judgement*, paras 248, 252; *Kunarac et al. Appeal Judgement*, para. 103: the Appeals Chamber considered that "[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."

<sup>147</sup> *Kunarac et al. Appeal Judgement*, para. 103; *Limaj et al. Trial Judgement*, para. 190.

<sup>148</sup> See *Appeal Decision on Nature of Armed Conflict*, para. 25, citing *Archbold: International Criminal Courts*, para. 11-27.

<sup>149</sup> See *Prosecutor v. Naletilic and Martinovic*, IT-98-34-A, Judgement (AC), 3 May 2006, para. 116 [*Naletilic and Martinovic Appeal Judgement*]: "[t]he fact that something is a jurisdictional prerequisite does not mean that it does not at the same time constitute an element of a crime".

(iv) The Accused knew or had reason to know that the person was not taking a direct part in the hostilities at the time of the act or omission.

### 3.2.2.1. The Existence of an Armed Conflict

123. The Chamber concludes that the application of Article 3 of the Statute requires that the alleged acts of the Accused be committed in the course of an armed conflict, and “it is immaterial whether the conflict is internal or international in nature.”<sup>150</sup>

124. Relying on the ICTY Appeals Chamber in the *Tadic* case, and as it held in the CDF Rule 98 Decision, the Chamber rules that under Common Article 3, “an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state”.<sup>151</sup> Therefore, the criteria for establishing the existence of an armed conflict are the intensity of the conflict and the organisation of the parties.<sup>152</sup> These criteria are used “solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law”.<sup>153</sup>

125. The Chamber notes that Additional Protocol II contains a stricter threshold for the establishment of an armed conflict than Common Article 3. Article 1 of the Protocol provides in relevant parts:

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts... which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

<sup>150</sup> Rule 98 Decision, para. 68, citing *Kunarac et al.* Appeal Judgement, paras 57-58; *Celebici* Trial Judgement, para. 303; *Celebici* Appeal Judgement, paras 140, 150; *Prosecutor v. Furundzija*, IT-95-17/1-T, Judgement (TC), 10 December 1998, para. 132 [*Furundzija* Trial Judgement]; *Blaskic* Trial Judgement, para. 161; *Prosecutor v. Brdjanin*, IT-99-36-T, Judgement (TC), 1 September 2004, para. 127 [*Brdjanin* Trial Judgement].

<sup>151</sup> Rule 98 Decision, para. 69, citing *Tadic* Appeal Decision on Jurisdiction, para. 70.

<sup>152</sup> *Limaj et al.* Trial Judgement, paras 84, 89; *Tadic* Trial Judgement, para. 562.

<sup>153</sup> *Tadic* Trial Judgement, para. 562 [emphasis added]; *Limaj et al.* Trial Judgement, paras 84, 89.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

126. This Chamber is therefore satisfied that where the Prosecution has alleged an offence under Additional Protocol II, then the following conditions must be met in order to establish the element of armed conflict:

(i) An armed conflict took place in the territory of Sierra Leone between its armed forces and dissident armed forces or other organized armed groups; and

The dissident armed forces or other organized groups:

(ii) Were under responsible command;

(iii) Were able to exercise such control over a part of their territory as to enable them to carry out sustained and concerted military operations; and

(iv) Were able to implement Additional Protocol II.<sup>154</sup>

127. The first requirement, that there be an armed conflict, has already been discussed in the context of the Common Article 3 test of armed conflict. The Chamber notes, therefore, that any armed conflict satisfying the higher threshold of the Additional Protocol II test would automatically constitute an armed conflict under Common Article 3. The term “armed forces” is to be defined broadly.<sup>155</sup> The armed forces or groups must be under responsible command which implies a degree of organisation to enable them “to plan and carry out concerted military operations, and to impose discipline in the name of a *de facto* authority.”<sup>156</sup> They must also be able to control a part of the territory of the country enabling them “to carry out sustained and concerted military operations” and to implement Additional Protocol II.

128. The Chamber also finds that international humanitarian law applies from the beginning of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of

<sup>154</sup> Akayesu Trial Judgement, para. 523; See also Rutaganda Trial Judgement, para. 95; Musema Trial Judgement, para. 254.

<sup>155</sup> Akayesu Trial Judgement, para. 625.

<sup>156</sup> *Ibid.*, para. 626.

peace is reached, or, in the case of internal conflicts, a peaceful settlement is achieved.<sup>157</sup> Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.<sup>158</sup>

### 3.2.2.2. Nexus

129. What distinguishes a war crime from a purely domestic crime “is that a war crime is shaped by or dependant upon the environment – the armed conflict – in which it is committed”.<sup>159</sup> As to the precise nature of the nexus between the alleged violation and the armed conflict, the Chamber, consistent with the decisions of the Appeals Chambers of the ICTY and of the ICTR on this issue, rules that the nexus requirement is fulfilled if the alleged violation was closely related to the armed conflict.<sup>160</sup> When the violation alleged has not occurred at a time and place in which fighting was actually taking place, the ICTY Appeals Chamber has held that “it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict”.<sup>161</sup> The crime ‘need not have been planned or supported by some form of policy’ and the armed conflict ‘need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in

<sup>157</sup> The term “hostilities” is not synonymous with the term “armed conflict.” An armed conflict may continue to exist after the hostilities in an area have ceased. (*Prosecutor v. Halilovic*, IT-01-48-T, Judgement (TC), 16 November 2005, para. 32 and footnoted references [*Halilovic* Trial Judgement]).

<sup>158</sup> *Tadic* Appeal Decision on Jurisdiction, para. 70; *Halilovic* Trial Judgement, para. 26. See also *Kunarac et al.* Appeal Judgement, para. 64: “[f]urthermore, the Appeals Chamber considers that the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”

<sup>159</sup> *Kunarac et al.* Appeal Judgement, para. 58; *Prosecutor v. Rutaganda*, ICTR-96-3-A, Judgement (AC), 26 May 2003, paras 569-570 [*Rutaganda* Appeal Judgement].

<sup>160</sup> *Rutaganda* Appeal Judgement, paras 569-570, citing *Kunarac et al.* Appeal Judgement, paras 58-59. In paragraph 25 of the Appeal Decision on Nature of Armed Conflict, the Appeals Chamber stated that: “[i]n respect of Article 3, therefore, the Court need only be satisfied that an armed conflict existed and that the alleged violations were related to the armed conflict”. In the view of the Chamber, the requirement that the alleged violations were closely related to the armed conflict reflects the jurisprudence of the *Ad Hoc* Tribunals: see *Tadic* Appeal Decision on Jurisdiction, paras 67, 70; *Kunarac et al.* Appeal Judgement, paras 55, 57-59. In addition, in the view of the Chamber, the stricter requirement better characterizes the distinguishing features of a war crime.

<sup>161</sup> *Halilovic* Trial Judgement, para. 29, citing *Kunarac et al.* Appeal Judgement, para. 57; *Tadic* Appeal Decision on Jurisdiction, para. 70.

which it was committed or the purpose for which it was committed'.<sup>162</sup> The nexus requirement is satisfied where the Accused acted in furtherance of or under the guise of the armed conflict.<sup>163</sup> The expression "under the guise of the armed conflict" does not mean simply "at the same time as an armed conflict" and/or "in any circumstances created in part by the armed conflict".<sup>164</sup>

130. The Chamber subscribes to the jurisprudence of the *Ad Hoc* Tribunals which outlined the following factors in determining whether or not the act in question was sufficiently related to the armed conflict, *inter alia*: "the fact that the [Accused] is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the [Accused's] official duties".<sup>165</sup> It has also been stated that the determination of a close relationship between particular offences and an armed conflict will usually require consideration of several factors, not just one.<sup>166</sup>

### 3.2.2.3. Protected Persons

131. Finally, Common Article 3 applies 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" and Additional Protocol II applies to "all persons who do not take a direct part or who have ceased to take part in hostilities". The Chamber holds that these phrases are so similar that, therefore, they may be treated as synonymous and be categorised as "all persons not taking direct part in the hostilities at the time of the alleged violation".<sup>167</sup>

<sup>162</sup> *Halilovic* Trial Judgement, para. 29, citing *Kunarac et al.* Appeal Judgement, para. 58.

<sup>163</sup> *Kunarac et al.* Appeal Judgement, para. 58; *Rutaganda* Appeal Judgement, para. 570.

<sup>164</sup> *Rutaganda* Appeal Judgement, para. 570.

<sup>165</sup> *Kunarac et al.* Appeal Judgement, para. 59. The nexus does not imply the requirement that the perpetrator be related or linked to one of the parties to the conflict: *Akayesu* Appeal Judgement, paras 443-444.

<sup>166</sup> *Rutaganda* Appeal Judgement, para. 570.

<sup>167</sup> Rule 98 Decision, para. 70, citing Article 3(1) of Geneva Conventions of 1949; *Akayesu* Trial Judgement, para. 629: "Common Article 3 is for the protection of 'persons taking no active part in the hostilities' (Common Article 3(1)), and Article 4 of Additional Protocol II is for the protection of, 'all persons who do not take a direct part or who have ceased to take part in hostilities'. These phrases are so similar that, for the Chamber's purposes, they may be treated as synonymous". See Article 4(1) of Additional Protocol II: "[a]ll persons who do not take a direct part or who have ceased to take part in hostilities". See also Article 4(2) of Additional Protocol II: "the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever". See also *Semanza*

132. The Chamber notes that the test applied by the ICTY Trial Chamber in the *Tadic* case was whether, at the time of the alleged offence, the alleged victim of the said offence was directly taking part in the hostilities, “being those hostilities in the context of which the alleged offences are said to have been committed”.<sup>168</sup> If the answer to that question is negative, the victim will be a person protected by Common Article 3 and Additional Protocol II.<sup>169</sup> Thus, for the purpose of establishing the commission of an offence under Article 3, the Prosecution must also prove that the victim was a person not taking a direct part in the hostilities at the time the offence was committed.<sup>170</sup>

133. Adopting the position taken by the Trial Chamber in the ICTY *Tadic* Trial Judgement, this Chamber holds that it does not serve any useful purpose to embark upon an exhaustive definition of the categories of persons who may be said not to be taking a direct part in hostilities.

134. Article 13(3) of Additional Protocol II provides that civilians are immune from attack for as long as they do not take a direct part in hostilities.<sup>171</sup> The question of whether civilians have participated directly in hostilities has to be decided on the specific facts of each case and there must be a sufficient causal relationship between the act of participation and its immediate consequences.<sup>172</sup> The Chamber takes the view that the direct participation should be understood to mean “acts which by their nature and purpose, are intended to cause actual harm to the enemy personnel and material.”<sup>173</sup>

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Trial Judgement, para. 365 and footnoted references: “[i]n essence, both Common Article 3 and Additional Protocol II protect persons not taking an active part in the hostilities.”

<sup>168</sup> See *Halilovic* Trial Judgement, para. 33, citing *Tadic* Trial Judgement, para. 615, referring to persons protected by Common Article 3. See also *Semanza* Trial Judgement, para. 366.

<sup>169</sup> *Semanza* Trial Judgement, para. 366; *Halilovic* Trial Judgement, para. 33; *Tadic* Trial Judgement, para. 615.

<sup>170</sup> *Semanza* Trial Judgement, para. 365. See also *Halilovic* Trial Judgement, para. 32.

<sup>171</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 U.N.T.S. 3, Article 13(3) (entered into force 7 December 1978; accession by Sierra Leone on 21 October 1986) [Additional Protocol II]. See also *Juan Carlos Abella* (Argentina), Inter-American Commission on Human Rights, Case 11.137, Report, 18 November 1997, paras 177-178, 189, 328 [*La Tablada* Case].

<sup>172</sup> Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Geneva: ICRC, 1987), Article 13 of Additional Protocol II, para. 4787 [ICRC Commentary on Additional Protocols].

<sup>173</sup> Third Report on the Human Rights Situation in Colombia, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, 26 February 1999 (Third Report on the Human Rights Situation in Colombia), paras 53 and 56, citing Yves Sandoz, Christophe Swinarski and Bruno Zimmerman, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: Martinus Nijhoff Publishers, 1987), p. 516: “Direct participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where the activity takes place.”

135. The Chamber is therefore of the opinion that persons Accused of “collaborating” with the government or armed forces would only become legitimate military targets if they were taking direct part in the hostilities. Indirectly supporting or failing to resist an attacking force is insufficient to constitute such participation. In addition, even if such civilians could be considered to have taken a direct part in hostilities, they would only have qualified as legitimate military targets during the period of their direct participation.<sup>174</sup> If there is any doubt as to whether an individual is a civilian he should be presumed to be a civilian and cannot be attacked merely because he appears dubious.<sup>175</sup> When it comes to establishing civilian status for the purposes of a criminal prosecution, however, it is the Prosecution which bears the onus of doing so.<sup>176</sup>

136. The armed law enforcement agencies of a State are generally mandated only to protect and maintain the internal order of the State. Thus, as a general presumption and in the execution of their typical law enforcement duties, such forces are considered to be civilians for the purposes of international humanitarian law.<sup>177</sup> This same presumption will not exist for military police or gendarmerie who operate under the control of the military.<sup>178</sup> The Chamber notes that, in accordance with the provisions of the *Constitution* of 1991<sup>179</sup> and the *The Police Act*<sup>180</sup> of 1964, the Sierra Leone Police operates under the control of the Minister of Internal Affairs, a civilian authority.

137. The Chamber is of the opinion that the status of police officers in a time of armed conflict must be determined in light of an analysis of the particular facts of a case. A civilian police force, for example, may be incorporated into the armed forces, which will cause the police to be classified

<sup>174</sup> *La Tablada Case*, paras 177-178, 189 and 328.

<sup>175</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 U.N.T.S. 609, Article 77(2) (entered into force 7 December 1978; accession by Sierra Leone on 21 October 1986), Article 50(1) [Additional Protocol I]; Jean-Marie Henckaerts & Louise Doswald-Beck, International Committee of the Red Cross, *Customary International Humanitarian Law, Volume 1: Rules* (United Kingdom: Cambridge University Press: 2005), p. 24.

<sup>176</sup> *Blaskic Appeal Judgement*, para. 111.

<sup>177</sup> ICRC Commentary on Additional Protocols, Article 43 of Additional Protocol I, paras 1682-1683 and Article 59 of Additional Protocol I, paras 2278-2282.

<sup>178</sup> See, *inter alia*, *Prosecutor v. Oric*, IT-03-68-T, Judgement (TC), 30 June 2006, paras 185-188 and 215-221 [*Oric Trial Judgement*]; *Akayesu Trial Judgement*, para. 68; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement (TC), 7 June 2001, para. 177 [*Bagilishema Trial Judgement*]; *Blaskic Trial Judgement*, paras 455-456.

<sup>179</sup> *The Constitution of Sierra Leone*, 1991 (Act No. 6 of 1991), art. 48(4), Part II [Sierra Leone Constitution].

<sup>180</sup> *An Act to Consolidate and Amend the Law Relating to the Organisation, Discipline, Powers and Duties of the Police Force*, (4 June 1964) No. 7, A65, s. 2 [*The Police Act*].

as combatants instead of civilians. This incorporation may occur *de lege*, by way of a formal Act, or *de facto*.

### 3.2.3. Article 4: Other Serious Violations of International Humanitarian Law

138. The general requirements which must be proved to establish the commission of an Other Serious Violation of International Humanitarian Law are as follows:

- (i) An armed conflict existed at the time of the alleged offence; and
- (ii) There existed a nexus between the alleged offence and the armed conflict.

139. These two elements have already been discussed in detail above in relation to the general requirements under Article 3 of the Statute.

140. The Indictment charges the Accused with crimes under Article 4(c) of the Statute (Enlistment of Child Soldiers). As the prohibition against enlistment of child soldiers has its foundation in Article 4(3)(c) of Additional Protocol II,<sup>181</sup> the Chamber holds that the definition of armed conflict under Additional Protocol II should be applied as outlined above.

## 3.3. Specific Offences

### 3.3.1. Murder (Count 1)

141. The Indictment charges the Accused with murder as a Crime against Humanity. The Indictment also charges the Accused in Count 2 with murder as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute. The Counts relate to the Accused's alleged responsibility for the unlawful killings by Kamajors resulting in the death of civilians, captured enemy combatants and Sierra Leone Police Officers at or near a series of locations in Kenema District, Bo District, Moyamba District and Bonthe District, between about October 1997 and December 1999.<sup>182</sup> While Counts 1 and 2 reference the same underlying facts, the law applicable to murder as a Crime against Humanity

<sup>181</sup> Article 4(3)(c) of Additional Protocol II provides that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities". While Article 4 of the Statute uses slightly different terminology, the Chamber is satisfied that this is the origin of the prohibition.

<sup>182</sup> Indictment, para. 25.



and as a serious violation of Common Article 3 and Additional Protocol II will be dealt with separately.

142. The crime of murder as a Crime against Humanity is a well-recognised and defined crime under customary international law that entails individual criminal responsibility.<sup>183</sup>

143. The constitutive elements of the offence of murder as a Crime against Humanity are:

- (i) The death of one or more persons;
- (ii) The death of the person(s) was caused by an act or omission of the Accused; and
- (iii) The Accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.<sup>184</sup>

144. In this regard, the Chamber is of the opinion that proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim's death can be inferred circumstantially from all the evidence presented to the Trial Chamber.<sup>185</sup> In addition, the Prosecution must prove that the victim or victims died as a result of acts or omissions of the Accused.<sup>186</sup>

### 3.3.2. Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Murder (Count 2)

145. The Chamber notes that the Indictment charges the Accused under Count 2 with: "violence to life, health and physical or mental well-being of persons, in particular murder", as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute. The Chamber has analysed this offence as murder, since the

<sup>183</sup> The crime of murder is criminalised in every domestic system and it has been prosecuted as a crime against humanity on numerous occasions before the *Ad Hoc* Tribunals with general agreement as to the elements: see, for example, *Kordic and Cerkez* Appeal Judgement, para. 113; *Vasiljevic* Trial Judgement, para. 205; *Prosecutor v. Krstic*, IT-98-33-T, Judgement (TC), 2 August 2001, para. 485 [*Krstic* Trial Judgement]; *Blaskic* Trial Judgement, para. 217; *Akayesu* Trial Judgement, para. 588; *Rutaganda* Trial Judgement, para. 79.

<sup>184</sup> *Sesay et al.* Rule 98 Oral Decision; Rule 98 Decision, para. 72; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T, Judgement (TC), 26 February 2001, para. 236 [*Kordic and Cerkez* Trial Judgement].

<sup>185</sup> *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement (TC), 15 March 2002, para. 326 [*Krnojelac* Trial Judgement]. See also *Tadic* Trial Judgement, para. 240.

<sup>186</sup> *Kvočka et. al.* Appeal Judgement, para. 540, citing *Krnojelac* Trial Judgement, paras 326-327; *Tadic* Trial Judgement, para. 240.

category of 'violence to life and person' does not exist as an independent offence in customary international law.<sup>187</sup>

146. The Chamber takes the view that the elements of the offence of murder as a serious violation of Common Article 3 and Additional Protocol II are the same as for murder as a Crime against Humanity,<sup>188</sup> except for the general elements outlined in the Introduction for crimes of this type. The constitutive elements are as follows:

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

147. The status of the victim as a person not taking direct part in the hostilities is an element of the offence.<sup>189</sup> This implies that the Prosecution must show that the *mens rea* of the Accused encompassed the fact that the victim was a person not taking direct part in the hostilities.<sup>190</sup>

<sup>187</sup> *Vasiljevic* Trial Judgement, para. 195: "Both 'life' and the 'person' are protected in various ways by international humanitarian law. Some infringements upon each of these protected interests are regarded as criminal under customary international law. It is so, for instance, of murder, cruel treatment, and torture. But not every violation of those protected interests has been criminalised, and those that have, as with the three offences just mentioned, have usually been given a definition so that both the individual who commits the act and the court called upon to judge his conduct are able to determine the nature and consequences of his acts. [...]". See also para. 203: "In the absence of any clear indication in the practice of states as to what the definition of the offence of "violence to life and person" identified in the Statute may be under customary law, the Trial Chamber is not satisfied that such an offence giving rise to individual criminal responsibility exists under that body of law." [footnote omitted].

<sup>188</sup> *Kvočka et al.* Appeal Judgement, para. 261; *Celebici* Appeal Judgement, para. 423. *Vasiljevic* Trial Judgement, para. 205; *Krnojelac* Trial Judgement, para. 323: "[i]t is clear from the jurisprudence of the Tribunal that the elements of the offence of murder are the same under both Article 3 and Article 5 of the Statute. These elements have been expressed slightly differently, but those slight variations in expression have not changed the essential elements of the offence". See also *Kordic and Cerkez* Trial Judgement, para. 236. Of course, in order to be characterised as a crime against humanity, a "murder" must have been committed as part of a widespread or systematic attack against a civilian population: *Kordic and Cerkez* Trial Judgement, para. 236; See also *Kvočka et al.* Appeal Judgement, para. 261.

<sup>189</sup> *Naletic and Martinovic* Appeal Judgement, para. 116: "[t]he fact that something is a jurisdictional prerequisite does not mean that it does not at the same time constitute an element of a crime".

<sup>190</sup> See *Halilovic* Trial Judgement, para. 36, concerning murder pursuant to Common Article 3. See also *Halilovic* Trial Judgement, fn 83: "[i]n this respect, the Trial Chamber notes that the knowledge of the status of the victims is one aspect of the *mens rea* that needs to be proven for the conviction on any Article 3 charge based on Common Article 3".

### 3.3.3. Other Inhumane Acts (Count 3)

148. The Indictment in Count 3 charges the Accused with “other inhumane acts” as a Crime against Humanity under Article 2 of the Statute. This Count relates to the Accused’s alleged responsibility for the intentional infliction of serious bodily harm and serious physical suffering between about 1 November 1997 and 30 April 1998, and for the intentional infliction, of serious mental harm and serious mental suffering between November 1997 and December 1999, on civilians by the CDF, largely Kamajors, in a series of locations in Kenema District, Bo District, Moyamba District and Bonthe District. Furthermore, the Indictment in Count 4 charges the Accused with cruel treatment as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(a) of the Statute for the same underlying facts as other inhumane acts in Count 3.

149. The Chamber is of the opinion that the crime of other inhumane acts is a residual category for serious acts which are not otherwise enumerated in Article 2 but which nevertheless require proof of the same general requirements.<sup>191</sup>

150. In the Chamber’s view, the constitutive elements of the crime of other inhumane acts are:

- (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 would likely occur.<sup>192</sup>

151. In order to assess the seriousness of an act or omission, consideration must be given to all the factual circumstances of the case which may include the nature of the act or omission, the

<sup>191</sup> *Vasiljevic* Trial Judgement, para. 234; *Galic* Trial Judgement, para. 152; *Krnjelac* Trial Judgement, para. 130; *Prosecutor v. Kvočka, Kos, Radic, Zigic and Prcac*, IT-98-30/1-T, Judgement (TC), 2 November 2001, para. 206 [*Kvočka et al.* Trial Judgement].

<sup>192</sup> *Sesay et al.* Rule 98 Oral Decision; Rule 98 Decision, para. 93; *Vasiljevic* Trial Judgement, para. 234; *Galic* Trial Judgement, para. 152.

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context in which it occurred, the personal circumstances including the age, gender and health of the victim, and the physical, mental and moral effects of the act or omission on the victim.<sup>193</sup>

152. The Chamber takes the view that the intention to inflict other inhumane acts is satisfied where the Accused, at the time of the act or omission, had the intention to inflict serious mental or physical suffering or injury or to commit a serious attack on the human dignity of the victim, or where he or she had reasonable knowledge that the act or omission would likely cause serious physical or mental suffering or injury or a serious attack on human dignity.<sup>194</sup>

153. The Chamber recognises that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends. The Chamber is also of the opinion that the Accused may be held liable for causing serious mental harm to a third party who witnesses acts committed against others only where, at the time of the act, the Accused had the intention to inflict serious mental suffering on the third party, or where the Accused had reasonable knowledge that his act would likely cause serious mental suffering on the third party. To this effect, the Chamber endorses the view of the ICTR Trial Chamber in *Kayishema and Ruzindana* that “if at the time of the act, the Accused was unaware of the third party bearing witness to his act, then he cannot be held responsible for the mental suffering of the third party.”<sup>195</sup>

#### 3.3.4. Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Cruel Treatment (Count 4)

154. The Indictment charges the Accused under Count 4 with cruel treatment as a serious violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3(a) of the Statute. Under this Count, the Accused are charged with “violence to life, health and physical or mental well-being of persons, in particular cruel treatment”. The

<sup>193</sup> *Galic* Trial Judgement, para. 153; *Vasiljevic* Trial Judgement, para. 234.

<sup>194</sup> Rule 98 Decision, para. 94; see also *Krnjelac* Trial Judgment, para. 132; *Vasiljevic* Trial Judgement, para. 236; *Kayishema and Ruzindana* Trial Judgment, para. 153.

<sup>195</sup> *Kayishema and Ruzindana* Trial Judgement, para. 153.

Chamber has analysed this offence as cruel treatment, since the category of “violence to life and person” does not exist as an independent offence in customary international law.<sup>196</sup>

155. The Chamber endorses the jurisprudence of the ICTY in which cruel treatment, punishable under Article 3 of the ICTY Statute as a violation of the laws or customs of war, including violations of Common Article 3 and other inhumane acts, punishable under Article 5 of the ICTY Statute as a Crime against Humanity, were said to require proof of the same elements.<sup>197</sup> Thus, the Chamber concludes that elements of the offence of cruel treatment as a serious violation of Common Article 3 and Additional Protocol II are the same as of other inhumane acts as a Crime against Humanity, except that the victim of cruel treatment must be a person not taking direct part in the hostilities,<sup>198</sup> and the Accused must have known or had reason to know that the victim was a person not taking direct part in the hostilities.

156. The Chamber considers that the constitutive elements of cruel treatment are as follows:<sup>199</sup>

- (i) The occurrence of an act or omission;
- (ii) The act or omission caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity, to a person not taking direct part in the hostilities; and
- (iii) The Accused intended to cause serious mental or physical suffering or injury or a serious attack on human dignity or acted in the reasonable knowledge that this would likely occur.<sup>200</sup>

<sup>196</sup> See *Vasiljevic* Trial Judgement, paras 195, 203, quoted above in the context of murder as a serious violation of Common Article 3 and Additional Protocol II under Count 2.

<sup>197</sup> See *Krnjelac* Trial Judgement, para. 130: “[i]t is apparent from the jurisprudence of the [ICTY] that cruel treatment, inhuman treatment and inhumane acts basically require proof of the same elements. Each offence functions as a residual category for serious charges under Articles 2, 3, and 5 respectively which are not otherwise enumerated under those Articles. The definitions adopted for each offence in the decisions of the [ICTY] vary only by the expressions used.” [footnote omitted] See also *Jelusic* Trial Judgement, para. 52 and *Prosecutor v. Simic, Tadic and Zaric*, IT-95-9-T, Judgement (TC), 17 October 2003, para. 74 [*Simic et al.* Trial Judgement].

<sup>198</sup> Rule 98 Decision, para. 95.

<sup>199</sup> In the Rule 98 Decision, the Chamber relied on the *Celebici* decision of the ICTY and adopted the following definition: “an intentional act or omission causing serious mental or physical suffering or injury or constituting a serious attack on human dignity. We take the view that such acts may include treatment that does not meet the purposive requirement for the offence of torture.” (para. 95).

<sup>200</sup> See also *Limaj et al.* Trial Judgement, para. 231; *Prosecutor v. Strugar*, IT-01-42-T, Judgement (TC), 31 January 2005 [*Strugar* Trial Judgement], para. 261. See also *Simic et al.* Trial Judgement, para. 76.

### 3.3.5. Pillage (Count 5)

157. The Chamber notes that the Indictment under Count 5 charges the Accused with pillage as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(f) of the Statute. This Count relates to the Accused's alleged responsibility for the unlawful taking and destruction by burning of civilian owned property between about 1 November 1997 and 1 April 1998 at a series of locations in Kenema District, Bo District, Moyamba District and Bonthe District.

158. As previously observed by the Chamber, the terms "pillage", "plunder" and "spoliation" have been varyingly used to describe the unlawful appropriation of private or public property during armed conflict.<sup>201</sup> The Chamber notes that the ICTR and SCSL Statutes include the crime of pillage, while the ICTY Statute lists the crime of plunder.<sup>202</sup>

159. The Chamber is satisfied that Article 3(f) of the Statute contains a general prohibition against pillage which covers both organised pillage and isolated acts of individuals. Further, the prohibition extends to all types of property, including State-owned and private property.<sup>203</sup>

<sup>201</sup> Rule 98 Decision, para. 102 referring to *Celebici* Trial Judgement, para. 591. See also *Naletilic and Martinovic* Trial Judgement, para. 612, fn 1499; *Blaskic* Appeal Judgement, paras 147-148. See also *Prosecutor v. Kunarac et al.*, IT-96-23 and IT-96-23/1-T, Decision on Motion for Acquittal (TC), 3 July 2000, fn 34 [*Kunarac et al.* Rule 98bis Decision] which stated that the ICRC Dictionary defines the two terms (plunder and pillage) together. These decisions relied on, *inter alia*: Article 6(b) of the Nürnberg Charter ("Plunder of public or private property" was one of the war crimes coming within the jurisdiction of the Tribunal); Article 2(1)(b) of Control Council Law No. 10 ("Plunder of public or private property" was listed as one of the war crimes); Article 47 of The Hague Regulations ("Pillage is formally prohibited"); Article 28 of the Hague Regulations of 1907 ("Pillage is formally forbidden"); Article 33(2) of the Geneva Convention IV ("Pillage is prohibited"); Article 5(b) of the Tokyo Charter (which merely referred to "violations of the laws or customs of war") and Article 8(2)(a)(iv) and Article 8(2)(b)(xvi) of the ICC Statute (Articles 8(2)(a)(iv) lists "Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" under the grave breaches of the Geneva Conventions and Article 8(2)(b)(xvi) lists "Pillaging a town or place, even when taken by assault" under "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law").

<sup>202</sup> Article 4(f) of the ICTR Statute lists pillage among the serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims and of Additional Protocol II thereto of 8 June 197; Article 3(e) of the ICTY Statute lists plunder of public or private property among violations of the laws or customs of war; Although the official English versions of the ICTY and ICTR Statutes use the terms plunder and pillage, respectively, the official French versions of both the ICTY and ICTR Statutes use the term 'le pillage.'

<sup>203</sup> Commentary, Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Convention IV (Geneva: ICRC, 1960), pp. 226-227 [ICRC Commentary on Geneva Convention IV]; *Celebici* Trial Judgement, para. 590; ICRC Commentary on Additional Protocols, para. 4542: "[t]he prohibition of pillage is based on Article 33, paragraph 2, of the Fourth Convention. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It is prohibited to issue order whereby pillage is authorized. The prohibition has a general tenor and applies to all categories of property, both State-owned and private."

160. The Chamber notes that the ICTY Trial Chamber in the *Celebici* case found that this prohibition “extends both to acts of looting committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory”.<sup>204</sup> In light of the foregoing, the Chamber is of the view that the inclusion of the requirement that the appropriation be for private or personal use is an unwarranted restriction on the application of the offence of pillage.<sup>205</sup>

161. In addition, under international law, pillage does not require the appropriation to be extensive or to involve a large economic value.<sup>206</sup> Whether pillage committed on a small scale fulfils the jurisdictional requirement of the Special Court that the violation be *serious*, is, however, a different question.<sup>207</sup>

162. The seriousness of the violation must be ascertained on a case by case basis, taking into consideration the specific circumstances in each instance.<sup>208</sup> Thus, the Chamber concurs with the ICTY Trial Chamber in *Naletilic and Martinovic* that pillage:

may be a serious violation not only when one victim suffers severe economic consequences because of the appropriation, but also, for example, when property is appropriated from a large number of people. In the latter case, the gravity of the crime stems from the reiteration of the acts and from their overall impact.<sup>209</sup>

163. The *mens rea* for pillage is satisfied where it is established that the Accused intended to appropriate the property by depriving the owner of it.<sup>210</sup>

164. The Chamber has already noted that the offence of pillage is provided for in Article 4(2) of Additional Protocol II.

<sup>204</sup> *Celebici* Trial Judgement, para. 590. See also Rule 98 Decision, para. 102.

<sup>205</sup> Rule 98 Decision, para. 102, where the Chamber found that one of the elements of pillage was that: “[t]he perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use”. This element was not included in the *Sesay et al.* Oral Rule 98 Decision.

<sup>206</sup> *Naletilic and Martinovic* Trial Judgement, para. 612.

<sup>207</sup> *Tadic* Appeal Decision on Jurisdiction, para. 94: In order for a violation to be serious, it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim.

<sup>208</sup> *Naletilic and Martinovic* Trial Judgement, para. 614 (in the context of ‘plunder of public or private property’ as a violation of the laws or customs of war pursuant to Article 3(e) of the ICTY Statute).

<sup>209</sup> *Naletilic and Martinovic* Trial Judgement, para. 614 (in the context of determining whether the violation - plunder in this case - is a serious violation pursuant to Article 1 of the ICTY Statute).

<sup>210</sup> *Kordic and Cerkez* Appeal Judgement, para. 84. See also *Naletilic and Martinovic* Trial Judgement, para. 612, fn. 1498; *Celebici* Trial Judgement, para. 590.

165. The Chamber finds that the elements of pillage are as follows:

- (i) The Accused unlawfully appropriated the property;<sup>211</sup>
- (ii) The appropriation was without the consent of the owner; and
- (iii) The Accused intended to unlawfully appropriate the property.

166. Although Count 5 of the Indictment is entitled: "Looting and burning," the offence charged under this count is pillage, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute. The acts of burning, as charged in some paragraphs in Count 5 of the Indictment, will not be considered for the purposes of the offence of pillage as charged under Count 5. According to the definition of pillage as stated above, an essential element of pillage is the unlawful appropriation of property. Black's Law Dictionary defines appropriation as "the exercise of control over property; a taking or possession."<sup>212</sup> In the act of looting, the offender unlawfully appropriates the property. Destruction of property by burning, however, does not, by itself, necessarily involve any unlawful appropriation. Thus, while both looting and burning deprive the owner of their property, the two actions are distinct since the latter crime may be committed without appropriation *per se*. As a result, the Chamber is of the view that the destruction by burning of property does not constitute pillage. The Chamber will not, therefore, take into account acts of destruction by burning for the purposes of determining the individual criminal responsibility of the Accused under Count 5.

### 3.3.6. Acts of Terrorism (Count 6)

167. The Indictment charges the Accused under Count 6 with acts of terrorism as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(d) of the Statute. This Count relates to the Accused's alleged responsibility for the crimes charged in Counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorise the civilian populations in those areas.

168. The prohibition against acts of terrorism in Article 3(d) of the Statute is taken from Article 4(2)(d) of Additional Protocol II which prohibits acts of terrorism as a violation of the

<sup>211</sup> *Kordic and Cerkez Appeal Judgement*, paras 79 and 84.

<sup>212</sup> Black's Law Dictionary, 7<sup>th</sup> Edition, (St. Paul: West Group, 1999) [Black's Law Dictionary], "appropriation".



“fundamental guarantees” of humane treatment under the Additional Protocol. This prohibition was, in turn, based on Article 33 of the Fourth Geneva Convention which prohibited “all measures of intimidation or of terrorism” of or against protected persons.

169. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II further prohibit “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”. The Chamber concurs with the ICTY Appeals Chamber in *Galic*, where it found that the prohibition of terror against the civilian population was a part of customary international law from at least the time it was included in those treaties<sup>213</sup> and that the offence gave rise to individual criminal responsibility pursuant to customary international law.<sup>214</sup>

170. In addition to these general elements, the specific elements of crime of acts of terrorism can be described as follows:

- (i) Acts or threats of violence directed against persons or property;
- (ii) The Accused intended to make persons or property the object of those acts and threats of violence or acted in the reasonable knowledge that this would likely occur; and
- (iii) The acts or threats of violence were committed with the primary purpose of spreading terror among persons.

171. The first element relates to the *actus reus* of the offence. In *Galic*, the Appeals Chamber of the ICTY addressed the elements of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population. The Chamber held:

The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern [...] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.<sup>215</sup>

<sup>213</sup> *Prosecutor v. Galic*, IT-98-29-A, Judgement (AC), 30 November 2006, paras 87-90 [*Galic* Appeal Judgement].

<sup>214</sup> *Ibid.*, paras 93-98. Justice Schomburg dissented on this finding and concluded that there is no basis to find that this act was penalised beyond any doubt under customary international criminal law at the relevant time, see para. 2 of the Separate and Partially Dissenting Opinion of Judge Schomburg.

<sup>215</sup> *Galic* Appeal Judgement, para. 102.

172. The offence of acts of terrorism under Article 4(2)(d) of Additional Protocol II is very broad. The Chamber is satisfied that this prohibition includes both acts and threats of violence.<sup>216</sup>

173. Indeed, as the Chamber held in the Rule 98 Decision in this case, the offence “extend[s] beyond acts or threats of violence committed against protected persons to ‘acts directed against installations which would cause victims terror as a side-effect’”.<sup>217</sup> Thus, if attacks on property are carried out with the specific intent of spreading terror among the protected population, this will fall within the proscriptive ambit of the offence of acts of terrorism. The Chamber emphasises that all types of civilian property, including that which belongs to individual civilians, are protected. The focus of the offence is clearly on protecting persons from being subjected to acts of terrorism and the means used to spread this terror may include acts or threats of violence against persons or property.

174. The *mens rea* requirement of the offence of the acts of terrorism is found in the next two elements. To satisfy these elements, the Prosecution need only establish that the Accused intended to spread terror and does not need to demonstrate that the protected population actually was terrorised. The argument that actual terrorisation of the civilian population is a required element of the offence was rejected by both the Trial Chamber and the Appeals Chamber of the ICTY in *Galic* based on the rejection of attempts in the *travaux préparatoires* to Additional Protocol I to replace the intent to terrorise with actual terror.<sup>218</sup> The Chamber is persuaded by this reasoning and finds that the actual infliction of terror is not a required element of the offence.

175. As the Chamber has already observed, the defining element of the offence of acts of terrorism is the specific intent to spread terror among the protected population. It is clear that civilian populations are frightened by war and that legitimate military actions may have a consequence of terrorising civilian populations. This offence is not concerned with these types of terror: it is meant to criminalise acts or threats that are undertaken for the primary purpose of spreading terror in the protected population. Thus, the specific intent to spread terror must be proven as an element of the offence. This is not to say, however, that the intent to spread terror

<sup>216</sup> Following the wording of Article 4(2) of Additional Protocol II, Article 3(h) of the Statute specifically provides that threats to commit any of the acts listed in Article 3 are also included. See further *Galic* Appeal Judgement, para. 102.

<sup>217</sup> Rule 98 Decision, para. 112. See also ICRC Commentary on Additional Protocols, para. 4538.

<sup>218</sup> *Galic* Appeal Judgement, paras 103-104 and *Galic* Trial Judgement, para. 134.

must be established by direct evidence or that it needed to have been the only purpose behind the act or threat.<sup>219</sup>

### 3.3.7. Collective Punishments (Count 7)

176. The Indictment under Count 7 charges the Accused with the offence of collective punishments as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(b) of the Statute. This Count relates to the Accused's alleged responsibility for the commission by the CDF, largely Kamajors, of the crimes charged in Counts 1 through 5 in order to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.

177. The prohibition against collective punishments in Article 3(b) of the Statute derives from Article 4(2)(b) of Additional Protocol II, which is in turn based on the first paragraph of Article 33 of Geneva Convention IV.

178. The prohibition on collective punishments has been included in conventions on international humanitarian law since 1899<sup>220</sup> and was relied on by the ICTY Trial Chamber in *Martić* to find that the prohibition on reprisals is also part of customary international law.<sup>221</sup> In light of the above, the Chamber finds that there is individual criminal responsibility for the offence of collective punishments at customary international law.<sup>222</sup>

<sup>219</sup> In addressing the specific intent requirement, the Appeals Chamber of the ICTY stated "[T]he purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration" (*Galic* Appeal Judgment, para. 104)

<sup>220</sup> See Article 50 of the Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899 [Hague Regulations, 1899]; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 [Hague Regulations, 1907]; Article 33 of Geneva Convention IV; Article 87 of Geneva Convention III; Article 75(2)(d) of Additional Protocol I; and Article 4(2)(b) of Additional Protocol II. See also Article 75(4)(b) of Additional Protocol I and Article 6(2)(b) of Additional Protocol II which provide that no one shall be convicted of an offence except on the basis of individual penal responsibility.

<sup>221</sup> *Prosecutor v. Martić*, IT-95-11-R6, Decision (TC), 8 March 1996. The Chamber found that the argument that the prohibition of reprisals against civilians in non-international armed conflicts is part of customary international law is "strengthened by the inclusion of the prohibition of 'collective punishments' in paragraph 2(b) of Article 4 of [Additional] Protocol II."

<sup>222</sup> While the offence of collective punishments has not yet been prosecuted by either the ICTY or the ICTR, this Chamber has considered relevant jurisprudence from the cases of the international military tribunals from World War

179. The Chamber notes that the prohibition against collective punishments is identified broadly as one of the fundamental guarantees of humane treatment in Article 4 of Additional Protocol II. The Chamber finds that this prohibition is to be understood as encompassing not only penal sanctions but also any other kind of sanction that is imposed on persons collectively.<sup>223</sup>

180. Based on Article 4 of Additional Protocol II to the Geneva Conventions and Article 33 of the Fourth Geneva Convention, the Chamber is of the view that the constitutive elements of the crime of collective punishments under Article 3(b) of the Statute are:

- (i) A punishment imposed collectively upon persons for omissions or acts that they have not committed; and

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II. See, for example, *Haas and Priebke case*, Italy, Military Court of Appeal of Rome, Judgement, 22 July 1997 (available at [http://www.difesa.it/Giustizia/Militare/RassegnaGM/Processi/Priebke+Erich/08\\_22-07-97.htm](http://www.difesa.it/Giustizia/Militare/RassegnaGM/Processi/Priebke+Erich/08_22-07-97.htm), last visited July 2007); *In re von Mackensen and Maelzer* (Ardeatine Caves Massacre Case), Rome British Military Court, 30 November 1946, in Hersch Lauterpacht, ed., *Annual Digest and Report of Public International Law Cases*, Year 1946 (London: Butterworth & Co., 1940-1955) pp. 258-259; *The Trial of Albert Kesselring*, British Military Court at Venice, 17 February – 6 May 1947, United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (London: H.M.S.O., 1947-1948), vol. 8, 1949, pp. 9-14; and *In re Kappler*, Military Tribunal of Rome, 20 July 1948, in Hersch Lauterpacht, ed., *Annual Digest and Report of Public International Law Cases*, Year 1946 (London: Butterworth & Co., 1940-1955), pp. 471-482; R. John Pritchard and Sonia Magbanua Zaide, eds., *The Tokyo War Crimes Tribunal Volume 20*, annex No. A-6 (New York: Garland Publishing, 1981), pp. 59, 49, and 705; M.J. Thurman and Christine A. Sherman, *War Crimes: Japan's World War II Atrocities* (Paducah: Kentucky: Turner Publishing Company, 2001), p. 245. Furthermore, this Chamber takes the view that the prohibition of collective punishments in international humanitarian law is based on one of the most fundamental principles of domestic criminal law that is reflected in national systems around the world: the principle of individual responsibility. The principle of individual criminal responsibility requires that, whether an accused be tried singly or jointly, a determination must be made as to the penal responsibility and appropriate punishment of each individual on trial. Most civil law and Islamic states contain explicit references to this principle in their constitutions or penal legislation. See, for example, *Loi No. 92-1336 du 16 décembre 1992 relative à l'entrée en vigueur du nouveau code pénal et à la modification de certaines dispositions de droit pénal et de procédure pénale nécessaires à cette entrée en vigueur*, published in the Journal Officiel de la République française, No. 292, 23 December 1992, pp. 17563-17595, Article 121-1 (France); *Costituzione della Repubblica Italiana*, effective since 1 January 1948, published in *La Gazzetta Ufficiale* 27 dicembre 1947, No. 298, at Article 27(1) (Italy); *Constitución de la Nación Argentina*, adopted on 22 August 1994, Section 119 (Argentina); *Constitución de la República Bolivariana de Venezuela*, adopted on 30 December 1999, published in *La Gaceta Oficial del jueves 30 de diciembre de 1999*, No. 36.860, Article 44(5) (Venezuela); *Constitution of the Arab Republic of Egypt*, 11 September 1971, Article 66 (Egypt); *The Constitution of the Kingdom of Saudi Arabia*, adopted by Royal decree of King Fahd bin Abdul Aziz in March 1992, Article 38 (Saudi Arabia); *The Constitution of Tunisia*, adopted on 1 June 1959, Article 13 (Tunisia). In common law countries, on the other hand, the principle is implicit and is considered as a corollary to the principle of *nullum crimen sine lege* and the requirement of proof of *mens rea* to establish criminal responsibility. This principle is also contained in international human rights treaties, including Article 5(3) of the American Convention on Human Rights, (1978), 1144 U.N.T.S. 123 and Article 7 of the African Charter on Human and Peoples' Rights, (1986), O.A.U. Doc. CAB/LEG/67/3 Rev. 5).

<sup>223</sup> See ICRC Commentary on Geneva Convention IV, Article 33, p. 225 and ICRC Commentary on Additional Protocols, paras 4535-4536.

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(ii) The Accused intended to punish collectively persons for these omissions or acts or acted in the reasonable knowledge that this would likely occur.

181. As noted above, the term punishment in the first element is meant to be understood in its broadest sense and refers to all types of punishments. It does not refer only to punishments imposed under penal law.

3.3.8. Enlisting Children under the Age of 15 into Armed Forces or Groups or Using Them to Participate Actively in Hostilities (Count 8)

182. The Indictment under Count 8 charges the Accused with the offence of enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities as an "other serious violation of international humanitarian law" pursuant to Article 4(c) of the Statute.<sup>224</sup> This Count alleges that the Accused are responsible for the initiation or enlistment of children under the age of 15 into armed forces or groups, or the use of children under the age of 15 to participate actively in hostilities, throughout the Republic of Sierra Leone, at all times relevant to the Indictment.<sup>225</sup>

183. The Chamber observes that the offences related to child soldiers, viewed against the background of the Statutes of the ICTY and the ICTR where no such provisions exist, are novel in the Statute of the Special Court for Sierra Leone that came into force on 16 January 2002.<sup>226</sup>

184. In this regard, the Chamber recalls the preliminary motion filed by the Accused Norman, challenging the jurisdiction of the Special Court to try him for any offence under Article 4(c) of the Statute, on the basis that it would violate the principle of *nullum crimen sine lege*, since it did not amount to a crime under customary international humanitarian law at the time of the alleged offence. The Chamber determined that the motion raised a serious issue relating to jurisdiction under the mandatory provisions of Rule 72(E) of the Rules, and referred the matter to the Appeals Chamber. The Appeals Chamber dismissed the motion, and ruled that the offence of recruitment

<sup>224</sup> Indictment, para. 29.

<sup>225</sup> Indictment, paras 9, 16-17.

<sup>226</sup> These offences were later codified in the Rome Statute instituting the International Criminal Court that came into force on 1 July 2002, respectively in its Article 8(2)(b)(xxvi) as war crimes in relation to international armed conflicts, as well as under its Article 8(2)(e)(v i), as war crimes in respect of armed conflicts not of an international character.

of child soldiers below the age of 15 did in fact constitute a crime under customary international law which entailed individual criminal responsibility prior to the time frame of the Indictment.<sup>227</sup>

185. The Chamber is cognisant of the fact that there are no express treaty provisions in the Geneva Conventions of 1949 proscribing the recruitment, conscription and enlistment, or use of children under the age of 15 to participate actively in hostilities except to the extent only of a prohibition under Article 51(1) of the Fourth Geneva Convention on “compelling protected persons to serve in the armed or auxiliary forces.”

186. The Chamber notes that the Geneva Conventions do not directly address the recruitment of children for the following reason:

Where children had participated in hostilities [during World War II] it had been as irregulars - partisans or resisters. Such participation was consequently seen by the Allied powers as voluntary and heroic or (at best) an unfortunate necessity. *It was seen as something exceptional and not, consequently, requiring legal regulation; being unlikely to be repeated.*<sup>228</sup>

187. The Chamber considers that, by the time the Additional Protocols were negotiated, the need to explicitly prohibit the recruitment of children had emerged. As noted by the Appeals Chamber, both Additional Protocol I and Additional Protocol II explicitly proscribe the recruitment of children under the age of 15. Article 4(3)(c) of Additional Protocol II states categorically that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”.<sup>229</sup> Although the prohibition in Article 77(2) of Additional Protocol I is more narrowly circumscribed, it also clearly prohibits the recruitment of children “[t]he Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.”<sup>230</sup>

<sup>227</sup> Appeal Decision on Child Recruitment, para. 53.

<sup>228</sup> Matthew Happold, *Child Soldiers in International Law* (Manchester: Manchester University Press, 2005), p. 55 (emphasis added) [Happold, *Child Soldiers*]. Happold also cites the perception, prevalent during the period when the Additional Protocols were drafted, that “the regulation of children’s participation in hostilities was ... primarily an internal matter.”

<sup>229</sup> Additional Protocol II, Article 4(3)(c).

<sup>230</sup> Additional Protocol I, Article 77(2). The second sentence of Article 77(2) states: “In recruiting among those persons who have attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.”

188. The Appeals Chamber also derived some support for its conclusion as to the proscription of the offences in question from the *Convention on the Rights of the Child*<sup>231</sup> which prohibits the recruitment of children under the age of 15 as soldiers.<sup>232</sup>

189. Relying on the Appeals Chamber Decision, this Chamber acknowledges, as existing law, that “child recruitment was criminalised before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time relevant to the Indictment”, the implication being that “the principle of legality and the principle of specificity are both upheld”.<sup>233</sup>

190. In this Decision, the Appeals Chamber dealt specifically with the offence of “recruitment” of child soldiers. The actual language of Article 4(c) of the Statute uses the terms “conscription,” “enlistment” and “using [children] to participate actively in hostilities”. Count 8 of the Indictment, however, makes reference to the concepts of “enlistment”, “using children to participate actively in hostilities”, and also “initiation” of children into the armed forces or groups. The Chamber deems it necessary to examine these terms and their relevance to this case, specifically, whether “enlistment”, “using children to participate actively in hostilities”, and also “initiation” of children into the armed forces or groups, are prohibited under customary international law.

191. The Chamber notes that “recruitment” is the subject of the proscription under the Geneva Conventions of 1949 and the Additional Protocols of 1977 rather than “enlistment”, “conscription” or “use” of child soldiers, the terms used in the Statute. However, it is pertinent that the notion of “recruitment”, is interpreted in the ICRC Commentary to Article 4(3)(c) of Additional Protocol II compendiously to encompass “conscription”, “enlistment” and the “use of children to participate actively in hostilities”. To this effect, paragraph 4557 of the Commentary states:

The principle of non-recruitment also prohibits accepting voluntary enlistment. Not only can a child not be recruited, or enlist himself, but furthermore he will not be ‘allowed to take part in hostilities’, i.e. to participate in military operations such as gathering information,

<sup>231</sup> *Convention on the Rights of the Child*, United Nations, Treaty Series, Vol. 1577, p. 3, 20 November 1989.

<sup>232</sup> See also the *African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49 (1990), Articles 22(1) and 22(2).

<sup>233</sup> Appeal Decision on Child Recruitment, para. 53.

transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage.<sup>234</sup>

192. Both in everyday language,<sup>235</sup> and in the commentary quoted above, it is clear that voluntary enlistment is but one type of enlistment. The Chamber therefore finds that the term “enlistment” could encompass both *voluntary* enlistment and *forced* enlistment into armed forces or groups, forced enlistment being the aggravated form of the crime. In the Chamber’s opinion however, the distinction between the two categories is somewhat contrived. Attributing voluntary enlistment in the armed forces to a child under the age of 15 years, particularly in a conflict setting where human rights abuses are rife, is, in the Chamber’s view, of questionable merit. Nonetheless, for the purposes of the Indictment, where “enlistment” alone is alleged, the Accused is put on notice that both voluntary and forced enlistment are charged.

193. In defining the phrase “using children to participate actively in hostilities”, the Chamber has considered the Commentary given on the relevant statutory provision in the Rome Statue establishing the ICC on the issue, which states *inter alia*:

The words “using” and “participate [actively]” have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer’s accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology.<sup>236</sup>

194. The Chamber recognises that the phrase “armed forces or groups” has been the subject of a variety of legal interpretations. Noting some treaty variations in the use of this phrase, as is the case with the reference in the Brussels Declaration of 1874 of “militia and volunteer corps” and *levées en masse* as loyal combatants, and similar usages in the Hague Convention II of 1899, the Hague Convention IV of 1907, and the Geneva Conventions of 1949, the Chamber deems it appropriate to adopt the definition of “armed groups” given in the *Tadic* Appeal Judgement to the effect that:

<sup>234</sup> ICRC Commentary on Additional Protocols, para. 4557.

<sup>235</sup> The Concise OED gives the definition of “enlist” as “enroll or be enrolled in the armed service” (Concise Oxford English Dictionary, 10<sup>th</sup> Edition, Revised (New York: Oxford University Press, 2002)).

<sup>236</sup> Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998, p. 21, fn 12.



One should distinguish the situation of individuals acting on behalf of a State without specific instructions, from that of individuals making up *an organised and hierarchically structured group*, such as a military unit or, in case of war or civil strife, armed bands of irregulars or rebels. Plainly, an organised group differs from an individual in that the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority. Normally a member of the group does not act on his own but conforms to the standards prevailing in the group and is subject to the authority of the head of the group.<sup>237</sup>

In the Chamber's view, such a group may be either State or Non-State controlled.

195. The Chamber concludes that the specific elements of enlisting children under the age of 15 years into armed forces or groups are:

- (i) One or more persons were enlisted, either voluntarily or compulsorily, into an armed force or group by the Accused;
- (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; and
- (iv) The Accused intended to enlist the said persons into the armed force or group.

196. The specific elements of using children under the age of 15 years to participate actively in hostilities are as follows:

- (i) One or more persons were used by the Accused to actively participate 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; and
- (iv) The Accused intended to use the said persons to actively participate in hostilities.

197. The Appeals Chamber ruled that the offence of recruitment of child soldiers had crystallised under customary international humanitarian law prior to the events alleged in the Indictment. In so finding, it dismissed the applicant's argument that the offences listed under Article 4(c) of the Statute did not constitute crimes during the time of the events. Enlistment is clearly a form of recruitment. However, the "use" of child soldiers, in ordinary language, could not

<sup>237</sup> *Tadic* Appeal Judgement, para. 120 [emphasis in original].

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be said to be a form of recruitment. Whilst the Appeals Chamber did not enunciate specifically on “using child soldiers to participate actively in hostilities” the Chamber, having considered the dismissal by the Appeals Chamber of the whole Motion relating to Article 4(c) in its totality, and having considered the available authorities, considers that “using child soldiers to participate actively in hostilities” was also proscribed under customary international humanitarian law prior to the events charged in the Indictment.<sup>238</sup> Indeed, this is the only logical conclusion. For it would make no sense to say that recruiting children under 15 years of age for the armed forces was prohibited, but using them to fight was not.

198. The Indictment also charges the Accused with “initiation” of child soldiers, which is not listed as an offence in the Statute. However, it is the opinion of the Chamber that evidence of “initiation” may be of relevance in establishing liability under Article 4(c) of the Statute.

199. It is the Chamber’s view that the rules of international humanitarian law apply equally to all parties in an armed conflict, regardless of the means by which they were recruited.<sup>239</sup> Furthermore, the Chamber is mindful that the special protection provided by Article 4(3)(d) of Additional Protocol II remains applicable in the event that children under the age of 15 are conscripted, enlisted, or used to participate actively in the hostilities.

#### 4. Law on the Forms of Liability Charged

200. In order to assess and determine the culpability or otherwise of each Accused, it is necessary for the Chamber to examine the criminal responsibility of each Accused on all the forms of liability which have been alleged against them in the Indictment, either collectively or individually. In this regard, it is alleged that the Accused are responsible, pursuant to Article 6(1) of the Statute, for planning, instigating, ordering, committing (including through participation in a joint criminal enterprise) or otherwise aiding and abetting the planning, preparation, or execution of the crimes charged in the Indictment.<sup>240</sup> In addition or in the alternative, the Accused

<sup>238</sup> Article 4(3)(c) of Additional Protocol II provides that “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups *nor allowed to take part in hostilities*” (italics added), which would appear to proscribe the “use” of child soldiers. The Appeals Chamber found that this formed part of customary international law (Appeal Decision on Child Recruitment, para. 18).

<sup>239</sup> Peter Rowe, *The Impact of Human Rights Law on Armed Forces* (Cambridge: Cambridge University Press, 2006), p. 21: “[I]nternational humanitarian law draws no distinction between volunteer and conscript soldiers.”

<sup>240</sup> Indictment, para. 20.

are also alleged to be criminally responsible pursuant to Article 6(3) of the Statute, as superiors of members of the CDF.<sup>241</sup>

201. The relevant paragraphs of Article 6 of the Statute provide as follows:

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime. [...]

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. [...]

202. The Chamber is of the view that the principle of legality demands that the Court shall apply the law which was binding upon individuals at the time of the acts charged.<sup>242</sup> The application of the law of Sierra Leone to the forms of liability within the jurisdiction of the Special Court is restricted to the crimes envisaged in Article 5 of the Statute. As stated earlier, no Accused has been charged with any crime under this article.<sup>243</sup> The Chamber finds that for the purposes of the crimes envisaged in Articles 2 to 4 of its Statute, the Court has jurisdiction to consider only modes of liability which both (a) are contemplated by its Statute, and (b) existed in customary international law at the time of the alleged offences under consideration.<sup>244</sup> The Chamber finds that all modes of liability listed in the indictment are contemplated by the Statute of the Special

<sup>241</sup> Indictment, paras 21, 18.

<sup>242</sup> See, for example, *Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction - Joint Criminal Enterprise (AC), 21 May 2003, para. 10 [*Ojdanic* Appeal Decision on Joint Criminal Enterprise].

<sup>243</sup> Article 6(5) of the Statute provides that: "[i]ndividual criminal responsibility for the crimes referred to in Article 5 shall be determined in accordance with the respective laws of Sierra Leone".

<sup>244</sup> *Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise (AC), 12 April 2006, para. 15 [*Karemera* Appeal Decision on Joint Criminal Enterprise]; see also *Prosecutor v. Bagilishema*, ICTR-95-1A-1, Judgement (Reasons) (AC), 3 July 2002, para. 34 [*Bagilishema* Appeal Judgement]: "[t]he Statute does not provide for criminal liability other than for those forms of participation stated therein, expressly or implicitly. In particular, it would be both unnecessary and unfair to hold an accused responsible under a head of responsibility which has not clearly been defined in international criminal law." See also *Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-05-87-PT, Decision on Ojdanic's Motion Challenging Jurisdiction: Indirect Co-Perpetration (TC), 22 March 2006, para. 15.

Court and were recognized as such under customary international law at the time of the acts or omissions alleged in the Indictment.<sup>245</sup>

203. The Chamber is of the opinion that to establish individual criminal responsibility under Article 6(1) of the Statute for committing, planning, instigating, ordering or otherwise aiding and abetting in the planning, preparation or execution of a crime over which the Special Court has jurisdiction, or under Article 6(3) of the Statute, the Prosecution must prove that the crime in question has been completed by the Accused.<sup>246</sup>

#### 4.1. Responsibility under Article 6(1) of the Statute

##### 4.1.1. Committing

204. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with committing the crimes referred to in the Indictment.<sup>247</sup>

205. Consistent with established jurisprudence, the Chamber adopts the definition of “committing” a crime as “physically perpetrating a crime or engendering a culpable omission in violation of criminal law”.<sup>248</sup> The *actus reus* for committing a crime consists of the proscribed act of participation, physical or otherwise direct, in a crime provided for in the Statute, through positive

<sup>245</sup> See *Prosecutor v. Hadzihasanovic, Alagic and Kubura*, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), 16 July 2003, para. 44 [*Hadzihasanovic et al.* Appeal Decision on Command Responsibility]: “it has always been the approach of this Tribunal not to rely merely on a construction of the Statute to establish the applicable law on criminal responsibility, but to ascertain the state of customary law in force at the time the crimes were committed.” See also *Tadic* Trial Judgement, paras 663-669. The *Tadic* Trial Chamber went through a number of sources and reached the following conclusion at para. 669: “the foregoing establishes the basis in customary international law for both individual responsibility and of participation in the various ways provided by Article 7 of the [ICTY] Statute. The International Tribunal accordingly has the competence to exercise the authority granted to it by the Security Council to make findings in this case regarding the guilt of the accused, whether as a principal or an accessory or otherwise as a participant.” This finding has been followed in trial judgements of the ICTY and ICTR and has never been altered on appeal; see *Furundzija* Trial Judgement, para. 226; *Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgement (TC), 25 June 1999, para. 60 [*Aleksovski* Trial Judgement]; *Celebici* Trial Judgement, para. 321; *Kordic and Cerkez* Trial Judgement, para. 373; and *Oric* Trial Judgement, para. 268. For further discussion of the status at customary international law of joint criminal enterprise, see paras 209 *infra*, and command responsibility, see paras 233 *infra*.

<sup>246</sup> *Semanza* Trial Judgement, para. 378: “[p]ursuant to Article 6(1), a crime within the Tribunal’s jurisdiction must have been completed before an individual’s participation in that crime will give rise to criminal responsibility. Article 6(1) does not criminalize *inchoate* offenses” [italics in original]. See also *Akayesu* Trial Judgement, para. 473; *Brdjanin* Trial Judgement, para. 267, and accompanying references.

<sup>247</sup> Indictment, para. 20.

<sup>248</sup> *Tadic* Appeal Judgement, para. 188; *Kunarac et al.* Trial Judgement, para. 390; *Limaj et al.* Trial Judgement, para. 509; *Rutaganda* Trial Judgement, para. 41.

acts or culpable omission, whether individually or jointly with others.<sup>249</sup> The Chamber takes the view that the *mens rea* requirement for committing a crime is satisfied if the Prosecution proves that the Accused acted with intent to commit the crime, or with the reasonable knowledge that the crime would likely occur as a consequence of his conduct.

#### 4.1.2. Committing through Participation in a Joint Criminal Enterprise

206. The Indictment charges the Accused with participating in a common purpose, plan or design. The Chamber notes that the phrases “common purpose doctrine” on the one hand, and “joint criminal enterprise” on the other have been used interchangeably in the international jurisprudence and they refer to one and the same thing. The latter term, which this Chamber adopts, refers to the same form of liability as that known as the common purpose doctrine or liability.<sup>250</sup>

207. For the Court to exercise its jurisdiction on the basis of this form of liability, it must conclude that, even though Article 6(1) does not make a specific reference to joint criminal enterprise, it is indeed included in Article 6(1) as a means of “committing”.<sup>251</sup>

208. The Chamber adopts the position that, although “committing” in Article 6(1) of the Statute “covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law,”<sup>252</sup> the verb “commit” is sufficiently protean in nature as to include participation in a joint criminal enterprise to commit the crime.<sup>253</sup> The view that “committing” also describes participation in a joint criminal enterprise is reinforced “to the extent that, insofar as a participant shares the purpose of the joint criminal enterprise (as he or she must do) as opposed to merely knowing about it, he or she cannot be

<sup>249</sup> *Limaj et al.* Trial Judgement, para. 509; *Kvočka et al.* Trial Judgement, para. 251; *Kordic and Cerkez* Trial Judgement, para. 376; *Kunarac et al.* Trial Judgement, para. 390; *Prosecutor v. Stakic*, IT-97-24-T, Judgement (TC), 31 July 2003, para. 439 [*Stakic* Trial Judgement]; *Musema* Trial Judgement, paras 122-123; *Semanza* Trial Judgement, para. 383.

<sup>250</sup> *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 36.

<sup>251</sup> *Ibid.*, para. 23.

<sup>252</sup> *Tadic* Appeal Judgement, para. 188; *Limaj et al.* Trial Judgement, para. 509.

<sup>253</sup> *Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Separate Opinion of Judge David Hunt on Challenge by *Ojdanic* to Jurisdiction – Joint Criminal Enterprise (AC), 21 May 2003, para. 26 [Separate Opinion of Judge Hunt to *Ojdanic* Appeal Decision on Joint Criminal Enterprise], citing *Tadic* Appeal Judgement, para. 188.

regarded as a mere aider and abettor to the crime which is contemplated".<sup>254</sup> The Chamber also recalls that this mode of liability has been routinely applied in the jurisprudence of the *Ad Hoc* Tribunals.<sup>255</sup> The Chamber is therefore satisfied that individual criminal responsibility for participation in a joint criminal enterprise to commit a crime over which the Court has jurisdiction is included with in Article 6(1) of the Statute.<sup>256</sup>

209. In *Tadic*, the ICTY Appeals Chamber found that, by 1992, joint criminal enterprise was a mode of liability which was "firmly established in customary international law".<sup>257</sup> The Chamber concurs with this position and finds as a result that joint criminal enterprise existed under customary international law at the time of the acts charged in the Indictment.

210. The jurisprudence of the *Ad Hoc* Tribunals has identified the following three categories of joint criminal enterprise:

The first category is a "basic" form of joint criminal enterprise. It is represented by cases where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention. An example is a plan formulated by the participants in the joint criminal enterprise to kill where, although each of the participants may carry out a different role, each of them has the intent to kill.

The second category is a "systemic" form of joint criminal enterprise. It is a variant of the basic form, characterised by the existence of an organised

<sup>254</sup> *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 20. See also *ibid.*, para. 31: "joint criminal enterprise is to be regarded, not as a form of accomplice liability, but as a form of 'commission' and that liability stems not [...] from mere membership of an organization, but from participating in the commission of a crime as part of a criminal enterprise".

<sup>255</sup> *Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006, para. 62 [*Stakic* Appeals Judgement] referring to *Kvočka et al.* Appeal Judgement, para. 79; *Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004, para. 95 [*Vasiljevic* Appeal Judgement]; *Prosecutor v. Krstic*, IT-98-33-A, Judgement (AC), 19 April 2004, paras 79-134 [*Krstic* Appeal Judgement]; *Prosecutor v. Furundzija*, IT-95-14/1-A, Judgement (AC), 21 July 2000 [*Furundzija* Appeal Judgement], para. 119; *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement (AC), 17 September 2003, paras 29-32 [*Krnojelac* Appeal Judgement]; *Celebici* Appeal Judgement, para. 366; *Tadic* Appeal Judgement, para. 220; *Prosecutor v. Brdjanin and Talic*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend (TC), 26 June 2001, para. 24; *Prosecutor v. Babic*, IT-03-72-A, Judgement on Sentencing Appeal (AC), 18 July 2005, paras 27, 38, 40 [*Babic* Judgement on Sentencing Appeal]. See also *Prosecutor v. Gacumbitsi*, ICTR-01-64-A, Judgement (AC), 7 July 2006, paras 158-179 [*Gacumbitsi* Appeal Judgement]; *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, paras 463-468 [*Ntakirutimana* Appeal Judgement].

<sup>256</sup> Rule 98 Decision, para. 130.

<sup>257</sup> *Tadic* Appeal Judgement, paras 220, 226. See also *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 29: "[the ICTY Appeals Chamber] is satisfied that the state practice and *opinio juris* reviewed in that decision was sufficient to permit the conclusion that such a norm existed under customary international law in 1992 when *Tadic* committed the crimes for which he had been charged and for which he was eventually convicted."

system of ill-treatment. An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.

The third category is an "extended" form of joint criminal enterprise. It concerns cases involving a common purpose to commit a crime where one of the perpetrators commits an act which, while outside the common purpose, is nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example is a common purpose or plan on the part of a group to forcibly remove at gun-point members of one ethnicity from their town, village or region (to effect "ethnic cleansing") with the consequence that, in the course of doing so, one or more of the victims is shot and killed. While murder may not have been explicitly acknowledged to be part of the common purpose, it was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians.<sup>258</sup>

211. In the present case, however, the pleading in the Indictment is limited to an alternative pleading of the first and third categories of joint criminal enterprise.

212. Regardless of the category at issue or the charge under consideration, the *actus reus* of the participant in a joint criminal enterprise is common to each of the three above-mentioned categories and comprises three requirements.<sup>259</sup>

213. First, a plurality of persons is required. They need not be organised in a military, political or administrative structure.<sup>260</sup> However, it needs to be shown that this plurality of persons acted in concert with each other.<sup>261</sup>

214. Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required.<sup>262</sup> There is no need for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts.<sup>263</sup>

<sup>258</sup> *Vasiljevic* Appeal Judgement, paras 97-99 [footnotes omitted]; *Tadic* Appeal Judgement, paras 196, 202, 204.

<sup>259</sup> *Vasiljevic* Appeal Judgement, para. 100.

<sup>260</sup> *Stakic* Appeal Judgement, para. 64; *Tadic* Appeal Judgement, para. 227.

<sup>261</sup> *Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (TC), 27 September 2006 [*Krajisnik* Trial Judgement], para. 884.

<sup>262</sup> *Stakic* Appeal Judgement, para. 64; *Tadic* Appeal Judgement, para. 227.

<sup>263</sup> *Ibid.*

215. Third, the participation of the Accused in the common purpose is required.<sup>264</sup> “This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose.”<sup>265</sup> It must be shown that the plurality of persons acted in concert with each other in the implementation of a common purpose.<sup>266</sup> As to the required extent of the participation, the Prosecution need not demonstrate that the Accused’s participation is necessary or substantial, but the Accused must at least have made a significant contribution to the crimes for which he is held responsible.<sup>267</sup>

216. The principal perpetrator need not be a member of the joint criminal enterprise, but may be used as a tool by one of the members of the joint criminal enterprise. The Chamber adopts the view of the ICTY Appeals Chamber in *Brdjanin et al.*, that “where the principal perpetrator is not shown to belong to the JCE, the trier of fact must further establish that the crime can be imputed to at least one member of the joint criminal enterprise, and that this member – when using the principal perpetrator – acted in accordance with the common plan”.<sup>268</sup>

217. The *mens rea* requirements for liability under the first and third categories of joint criminal enterprise, which are pleaded in the Indictment, are different.

218. In the first category of joint criminal enterprise the Accused must intend to commit the crime and intend to participate in a common plan whose object was the commission of the crime.<sup>269</sup> The intent to commit the crime must be shared by all participants in the joint criminal enterprise.<sup>270</sup>

219. The *mens rea* for the third category of joint criminal enterprise is two-fold: in the first place, the Accused must have had the intention to take part in and contribute to the common purpose. In the second place, responsibility under the third category of joint criminal enterprise for a crime

<sup>264</sup> *Stakic* Appeal Judgement, para. 64.

<sup>265</sup> *Tadic* Appeal Judgement, para. 227.

<sup>266</sup> *Krajisnik* Trial Judgement, para. 884.

<sup>267</sup> *Prosecutor v. Brdjanin*, IT-99-36-A Judgement (AC), para. 430 [*Brdjanin* Appeal Judgement], citing *Kvočka et al.* Appeal Judgement, para. 97.

<sup>268</sup> *Brdjanin et al.* Appeal Judgement, para. 430. See also para. 413.

<sup>269</sup> *Tadic* Appeal Judgment, para. 228, *Brdjanin et al.* Appeal Judgement, para. 365. See also *Vasiljevic* Appeal Judgement, paras 97, 101; *Kvočka et al.* Appeal Judgement, para. 82 (requiring “intent to further the common purpose”).

<sup>270</sup> *Tadic* Appeal Judgement, para. 228.



that was committed beyond the common purpose of the joint criminal enterprise, but which was “a natural and foreseeable consequence thereof”, arises only if the Prosecution proves that the Accused had sufficient knowledge that the additional crime was a natural and foreseeable consequence to him in particular.<sup>271</sup> The Accused must also know that the crime which was not part of the common purpose, but which was nevertheless a natural and foreseeable consequence of it, *might* be perpetrated by a member of the group (or by a person used by the Accused or another member of the group).<sup>272</sup> The Accused must willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.<sup>273</sup> The Chamber can only find that the Accused has the requisite intent “if this is the only reasonable inference on the evidence”.<sup>274</sup>

#### 4.1.3. Planning

220. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with planning the crimes referred to in the Indictment.<sup>275</sup>

221. The Chamber adopts the view of the various Chambers of the *Ad Hoc* Tribunals which have consistently stated that: “planning” a crime implies that one or several persons plan or design the commission of a crime at both the preparatory and execution phases.<sup>276</sup> The Chamber agrees with the ICTY Appeals Chamber in the *Kordic and Cerkez* case that the *actus reus* of planning a crime requires that one or more persons design the criminal conduct constituting one or more crimes provided for in the Statute, which are later perpetrated.<sup>277</sup> “It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.”<sup>278</sup> The Chamber is of the opinion that the *mens rea* requirement for planning an act or omission is satisfied if the Prosecution proves that the Accused acted with an intent that a crime provided for

<sup>271</sup> *Kvočka et al.* Appeal Judgement, para. 86.

<sup>272</sup> *Brdjanin* Appeal Judgement, para. 411.

<sup>273</sup> *Kvočka et al.* Appeal Judgement, para. 83; *Vasiljevic* Appeal Judgement, para. 99; *Tadic* Appeal Judgement, paras 204, 227-228; *Stakic* Appeal Judgement, para. 65.

<sup>274</sup> *Brdjanin* Appeal Judgment, para. 429.

<sup>275</sup> Indictment, para. 20.

<sup>276</sup> *Limaj et al.* Trial Judgement, para. 513; *Brdjanin* Trial Judgement, para. 268; *Krstic* Trial Judgement, para. 601; *Blaskic* Trial Judgement, para. 279.

<sup>277</sup> *Kordic and Cerkez* Appeal Judgement, para. 26, citing *Kordic and Cerkez* Trial Judgement, para. 386; see also *Limaj et al.* Trial Judgement, para. 513.

<sup>278</sup> *Kordic and Cerkez* Appeal Judgement, para. 26.

in the Statute be committed or with reasonable knowledge that the crime would likely be committed in the execution of that plan.

#### 4.1.4. Instigating

222. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.<sup>279</sup>

223. The Chamber is of the view that “instigating” a crime means urging, encouraging or “prompting another to commit an offence”.<sup>280</sup> The *actus reus* required for instigating a crime is an act or omission, covering both express and implied conduct of the Accused,<sup>281</sup> which is shown to be a factor substantially contributing to the conduct of another person committing the crime.<sup>282</sup> A causal relationship between the instigation and the perpetration of the crime must be demonstrated; although it is not necessary to prove that the crime would not have occurred without the Accused’s involvement.<sup>283</sup> To establish the *mens rea* requirement for “instigating” a crime, the Prosecution must prove that the Accused intended to provoke or induce the commission of the crime, or had reasonable knowledge that a crime would likely be committed as a result of that instigation.

#### 4.1.5. Ordering

224. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.<sup>284</sup>

225. The Chamber takes the view that the *actus reus* of “ordering” a crime requires that a person who is in a position of authority orders a person in a subordinate position to commit an offence.<sup>285</sup> It is our opinion that no *formal* superior-subordinate relationship between the superior and the

<sup>279</sup> Indictment, para. 20.

<sup>280</sup> *Kordic and Cerkez* Appeal Judgement, para. 27; *Semanza* Trial Judgement, para. 381; *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 514.

<sup>281</sup> *Brdjanin* Trial Judgement, para. 269; *Blaskic* Trial Judgement, para. 280; *Limaj et al.* Trial Judgement, para. 514; *Oric* Trial Judgement, para. 273.

<sup>282</sup> *Kordic and Cerkez* Appeal Judgement, para. 27; *Gacumbitsi* Appeal Judgement, para. 129; *Limaj et al.* Trial Judgement, para. 514.

<sup>283</sup> *Kordic and Cerkez* Appeal Judgement, para. 27; *Limaj et al.* Trial Judgement, para. 515; *Brdjanin* Trial Judgement, para. 269; *Bagilishema* Trial Judgement, para. 30.

<sup>284</sup> Indictment, para. 20.

<sup>285</sup> *Kordic and Cerkez* Appeal Judgement, para. 28; *Limaj et al.* Trial Judgement, para. 514.

subordinate is required. It is sufficient that there is proof of some position of authority on the part of the Accused that would compel another to commit a crime in compliance with the Accused's order.<sup>286</sup> Such authority can be *de jure* or *de facto* and can be reasonably implied.<sup>287</sup> The Chamber is of the view that a "causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering" but that this "link need not be such as to show that the offence would not have been perpetrated in the absence of the order."<sup>288</sup>

226. The Chamber finds that to establish the *mens rea* requirement for "ordering" a crime, the Prosecution must prove that the Accused either intended to bring about the commission of the crime or that the Accused had reasonable knowledge that the crime would likely be committed as a consequence of the execution or implementation of that order.

#### 4.1.6. Aiding and Abetting:

227. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with aiding and abetting in the planning, preparation or execution of the crimes referred to in the Indictment.<sup>289</sup>

228. It is the view of the Chamber that "aiding and abetting" consists of the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.<sup>290</sup> "Aiding and abetting" can include providing assistance, helping, encouraging, advising, or being sympathetic to the commission of a particular act by the principal offender.<sup>291</sup>

<sup>286</sup> *Gacumbitsi* Appeal Judgement, paras 181-182; *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 361 [*Semanza* Appeal Judgement], referring to *Kordic and Cerkez* Appeal Judgement, para. 28. See also *Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005, para. 75 [*Kamuhanda* Appeal Judgement]: "To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act." [Footnotes omitted].

<sup>287</sup> *Limaj et al.* Trial Judgement, para. 515 referring to *Brdjanin* Trial Judgement, para. 270.

<sup>288</sup> *Strugar* Trial Judgement, para. 332.

<sup>289</sup> Indictment, para. 20.

<sup>290</sup> *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 516; *Tadic* Appeals Judgement, para. 229.

<sup>291</sup> *Limaj et al.* Trial Judgement, para. 516; *Kvočka et al.* Trial Judgement, para. 254; *Semanza* Trial Judgement, para. 384; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (TC), 17 June 2004, para. 286 [*Gacumbitsi* Trial Judgement].

229. The Chamber is of the opinion that the *actus reus* of aiding and abetting requires that the Accused carries out an act specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act of the aider and abettor must have a substantial effect upon the perpetration of the crime.<sup>292</sup> “Proof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required.”<sup>293</sup> Further, taking into account the specific wording of Article 6(1) of the Statute that “[a] person who [...] aided and abetted *in the planning, preparation or execution* of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime”, this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.<sup>294</sup> The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

230. Mere presence at the scene of a crime will not usually constitute aiding and abetting. Where, however, such presence provides encouragement or support to the principal offender, that may be sufficient. For example, the presence of a person with superior authority at the scene of a principal crime may be probative to determining whether such person encouraged or supported the principal perpetrator.<sup>295</sup> The Chamber also notes that a superior’s failure to punish for past crimes might result in acts that would constitute instigation or aiding and abetting for *further* crimes.<sup>296</sup>

231. The Chamber recognises that the *mens rea* of aiding and abetting is the knowledge that the acts performed by the Accused assist the commission of the crime by the principal offender.<sup>297</sup>

<sup>292</sup> *Vasiljevic* Appeal Judgement, para. 102; see also *Blaskic* Appeal Judgement, para. 46 referring to *Furundzija* Trial Judgement, para. 249.

<sup>293</sup> *Blaskic* Appeal Judgement, para. 48; see also *Gacumbitsi* Appeal Judgement, para. 140.

<sup>294</sup> *Blaskic* Appeal Judgement, para. 48; see also *Vasiljevic* Trial Judgement, para. 70, *Aleksovski* Trial Judgement, para. 62.

<sup>295</sup> *Blaskic* Appeal Judgement, para. 47; see also *Limaj et al.* Trial Judgement, para. 517; *Brdjanin* Trial Judgement, para. 271 and footnoted references; *Aleksovski* Trial Judgement, para. 65.

<sup>296</sup> *Blaskic* Trial Judgement, para. 337;

<sup>297</sup> *Vasiljevic* Appeal Judgement, para. 102; see also *Blaskic* Appeal Judgement, para. 49; *Tadic* Appeal Judgement, para. 229.

Such knowledge may be inferred from all relevant circumstances.<sup>298</sup> The Accused need not share the *mens rea* of the principal offender, but he must be aware of the principal offender's intention.<sup>299</sup> In the case of specific intent offences, the aider and abettor must have knowledge that the principal offender possessed the specific intent required.<sup>300</sup> The aider and abettor, however, need not know the precise crime that is intended by the principal offender. If he is aware that one of a number of crimes will probably be committed by the principal offender, and one of those crimes is in fact committed, then he has intended to assist or facilitate the commission of that crime, and may be guilty of aiding and abetting.<sup>301</sup>

#### 4.2. Responsibility under Article 6(3) of the Statute

232. The Chamber notes that the Prosecution, in addition or in the alternative, alleges that the Accused are responsible pursuant to Article 6(3) of the Statute for the crimes alleged in Counts 1 through 8 of the Indictment since these crimes were allegedly committed while the Accused were holding positions of superior responsibility and exercising command and control over their subordinates.<sup>302</sup>

233. The principle of superior responsibility is today anchored firmly in customary international law.<sup>303</sup> The Chamber endorses the views expressed by the ICTY Appeals Chamber in *Celebici* that the individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates was already an established principle of customary international law in 1992,<sup>304</sup> whether the crimes charged were committed in the context of an international or an

<sup>298</sup> *Limaj et al.* Trial Judgement, para. 518 referring to *Celebici* Trial Judgement, para. 328; *Tadic* Trial Judgement, para. 676.

<sup>299</sup> *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000, para. 162 [*Aleksovski* Appeal Judgement] referring to *Furundzija* Trial Judgement, para. 245; see also *Limaj et al.* Trial Judgement, para. 518; *Brdjanin* Trial Judgement, para. 273; *Kunarac et al.* Trial Judgement, para. 392.

<sup>300</sup> *Krnjelac* Appeal Judgement, para. 52, *Krstic* Appeal Judgement, para. 140, *Vasiljevic* Appeal Judgement, para. 142.

<sup>301</sup> *Blaskic* Appeal Judgement, para. 50, *Furundzija* Trial Judgement, para. 246, *Limaj et al.* Trial Judgement, para. 518.

<sup>302</sup> Indictment, paras 18, 21.

<sup>303</sup> Gerhard Werle, *Principles of International Criminal Law* (The Hague: T.M.C. Asser Press, 2005), para. 372.

<sup>304</sup> *Celebici* Appeal Judgement, para. 195: "[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law". See also *Celebici* Trial Judgement, para. 343; *Strugar* Trial Judgement, para. 357; *Limaj et al.* Trial Judgement, para. 519; *Oric* Trial Judgement, para. 291; *Halilovic* Trial Judgement, paras 39-54.

internal armed conflict.<sup>305</sup> The Chamber further concurs with the finding of the Appeals Chamber of the *Ad Hoc* Tribunals that the principle of individual criminal responsibility of superiors is applicable, albeit not exactly in the same way, to both civilian and military superiors.<sup>306</sup>

234. The Chamber is of the opinion that the nature of responsibility pursuant to Article 6(3) is based upon the duty of a superior to act, which consists of a duty to prevent and a duty to punish criminal acts of his subordinates.<sup>307</sup> It is thus the failure to act when under a duty to do so which is the essence of this form of responsibility.<sup>308</sup> It is responsibility for an omission<sup>309</sup> where a superior may be held criminally responsible when he fails to take the necessary and reasonable measures to prevent the criminal act or punish the offender.<sup>310</sup>

235. The Chamber takes the view that the following three elements must be satisfied in order to invoke individual criminal responsibility under Article 6(3) of the Statute:

- (i) the existence of a superior-subordinate relationship between the superior and the offender of the criminal act;
- (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
- (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the offender thereof.<sup>311</sup>

<sup>305</sup> See for the application of the principle of command responsibility to internal armed conflicts, *Hadzihasanovic et al.* Appeal Decision on Command Responsibility, paras 27, 31; see also *Brdjanin* Trial Judgement, para. 275; *Strugar* Trial Judgement, para. 357; *Limaj et al.* Trial Judgement, para. 519; *Oric* Trial Judgement, para. 291.

<sup>306</sup> *Bagilishema* Appeal Judgement, paras 35, 51-52; *Celebici* Appeal Judgement, paras 195-197; for the distinction in the application of the principle to civilian and military superiors, see para. 163 *infra*.

<sup>307</sup> *Halilovic* Trial Judgement, para. 38; *Celebici* Trial Judgment, para. 334.

<sup>308</sup> *Halilovic* Trial Judgement, para. 38 and footnoted references.

<sup>309</sup> *Halilovic* Trial Judgement, para. 54: "The Trial Chamber finds that under Article 7(3) command responsibility is responsibility for an omission. The commander is responsible for the failure to perform an act required by international law. This omission is culpable because international law imposes an affirmative duty on superiors to prevent and punish crimes committed by their subordinates. Thus "for the acts of his subordinates" as generally referred to in the jurisprudence of the Tribunal does not mean that the commander shares the same responsibility as the subordinates who committed the crimes, but rather that because of the crimes committed by his subordinates, the commander should bear responsibility for his failure to act. The imposition of responsibility upon a commander for breach of his duty is to be weighed against the crimes of his subordinates; a commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed. The Trial Chamber considers that this is still in keeping with the logic of the weight which international humanitarian law places on protection values."

<sup>310</sup> *Bagilishema* Appeal Judgement, para. 35.

<sup>311</sup> See *Blaskic* Appeal Judgement, para. 484; *Kordic and Cerkez* Appeal Judgement, para. 827; *Aleksovski* Appeal Judgement, para. 72; *Gacumbitsi* Appeal Judgement, para. 143.

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#### 4.2.1. Superior-Subordinate Relationship

236. Under Article 6(3) of the Statute, a superior is someone who possesses the power or authority in either a *de jure* or a *de facto* capacity to prevent the commission of a crime by a subordinate or to punish the offender of the crime after the crime has been committed.<sup>312</sup> It is thus this power or authority of the superior to control the actions of his subordinates which forms the basis of the superior-subordinate relationship.<sup>313</sup>

237. The power or authority of the superior to prevent or to punish does not arise solely from a *de jure* status of a superior conferred upon him by official appointment.<sup>314</sup> Someone may also be judged to be a superior based on the existence of *de facto* powers or degree of control. This may often be the case in contemporary conflicts where only *de facto* armies and paramilitary groups subordinated to self-proclaimed governments may exist.<sup>315</sup>

238. In assessing the degree of control to be exercised by the superior over the subordinate, the Appeals Chambers of the *Ad Hoc* Tribunals have determined that the “effective control” test should be applied. According to this test, the superior must possess the “material ability to prevent or punish criminal conduct”.<sup>316</sup> The indicators of effective control are more a matter of evidence than of substantive law.<sup>317</sup> The Chamber adopts the view that this is the appropriate test to apply in determining whether a superior-subordinate relationship exists. Mere substantial influence that does not meet the threshold of effective control is not sufficient under customary international law to serve as a means of exercising superior criminal responsibility.<sup>318</sup> Moreover, *de jure* power in and of itself is not conclusive of whether a superior-subordinate relationship exists, although it may be

<sup>312</sup> *Celebici* Appeal Judgement, para. 192; *Bagilishema* Appeal Judgement, para. 50.

<sup>313</sup> *Kordic and Cerkez* Appeal Judgement, para. 840; see also *Celebici* Trial Judgement, para. 377; *Strugar* Trial Judgement, para. 359.

<sup>314</sup> *Celebici* Appeal Judgement, para. 193; *Bagilishema* Appeal Judgement, para. 50; *Gacumbitsi* Appeal Judgement, para. 143.

<sup>315</sup> *Celebici* Appeal Judgement, para. 193.

<sup>316</sup> *Celebici* Appeal Judgement, para. 256.

<sup>317</sup> *Blaskic* Appeal Judgement, para. 69 referring to *Aleksovski* Appeal Judgement, paras 73-74, 76 and *Celebici* Appeal Judgement, para. 206.

<sup>318</sup> *Celebici* Appeal Judgement, para. 266.

evidentially relevant to such a determination.<sup>319</sup> The Chamber is therefore of the view that the effective control test must be satisfied even if the Accused has *de jure* status as a superior.

239. Hierarchy, subordination and chains of command need not be established in the sense of a formal organisational structure as long as the test of effective control is met.<sup>320</sup> The superior can also be found responsible for a crime committed by a subordinate two levels down in the chain of command.<sup>321</sup>

240. The Chamber further endorses the finding of the ICTY Appeals Chamber that an Accused could not be held liable under Article 6(3) of the Statute for crimes committed by a subordinate before the said Accused assumed command over that subordinate.<sup>322</sup> In order to “hold a commander liable for the acts of troops who operated under his command on a temporary basis it must be shown that *at the time* when the acts charged in the indictment were committed, these troops were under the effective control of that commander.”<sup>323</sup>

241. A superior-subordinate relationship may be of a military or civilian character.<sup>324</sup> When examining whether a superior exercises effective control over his subordinates, the Chamber must take into account inherent differences in the nature of military and civilian superior-subordinate relationships. Effective control may not be exercised in the same manner by a civilian superior and by a military commander and, therefore, may be established by the evidence to have been exercised in a different manner.<sup>325</sup> Whether the evidence regarding a civilian’s *de jure* or *de facto* authority establishes effective control over subordinates must be determined on a case-by-case basis.

<sup>319</sup> *Celibici* Appeal Judgement, para. 197; *Kayishema and Ruzindana* Appeal Judgement, para. 294. See also *Kunarac* Trial Judgement, paras 396-397.

<sup>320</sup> *Celibici* Appeal Judgment, para. 254.

<sup>321</sup> *Strugar* Trial Judgement, para. 361.

<sup>322</sup> *Hadzihasanovic et al.* Appeal Decision on Command Responsibility. The Appeals Chamber found that individual criminal responsibility for superior command responsibility did not exist at customary international law for crimes that occurred before an accused became a superior. See para. 51: “[The ICTY] Appeals Chamber holds that an accused cannot be charged under Article 7(3) of the [ICTY] Statute for crimes committed by a subordinate before the said accused assumed command over that subordinate. The Appeals Chamber is aware that views on this issue may differ. However, the Appeals Chamber holds the view that this Tribunal can impose criminal responsibility only if the crime charged was clearly established under customary law at the time the events in issue occurred. In case of doubt, criminal responsibility cannot be found to exist, thereby preserving full respect for the principle of legality”.

<sup>323</sup> *Halilovic* Trial Judgment, para. 61 [emphasis added]; *Kunarac et al.* Trial Judgement, para. 399.

<sup>324</sup> *Celibici* Appeal Judgement, para. 195; *Celibici* Trial Judgement, paras 735-736; *Kayishema and Ruzindana* Trial Judgement, para. 216; *Aleksovski* Appeal Judgement, para. 76.

<sup>325</sup> *Bagilishema* Appeal Judgement, para. 52.



#### 4.2.2. Mental Element: the Superior Knew or Had Reason to Know

242. In order to hold a superior responsible under Article 6(3) of the Statute for crimes committed by a subordinate, the Chamber is of the opinion that the Prosecution must prove that the superior knew or had reason to know that his subordinate was about to commit or had committed such crimes. Responsibility under Article 6(3) of the Statute is not a form of strict liability.<sup>326</sup>

243. The actual knowledge of the superior, *i.e.* that he knew that his subordinate was about to commit or had committed the crime, cannot be presumed and, in the absence of direct evidence, may be established by circumstantial evidence.<sup>327</sup> Various factors or indicia may be considered by the Chamber when determining the actual knowledge of the superior. Such indicia would include: the number, type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of subordinates involved; the logistics involved, if any; the means of communication available; the geographical location of the acts; the widespread occurrence of the acts; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the superior at the time and the proximity of the acts to the location of the superior.<sup>328</sup>

244. The Chamber accepts the jurisprudence of the *Ad Hoc* Tribunals that the “had reason to know” standard will only be satisfied if information was available to the superior which would have put him on notice of offences committed by his subordinates or about to be committed by his subordinates.<sup>329</sup> Such information need not be such that, by itself, it was sufficient to compel

<sup>326</sup> *Celebici* Appeal Judgement, para. 239: “[...] The Appeals Chamber would not describe superior responsibility as a vicarious liability doctrine, insofar as vicarious liability may suggest a form of strict imputed liability.”

<sup>327</sup> *Oric* Trial Judgement, para. 319 and footnoted references.

<sup>328</sup> *Celebici* Trial Judgement, para. 386; *Strugar* Trial Judgement, para. 368; *Limaj et al.* Trial Judgement, para. 524; *Blaskic* Trial Judgement, para. 307 endorsed in *Blaskic* Appeal Judgement, para. 57; see also *Oric* Trial Judgement, fn 909: “With regard to geographical and temporal circumstances, it has to be kept in mind that the more physically distant the commission of the subordinate’s acts from the superior’s position, the more difficult it will be, in the absence of other indicia, to establish that the superior had knowledge of them. Conversely, if the crimes were committed close to the superior’s duty-station, the easier it would be to establish a significant indicium of the superior’s knowledge, and even more so if the crimes were repeatedly committed.”

<sup>329</sup> *Galic* Appeal Judgement, para. 184 referring to *Celebici* Appeal Judgement, para. 241; see also *Blaskic* Appeal Judgement, paras 62-63, *Celebici* Trial Judgement, para. 393, *Strugar* Trial Judgement, para. 369, *Krnjelac* Appeal Judgement, para. 154.

the conclusion of the existence of such crimes.<sup>330</sup> It need not, for example, take “the form of specific reports submitted pursuant to a monitoring system” and “does not need to provide specific information about unlawful acts committed or about to be committed”.<sup>331</sup> It can be general in nature, but it must be sufficiently alarming so as to alert the superior to the risk of the crimes being committed or about to be committed,<sup>332</sup> and to justify further inquiry in order to ascertain whether indeed such crimes were committed or were about to be committed by his subordinates.<sup>333</sup>

245. The information in question must in fact be available to the superior, who may not be held liable for failing to acquire such information in the first place.<sup>334</sup> In any event, an assessment of the mental element required by Article 6(3) of the Statute should be conducted in the particular circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.<sup>335</sup>

#### 4.2.3. Necessary and Reasonable Measures

246. The Chamber is of the opinion that a superior may be held responsible pursuant to Article 6(3) of the Statute if he has failed to take necessary and reasonable measures to prevent the commission of a crime or punish the perpetrators thereof. The question of whether a superior has failed to take such measures is connected to his possession of effective control. In other words, a superior will be liable if he failed to take measures that are within his material ability.<sup>336</sup> Hence, the question of whether the superior had the explicit legal capacity to do so is irrelevant if it is proven that he had the material ability to act.<sup>337</sup>

<sup>330</sup> *Celebici* Trial Judgement, para. 393; *Strugar* Trial Judgement para. 369; *Limaj et al.* Trial Judgement, para. 525.

<sup>331</sup> *Galic* Appeal Judgement, para. 184 citing *Celebici* Appeal Judgement, para. 238: “For instance, a military commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge”.

<sup>332</sup> See, for example, *Krnjelac* Appeal Judgement, para. 155.

<sup>333</sup> *Celebici* Appeal Judgement, paras 233, 223; see also *Limaj et al.* Trial Judgement, para. 525 and footnoted references.

<sup>334</sup> *Blaskic* Appeal Judgement, paras 62-63; *Celebici* Appeal Judgement, para. 226.

<sup>335</sup> *Krnjelac* Appeal Judgement, para. 156 referring to *Celebici* Appeal Judgement, para. 239.

<sup>336</sup> *Limaj et al.* Trial Judgement, para. 526; *Halilovic* Trial Judgement, para. 73.

<sup>337</sup> *Celebici* Trial Judgement, para. 395: “lack of formal legal competence to take the necessary measures to prevent or repress the crime in question does not necessarily preclude the criminal responsibility of the superior”; *Limaj et al.* Trial Judgement, para. 526; *Halilovic* Trial Judgement, para. 73.

247. Under Article 6(3), the superior has a duty both to prevent the commission of the offence and punish the perpetrators. These are not alternative obligations – they involve different crimes committed at different times: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates.<sup>338</sup> The duty to prevent arises from the time a superior acquires knowledge, or has reason to know that a crime is being or is about to be committed, while the duty to punish arises after the superior acquires knowledge of the commission of the crime.<sup>339</sup> “A superior must act from the moment that he acquires such knowledge. His obligations to prevent will not be met by simply waiting and punishing afterwards.”<sup>340</sup>

248. The Chamber is of the opinion that whether a superior has discharged his duty to prevent the commission of a crime will depend on his material ability to intervene in a specific situation. In making this determination, the Chamber may take into account factors such as those which have been enumerated in the *Strugar* case on the basis of the case law developed by the military tribunals in the aftermath of World War II: the superior’s failure to secure reports that military actions have been carried out in accordance with international law, the failure to issue orders aimed at bringing the relevant practices into accord with the rules of war, the failure to protest against or to criticise criminal action, the failure to take disciplinary measures to prevent the commission of atrocities by the troops under the superior’s command and the failure to insist before a superior authority that immediate action be taken.<sup>341</sup> As part of his duty to prevent subordinates from committing crimes, the Chamber is of the view that a superior also has the obligation to prevent his subordinates from following unlawful orders given by other superiors.

249. The Chamber notes that a causal link between the superior’s failure to prevent the subordinates’ crimes and the occurrence of these crimes is not an element of the superior’s responsibility; it is a question of fact rather than of law.<sup>342</sup> “Command responsibility is

<sup>338</sup> *Blaskic* Appeal Judgement, para. 83.

<sup>339</sup> *Limaj et al.* Trial Judgement, para. 527 referring to *Blaskic* Appeal Judgement, para. 83 and *Kordic and Cerkez* Trial Judgement, paras 445-446.

<sup>340</sup> *Limaj et al.* Trial Judgement, para. 527; *Strugar* Trial Judgement, para. 373.

<sup>341</sup> *Strugar* Trial Judgement, para. 374 and footnoted references; see also *Limaj et al.* Trial Judgement, para. 528; *Oric* Trial Judgement, para. 331; *Halilovic* Trial Judgement, para. 89.

<sup>342</sup> *Blaskic* Appeal Judgement, para. 77; *Kordic and Cerkez* Appeal Judgement, para. 832, *Halilovic* Trial Judgement, para. 78.

responsibility for omission, which is culpable due to the duty imposed by international law upon a commander” and does not require his involvement in the crime.<sup>343</sup>

250. The Chamber is of the opinion that the duty imposed on a superior to punish subordinate offenders includes the obligation to investigate the crime or to have the matter investigated to establish the facts in order to assist in the determination of the proper course of conduct to be adopted.<sup>344</sup> The superior has the obligation to take active steps to ensure that the offender will be punished.<sup>345</sup> The Chamber further takes the view that in order to discharge this obligation, the superior may exercise his own powers of sanction, or if he lacks such powers, report the offender to the competent authorities.<sup>346</sup>

#### 4.3. Conviction under Article 6(1) and Article 6(3) of the Statute

251. The Chamber takes the view that where the Indictment charges the Accused with both Article 6(1) and Article 6(3) responsibility under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber may only enter a conviction on the basis of Article 6(1).<sup>347</sup>

## V. FACTUAL AND LEGAL FINDINGS

### 1. Evaluation of Evidence

#### 1.1. Introduction

252. The Rules confer upon the Chamber discretion to apply rules of evidence which best favour a fair determination of the proceedings.<sup>348</sup> The Appeals Chamber has stated that the

<sup>343</sup> *Halilovic* Trial Judgement, para. 78; *see also Oric* Trial Judgement, para. 293.

<sup>344</sup> *Strugar* Trial Judgement, para. 376; *Halilovic* Trial Judgement, para. 97; *Kordic and Cerkez* Trial Judgement, para. 446.

<sup>345</sup> *Limaj et al.* Trial Judgement, para. 529; *Halilovic* Trial Judgement, para. 98.

<sup>346</sup> *Kordic and Cerkez* Trial Judgement, para. 446; *Strugar* Trial Judgement, para. 376.

<sup>347</sup> *Blaskic* Appeal Judgement, para. 91; *Kordic and Cerkez* Appeal Judgement, para. 34; *Gacumbitsi* Appeal Judgement, para. 142; *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, Judgement (AC), 23 May 2005, para. 81 [*Kajelijeli* Appeal Judgement]; *Celebici* Appeal Judgement, para. 745.

<sup>348</sup> Rule 89 - General Provisions (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence. (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law. (C) A Chamber may admit any relevant evidence.

language used in the Rules “should be given its ordinary meaning”. However the Rules must be “applied in their context and according to their purpose in progressing the relevant stage of the trial process fairly and effectively”.<sup>349</sup> This gives the Chamber a wide discretion, which makes it appropriate for the Chamber to outline some of the basic standards it has applied.

### 1.2. Admission of “Relevant” Evidence

253. Under the Rules, the Chamber may admit all “relevant evidence”.<sup>350</sup> The Chamber understands relevant evidence to be any evidence that could have a bearing on the guilt or innocence of the Accused for the crimes charged under the Indictment. The assessment of evidential weight is a separate issue and, unless otherwise stated, has been made by the Judges during final deliberations.<sup>351</sup> This approach is consonant with established international criminal procedure.<sup>352</sup>

### 1.3. Standard of Proof

254. Article 17(3) of the Statute enshrines the principle that an Accused person is presumed innocent until proven guilty. The Prosecution alone bears the burden of establishing the guilt of the Accused, and the high standard which must be met before there can be a conviction on any Count is *proof beyond reasonable doubt*. Each fact on which the Accused’s conviction is based must be proved beyond a reasonable doubt. However, the standard of proof does not need to be applied to every individual piece of evidence.<sup>353</sup>

<sup>349</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Amendment of the Consolidated Indictment (AC), 16 May 2005, para. 45. See also para. 46.

<sup>350</sup> Rule 89 (C).

<sup>351</sup> See, for example, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR65, Fofana - Appeal Against Decision Refusing Bail (AC), 11 March 2005, paras 22-24 [*Fofana Bail Appeal*]; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Mr. Koker (TC), 23 May 2005, paras 4-6.

<sup>352</sup> “The principle... is one of extensive admissibility of evidence - questions of credibility or authenticity being determined according to the weight given to each of the materials by the judges at the appropriate time.” (*Blaskic Trial Judgement*, para. 34).

<sup>353</sup> *Ntagerura et al. Appeal Judgement*, paras 174-175. See also *R. v. Morin*, [1988] 2 S.C.R. 345, paras 40-41.

#### 1.4. Circumstantial Evidence

255. The Chamber is composed of professional judges who do not make inferences without proper evidentiary basis or foundation.<sup>354</sup> Where it has been necessary for the Chamber to resort to circumstantial evidence in proof of a fact at issue,<sup>355</sup> the Chamber has been careful to consider whether there is any other reasonable conclusion rather than that which leads to a finding of guilt. If such a conclusion is possible, the Chamber has erred on the side of caution and adopted that explanation which best favours the Accused.<sup>356</sup>

#### 1.5. Credibility and Reliability of Oral Testimony

256. In assessing the credibility and reliability of oral witness testimony, the Chamber has considered factors such as the internal consistency of the witness' testimony, its consistency with other evidence in the case, any personal interest a witness may have that may influence his motivation to tell the truth, as well as observational criteria such as the witness' demeanour, conduct and character.<sup>357</sup> In addition, the Trial Chamber has considered the witnesses' knowledge of the facts on which they testify, and the lapse of time between the events and the testimony.<sup>358</sup>

257. The Trial Chamber has also kept in mind that "the fact that a witness gives evidence honestly is not in itself sufficient to establish the reliability of that evidence. The issue is not

<sup>354</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT and *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-04-15-PT and SCSL-04-16-PT (TC), 11 May 2004, para. 38; *Prosecutor v. Gbao*, SCSL-03-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions And The Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case (TC), 16 May 2003, p. 2; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination (TC), 2 August 2006, p. 4.

<sup>355</sup> *Limaj et al.* Trial Judgement, para. 10. See also *Halilovic* Trial Judgement, para. 15: "[c]ircumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred."

<sup>356</sup> "A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him. [...] Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from the evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted." (*Celebici* Appeal Judgement, para. 458 [emphasis in original]).

<sup>357</sup> *Prosecutor v. Blagojevic*, IT-02-60-T, Judgement (TC), 17 January 2005, para. 23 [*Blagojevic* Trial Judgement]. See also *Brdjanin* Trial Judgement, para. 25.

<sup>358</sup> *Blagojevic* Trial Judgement, para. 23; *Halilovic* Trial Judgment, para. 17.

merely whether the evidence of a witness is honest; it is also whether the evidence is objectively reliable.”<sup>359</sup>

258. The Chamber may accept or reject the evidence of a witness in part or in whole, and may find a witness to be credible and reliable about certain aspects of their testimony and not credible or reliable with respect to others.<sup>360</sup>

#### 1.6. Identification Evidence

259. It is well-accepted that identification evidence is affected by the vagaries of human perception and recollection. Its probative value depends not only upon the credibility of the witness, but also on other circumstances surrounding the identification. In assessing the reliability of identification evidence, the Chamber has taken account of “the circumstances in which each witness claimed to have observed the Accused, the length of that observation, the familiarity of a witness with the Accused prior to the identification and the description given by the witness of their identification of the Accused.”<sup>361</sup> The Chamber is mindful that the ICTY Appeals Chamber has drawn attention to the need for “extreme caution” in relation to visual identification evidence<sup>362</sup> and has highlighted that the evaluation of an individual witness’s evidence, as well as the evidence as a whole, should be conducted with considerations such as those enunciated in *Reg. v. Turnbull* in mind.<sup>363</sup>

260. During the course of the trial, some witnesses have been asked to identify one or more of the Accused in the courtroom. The Chamber is aware that it may be possible for a witness to point out an Accused person (whomever they may be) due to their physical placement in the courtroom

<sup>359</sup> *Brdjanin* Trial Judgement, para. 25, relying on, *inter alia*, *Celebici* Appeal Judgement, paras 491, 506.

<sup>360</sup> *Kupreskic* Appeal Judgement, para. 332.

<sup>361</sup> *Vasiljevic* Trial Judgement, para. 16.

<sup>362</sup> *Kupreskic et al.* Appeal Judgment, paras 34-40 and footnoted references.

<sup>363</sup> *Limaj et al.* Trial Judgement, para. 17, citing *Reg v. Turnbull*, [1977] QB 224 (CA) [*Turnbull*]; *Reid v. Reg.*, [1991] I AC 363; *Auckland City Council v. Brailey*, [1988] 1 NZLR 103 (New Zealand); *R v. Mezzo*, [1986] 1 SCR 802; *Dominican v. R.*, [1992] 173 CLR 555. See also *Kupreskic et al.* Appeal Judgement, para. 34. These considerations include the amount of time the witness observed the Accused, the distance between the witness and the Accused, the level of visibility, the presence of any impediments in the line of view, whether the witness had specific reasons to remember the Accused, whether the Accused was previously known to the witness, the time lapse between the original observation and the subsequent identification to the authorities, and any discrepancies between the original description given by the witness and the actual appearance of the Accused (*Turnbull*, pp. 228-229).

and, in multi-Accused trial, to pick out the Accused person who most closely resembles an individual they previously saw.<sup>364</sup>

261. The Chamber considers identification by a witness of someone previously known to be more reliable than identification of someone previously unknown.<sup>365</sup>

#### 1.7. Inconsistencies

262. Minor inconsistencies in testimony do not necessarily discredit a witness. The events in question took place several years ago and, due to the nature of memory, some details will be confused, and some will be forgotten.

263. The Chamber's preference is for oral testimony.<sup>366</sup> It is not expected that a witness' oral evidence will be identical to evidence given in prior statements. As we have stated, "it is foreseeable that witnesses, by the very nature of oral testimony, will expand on matters mentioned in their witness statements, and respond more comprehensively to questions asked at trial."<sup>367</sup> A witness may be asked questions at trial which were not asked before. Also, many witnesses remember, in court, details which they had previously forgotten.

#### 1.8. Hearsay

264. There is no bar to the admission of hearsay evidence at the Special Court.<sup>368</sup> Although admitted during the course of trial, the Chamber is aware that hearsay evidence has inherent deficiencies. It cannot be tested by cross-examination, its reliability may be affected by compounded errors of perception and memory, and its source is not subject to solemn

<sup>364</sup> See also *Limaj et al.* Trial Judgement, para. 18, citing *Vasiljevic* Trial Judgement, para. 19; *Kunarac et al.* Trial Judgement, para. 562.

<sup>365</sup> *Kayishema and Ruzindana* Trial Judgement, paras 455-458.

<sup>366</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Disclosure of Witness Statements and Cross-Examination (TC), 16 July 2004, para. 25 [*Norman* Decision on Disclosure of Witness Statements]; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108 (TC), 15 June 2006, para. 8.

<sup>367</sup> *Norman* Decision on Disclosure of Witness Statements, para. 25.

<sup>368</sup> *Fofana* Bail Appeal, para. 29. See also *Halilovic* Trial Judgement, para. 15, citing *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999, para. 14 [*Aleksovski* Decision on Hearsay Evidence]: hearsay evidence is "the statement of a person made otherwise than in the proceedings in which it is being tendered, but nevertheless being tendered in those proceedings in order to establish the truth of what that person says."



declaration.<sup>369</sup> However, hearsay evidence is not necessarily without probative value, and the Chamber will consider any indicia of reliability before according appropriate weight to it.

### 1.9. Corroboration

265. In some instances, only one witness has given evidence on a material fact. While the testimony of a single witness on a material fact does not, as a matter of law, require corroboration,<sup>370</sup> it has been the practice of the Chamber to examine such evidence very carefully, and in light of the overall evidence adduced, before placing reliance upon it.

### 1.10. Measures to Protect Witnesses

266. Concerns for the safety of certain witnesses and their families necessitated the granting of protective measures, including anonymity during trial.<sup>371</sup> To preserve that anonymity in this Judgement, these witnesses are referred to only by the pseudonym under which they testified.

267. Occasionally, it is also possible to identify a protected witness by the events or knowledge they testified to. To safeguard the anonymity of these protected witnesses, it has on occasion unfortunately proved necessary for the Chamber to omit from this Judgement factual details that might otherwise have been included.

<sup>369</sup> *Krnjelac* Trial Judgement, para. 70. See also *Aleksovski* Decision on Hearsay Evidence, para. 15, where the ICTY Appeals Chamber clarified that: “[t]he absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is ‘first-hand’ or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence”.

<sup>370</sup> *Limaj et al.* Trial Judgement, para. 21, citing *Aleksovski* Appeal Judgement, para. 62. See also *Vasiljevic* Trial Judgement, para. 22; *Krnjelac* Trial Judgement, para. 71.

<sup>371</sup> See *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003; *Prosecutor v. Fofana*, SCSL-03-11-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 16 October 2003; *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and urgent Request for Interim Measures until Appropriate Protective Measures are in Place (TC), 10 October 2003. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (TC), 8 June 2004.

### 1.11. Expert Evidence

268. During the course of trial, the Chamber ruled that an expert witness is a “person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute”<sup>372</sup> and that expert testimony is “testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field” whose purpose “is to provide a court with information that is outside its ordinary experience and knowledge”.<sup>373</sup>

269. The Chamber admitted testimony from expert witnesses for both the Prosecution and the Defence. The admission into evidence of expert testimony does not mean that the Chamber is bound to accept it. It is the prerogative of the Chamber to assign what probative value to attach to it.<sup>374</sup> In evaluating the probative value of this evidence, the Chamber has considered the professional competence of the expert, the methodologies and reasoning used by the expert, the independence of the expert, whether those facts that the expert opinion is based upon have been introduced into evidence, the truthfulness of those facts, and the credibility of the opinions expressed in light of these factors and other evidence accepted by the Chamber.<sup>375</sup>

### 1.12. Judicial Notice

270. The Chamber observes that Rule 94(A) of the Rules provides that the Chamber shall not require proof of facts of common knowledge but shall instead take judicial notice of them. In accordance with this provision, the Chamber took judicial notice of a number of facts.<sup>376</sup> Once

<sup>372</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 21 June 2005 [*Norman Decision on Additional Witnesses*], p. 4, citing *Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps (TC), 3 July 2002, p. 2.

<sup>373</sup> *Norman Decision on Additional Witnesses*, p. 4, citing *Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998 and Richard May and Marieke Wierda, *International Criminal Evidence* (New York: Transnational Publishers, 2002), p. 199, para. 6.83 [*May, International Criminal Evidence*].

<sup>374</sup> *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1, Decision on Prosecution’s Motion for Exclusion of Evidence and Limitation of Testimony (TC), 3 July 2000, para. 4.

<sup>375</sup> *Vasiljevic Trial Judgement*, para. 20.

<sup>376</sup> See Annex E: Judicially Noted Facts.

judicial notice is taken, such facts cannot be challenged during trial.<sup>377</sup> Those facts that have been judicially noticed by the Chamber are, therefore, conclusively established.<sup>378</sup>

### 1.13. Documentary Evidence

271. Pursuant to the Rules, the Chamber may admit documentary evidence.<sup>379</sup> During the course of trial, the Chamber admitted documentary evidence from both Prosecution and Defence teams.<sup>380</sup> As with all evidence adduced before the Trial Chamber, “the weight and reliability of such ‘information’ admitted under Rule 92bis will have to be assessed in light of all the evidence in the case.”<sup>381</sup> The Chamber will not make use of the evidence admitted under this rule, where it goes to prove the acts and conduct charged against the Accused if there is no opportunity for cross-examination.<sup>382</sup>

272. With this flexible approach to the admission of evidence, there is less scope for the restrictive application of technical rules of evidence sometimes found in national jurisdictions and applied to documentary evidence.<sup>383</sup>

<sup>377</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence” (AC), 16 May 2005, para. 32 [Appeal Decision on Judicial Notice].

<sup>378</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence (TC), 2 June 2004, as modified by Appeal Decision on Judicial Notice, paras 41, 43, 45 and 49 [Trial Decision on Judicial Notice].

<sup>379</sup> Rules 89(C), 92bis and 92ter. Rule 92bis was amended on 14 May 2007. Rule 92ter was adopted on 24 November 2006.

<sup>380</sup> For example, documents submitted by the Prosecution, such as United Nations and Non-Governmental organisations (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C) (TC), 14 July 2005); Documents submitted by Defence for Norman (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Norman Request to Admit Documents in Lieu of Oral Testimony of Abdul One-Mohammed Pursuant to Rules 89(C) and 92bis (TC), 15 September 2006) and witness statements adduced by Defence for Fofana (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92bis (TC), 9 October 2006).

<sup>381</sup> Appeal Decision on Judicial Notice, para. 27.

<sup>382</sup> *Prosecutor against Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89 (C), 15 July 2005, p. 3; *Prosecutor v Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-156 and TF1-179, 3 April 2006, p. 3; *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92bis to admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169, 9 November 2005, p. 3.

<sup>383</sup> As the Appeals Chamber has stated, “[t]he so-called “best evidence rule” [...] has no modern application other than to require a party in possession of the original document to produce it. If the original is unavailable then copies may be relied upon – the rule has no bearing at all on the question of whether an unsigned statement or submission is admissible. If relevant, then under Rule 89(C) they may [...] be admitted, with their weight to be determined

1.14. Article 18 of the Statute – A Reasoned Opinion in Writing

273. Pursuant to Article 18 of the Statute, every Accused has the right to a public judgement accompanied by a reasoned opinion in writing. Although in a case of this size and complexity, a written reasoned opinion will necessarily be fairly lengthy, it is important that it remains readable to the public at large. Cogency, comprehensibility, and conciseness are important qualities. The Chamber has sought to make clear the evidence it has found to be credible, and, more importantly, the evidence it has relied upon in making its legal findings. The Chamber recalls the guidance given by the ICTY Appeals Chamber on this issue:

With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the record. It is to be presumed that the Trial Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence.<sup>384</sup>

274. In handing down its factual findings, the Chamber has consciously opted to present them as a comprehensible narrative. This approach does not comment on the Chamber's evaluation of every piece of evidence on the record. The facts that the Chamber has included within its narration are *only* those facts which it has found established. Furthermore, it includes *only* those established facts that have been seriously considered by the Chamber in determining whether an Accused bears responsibility on the charges against him. Some of the evidence in this case was not useful to the Chamber in determining the liability of the Accused. This can be attributed partly to the wide discretion the Judges gave the parties in adducing evidence, and also because some of the evidence became irrelevant due to the death of one of the original Accused, Norman, prior to Judgement. In adopting this narrative approach, the Chamber has attempted to give as clear a picture as possible of the involvement of the two remaining Accused in the crimes charged against them, and the context in which the relevant actions took place. In so doing, the Chamber has fully

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thereafter. There is no rule that requires, as a precondition for admissibility, that relevant statements or submissions must be signed. That may be good practice, but it is not a rule about admissibility of evidence. Evidence is admissible once it is shown to be relevant: the question of its reliability is determined thereafter, and is not a condition for its admission." (*Fofana* Bail Appeal, para. 24 [original footnotes omitted]).

<sup>384</sup> *Kvočka et al.* Appeal Judgement, para. 23.

taken into consideration, where necessary, the evidence given by the Accused Norman before he died.

275. The ICTY Appeals Chamber also gave useful guidance in determining the level of detail required of a Trial Chamber in its written reasoned opinion as regards how the Trial Judges exercised their discretion to determine that testimony they find credible, and that which they do not:

Considering the fact that minor inconsistencies commonly occur in witness testimony without rendering it unreliable, it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail. If the Trial Chamber did not refer to the evidence given by a witness, even if it is contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.<sup>385</sup>

276. Adopting this approach, it should be taken that where the Chamber has not discussed the evidence of witnesses who gave testimony at odds with that found as established in the factual narrative, the Chamber has nevertheless fully considered the evidence of each and every witness in light of the evidence of the case as a whole. The Chamber has however determined that such evidence does not meet the threshold of reliability and credibility necessary to make a factual conclusion upon it.

#### 1.15. Credibility Discussion

277. As the Chamber has made clear in the approach outlined above, it does not intend to discuss in this Judgement the credibility of the testimony of each and every witness that testified in the case. However, certain important credibility findings bear highlighting.

278. In its attempt to establish that the Accused bear responsibility under either Article 6(1) or as a superior under Article 6(3) for the crimes charged in the Indictment, the Prosecution brought witnesses that may be regarded as "insider" witnesses. In this case, the Chamber has found that these are witnesses who themselves operated either within the CDF inner circle, or at a fairly high level within the overall CDF structure. The Chamber recalls particularly the evidence of Witnesses

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<sup>385</sup> *Kvočka et al.* Appeal Judgement, para. 23.

Albert J Nallo, Bobor Tucker, TF2-017, TF2-201, TF2-005, TF2-008, TF2-011, TF2-079, TF2-082 and TF2-223.<sup>386</sup> Many of these witnesses were directly involved as key participants in the events alleged in the Indictment. With this category of witnesses, who could be considered as co-perpetrators or accomplices, a trier of fact has to exercise particular caution in examining every detail of the witnesses' testimony.

279. Witness Nallo was, in the Chamber's view, the single most important witness in the Prosecution evidence on the alleged superior responsibility of the Accused, particularly Fofana. Nallo was, at the time, the Deputy National Director of Operations and the Director of Operations, Southern Region, and according to the evidence, one of only a few literate Directors within the organisation. The Chamber has found that he was in regular communication with both the senior leadership of the organisation and the Kamajors fighting on the ground. Due to his literacy and his functions in relation to the war front, he regularly prepared reports for the ultimate attention of the National Coordinator, Norman. During his time spent at Base Zero, he worked with and reported directly to Fofana, the Director of War, preparing plans for the war. In short, he was in a unique position.

280. Nallo's frank and public admission of his personal role in the war, including the commission of criminal acts, and his willingness to testify openly (presumably at considerable personal risk) about the activities of his fellow leaders and commanders are important factors that have added to his overall credibility. For the greater part, Nallo testified without hesitation, unambiguously, and, in the Chamber's opinion, through a genuine desire that the truth be known. Parts of his testimony were corroborated by the testimony of TF2-017, one of Nallo's subordinates. Occasionally, however, Nallo appeared equivocal or exaggerated in his responses to questions. The Chamber has rejected those portions of his evidence.

281. The Chamber has also rejected parts of Nallo's testimony for reasons of reliability. Much of this relates to events occurring around Talia. The Chamber, for example, rejected part of the testimony of Nallo describing the attacks on four villages in Bonthe District: Dodo, Sorgia, Pipor and Baomakpengeh. For example, Joseph Lansana, whom the Chamber found to be a largely

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<sup>386</sup> The Chamber granted protective measures to almost all Prosecution witnesses. The pseudonym assigned to each witness begins with the letters "TF2".

credible witness, gave evidence about his own mother being thrown into a fire, an event to which Nallo also testified; however Lansana placed this event at a different time than Nallo. Doubts as to Nallo's accurate recollection of this, and other incidents, caused the Chamber to entirely reject this part of his testimony.

282. The Prosecution adduced evidence from former child soldiers. The Chamber found the evidence of TF2-021 pivotal in making its factual findings. According to TF2-021's own testimony, he was nine years old when he was captured by RUF rebels, and eleven years old when the Kamajors captured him from the RUF and initiated him into their society. For this Witness, the events in question occurred when he was very young, and his testimony comes many years after the events in question. Nonetheless, the Chamber found his testimony highly credible and largely reliable. Clearly, the intensity of his experience has left him with an indelible recollection of the events in question.

283. Corroboration, although not required in law, was deemed necessary where the Chamber found that internal inconsistencies and contradictions with other evidence demonstrated a poor, selective, or tainted recollection of events. TF2-057 wildly exaggerated his testimony, perhaps because he has a failing memory, because of the trauma he has suffered, or perhaps for other personal reasons. When juxtaposed with the evidence of TF2-067 it was clear that only those parts of his evidence corroborated by other witnesses could be accepted by the Chamber. TF2-223 is an example of a self-serving witness who seemed more interested in bolstering his own role in the events rather than in assisting the court to establish the truth. The Chamber has accepted the evidence given in this vein only where elsewhere corroborated.

284. Similarly, the Chamber found Kamabote to be an unreliable witness and has accepted his evidence only where corroborated. The Chamber has found that Kamabote was directly involved in the commission of crimes in Tongo Field, however, his blanket denial of any such participation, coupled with his general demeanour in court, has led the Chamber to discount most of his evidence.

285. Some Defence witnesses were clearly testifying with the objective of assisting one of the Accused in his Defence. For example, Joe Kpana Lewis and Yeama Lewis, who testified on behalf of Kondewa, had family and friendship connections to the Accused. Yeama Lewis openly admitted

that she was there to assist him and that she had discussed her evidence with her husband before testifying. Such evidence, which is strongly flavoured with personal motive, is of little value to the Chamber.

286. The Chamber suspected that several witnesses were attempting to mislead the Chamber. Brima Tarawally is one such example. The Chamber found him to be self-interested and deliberately obstructive of the proceedings. The Chamber had similar views on the testimony of Mustapha Lumeh, who was hesitant in answering questions, and whose attitude and behaviour in court led the Chamber to conclude that assisting the Chamber with the discovery of truth was not his primary reason for testifying. Such evidence has been disregarded in its entirety. Several other Defence witnesses, whilst to some extent corroborating each others' testimony, left the Chamber with the distinct impression that they had come prepared with "stock" answers which, at least in part, appeared to be designed to refute the charges against the Accused persons.

287. Finally, the Chamber wishes to reiterate that, regardless of any evidence presented in defence of the Accused persons and the weight the Chamber has attached to such evidence, it is the Prosecution that bears the burden of proving, beyond reasonable doubt, the charges against the Accused.

## 2. Factual Findings

### 2.1. Introduction

288. In setting out its factual findings, the Chamber has first dealt with the structure and organisation of the CDF / Kamajors, focussing on the period of time of the existence of Base Zero (i.e. from around 15 September 1997 to 10 March 1998). Base Zero was located in Talia Yawbeko chieftdom and was referred to as the CDF Headquarters and the CDF High Command. This section also briefly describes the structure and organisation of the CDF / Kamajors after the dissolution of Base Zero.

289. Secondly, the Chamber has grouped the factual findings relevant to Counts 1-7 of the Indictment according to geographical area. For the sake of clarity, the Chamber has chosen to consider the facts in chronological order, rather than in the order in which they are listed in the





Indictment. These areas consist of the Towns of Tongo Field, Koribondo, Bo District, Bonthe District, Kenema District, Talia / Base Zero and Moyamba District.

290. The factual findings which have a bearing upon offences relating to Child Soldiers (Count 8 of the Indictment), throughout the timeframe of the Indictment, have been extracted from various geographical locations and grouped together under a separate heading. The Chamber considers that they warrant unified treatment because these crimes were charged for locations “throughout the Republic of Sierra Leone”.

291. Despite this grouping, it should be understood that events occurring in one area cannot be understood to be entirely distinct from those occurring in another.

## 2.2. Structure and Organisation of the CDF / Kamajors

### 2.2.1. Background to Talia / Base Zero

292. The town of Talia is the Chiefdom headquarters of the Yawbeko<sup>387</sup> Chiefdom in Bonthe District.<sup>388</sup> In 1996, the RUF were in control of Talia and were bringing captured civilians to their base there;<sup>389</sup> however, by late 1996 or early 1997 the Kamajors had taken over.<sup>390</sup> The first Kamajor leaders who came to Talia were Ngobeh and Joe Tamidey. Kondewa, who was an herbalist, came two weeks later with his priests and was performing initiations in Mokusi.<sup>391</sup> By the time of the coup on 25 May 1997, the rebel war had subsided in the area and the Kamajors were in control in Talia and surrounding villages.<sup>392</sup>

### 2.2.2. Events at Talia Prior to the Set up of Base Zero

#### 2.2.2.1. Meeting in Talia After the Coup

293. After the Coup, the Kamajor initiator Kamoh Lahai Bangura called a meeting in Talia that was chaired by MT Collier. Those present at the meeting included, among others, Fofana, Bobor

<sup>387</sup> Yawbeko is alternatively spelt Yowbeko, Yohbeko.

<sup>388</sup> Transcript of 4 November 2004, TF2-201, p. 84 (CS); Transcript of 18 February 2005, TF2-222, p. 3; Transcript of 17 February 2006, MT Collier, p. 11; Transcript of 8 November 2004, TF2-096, p. 4.

<sup>389</sup> Transcript of 8 November 2004, TF2-096, pp. 4-8.

<sup>390</sup> Transcript of 16 February 2006, MT Collier, pp. 59-65; Transcript of 17 February 2006, MT Collier, p. 11; Transcript of 8 November 2004, TF2-096, pp. 38 and 59-60; Transcript of 12 October 2006, Baimba Jobai, p. 79.

<sup>391</sup> Transcript of 8 November 2004, TF2-096, pp. 14-16; Transcript of 3 June 2005, TF2-134, pp. 25-27.

<sup>392</sup> Transcript of 16 February 2006, MT Collier, pp. 59-61; Transcript of 17 February 2006, MT Collier, p. 11.





Tucker and Rufus Collier. Everyone present agreed to resist the rule of the rebels. Specifically, Bobor Tucker, a.k.a. Jegbeyama and twenty of his men agreed to fight.<sup>393</sup> This group became known as the Death Squad, and was later responsible for the security in and around Talia.<sup>394</sup> Everyone agreed to hold another meeting with Kondewa, who was the chief initiator at that time.<sup>395</sup>

#### 2.2.2.2. Meetings with Kondewa in Tihun

294. Two weeks later, Kamajors and civilians from Moyamba, Bonthe, Bo and Pujehun Districts met with Kondewa in Tihun, a town 14 miles from Talia in Sogbini Chiefdom.<sup>396</sup> Everyone again agreed that they would not accept the rebels, and that they should find Norman, who had been appointed the National Coordinator of the civil defence on 15 June 1997 by President Kabbah.<sup>397</sup> They sent a delegation of four people to find Norman in Liberia so that he could tell President Kabbah that they supported him and would find the means to return him to power.<sup>398</sup> They also wanted to request logistical support from Kabbah and join with Norman to fight the war on two fronts instead of one.<sup>399</sup>

#### 2.2.2.3. Actions of Kondewa in Tihun

295. Around July-August 1997, and while the delegation was searching for Norman, Kondewa was in Tihun performing initiations.<sup>400</sup> During this time, he ordered Tucker and the Death Squad to mount checkpoints around the area, and specifically, at Bauya Junction, Tobanda Junction and in Bumpeh town. Tucker and the Death Squad were also ordered to launch an attack on the Mokanji soldiers in Bo and were given ammunitions from Kondewa's home in Tihun.<sup>401</sup> Tucker reported to Kondewa that the attack on Bo had failed. The two then travelled to Executive

<sup>393</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 12-15.

<sup>394</sup> Transcript of 10 February 2005, Bobor Tucker, p. 32-33. See section V.2.2.11.6.

<sup>395</sup> Transcript of 10 February 2005, Bobor Tucker, p. 15.

<sup>396</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 15-16; Transcript of 16 February 2006, MT Collier, p. 78; Transcript of 12 May 2006, Haroun Collier, p. 30.

<sup>397</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp. 25-28; Transcript of 16 February 2006, MT Collier, pp. 78-80.

<sup>398</sup> Transcript of 16 February 2006, MT Collier, pp. 78-80; Transcript of 12 May 2006, Haroun Collier, p. 31.

<sup>399</sup> Transcript of 10 February 2005, Bobor Tucker, p. 26.

<sup>400</sup> Transcript of 16 November 2004, TF2-008, pp. 47-50; Transcript of 10 March 2005, Albert J Nallo, p. 18; Transcript of 15 May 2006, Haroun Collier, pp. 16-17.

<sup>401</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 16-18.

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Outcomes at Mombini Sierra Rutile to collect more ammunitions.<sup>402</sup> Kondewa then ordered Tucker to attack Taiama. The attack was successful and a situation report was made to Kondewa.<sup>403</sup>

#### 2.2.2.4. Meeting with Kondewa and Fofana at Talia

296. The delegation that had been sent to find Norman had not returned by the end of two months. Another meeting was held in Talia and those present including, among others, Kondewa, Fofana, Kamoh Lahai Bangura and Tucker, decided to send another delegation to Norman in Gendema.<sup>404</sup> They sent a letter written by Kondewa and a cassette with Kondewa speaking on it. Fofana was among the members of the delegation that went to find Norman.<sup>405</sup>

#### 2.2.2.5. Delegation from Bonthe to Meet Kondewa

297. As a result of a few meetings held in Bonthe Town around August 1997 to discuss the continuing harassment of civilians by soldiers and the security of the island, a delegation of ten, headed by the district officer Mr. LV Kanneh and attended by Father Garrick<sup>406</sup> was sent to Kondewa, who was considered the supreme head of Kamajors, in Tihun Sogbini.<sup>407</sup>

298. The delegation was ordered to disembark from their boat at Momaya. Kamajors were shooting all around them and threatening them. Kamajor Commander Sheku Kaillie, a.k.a. Bombowai, pleaded on the delegation's behalf to allow them to be heard and eventually led them, under his protection, to Kondewa.<sup>408</sup> They learned that Kondewa was no longer in Tihun, but in Talia. After a meeting with the chiefs and elders of Matru Jong in the morning of 22 August, the delegation was led to Talia by Ngobeh, the district grand Kamajor commander.<sup>409</sup>

299. The delegation arrived at Kondewa's house on 24 August 1997. A young boy around fifteen years of age was playing guitar and percussion and singing about the greatness of Kondewa and the Kamajor society. Kamajors armed with rifles and guns were guarding the house.<sup>410</sup> The

<sup>402</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 19-22.

<sup>403</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 20-23; Transcript of 12 May 2006, Haroun Collier, p. 31

<sup>404</sup> Transcript of 16 February 2006, MT Collier, pp. 78-79; Transcript of 10 February 2005, Bobor Tucker, pp. 26-27.

<sup>405</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 28-29; See also Transcript of 12 May 2006, Haroun Collier, p. 33.

<sup>406</sup> Transcript of 10 November 2004, Father Garrick, pp. 10-12; Transcript of 11 November 2004, TF2-071, pp. 50-51.

<sup>407</sup> Transcript of 10 November 2004, Father Garrick, pp. 11-12.

<sup>408</sup> Transcript of 10 November 2004, Father Garrick, pp. 13-17.

<sup>409</sup> Transcript of 10 November 2004, Father Garrick, pp. 17-19.

<sup>410</sup> Transcript of 10 November 2004, Father Garrick, pp. 19-20.

delegation was introduced to Kondewa, and they spoke in his veranda. The delegation explained to Kondewa the dreadful effects of the war. In response Kondewa stated: "war means to know that you will die; to know that you have no control over your life; to know that you have no dignity; to know that your property is not yours".<sup>411</sup> Kondewa then called a meeting at the court *barri* that was attended by all of the elders of the region, the paramount chiefs and Kamajor commanders. Kondewa said at the meeting that he was not going to give any of the areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah. Kondewa agreed to the cessation of hostilities between the Kamajors and the Soldiers, the stopping of the harassment of civilians and the free movement of boats, and wrote a letter to this effect to all Kamajor commanders around Bonthe.<sup>412</sup> The agreement did not work.<sup>413</sup>

300. The delegation left to return to Bonthe accompanied by Ngobeh. It was stopped in Tihun by a Kamajor who presented a letter, which he demanded to be read in the presence of Kondewa. They returned to Talia. The letter was written by a commander from Gambia and stated that LV Kanneh and his group were responsible for bringing the soldiers to Bonthe. Kondewa declared that if the information was true, all of the delegation would be killed; if it was not true, those responsible for the lie would experience a terrible death.<sup>414</sup>

301. The next morning the delegation proceeded to Gambia in the company of Kondewa, Julius Squire and Bombowai. Kondewa ordered a court sitting in Gambia and placed Pa Lewis, one of the elders of the town, Ngobeh and Bombowai in charge of the investigation. Those responsible for the letter pleaded guilty. They were supposed to be killed, but the delegation pleaded with Kondewa to spare their lives and he agreed.<sup>415</sup>

### 2.2.3. Arrival of Norman at Talia: Base Zero

302. Around 15 September 1997, Norman arrived in Talia by helicopter.<sup>416</sup> Upon his arrival, he told the crowd that welcomed him that President Kabbah had named him the leader of the

<sup>411</sup> Transcript of 10 November 2004, Father Garrick, pp. 20-21.

<sup>412</sup> Transcript of 10 November 2004, Father Garrick, pp. 21-23.

<sup>413</sup> Transcript of 11 November 2004, TF2-071, pp. 52-53.

<sup>414</sup> Transcript of 10 November 2004, Father Garrick, pp. 23-27.

<sup>415</sup> Transcript of 10 November 2004, Father Garrick, pp. 27-29.

<sup>416</sup> Transcript of 26 January 2006, Samuel Hinga Norman, p. 13; Transcript of 12 May 2006, Haroun Collier, p. 33; Transcript of 16 February 2006, MT Collier, p. 79; See also transcript of 5 November 2004, TF2-201, p. 97 (CS).

Kamajors and told him to join the Kamajors in Talia to fight the war. President Kabbah sent a small amount of logistics, including rice, gari, fuel, guns and ammunitions, to Norman for that purpose.<sup>417</sup>

303. Upon his arrival, Norman gave Talia the code name "Base Zero" because Talia was a common name and its use would alert the rebels to their whereabouts.<sup>418</sup> Base Zero existed from about 15 September 1997 to 10 March 1998 as the headquarters for the Civil Defence Forces High Command.<sup>419</sup> Thousands of civilians and Kamajors travelled to Base Zero for military training and initiation into the Kamajor society during those six months.<sup>420</sup>

#### 2.2.4. Establishment and Functions of the War Council

304. When Base Zero was established, Norman was in charge of all matters other than military training and initiations, which were headed respectively by the trainer Mbogba and Kondewa.<sup>421</sup> The elders were displeased with the situation because many atrocities were then being committed by Kamajors.<sup>422</sup> They approached Norman around mid-October and suggested the establishment of a War Council whereby the elders could be involved in the running of Base Zero as an advisory group. Norman accepted this recommendation.<sup>423</sup> The War Council was to advise Norman on issues such as appointment and promotion of commanders, reports from the frontline, requisitions for arms, ammunition and food from the frontline, settlement of complaints between

<sup>417</sup> Transcript of 16 February 2006, MT Collier, pp. 79-82; Transcript of 10 February 2005, Bobor Tucker, pp. 29-30; See also Transcript of 12 May 2006, Haroun Collier, pp. 33-37.

<sup>418</sup> Transcript of 26 January 2006, Samuel Hinga Norman, p.17.

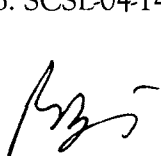
<sup>419</sup> Transcript of 26 January 2006, Samuel Hinga Norman, p. 61; Transcript of 26 January 2006, Samuel Hinga Norman, p. 17. See also Exhibit 10, confidential (refers to the "Civil Defence Forces of Sierra Leone Headquarters"); Exhibit 11, confidential, (refers to the "Civil Defence Forces High Command").

<sup>420</sup> Transcript of 15 February 2005, TF2-005, p. 90 (CS); Transcript of 27 May 2005, TF2-079, p. 53; Transcript of 23 November 2004, TF2-008, pp. 28-29; Transcript of 10 February 2005, Bobor Tucker, pp. 41-42; Transcript of 16 November 2004, TF2-008, pp. 66-67; Transcript of 17 November 2004, TF2-068, pp. 78-79 (CS); Testimony of 8 June 2005, TF2-011, pp. 16-17 (CS).

<sup>421</sup> Transcript of 15 February 2005, TF2-005, p. 91 (CS).

<sup>422</sup> Transcript of 15 February 2005, TF2-005, p. 91 (CS); See also Transcript of 17 February 2005, TF2-222, pp. 90-93; Transcript of 17 November 2004, TF2-008, p. 9.

<sup>423</sup> Transcript of 15 February 2005, TF2-005, pp. 91-92 (CS); Transcript of 4 November 2004, TF2-201, p. 87 (CS); Transcript of 26 May 2005, TF2-079, p. 45; Transcript of 16 November 2004, TF2-008, p. 75; Transcript of 17 November 2004, TF2-008, p. 9.





the Kamajors and the surrounding communities, and decisions on when and where to go to war and how many Kamajors should be committed to the effort.<sup>424</sup>

305. The War Council had between 15 and 30 members who were recommended by sitting members of the War Council and appointed by Norman.<sup>425</sup> Its members included, among others: Chief William Quee as the Chairman, Paramount Chief Charlie Tucker as the vice-Chairman, Ibrahim FM Kanneh as the Secretary, regional coordinators from the South, North and East and numerous other representatives from every region.<sup>426</sup>

306. The War Council functioned well at the beginning. The members collectively gave advice to Norman and he would approve or deny their suggestions.<sup>427</sup> Norman, however, did not want an effective structure in place to check his power, and therefore began discouraging all proposals from the War Council, often sitting in on the meetings to discourage members from speaking freely.<sup>428</sup> He began calling meetings with the commanders and excluded the War Council from these meetings.<sup>429</sup> Kondewa also opposed the War Council and acted out against them on more than one occasion, once condoning Kamajors "pelting" the members with stones, once shooting amongst the members during a meeting saying, "[w]hen people say war, you say book", and also threatening the members for attempting to investigate complaints of looting and killing made against the Death Squad.<sup>430</sup> The War Council quickly became ineffective and the three Accused and the commanders ultimately did all of the planning for the prosecution of the war without the War Council's involvement.<sup>431</sup>

<sup>424</sup> Transcript of 15 February 2005, TF2-005, pp. 93-94 (CS); Transcript of 16 February 2005, TF2-005, p. 10 (CS); Transcript of 4 November 2004, TF2-201, pp. 90-91 (CS); Transcript of 18 November 2004, TF2-068, p. 80 (CS); Transcript of 16 November 2004, TF2-008, p. 75.

<sup>425</sup> Transcript of 17 November 2004, TF2-008, p. 8; Transcript of 4 November 2004, TF2-201, p. 94 (CS); Transcript of 16 November 2004, TF2-008, p. 75.

<sup>426</sup> Transcript of 15 February 2005, TF2-005, pp. 92-93 (CS).

<sup>427</sup> Transcript of 15 February 2005, TF2-005, p. 94 (CS).

<sup>428</sup> Transcript of 17 February 2005, TF2-222, pp. 101-102; Transcript of 15 February 2005, TF2-005, p. 94 (CS).

<sup>429</sup> Transcript of 17 February 2005, TF2-222, pp. 102-103; Transcript of 4 November 2004, TF2-201, pp. 91-93 (CS).

<sup>430</sup> Transcript of 26 May 2005, TF2-079, pp. 46-49; Transcript of 4 November 2004, TF2-201, pp. 92-95 (CS); Transcript of 15 February 2005, TF2-005, pp. 95-98 and 100-101 (CS); TF2-011 also testified that Kondewa was calling the War Council a Mende word for "cunning" saying they were trying to cunningly take the power from Norman, Fofana and Kondewa. Transcript of 8 June 2005, TF2-011, p. 31 (CS).

<sup>431</sup> Transcript of 15 February 2005, TF2-005, p. 94 (CS); Transcript of 5 November 2004, TF2-201, pp. 93-99 (CS); Transcript of 16 November 2004, TF2-008, p. 82.

### 2.2.5. Discipline

307. There was a disciplinary committee of the War Council at Base Zero that was headed by Dr. Jibao.<sup>432</sup> The process would generally begin when a complaint was made to the War Council by a commander or a civilian.<sup>433</sup> The complaint would then be forwarded to the disciplinary committee, which could take one of two measures. If the matter was a minor complaint, the disciplinary committee and the War Council had a free hand to settle the problem themselves or to hand it back to the commanders to settle. If the matter was a major one, the disciplinary committee would make a recommendation to Norman.<sup>434</sup> In the most severe cases, Norman would refer the matter to the War Council for advice. However, Norman would make the final decision on discipline himself.<sup>435</sup>

308. As with their other functions, members of the War Council were afraid of exercising their functions as a disciplinary body and were often prevented from doing so.<sup>436</sup> In particular, they feared reprisals from the Kamajors. For example, Mr. Robert Kajue, a seventy-year-old former Member of Parliament and member of the War Council, was molested by a young Kamajor with a gun and no disciplinary action was taken against the Kamajor.<sup>437</sup> On a separate occasion, Kondewa threatened the War Council, saying that whoever touched a Kamajor would be punished.<sup>438</sup> Norman also routinely refused to implement the War Council's recommendations<sup>439</sup> and despite recommendations by the War Council as serious as the threat of death,<sup>440</sup> the worst punishment

<sup>432</sup> Transcript of 5 November 2004, TF2-201, p. 95 (CS).

<sup>433</sup> Transcript of 16 February 2005, TF2-005, pp. 14-16 (CS).

<sup>434</sup> Transcript of 23 November 2004, TF2-008, pp. 3-5; Transcript of 15 February 2005, TF2-005, pp. 94-95 (CS); Transcript of 6 February 2006, Samuel Hinga Norman, pp. 38-41.

<sup>435</sup> Transcript of 6 February 2006, Samuel Hinga Norman, pp. 38-41.

<sup>436</sup> Transcript 22 November 2004, TF2-017, pp. 46-47 (CS).

<sup>437</sup> Transcript of 8 June 2005, TF2-011, pp. 23-24 (CS).

<sup>438</sup> Transcript of 22 November 2004, TF2-017, p. 46 (CS).

<sup>439</sup> Transcript of 23 November 2004, TF2-008, pp. 4-5.

<sup>440</sup> For example, the War Council recommended that Osman Vandi a.k.a. Vanjawai be executed after he killed a pregnant woman named Jeneba in Jiama Bongo Chiefdom. He was instead removed from command and was not permitted to return to the warfront. See Transcript of 11 March 2005, Albert J Nallo, pp.16-23; Transcript of 26 January 2006, Samuel Hinga Norman, pp.31-34; Transcript of 31 January 2006, Samuel Hinga Norman, pp.44-46. Similar actions were taken against Bobor Tucker, a.k.a. Jegbeyama, the commander of the Death Squad. The Death Squad was found to have been killing civilians and looting. It was recommended that Jegbeyama should remain at Base Zero. See Transcript of 16 November 2004, TF2-008, pp. 76-77.

that was actually given was to 'peg' the offender at Base Zero. This meant only that the person had to remain at Base Zero and could not return to combat.<sup>441</sup>

#### 2.2.6. Reports

309. Throughout the operation of Base Zero, reports were delivered to the High Command from the frontlines. However, there was no uniform reporting system in place. There are examples of a written reporting scheme, with reports ranging from two-page requests for logistics<sup>442</sup> to detailed descriptions of attacks, ambushes and summary executions.<sup>443</sup> There was also a system of verbal reporting whereby battalion commanders would report from the warfront to regional operation commanders, who would then report to the War Council.<sup>444</sup>

310. Norman had a satellite phone at Base Zero which was kept at MT Collier's house.<sup>445</sup> He would use the phone only to keep President Kabbah informed and to request assistance from him when necessary.<sup>446</sup> Reports from the warfront were generally conveyed by foot, and rarely, by more efficient forms of transport like bicycle, motorcycles and other vehicles.<sup>447</sup>

#### 2.2.7. Logistics Procurement

311. One of the principal functions of the reporting scheme was as a means for commanders to request more logistics from Base Zero.<sup>448</sup> Base Zero was also, in addition to its other functions, a central storage and distribution site for all of the CDF's logistics, including weapons, ammunitions, fuel, food and other condiments.<sup>449</sup> Whenever possible, victorious commanders would take the weapons of defeated enemies.<sup>450</sup> The primary source of logistics, however, was Base

<sup>441</sup> Transcript of 17 November 2004, TF2-008, p. 46.

<sup>442</sup> Exhibit 147.

<sup>443</sup> Exhibit 86, confidential.

<sup>444</sup> See also section V.2.2.6 below.

<sup>445</sup> Transcript of 12 May 2006, Haroun Collier, pp. 37-39; Transcript of 15 May 2006, Haroun Collier, p. 66.

<sup>446</sup> Transcript of 16 February 2005, TF2-005, pp. 10-11 (CS); Transcript of 27 January 2006, Samuel Hinga Norman, pp. 97-99; Transcript of 30 January 2006, Samuel Hinga Norman, pp. 2-3.

<sup>447</sup> Transcript of 8 June 2005, TF2-011, pp. 27-28 (CS).

<sup>448</sup> See also section V.2.2.6 below.

<sup>449</sup> Transcript of 4 November 2004, TF2-201, pp. 85, 87 and 96-98 (CS); Transcript of 5 November 2004, TF2-201, p. 100 (CS).

<sup>450</sup> Transcript of 16 November 2004, TF2-008, p. 48.



Zero. Norman would take logistics from Liberia by helicopter and store them at Base Zero.<sup>451</sup> President Kabbah would also provide arms and ammunitions when Norman made such requests.<sup>452</sup> After one request that Norman made in October 1997, President Kabbah organised a meeting between himself, Norman and ECOMOG General Maxwell Khobe at Lungi Airport during which President Kabbah assured Norman that arrangements had been put in place to bring weapons to Base Zero by the end the month.<sup>453</sup> Norman and others returned to Lungi in November and received an assortment of conventional weapons.<sup>454</sup>

312. There were two logistics stores at the court *barri* at Base Zero. One was the goods store, which was run by Commanding Officer Jayah.<sup>455</sup> The other was the arms and ammunitions store, which was run by the National Deputy Director of War, Mohamed Orinco Moosa.<sup>456</sup> Norman kept records of everything that he brought to Base Zero and when he wanted arms and ammunitions distributed, he would write out an order and give it to Fofana for his action.<sup>457</sup>

#### 2.2.8. Initiation

313. Initiation into the Kamajor society and immunisation are two distinct but interrelated concepts.<sup>458</sup> The phenomenon of immunisation developed between 1996 and 1997 when some people, called "initiators", were believed to have developed mystical medicinal herbs which rendered people immune to bullet wounds.<sup>459</sup> Most chieftom authorities not only invited but paid for the initiators, including among others, Kondewa, Mama Munde Fortune, Siaka Sheriff

<sup>451</sup> Transcript of 4 November 2004, TF2-201, p. 87 (CS); Transcript of 16 November 2004, TF2-008, p. 48; Transcript of 15 March 2005, Albert J Nallo, p. 5; Transcript of 5 May 2006, Mustapha Lumeh, pp. 75-76; Transcript of 17 November 2004, TF2-008, p. 8.

<sup>452</sup> Transcript of 27 January 2006, Samuel Hinga Norman, pp. 98-99; Transcript of 26 January 2006, Samuel Hinga Norman, pp. 25-26.

<sup>453</sup> Transcript of 26 January 2006, Samuel Hinga Norman, pp. 37-39.

<sup>454</sup> Transcript of 26 January 2006, Samuel Hinga Norman, pp. 39-42; Transcript of 5 May 2006, Mustapha Lumeh, pp. 75-78.

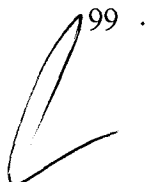
<sup>455</sup> Transcript of 17 February 2006, MT Collier, pp. 6-7; Transcript of 16 November 2004, TF2-008, pp. 69-70.

<sup>456</sup> Transcript of 16 November 2004, TF2-008, pp.69-70; Transcript of 4 November 2004, pp.96-98 (CS).

<sup>457</sup> Transcript of 4 November 2004, pp. 97-98 (CS).

<sup>458</sup> Transcript of 27 January 2006, Samuel Hinga Norman, pp. 91-95.

<sup>459</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 10-11; Transcript of 27 January 2006, Samuel Hinga Norman, pp. 91-95.


(Mualemu) K Saddam and Kamoh Lahai Bangura,<sup>460</sup> to immunise their chiefdom Kamajors.<sup>461</sup> In addition to the Kamajors, civilians, including elders, women and children, were immunised.<sup>462</sup>

314. For a period of time before the coup, initiation was a process through which a fighter joined the Kamajor society. Young male fighters of good character were recommended and selected by the local chiefdom authorities for initiation.<sup>463</sup> One of the foremost reasons for being initiated at that time was to protect civilians and territory.<sup>464</sup> During the initiation, Kamajors were given certain rules and prohibitions that they were bound to follow.<sup>465</sup> Some of these prohibitions precluded, *inter alia*, the killing of civilians who were not participating in the conflict; the killing of women; looting; and the killing of a surrendered enemy.<sup>466</sup> The consequence for violating one of these rules was that a Kamajor would lose his immunisation to bullets and would be killed.<sup>467</sup>

315. After the Coup, there was a need to substantially increase the number of hunters in the Kamajor society, which required a marked increase in the number of initiations. The initiation procedure changed tremendously and was no longer coordinated at the local or chiefdom level. Instead of being recommended by the chiefdom authorities, fighters started seeking initiation individually<sup>468</sup> and the rules were not highlighted to the fighters.<sup>469</sup> Chiefs were in disarray and everybody came to Base Zero to seek refuge and join the Kamajors there.<sup>470</sup> The primary purpose of the initiation was still to prepare the fighters for the war and to receive the protection against

<sup>460</sup> Transcript of 26 May 2005, TF2-079, pp. 12-14; Transcript of 22 February 2006, Ishmael Koroma, pp. 29-35; Transcript of 31 May 2006, Lansana Bockarie p.17; Transcript of 10 March 2005, Albert J Nallo, pp. 6 and 9; Transcript of 15 February 2005, TF2-001, pp. 80-85 (CS); Transcript of 10 February 2006, Albert Joe Demby, p. 13.

<sup>461</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 13-15.

<sup>462</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 13-15.

<sup>463</sup> Transcript of 16 November 2004, TF2-008, pp. 51-55; Transcript of 27 May 2005, TF2-079, pp. 6-8.

<sup>464</sup> Transcript of 17 November 2004, TF2-008, pp. 12-14.

<sup>465</sup> Norman was told about these guiding laws when he was initiated by Moalem Sesay. See Transcript of 3 February 2006, Samuel Hinga Norman, pp. 38-39.

<sup>466</sup> Transcript of 27 January 2006, Samuel Hinga Norman, pp. 47-48; Transcript of 3 February 2006, Samuel Hinga Norman, pp. 39-42; Transcript of 17 September 2004, TF2-082, pp. 6-8, (CS); Transcript of 3 November 2004, TF2-021, pp. 49-51; Transcript of 18 February 2005, TF2-222, p. 20; Transcript of 5 November 2004, TF2-021, pp. 106-107 (CS); Transcript of 14 September 2004, TF2-140, pp. 160-162; Transcript of 16 February 2005, TF2-005, p. 4, (CS).

<sup>467</sup> Transcript of 17 September 2004, TF2-082, pp. 7-8 (CS); Transcript of 3 November 2004, TF2-021, p. 51; Transcript 18 February 2005, TF2-222, p. 21.

<sup>468</sup> Transcript of 3 February 2006, Samuel Hinga Norman, pp. 72-75; 6 February 2006, Samuel Hinga Norman, pp. 73-75.

<sup>469</sup> Transcript of 17 November 2004, TF2-008, p. 24; Transcript of 16 November 2004, TF2-008, p.55; Transcript of 26 May 2005, TF2-079, pp.13-14.

<sup>470</sup> Transcript of 8 June 2005, TF2-011, pp. 16-17 (CS).

bullets by immunisation.<sup>471</sup> However, some initiates, such as members of the War Council, chose only to be immunised and not to fight in the battles.<sup>472</sup>

316. Kondewa was in charge of the initiations at Base Zero; however, it was Norman who decided who should be initiated or who could join the Kamajors.<sup>473</sup> The initiation fee was about 10,000 leones and was paid directly to Kondewa.<sup>474</sup>

317. An example of a Base Zero initiation of fighters was one that involved a group of 400 candidates who were gathered naked in the bush while singing. Children as young as eleven or twelve years of age were in this group, but the majority were adults. Marks were made on initiates' bodies with razor blades and they were told not to bathe for one week. The blade marks symbolised the completion of the initiation. After one week, the initiates were gathered at a graveyard in the middle of the night and allowed to bathe. The initiates were told that if anyone had died for them, that person would return to them in the graveyard and give them something to make them powerful fighters. A substance called "tevi", a mixture of burnt human ashes with herbs and leaves in palm oil, was given to all initiates to rub on their bodies before going to the warfront.<sup>475</sup>

#### 2.2.9. Training

318. Training was an important component of the operations at Base Zero. When Norman first landed in Talia, he told the crowd that President Kabbah had sent him there to set up a training base so that they could fight the war and bring peace to the country.<sup>476</sup> Any initiate wanting to become a combatant had to go through military training.<sup>477</sup> MS Dumbuya, who was once the head of the armed wing of the Sierra Leone Police known as the State Security Division ("SSD"), led the

<sup>471</sup> Transcript of 27 January 2006, Samuel Hinga Norman, p. 95.

<sup>472</sup> Transcript of 17 November 2004, TF2-068, pp. 79-80 (CS).

<sup>473</sup> Transcript of 8 June 2005, TF2-011 p. 17 (CS).

<sup>474</sup> Transcript of 2 November 2004, TF2-021, p. 43.

<sup>475</sup> Transcript of 2 November 2004, TF2-021, pp. 37-43; Transcript of 12 October 2006, Abibu Brima, pp. 60-63. For examples of killings as part of Kamajor rituals see the killings of Alpha Dauda Kanu and Mustafa Fallon in Talia and the killing of TF2-088's son in Kpetewoma, described in sections V.2.8.5 and V.2.5.7.2.1; See also Transcript of 19 November 2004, TF2-017, p. 27 (CS).

<sup>476</sup> Transcript of 8 November 2004, TF2-096, pp. 18-19 and 54-55; see also section V.2.2.3.

<sup>477</sup> Transcript of 8 June 2005, TF2-011, p. 44 (CS).

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training along with a man named Mbogba.<sup>478</sup> Norman was one of the instructors.<sup>479</sup> There were up to 5,000 trainees at Base Zero at any given time.<sup>480</sup> After the training, a passing out parade would be held at Base Zero, which signified that the Kamajors had passed their training and could present their skills.<sup>481</sup> Thereafter each trainee would be given a certificate, which was signed by Norman, Kondewa and Mbogba.<sup>482</sup>

319. Different levels of training were given for different trainees. For instance, one of the members of the War Council, who was not a combatant, learned “cock and fire” techniques, which took about three to four days, and was given his certificate. A combatant, on the other hand, would be trained for up to two weeks, and learned how to assemble weapons, what to do when ambushed and how to roll like a snake when being followed by a troop. All training was done at the Talia School Field and behind it, where there was an obstacle course with ropes hanging and trenches dug.<sup>483</sup>

#### 2.2.10. Planning Operations: Meetings at Base Zero

##### 2.2.10.1. Passing out Parade in December 1997

320. Between 10 and 12 December 1997, a passing out parade was held at Base Zero. It was witnessed by many civilians and Kamajors at Talia. At this parade instructions for the Tongo and Black December operations were given.<sup>484</sup>

321. Norman said in the open that “the attack on Tongo will determine who the winner or the looser of the war would be” and that “[...] there is no place to keep captured or war prisoners like the juntas, let alone their collaborators”.<sup>485</sup> TF2-222 felt uncomfortable with this command because “[g]iving such a command to a group that was 95 percent illiterate who had been wronged,

<sup>478</sup> Transcript of 18 February 2005, TF2-222, p. 40; Transcript of 10 February 2005, Bobor Tucker, pp. 42-43; Transcript of 16 November 2004, TF2-008, pp. 65-67; Transcript of 26 January 2006, Samuel Hinga Norman, p. 56; Transcript of 17 February 2006, MT Collier, p. 48; Transcript of 8 June 2005, TF2-011, p. 45 (CS).

<sup>479</sup> Transcript of 16 November 2004, TF2-008, pp. 63, 66.

<sup>480</sup> Transcript of 10 February 2005, Bobor Tucker, p. 43

<sup>481</sup> Transcript of 18 February 2005, TF2-222, p. 7.

<sup>482</sup> Transcript of 10 February 2005, Bobor Tucker, p. 43; Transcript of 16 November 2004, TF2-008, p. 67; Exhibit 26; Transcript of 19 November 2004, TF2-008, p. 67.

<sup>483</sup> Transcript of 15 February 2005, p. 89 (CS).

<sup>484</sup> Transcript of 17 February 2005, TF2-222, pp. 104-111.

<sup>485</sup> Transcript of 17 February 2005, TF2-222, p. 110; See also Transcript of 7 February 2006, Samuel Hinga Norman, pp. 41-44; Transcript of 15 February 2005, TF2-005, p. 106 (CS).

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is like telling them an eye for an eye” and meant telling them not to “[...] spare the vulnerables [sic]”.<sup>486</sup> Norman also said that “[if] the international community is condemning human rights abuses [...] then I take care of the human left abuses”, which was clarified by him to mean that “[...] any junta you capture, instead of wasting your bullet, chop off his left [hand] as an indelible mark [...] to be a signal to any group that will want to seize power through the barrels of the gun and not the ballot paper [;] [w]e are in Africa, we want to practice democracy”.<sup>487</sup> He also told the fighters to “spare the houses of those men who burnt down your own houses”, which TF2-222 took to be very ironical. He understood the last instruction as telling the fighters indirectly not to spare house of the juntas.<sup>488</sup> Fofana also spoke at this meeting saying “[n]ow, you’ve heard the National Coordinator [...] any commander failing to perform accordingly and losing your own ground, just decide to kill yourself there and don’t come to report to us.”<sup>489</sup> Then all the fighters looked at Kondewa, admiring him as a man with mystic power, and he gave the last comment saying “a rebel is a rebel; surrendered, not surrendered, they’re all rebels [... t]he time for their surrender had long since been exhausted, so we don’t need any surrendered rebel.” He then said, “I give you my blessings; go my boys, go.”<sup>490</sup>

#### 2.2.10.2. Commanders’ Meeting in December 1997 for Tongo

322. Following the passing out parade, a meeting was held by Norman at the *walehun*,<sup>491</sup> which was a small place in the bush which took the role of a big *barri*.<sup>492</sup> Further instructions for the Tongo and Black December operations were then given to the commanders by Norman.<sup>493</sup> The meeting had in attendance, among others, Fofana, Kondewa, Mohamed Orinco Moosa, Albert J Nallo, KG Samai, Ngobeh, some commanders from the Tongo area, such as, Musa Junisa, TF2-

<sup>486</sup> Transcript of 17 February 2005, TF2-222, p. 111.

<sup>487</sup> Transcript of 17 February 2005, TF2-222, pp. 112-114.

<sup>488</sup> Transcript of 17 February 2005, TF2-222, pp. 114-115; TF2-222 also testified that later that day, Alhaji Daramy Rogers held a meeting with TF2-222, Hashim Kallon, George Jambawai and Paramount Chief Charles Caulker to discuss Norman’s orders. They were all in agreement that the CDF was now taking the same line of operation as the juntas and doing “unholy acts”. Transcript of 17 February 2005, pp. 116-118.

<sup>489</sup> Transcript of 17 February 2005, TF2-222, p. 119.

<sup>490</sup> Transcript of 17 February 2005, TF2-222, pp. 119-120.

<sup>491</sup> Transcript of 26 May 2005, TF2-079, pp. 55-56.

<sup>492</sup> Transcript of 17 February 2005, TF2-222, p. 102.

<sup>493</sup> Transcript of 15 February 2005, TF2-005, pp. 105-107 (CS); Transcript of 26 May 2005, TF2-079, p. 55.

079 and Vandi Songo, and some members of the War Council.<sup>494</sup> Norman repeated that whoever took Tongo would win the war and that it should be taken at all costs. He told them not to spare anyone working with the juntas or mining for them.<sup>495</sup> Norman also said that all collaborators should forfeit their properties and be killed. Norman ordered that gravels mined by the AFRC/RUF should be washed by the Kamajors and the proceeds should be taken to Base Zero.<sup>496</sup> Everyone in the meeting contributed to the discussion, including Fofana and Kondewa. Norman then ordered Fofana to provide logistics for the operation.<sup>497</sup> At the meeting, Norman suggested that a deputy should be elected to deputise Fofana. Orinco Moosa was elected to this position.<sup>498</sup>

### 2.2.10.3. Passing out Parade in Early January 1998 / "All-out Offensive"

323. One afternoon in early January 1998 the bell rang to say that Norman wanted to see all Kamajors at the training field urgently.<sup>499</sup> The meeting was to plan an "all-out offensive" in all of the areas occupied by the juntas.<sup>500</sup> The War Council members were there, the two Accused, the battalion commanders, the Kamajors who had been trained, and children who were involved in the operations.<sup>501</sup> Norman thanked the Kamajors for the training they had undergone and talked about the operations that had been undertaken and those that were pending and their importance. Norman said that he had given instructions for the pending operations and that the Kamajors should follow those instructions.<sup>502</sup> Norman also said that "whoever knows that he is used to fighting with the cutlass, it is time for him to take up the cutlass[; w]hoever knows that he's

<sup>494</sup> Transcript of 26 May 2005, TF2-079, p. 53; Transcript of 15 February 2005, TF2-005, pp. 105-106 (CS); See also Transcript of 4 November 2004, pp. 103-105 (CS).

<sup>495</sup> Transcript of 15 February 2005, TF2-005, p. 106 (CS); Transcript of 4 November 2004, TF2-201, pp. 107-108 (CS); Transcript of 5 November 2004, TF2-201, p. 82 (CS): TF2-201 testified that immediately after the Kamajors left for Tongo, Norman went on the BBC radio telling civilians to leave Tongo because there would be an attack and if they did not leave, they would be categorised as a rebel. See also Transcript of 26 May 2005, TF2-079, pp. 63-66; Transcript of 7 February 2006, Samuel Hinga Norman, pp. 41-44.

<sup>496</sup> Transcript of 26 May 2005, TF2-079, p. 55.

<sup>497</sup> Transcript of 15 February 2005, TF2-005, pp. 106-107 (CS).

<sup>498</sup> Transcript of 26 May 2005, TF2-079, p. 40.

<sup>499</sup> Transcript of 19 November 2004, TF2-017, p. 87 (CS).

<sup>500</sup> Transcript of 10 February 2005, Bobor Tucker, p. 45.

<sup>501</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 45 and 83-84; Transcript of 19 November 2004, TF2-017, pp. 87-91 (CS).

<sup>502</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 45-46; Transcript of 19 November 2004, TF2-017, pp. 88-89 (CS).

used to fighting with a gun, it is time for him to take up the gun; w]hoever knows that he's used to fight with a stick, it is time to him to take up his stick.”<sup>503</sup>

324. Fofana also spoke at this meeting saying:

[T]he advice that Pa Norman had given to us, that the training that we underwent for a long time, the time has come for us to implement what we've learned. Now that we have received the order that we shall attack the various areas where the juntas are located, they have done a lot for the trainees. They've spent a lot on them. So any commander, if you are given an area to launch an attack and you fail to accomplish that mission, do not return to Base Zero.<sup>504</sup>

325. During his speech, Fofana told the fighters to attack the villages where the juntas were located and “to destroy the soldiers finally from where they were [...] settled”.<sup>505</sup> Fofana also said that the failure to take Koribondo was “a disgrace to the Kamajors that [sic] were [sic] close to Base Zero because [...] medicine that is given to Kamajors comes from there [and] [t]hat's where they come from to attack Koribondo [sic] many [times].” He then said that “[...] this time around, he wants them to go and capture Koribondo.”<sup>506</sup>

326. Kondewa said “I am going to give you my blessings [... and] the medicines, which would make you to be fearless if you didn't spoil the law.”<sup>507</sup> Kondewa said that all of his powers had been transferred to them to protect them, so that no cutlass would strike them and that they should not be afraid.<sup>508</sup>

327. Afterwards, Norman said that a commanders' meeting was yet to be held where he would reveal which operations were going to be undertaken.<sup>509</sup>

#### 2.2.10.4. Commanders' Meeting for Koribondo in Early January 1998

328. A subsequent meeting was held by Norman in the *walehun*, where the War Council members, the two Accused and some commanders were present.<sup>510</sup> Norman asked Lamin Ngobeh,

<sup>503</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 45, line 29 and p. 46 line 5.

<sup>504</sup> Transcript of 10 February 2005, Bobor Tucker, p. 45, lines 13-21.

<sup>505</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 82-84.

<sup>506</sup> Transcript of 4 November 2004, TF2-201, p. 113, lines 11-16 (CS).

<sup>507</sup> Transcript of 4 November 2004, TF2-201, p. 113, lines 16-19 (CS).

<sup>508</sup> Transcript of 10 February 2005, Bobor Tucker, p. 46.

<sup>509</sup> Transcript of 19 November 2004, TF2-017, p. 89 (CS).

<sup>510</sup> Transcript of 16 November 2004, TF2-008, pp. 78-80; see also Transcript of 8 June 2005, TF2-011, pp. 28-29 (CS).

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then the National Director of Operations, to call Joe Tamidey, the commander for Koribondo.<sup>511</sup> Joe Tamidey was chosen by Norman to lead the attack on Koribondo.<sup>512</sup>

329. Norman said that they should take Koribondo “at all costs” because they had already spent a lot on Koribondo.<sup>513</sup> He said that Koribondo had been attacked three or four times before without the CDF taking it.<sup>514</sup> He told the commanders that when they got to Koribondo not to “leave any house or any living thing there, except mosque, church, the *barri* and the school.”<sup>515</sup> He specified that this time they should destroy or burn everything in the town and that anyone left in Koribondo should be termed an enemy or a rebel and killed since they had been forewarned of such consequences.<sup>516</sup>

330. Joe Tamidey then requested ammunition, food and money, which was approved.<sup>517</sup> Joe Tamidey got his ammunitions at Base Zero from Lumeh at the order of Norman. Bobor Tucker had reserve ammunitions from before that he used.<sup>518</sup>

331. At this meeting Bobor Tucker’s group was specifically ordered to reinforce the Bo-Koribondo Highway so that no one could come from Bo to help the juntas.<sup>519</sup>

#### 2.2.10.5. Commanders’ Meeting for Bo in Early January 1998

332. In the evening of the same day of passing out parade, a second commanders’ meeting was held by Norman at the back of the field. The two Accused, the War Council, and commanders attended. Norman addressed the group and told the Kamajors that they had an assignment to attack Bo Town. They were told to kill enemy combatants and people who had connections with or supported the rebels and who were therefore worse than the combatants. He referred to them as “collaborators”. The Kamajors were also told to burn down houses and loot big shops, especially

<sup>511</sup> Transcript of 4 November 2004, TF2-201, p. 113 (CS); see also Transcript of 8 June 2005, TF2-011, pp. 28-29 (CS).

<sup>512</sup> Transcript of 8 June 2005, TF2-011, pp. 28-29 (CS).

<sup>513</sup> Transcript of 4 November 2004, TF2-201, p. 113 (CS).

<sup>514</sup> Transcript of 8 June 2005, TF2-011, p. 30 (CS).

<sup>515</sup> Transcript of 16 November 2004, TF2-008, p. 79.

<sup>516</sup> Transcript of 8 June 2005, TF2-011, pp. 30-31 (CS); Transcript of 15 September 2004, pp. 10 and 35 (CS); Transcript of 2 November 2004, TF2-021, p. 62.

<sup>517</sup> Transcript of 4 November 2004, TF2-201, p. 114 (CS).

<sup>518</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 47-48.

<sup>519</sup> Transcript of 10 February 2005, Bobor Tucker, p. 47.



pharmacies, in the areas that were rebel-held.<sup>520</sup> Norman added that the adult fighters were doing less than the children, and were just eating and looting.<sup>521</sup>

333. Norman called TF2-017 and said he was a good fighter. He then called other commanders, James Kaillie, Battalion commander from Bumpah, and Joseph Lappia, deputy battalion commander from Bumpah. They were told to go on a test case for Bo and to attack Kebi town where the rebel brigade headquarters was located. Norman told them to get ammunitions for the attack directly after the meeting. He told them where they were to meet him after the attack and to bring something back to prove that they had attacked. Norman also said that if they repelled the rebels, they would take the country for three years. Fofana provided the commanders with arms, ammunitions and a vehicle.<sup>522</sup>

2.2.10.6. Meeting with Nallo in Early February 1998 / Specific Instructions for Bo and Koribondo

334. Albert J Nallo did all the planning for the Koribondo attack and then submitted it to the Director of War, Fofana, who then submitted it to Norman. Norman called Nallo before the Koribondo and Bo attacks and gave him specific instructions for these two attacks. Fofana was present.<sup>523</sup>

335. Norman told Nallo that the Kamajors had tried to capture Koribondo many times and that they had failed because the civilians had given their children to the juntas in marriage and thus, they were all "spies and collaborators". Therefore, when he goes to Koribondo "anybody that was met there should be killed" and nothing should be left "not even a farm" or "[...] a fowl". All houses were to be burnt, and he was given petrol for the job. Some specific names were mentioned: Shekou Gbao, the driver, should be killed and his compound burnt because he was giving his vehicle to the juntas. The house of Mike Lamin's father was also to be burnt because Mike Lamin was RUF. Mr Biyo, a driver, should also have his compound burnt.<sup>524</sup> Although Joe

<sup>520</sup> Transcript of 19 November 2004, TF2-017, pp. 92-95 (CS); See also: Transcript of 11 May 2006, Joe Nunie, pp. 92-93. Joe Nunie testified that the plan to capture Bo was made at Base Zero.

<sup>521</sup> Transcript of 19 November 2004, TF2-017, pp. 89-90 (CS).

<sup>522</sup> Transcript of 19 November 2004, TF2-017, pp. 95-97 (CS).

<sup>523</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 44 and 70-77.

<sup>524</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 77-79.

Tamidey was appointed by Norman to lead the attack on Koribondo, he and the other commanders involved in that attack were under Nallo's overall command.<sup>525</sup>

336. Regarding Bo, Norman told Nallo that he should loot the Southern Pharmacy and bring the medicines to Norman.<sup>526</sup> He also told Nallo to kill Paramount Chief Veronica Bagni of Valunia chiefdom, because she was against the Kamajor movement; JK (Kpundoh) Boima III, Paramount Chief of Bo Kakua; Madam Tuma Alias, chairlady of Bo Town Council, because she used "to collect [...] market dues"; Provincial Secretary Lansana Koroma; MB Sesay because he gave money to the juntas and prepared the *ronko* which the juntas wore so that they could not be differentiated from the Kamajors. MB Sesay should also have his house looted and burnt. Nallo was to kill Ali Fataba and burn his house because he was a collaborator who supplied fuel to the juntas. He should kill Cecil Hanciles for liaising between the juntas and the civilians. He was to kill Brima Tolli, if he saw him, and to burn his house and loot his property because the juntas ate and spent time at the house. Norman ordered Nallo to kill the police officers who used to work under the AFRC junta. Nallo carried out the orders as far as burning and looting but did not see most of the people. He would have killed them had he seen them because the law given by the National Coordinator was that if Kamajors did not follow their orders they would cut off your ear or kill you.<sup>527</sup>

#### 2.2.11. Command Structure

##### 2.2.11.1. Norman, Fofana and Kondewa - the High Command

337. Norman, Fofana and Kondewa were regarded as the "Holy Trinity".<sup>528</sup> "Norman was the God, [...] Fofana was the Son, and [Kondewa] was the Holy Spirit."<sup>529</sup> The three of them were the key and essential components of the leadership structure of the organisation and were the executive of the Kamajor society.<sup>530</sup> They were the ones actually making the decisions<sup>531</sup> and

<sup>525</sup> Transcript of 14 March 2005, Albert J Nallo, p. 44.

<sup>526</sup> Transcript of 10 March 2005, Albert J Nallo, p. 71; Transcript of 8 June 2005, TF2-011, p. 29 (CS).

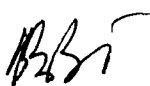
<sup>527</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 70-77.

<sup>528</sup> Transcript of 11 March 2005, Albert J Nallo, pp. 23-24; Transcript of 8 June 2005, TF2-011, p. 31 (CS).

<sup>529</sup> Transcript of 11 March 2005, Albert J Nallo, p. 24.

<sup>530</sup> Transcript of 16 November 2004, TF2-008, p. 51; see also Exhibit 10 and Exhibit 11, confidential.

<sup>531</sup> Transcript of 8 June 2005, TF2-011, p. 31 (CS).





nobody could make a decision in their absence. Whatever happened, they would come together because they were the leaders and the Kamajors looked up to them.<sup>532</sup>

#### 2.2.11.2. Fofana: Director of War

338. In 1995 Fofana together with Joe Tamidey and Musa Kortuwai gave instructions to the group led by Mustafa Ngobeh to fight in Baomakpengeh and Singihun. Fofana assigned Bobor Tucker specifically to lead the attack on Singihun.<sup>533</sup> In late 1995 or early 1996 Fofana together with Jusu Kapanday, Rufus Collier, Joseph Koroma and John Swaray fought the war in Pujehun. Fofana did not then command troops. He was getting food for the fighters along with Musa and Ansu Vanjawai.<sup>534</sup>

339. At Base Zero Fofana was known as the "Director"<sup>535</sup> or "Director of War".<sup>536</sup> He was appointed to this position solely by Norman;<sup>537</sup> the appointment was later confirmed by the War Council.<sup>538</sup>

340. The duties of the Director of War were to plan and execute the strategies for war operations. He received frontline reports, both written and verbal, from the commanders in the field and passed them to Norman.<sup>539</sup> In executing these functions, Fofana was largely assisted by Albert J Nallo, the National Director of Operations, who was the only literate Director. He wrote everything for Fofana while Fofana planned in Mende.<sup>540</sup> For example, Nallo and Fofana were the architects of the Black December Operation.<sup>541</sup> Sometimes Fofana passed on his responsibilities to

<sup>532</sup> Transcript of 16 November 2004, TF2-008, p. 51.

<sup>533</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 5-6.

<sup>534</sup> Transcript of 16 September 2004, TF2-082, p. 117 (CS).

<sup>535</sup> Transcript of 16 September 2004, TF2-082, pp. 120-121 (CS); Transcript of 28 September 2006, Billoh Conteh, p. 58; Transcript of 17 February 2006, MT Collier, pp. 7-8.

<sup>536</sup> Transcript of 17 February 2005, TF2-222, p. 87; Exhibit 11, confidential; Transcript of 8 November 2004, TF2-096, p. 20; Transcript of 19 May 2006, Mohammed Kaineh, pp. 38-37.

<sup>537</sup> Transcript of 16 February 2005, TF2-005, pp.54-55 (CS); Transcript of 17 February 2005, TF2-222, pp.96-97.

<sup>538</sup> Exhibit 59.

<sup>539</sup> Transcript of 26 May 2005, TF2-079, pp. 40-43; Transcript of 10 March 2005, Albert J Nallo, pp. 33-35; Transcript of 16 November 2004, TF2-008, pp. 46-47.

<sup>540</sup> Transcript of 14 March 2005, Albert J Nallo, pp. 55-57.

<sup>541</sup> Transcript of 14 March 2005, Albert J Nallo, pp. 51-52.





Nallo.<sup>542</sup> The strategies for war operations, which Fofana and Nallo planned together, did not include the killing of innocent civilians, looting of property or raping of women.<sup>543</sup>

341. Fofana's duties as Director of War were to select commanders to go to battle and to act as the overall boss of the commanders who were at Base Zero.<sup>544</sup> However, the final authority regarding the deployment of Kamajors belonged to Norman.<sup>545</sup> Fofana could, on occasions, issue orders to the commanders.<sup>546</sup> For example, he issued the order to Joe Tamidey not to release captured vehicles and other items to any other person until they were registered with CDF Headquarters.<sup>547</sup>

342. Fofana dealt with the receipt and provision of logistics for the frontline by instructing the Director of Logistics on what to make available. This included both fighting logistics, such as, arms and ammunitions, as well as social logistics, such as cigarettes, tobacco leaves and alcohol.<sup>548</sup> However, Fofana could only give out ammunition if and when directed to do so by Norman.<sup>549</sup> Mohamed Orinco Moosa would hand out the arms and ammunitions and Fofana would check to ensure that the right amount had been handed out to the correct commanders.<sup>550</sup>

343. Fofana was never seen on the battlefield or even with a gun and was only considered to have fought in the war because the man who feeds you is a fighter too.<sup>551</sup> Fofana was seen as having power and authority at Base Zero as he was frequently quoted on the BBC,<sup>552</sup> and because people did not approach him unless he summoned them.<sup>553</sup>

### 2.2.11.3. Kondewa: High Priest

<sup>542</sup> Transcript of 11 March 2005, Albert J Nallo, p. 59.

<sup>543</sup> Transcript of 14 March 2005, Albert J Nallo, pp. 56-57.

<sup>544</sup> Transcript of 15 February 2005, TF2-005, p. 101 (CS).

<sup>545</sup> Transcript of 8 June 2005, TF2-011, p. 47 (CS).

<sup>546</sup> Transcript of 16 February 2005, TF2-005, p. 17 (CS).

<sup>547</sup> Exhibit 11, confidential; Transcript of 5 May 2005, Mustapha Lumeh, pp. 9-12.

<sup>548</sup> Transcript of 17 February 2005, TF2-222, p. 92; Transcript of 26 May 2005, TF2-079, p. 42; Transcript of 16 November 2004, TF2-008, p. 47; Transcript of 17 February 2006, MT Collier, pp. 6-7 and 63-64.

<sup>549</sup> Transcript of 15 February 2005, TF2-005, p. 101 (CS).

<sup>550</sup> Transcript of 16 November 2004, TF2-008, pp. 69-70; Transcript of 4 November 2004, pp. 96-98.

<sup>551</sup> Transcript of 16 September 2004, TF2-082, p. 121 (CS).

<sup>552</sup> Transcript of 26 May 2005, TF2-079, pp. 42-43.

<sup>553</sup> Transcript of 28 September 2006, Billoh Conteh, pp. 49-50 and 58.

344. Kondewa was known as the High Priest of the entire CDF organisation and was performing initiations at Talia.<sup>554</sup> He was also appointed by Norman.<sup>555</sup> He was the head of all the CDF initiators initiating the Kamajors into the Kamajor society in Sierra Leone.<sup>556</sup> Kondewa created different types of initiations within the Kamajor movement.<sup>557</sup>

345. Kondewa's job was to prepare herbs which the Kamajors smeared on their bodies to protect them from bullets.<sup>558</sup> Kondewa was not a fighter,<sup>559</sup> he himself never went to the war front<sup>560</sup> or into active combat,<sup>561</sup> but whenever a Kamajor was going to war, he would go to Kondewa for advice and blessing.<sup>562</sup> Kondewa's role was to decide whether a Kamajor could go to the war front that day. Before combat, the Kamajors would go in a line and Kondewa would say, "You, don't go to war this time." Although, he could say, "don't go [...] you go", it was similar to a fortune teller saying so.<sup>563</sup>

346. The Kamajors believed in the mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them "bullet-proof".<sup>564</sup> The Kamajors looked up to Kondewa and admired the man with such powers.<sup>565</sup> They believed that he was capable of transferring his powers to them to protect them.<sup>566</sup> Because of the mystical powers Kondewa possessed, he had command over the Kamajors from every part of the country. No

<sup>554</sup> Transcript of 17 February 2005, TF2-222, pp. 86-87; Transcript of 26 May 2005, TF2-079, p. 43; Transcript of 8 November 2004, TF2-096, p. 16.

<sup>555</sup> Transcript of 16 February 2005, TF2-005, p. 55 (CS); Transcript of 17 February 2005, TF2-222, pp. 96-97.

<sup>556</sup> Transcript of 26 May 2005, TF2-079, pp. 43-44; Transcript of 16 November 2004, TF2-008, pp. 48-49; Transcript of 23 November 2004, TF2-008, p. 57; Transcript of 3 February 2006, Samuel Hinga Norman, p. 45; Transcript of 6 February 2006, Samuel Hinga Norman, pp. 102-103.

<sup>557</sup> Transcript of 10 March 2005, Albert J Nallo, p. 19.

<sup>558</sup> Transcript of 4 November 2004, TF2-201, p. 107 (CS).

<sup>559</sup> Transcript of 15 March 2005, Albert J Nallo, p. 46.

<sup>560</sup> Transcript of 16 November 2004, TF2-008, p. 50.

<sup>561</sup> Transcript of 23 November 2004, TF2-008, p. 58.

<sup>562</sup> Transcript of 23 November 2004, TF2-008, pp. 58-60.

<sup>563</sup> Transcript of 23 November 2004, TF2-008, pp. 58-60.

<sup>564</sup> Transcript of 25 May 2006, Lahai Koroma, p. 7; Transcript of 18 February 2005, TF2-222, pp. 19-22; Transcript of 1 June 2006, Joseph Kavura Kongomoh, pp. 56-57; Transcript of 21 February 2006, Lt. General Richards, p. 63, pp. 106-107; Transcript of 17 September 2004, TF2-082, pp. 3-6.

<sup>565</sup> Transcript of 17 February 2005, TF2-222, p. 119; Transcript of 12 May 2006, Haroun Collier, p. 13; Transcript of 17 February 2006, Osman Vandi, p. 105.

<sup>566</sup> Transcript of 10 February 2005, Bobor Tucker, p. 45; Transcript of 4 November 2004, TF2-201, p. 113 (CS); Transcript of 18 May 2006, Keikula Amara, pp. 69-70.

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Kamajor would go to war without Kondewa's blessing.<sup>567</sup> For example, he did this for the Kamajors leaving Base Zero for Tongo.<sup>568</sup>

347. Kondewa had bodyguards at Base Zero because of his importance as an initiator within the hunters' society.<sup>569</sup> One of his bodyguards was a child soldier.<sup>570</sup> Kondewa had a house in Nyandehun, which was about a quarter mile from Talia.<sup>571</sup>

#### 2.2.11.4. CDF Structure at the National Level

348. During the time of the existence of Base Zero, there were a few positions of Directors within the CDF hierarchy. The Director of War was deputised by his Deputy. This position was occupied by Mohamed Orinco Moosa at least as of December 1997.<sup>572</sup> The National Director of Operations was below the Deputy Director of War.<sup>573</sup> During the existence of Base Zero, Joseph Koroma first occupied this position.<sup>574</sup> He was an elderly person and was given the position to be appeased. Albert J Nallo who was the Deputy to the National Director of Operations<sup>575</sup> did all the work because Koroma was illiterate and was largely dormant and inactive.<sup>576</sup> In early January 1998 Lamin Ngobeh became the National Director of Operations.<sup>577</sup> Despite the existence of the formal structure which presupposed the flow of command from Norman down to Nallo through Fofana, Orinco Moosa and Joseph Koroma, the normal flow of command did not go through these persons. Nallo was also not permanently based at Base Zero and would come and go to the warfronts.<sup>578</sup>

<sup>567</sup> Transcript of 16 November 2004, TF2-008, pp. 49-50.

<sup>568</sup> Transcript of 4 November 2004, TF2-201, p. 107 (CS).

<sup>569</sup> Transcript of 3 February 2006, Samuel Hinga Norman, p. 74; Transcript of 15 March 2005, Albert J Nallo, pp. 46-47; See also Transcript of 8 June 2005, TF2-011, pp. 45-47 (CS); Transcript of 8 November 2004, TF2-096, p. 28.

<sup>570</sup> Transcript of 27 May 2005, TF2-079, p. 13.

<sup>571</sup> Transcript of 18 February 2005, TF2-222, pp. 49-50; Transcript of 11 October 2006, JD Murana, pp. 32-33 and 45.

<sup>572</sup> Transcript of 26 May 2005, TF2-079, p. 40; Transcript of 4 November 2004, pp. 88-90 (CS); Transcript of 11 March 2005, Albert J Nallo, pp. 24-27; Transcript of 15 February 2005, TF2-005, pp. 92-93 (CS).

<sup>573</sup> Transcript of 11 March 2005, Albert J Nallo, p. 24.

<sup>574</sup> Transcript of 11 March 2005, Albert J Nallo, p. 24.

<sup>575</sup> Transcript of 10 March, Albert J Nallo, p. 32.

<sup>576</sup> Transcript of 11 March 2005, Albert J Nallo, pp. 59-60.

<sup>577</sup> Transcript of 4 November 2004, p. 113 (CS).

<sup>578</sup> Transcript of 11 March 2005, Albert J Nallo, pp. 60-61.

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349. The job of deciding when and where to go to war lay with Norman, Kondewa, Fofana, the Deputy Director of War, the Director of Operations, his deputy, and the battalion commanders.<sup>579</sup>

350. In his position as the Deputy National Director of Operations, Nallo had five roles: 1) transmit general and specific instructions from Norman to the warfront;<sup>580</sup> 2) collect reports from the warfront, both written and verbal, and bring them to Base Zero to Fofana before giving them to Norman; if they were written, he would sit with Fofana and go over them before taking them to Norman; 3) take arms and ammunitions to the warfront for the fighters; 4) visit the frontlines to receive reports and ascertain the position of the troops; and 5) plan with Fofana strategies for war operations for the Southern Region because Fofana was illiterate.<sup>581</sup>

351. While at Base Zero, apart from the Directors at the national level, there were a few regional positions within the CDF structure: Musa Junisa was the Director of Operations for the Eastern Region, Dr. Mohamed Mansaray was the Director of Operations for the Northern Region, Pa Lungba was the Director of Operations for the Western Region,<sup>582</sup> and Nallo, in addition to being the Deputy National Director of Operations, was the Director of Operations for the Southern Region. The latter included the districts of Bo, Bonthe, Moyamba and Pujehun.<sup>583</sup>

352. Nallo was appointed by Norman at Base Zero to hold both positions of the Deputy National Director of Operations and the Director of Operations for the Southern Region.<sup>584</sup> As the Director of Operations for the Southern Region, Nallo took general and specific instructions from Norman and passed them to the warfront.<sup>585</sup> In the same capacity, Nallo would arrange the Kamajors wherever they had an operation.<sup>586</sup> He was in charge of the commanders in the Southern Region but he did not have full or strict control of them, especially because of their large numbers. Particularly, he was unable to control the Special Forces and Vanjawai. Nallo was responsible for implementing the commands he received from Base Zero along with his commanders. In implementing commands, he did not distinguish between lawful and unlawful ones and did not

<sup>579</sup> Transcript of 23 November 2004, TF2-008, p. 11; Transcript of 15 February 2005, TF2-005, pp. 93-94 (CS).

<sup>580</sup> See Transcript of 27 January 2006, Samuel Hinga Norman, p. 99.

<sup>581</sup> Transcript of 10 March, Albert J Nallo, pp. 32-35.

<sup>582</sup> Transcript of 11 March 2005, Albert J Nallo, pp. 25-26.

<sup>583</sup> Transcript of 10 March, Albert J Nallo, p. 32; Transcript of 17 November 2004, TF2-008, pp. 40-41.

<sup>584</sup> Transcript of 10 March, Albert J Nallo, p. 32.

<sup>585</sup> Transcript of 10 March, Albert J Nallo, p. 32.

<sup>586</sup> Transcript of 11 May 2006, Joe Nunie, pp. 53-54.

recognise that he had discretion to not implement them.<sup>587</sup> Nallo went to his operational areas of command three times per week from Base Zero on his Honda motorbike.<sup>588</sup>

353. Norman also developed a system of administrative command through the position of Regional Coordinator. Alhaji Daramy Rogers occupied the position for the Southern Region, Jambawai for the Eastern Region and Dumbuya for the Northern Region. These individuals oversaw the distribution of food and welfare items to the Kamajors in their respective regions.<sup>589</sup>

#### 2.2.11.5. CDF Structure at the Regional Level

354. Since the formation of the Kamajor society in 1991, the Kamajors were organised essentially as a group of native hunters who responded to the directives of the chiefs and chiefdom authorities when being requested to protect people from the rebels and to defend their chiefdoms.<sup>590</sup> Paramount chiefs would select people in their respective chiefdoms to become Kamajors.<sup>591</sup>

355. At the level of the village, the Kamajors appointed their leader/commander usually from either ex-servicemen or strong and active men in the community. At the chiefdom level, the paramount chiefs and their sub-chiefs brought the Kamajors together under one umbrella called "chiefdom Kamajors". Hence, they were under the command and control of the chiefdom authorities led by their paramount chief or regent chief. Therefore, requests for the special services of the Kamajors frequently came through the chiefs.<sup>592</sup> A commander did not have a strict number of men under his command and the number depended upon the available number of men in the various chiefdoms.<sup>593</sup>

356. Upon his arrival at Base Zero, Norman attempted to synchronise the command structure, so that everyone could abide by the centralised commands coming from Base Zero. At that time the Kamajors were still operating in different groups according to which chiefdom they hailed

<sup>587</sup> Transcript of 11 March 2005, Albert J Nallo, pp. 96-98; Transcript of 14 March 2005, Albert J Nallo, pp. 20-21.

<sup>588</sup> Transcript of 11 March 2005, Albert J Nallo, pp. 103-104.

<sup>589</sup> Transcript of 15 February 2005, p. 93 (CS); Transcript of 16 February 2005, pp. 17-18 (CS).

<sup>590</sup> Transcript of 17 February 2005, TF2-222, pp. 13, 15 and 17 (CS); Transcript of 9 February 2006, Albert Joe Demby, p. 103.

<sup>591</sup> Transcript of 3 February 2006, Samuel Hinga Norman, p. 72; Transcript of 16 November 2004, TF2-008, pp. 51-53.

<sup>592</sup> Transcript of 10 February 2006, Albert Joe Demby, p. 7; Exhibit 165, para. C.1.d.

<sup>593</sup> Transcript of 6 February 2006, Samuel Hinga Norman, p. 108.



from.<sup>594</sup> Positions of a town or a village commander, section commander in charge of one section of a chiefdom, and chiefdom commander in charge of an entire chiefdom still existed.<sup>595</sup>

357. Norman introduced some military terminology and concept into the organisation and the structure of the CDF, such as, division of Kamajors by sections, squads, platoons and companies, varying in size from three to 75-100 men.<sup>596</sup> Positions of battalion and senior battalion commanders were introduced to replace the terminology of chiefdom and district commanders. A new system of appointments was adopted around the end of December 1997, when around 100 to 150 commanders from various chiefdoms, who were considered fit to take up command responsibility, were called to Base Zero to go through the screening and appointment process to be promoted to the rank of battalion and senior battalion commanders.<sup>597</sup> A chiefdom / battalion commander reported to a district commander, while the latter would in turn tell the chiefdom / battalion commander where to deploy the Kamajors.<sup>598</sup> The district commanders reported to the Regional Directors of Operations.<sup>599</sup>

358. Although the CDF was regarded as a cohesive force under one central command, there were some fighters who acted on their own without the knowledge of the central command because their area of operation was so wide.<sup>600</sup> Commanders' authority to discipline their men on the ground was entirely their own. The CDF also did not keep records of its members like a conventional army would.<sup>601</sup> There were literally hundreds of groups spread throughout the country and they would communicate through their commanders. Commanders went to Base Zero from every group and location in the country and received training, facilities and instruction. Instructions came from the High Command or the National Coordinator.<sup>602</sup>

#### 2.2.11.6. Death Squad

<sup>594</sup> Transcript of 14 March 2005, Albert J Nallo, p. 21.

<sup>595</sup> Transcript of 30 January 2006, Samuel Hinga Norman, pp. 3-5.

<sup>596</sup> The Kamajors were divided into sections, squads and platoons varying in size from three to a company of 75-100 men, the latter organised on the level of chiefdoms. See Transcript of 30 January 2006, Samuel Hinga Norman, pp. 3-4.

<sup>597</sup> Transcript of 30 January 2006, Samuel Hinga Norman, pp. 3-6; See for example Exhibit 10, confidential.

<sup>598</sup> Transcript of 17 February 2006, MT Collier, pp. 18-20 and 61-63.

<sup>599</sup> Transcript of 17 February 2006, MT Collier, pp. 62-63.

<sup>600</sup> Transcript of 16 February 2005, TF2-005, p. 70 (CS).

<sup>601</sup> Transcript of 3 February 2006, Samuel Hinga Norman, p. 73.

<sup>602</sup> Transcript of 17 November 2004, TF2-008, pp. 10-11.

359. The Death Squad was formed at the meeting held by Kamoh Lahai Bangura in Talia,<sup>603</sup> prior to the arrival of Norman.<sup>604</sup> Bobor Tucker, a.k.a. Jegbeyama, was the leader of this group.<sup>605</sup> The Death Squad originally had 20 members and had grown to have 42 members by the time that Norman arrived in Talia.<sup>606</sup> Bobor Tucker was based at Tisana and the Death Squad was based at Sumbuya Junction.<sup>607</sup>

360. The Death Squad was responsible for the security in and around Talia, which was later called Base Zero. The Death Squad would patrol the area and ensured that any group wanting to launch an attack on Base Zero was prevented from doing so. In addition to acting as security, the Death Squad would participate in armed attacks against the junta.<sup>608</sup> After Bobor Tucker was introduced to Norman at Talia, he received orders for these attacks from Norman alone.<sup>609</sup> The Death Squad was under Norman's control,<sup>610</sup> and was answerable and reporting only to Norman.<sup>611</sup> Norman was their "direct boss".<sup>612</sup>

361. Although, originally the duty of the Death Squad was to provide security in and around Base Zero, this was not the work they were actually doing.<sup>613</sup> They were responsible for arresting undisciplined people<sup>614</sup> and for torturing and killing people,<sup>615</sup> especially captives.<sup>616</sup> They also

<sup>603</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 31-38; see section V.2.2.2.1.

<sup>604</sup> Transcript of 31 January 2006, Samuel Hinga Norman, pp. 15-16.

<sup>605</sup> Transcript of 10 February 2005, Bobor Tucker, p. 32; Transcript of 4 November 2004, TF2-201, pp. 98-99 (CS); Transcript of 16 November 2004, TF2-008, pp. 60-61; Transcript of 11 March 2005, Albert J Nallo, p. 23; Transcript of 17 February 2006, MT Collier, pp. 52-53.

<sup>606</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 31-32 and 59.

<sup>607</sup> Transcript of 12 October 2006, JD Murana, pp. 3-6; Transcript of 15 May 2006, Haroun Collier, p. 35.

<sup>608</sup> Transcript of 8 June 2005, TF2-011, pp. 21-22 (CS); Transcript of 10 February 2005, Bobor Tucker, pp. 33-35.

<sup>609</sup> Transcript of 10 February 2005, Bobor Tucker, p. 35; Transcript of 4 November 2004, TF2-201, pp. 99-100 (CS).

<sup>610</sup> Transcript of 17 November 2004, TF2-068, pp. 90-91 (CS).

<sup>611</sup> Transcript of 10 March 2005, Albert J Nallo, p. 38; Transcript 11 March 2005, Albert J Nallo, p. 23; Transcript 8 June 2005, TF2-011, pp. 21-22 (CS).

<sup>612</sup> Transcript of 11 March 2005, Albert J Nallo, p. 23.

<sup>613</sup> Transcript of 14 March, Albert J Nallo, p. 42.

<sup>614</sup> Transcript of 18 February 2005, TF2-222, pp. 8-9.

<sup>615</sup> Transcript of 10 March 2005, Albert J Nallo, p. 38; Transcript of 14 March 2005, Albert J Nallo, p. 43; Transcript of 16 November 2004, TF2-008, pp. 60-63; Transcript of 15 February 2005, TF2-005, pp. 95-98 (CS); See for example Transcript of 26 May 2005, TF2-079, pp. 48-49: The Death Squad was killing people for their diamonds and was looting around Bumpah.

<sup>616</sup> Transcript of 10 March 2005, Albert J Nallo, p. 38; see also Section 2.5.3.3.6; Transcript of 10 March 2005, Albert J Nallo, pp. 85-87; Transcript of 22 November 2004, TF2-017, pp. 18-21 (CS).

looted properties<sup>617</sup> and brought them to Norman<sup>618</sup> and molested and threatened War Council members.<sup>619</sup> Their actions were “abnormal”, “horrible” and “beyond bounds”.<sup>620</sup>

#### 2.2.11.7. Special Forces

362. The Special Forces were the bodyguards of Norman, Kondewa and Fofana and they took care of Base Zero.<sup>621</sup> Later, the Special Forces were composed of both Liberians and Sierra Leoneans. They were permanently based at Base Zero and accompanied Norman wherever he went. They reported to Norman.<sup>622</sup>

#### 2.2.11.8. ECOMOG

363. When ECOMOG and the CDF joined forces, the CDF remained independent because they were regionally separated in the country. ECOMOG was in Lungi and Freetown while the CDF was in the south and east.<sup>623</sup>

#### 2.2.12. Structure and Organisation of the CDF / Kamajors Post Base Zero

364. On 10 March 1998, President Kabbah returned to Sierra Leone and the Kabbah government resumed its functions.<sup>624</sup> At this time, several changes were made to the organisation, structure and administration of the CDF.<sup>625</sup>

365. The War Council left Base Zero in February 1998 to set up regional CDF offices in Bo and Kenema Districts.<sup>626</sup> The administrative authority of the CDF was transferred to these offices and

<sup>617</sup> TF2-011 testified that the Death Squad raided a car in Sembehun and brought it to Talia: Transcript of 8 June 2005, TF2-011, pp. 22-23 (CS); See also Transcript of 16 November 2004, TF2-008, p. 62; Transcript of 26 May 2005, TF2-079, pp. 48-49.

<sup>618</sup> Transcript of 14 March 2005, Albert J Nallo, p. 42.

<sup>619</sup> Transcript of 14 March 2005, Albert J Nallo, p. 42; Transcript of 15 February 2005, TF2-005, pp. 100-101 (CS).

<sup>620</sup> Transcript of 16 November 2004, TF2-008, p. 60, lines 21-24.

<sup>621</sup> Transcript of 16 November 2004, TF2-008, p. 63.

<sup>622</sup> Transcript of 11 March 2005, Albert J Nallo, p. 28; Transcript of 10 March 2005, Albert J Nallo, pp. 86-87.

<sup>623</sup> Transcript of 14 November 2004, TF2-008, p. 30.

<sup>624</sup> Transcript of 26 January 2006, Sam Hinga Norman, pp. 77-78; Transcript of 8 February 2006, Peter Penfold, p. 43.

<sup>625</sup> Transcript of 26 January 2006, Sam Hinga Norman, pp. 72-75.

<sup>626</sup> See sections V.2.5.5 and V.2.7.8.1.

the CDF High Command ceased to exist at Base Zero.<sup>627</sup> The War Council continued to act in a limited capacity for another two months, finally disbanding in April 1998.<sup>628</sup>

366. The CDF offices were run by the Regional Coordinators. Alhaji Daramy Rogers, the Regional Coordinator for the Southern Region, was stationed in Bo. Jambawai, the Regional Coordinator for the Eastern Region, was stationed in Kenema. Around June 1998, the position of Regional Coordinator was abolished. In its stead, the position of District Administrator was created and was held by Kosseh Hindowa in Bo and Arthur Koroma in Kenema. The District Administrators received reports from the battalion commanders, and then reported directly to Norman.<sup>629</sup> Their functions included, for examples, distribution of rice and logistics.<sup>630</sup>

367. Sometime after 10 March 1998, control of all military matters, including the CDF forces was transferred to General Khobe, the Chief of Defence Staff of the Sierra Leone Army ("SLA").<sup>631</sup> He was later joined by ECOMOG commander General Shelpidi. The two men took orders from President Kabbah and worked together to manage the daily fighting across the country.<sup>632</sup> Although ECOMOG assumed command responsibility over Kamajors in Bo and Kenema in late February at the end of these operations, it remains doubtful whether ECOMOG exercised effective control over the Kamajors' actions. There are only a few examples of ECOMOG officers disciplining Kamajors and these efforts were largely unsuccessful.<sup>633</sup>

#### 2.2.12.1. The National Coordinating Committee

<sup>627</sup> Transcript of January 26 2006, Sam Hinga Norman, pp. 72-75; See also sections V.2.5.5 and V.2.7.8.1.

<sup>628</sup> Transcript of 14 March 2005, Albert J Nallo, pp. 11-16; Transcript of 5 May 2006, Mustapha Lumeh, p. 81. The War Council held its last meeting in Kenema in April 1998. Though it continued to function during that time, the War Council's suggestions were largely ignored and most members had returned to their various towns and villages. Exhibit 129; Transcript of 13 February 2006, Albert Joe Demby, pp. 4-6. On 9 March 1999, the War Council, having been superseded by the NCC, was officially abolished.

<sup>629</sup> Transcript of 3 May 2006, Arthur Koroma, pp. 39-41; Transcript of 4 May 2006, Arthur Koroma, p. 105; Transcript of 16 September 2004, pp. 50-51 (CS): For example, the battalion commander in Koribondo reported to Alhaji Daramy Rogers in Bo. When the position of Regional Coordinator was abolished, he made his reports to Kosseh Hindowa, the District Administrator.

<sup>630</sup> Exhibit 87.

<sup>631</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 52-53 and 70; Transcript of 26 January 2006, Samuel Hinga Norman, pp. 46 and 54; Transcript of 14 June 2005, Colonel Richard Iron, p. 47; Transcript of 13 February 2006, Albert Joe Demby, p. 7: Military matters included deployment, supply of arms and ammunition and supply of food which was stored in military warehouses. These items were distributed through the use of military helicopters.

<sup>632</sup> Transcript of 21 February 2006, Lt. General Richards, p. 101; Transcript of 13 February 2006, Albert Joe Demby, pp. 9-10.

<sup>633</sup> See e.g. section V.2.5.4.1.15 and Exhibit 89.

368. The National Coordinating Committee (“NCC”) was formed by President Kabbah on 29 January 1999. It became the highest body in the CDF and was chaired by the then Vice President of Sierra Leone, Albert Joe Demby.<sup>634</sup> The NCC was an administrative body responsible for providing food and other welfare items to the CDF fighters. It was not part of the military.<sup>635</sup>

369. In his capacity as Deputy Minister of Defence, Norman attended meetings of the NCC. However, he was not a member of the NCC and was under the NCC’s control. He did not discuss military matters with President Kabbah.<sup>636</sup>

#### 2.2.12.2. Roles of Moinina Fofana and Allieu Kondewa

370. Fofana retained the title of Director of War and was responsible for distributing logistics to the various parts of the country. The position was later incorporated into the organisation of the NCC and Fofana then acted under the authority of the NCC.<sup>637</sup> He was not responsible for the conduct of the war and the fighting forces.<sup>638</sup> Sometime in mid-1999, he became the Director of the Peace Office in Bo.<sup>639</sup>

371. Sometime after 10 March 1998, Kondewa founded and led the *Avondo* society together with Sheku Kaillie, a.k.a. Bombowai. The “cabinet” and subordinate members of the society were Kamoh Gboni, Kamoh Fuwad, Gibrilla, CO Makossi, Hallie Namoi and Woodie. They were known as the “cabinet” because they sat together and were responsible for marking the bodies of initiates.<sup>640</sup>

372. The children who were initiated into the *Avondo* society acted differently. They did not want to be touched by or stand near female teachers. They did not want to hold a sweeping brush, unlike other children who would sweep at the schools. They began to show violent behaviour and

<sup>634</sup> Transcript of 10 February 2006, Albert Joe Demby, p.55; Exhibit 127; Transcript of 27 May 2005, TF2-079, pp. 22-24; Exhibit 120.

<sup>635</sup> Transcript of 27 May 2005, TF2-079, p. 24; Transcript of 16 February 2006, Albert Joe Demby, pp. 7-8.

<sup>636</sup> Transcript of 21 February 2006, Lt. General Richards, p. 101; Transcript of 6 February 2006, Samuel Hinga Norman, p.66; Exhibit 123.

<sup>637</sup> Exhibit 123.

<sup>638</sup> Transcript of 6 February 2006, Sam Hinga Norman, pp. 62-66.

<sup>639</sup> Transcript of 23 November 2004, TF2-008, pp. 23-28; see section V.2.5.5.2.

<sup>640</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 19-21 and 28-30; Transcript of 16 June 2005, TF2-EW2, pp. 21-22 and 90-91 (CS); Transcript of 3 November 2004, TF2-021, pp. 20-21 and 49.





acted like they were better than the other children - even the other children that had been initiated into the CDF.<sup>641</sup>

373. Kondewa also became part of the organisation of the NCC and continued to act as High Priest under the NCC's control.<sup>642</sup> Sometime in February or March 1999, Kondewa was removed from his position as High Priest and was replaced by Kamoh Lahai Bangura. President Kabbah was notified and he approved the replacement.<sup>643</sup>

### 2.3. Towns of Tongo Field

#### 2.3.1. Background to Tongo Field

374. Tongo is a mining town in Lower Bambara Chiefdom in Kenema District.<sup>644</sup> The Kamajors and the SLA were both present and mined in Tongo from 1996 until the Coup of 25 May 1997. After 25 May, Kamajors alone occupied Tongo.<sup>645</sup>

375. The AFRC and RUF forces collectively attacked Tongo on 11 August 1997 and occupied it until January 1998.<sup>646</sup> When the AFRC was in Tongo, they forced civilians to mine diamonds for them and killed those who refused.<sup>647</sup> Although the Kamajors were driven out of Tongo Town, they remained in the surrounding towns, which are collectively known as "towns of Tongo Field". The Kamajors launched numerous armed operations against the rebels in an attempt to regain control over Tongo.<sup>648</sup>

<sup>641</sup> Transcript of 16 June 2005, TF2-EW2, pp. 21-22 and 90-91. See also Transcript of 3 November 2004, TF2-021, pp. 20-21 and 49: TF2-021 testified that *Avondo* means that "when you go to the warfront, the medicine enters your body as you sweat".

<sup>642</sup> Exhibit 123.

<sup>643</sup> Transcript of 3 February 2006, Sam Hinga Norman, pp. 45-46.

<sup>644</sup> Transcript of 11 February 2005, TF2-022, p. 37, Transcript of 26 May 2005, TF2-079, p. 17

<sup>645</sup> Transcript of 15 May 2006, BJK Sei, p. 80, Transcript of 18 February 2005, TF2-027, pp. 77-78, Transcript of 16 May 2006, Siaka Lahai, pp. 89-90. Note that there is also testimony from TF2-222 and TF2-022 that the SLA was not in Tongo until August 1997; Transcript of 4 November 2004, TF2-201, p. 71; Transcript of 11 February 2005, TF2-022, pp. 74-75

<sup>646</sup> Transcript of 1 March 2005, TF2-053, p. 72, Transcript of 18 February 2005, TF2-027, pp. 77-78

<sup>647</sup> Transcript of 22 February 2005, TF2-027, pp. 70-71, Transcript of 22 February 2005, TF2-027, p. 10, Transcript of 18 February 2005, TF2-027, pp. 78-79

<sup>648</sup> Exhibit 86, confidential; see also evidence of Norman that the attack on Tongo would determine who the winner or the loser of the war would be, Transcript of 17 February 2005, TF2-222, p. 110

### 2.3.2. Attacks on Tongo Town

376. Numerous attacks were launched by Kamajors on Tongo Town, however, the evidence led by the Parties focused mainly on three distinct attacks. For ease of reference, the Chamber refers below to these attacks as the first, second and third attacks on Tongo Town.

377. On 16 November 1997 TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms. It requested arms and ammunitions and described attacks which had been launched in the area. It also narrated the following killing which was committed by Kamajors:

On 9 November 1997, Siaka Lahai and eight of his Kamajor militia were patrolling Gboegiama Village armed with assault rifles and an RPG launcher.<sup>649</sup> The Kamajors entered the village and captured Robert Ndanema, who was in possession of a large number of AFRC market due tickets. Mr. Ndanema admitted complicity with the rebels and was summarily executed.<sup>650</sup>

378. The report was endorsed by Musa Junisa, the then Commander-in-chief of Zone II Operational Frontline and Mohamed Orinco Moosa, his deputy. TF2-079, Junisa and Moosa with 100 other Kamajors then travelled to Base Zero. At Base Zero they gave the report first to Fofana and then to Norman. Norman commended their efforts and told them that a good number of that group should return to the area with another senior commander to keep the area strong and only a few of them should remain at Base Zero to await ammunitions. Seven people, including Moosa and TF2-079 stayed at Base Zero.<sup>651</sup>

379. Around November 1997, while the rebels occupied Tongo and the Kamajors were headquartered in Panguma, Kamajors killed a small boy who had been travelling on foot from Tongo to Panguma. The boy was killed because he was coming from rebel-held territory.<sup>652</sup>

380. The first attack on Tongo Town was launched in late November or early December 1997.<sup>653</sup> Key commanders included Mohamed Kailondo Banya, Keikula Amara, a.k.a. Kamabote,

<sup>649</sup> Siaka Lahai testified that there is no village named Gboegiama in the Tongo Field area, but that there is a village named Gbongema. Transcript of 17 May 2006, Siaka Lahai, pp. 46-47.

<sup>650</sup> Exhibit 86, confidential; Transcript of 26 May 2005, TF2-079, pp. 33-34.

<sup>651</sup> Transcript of 26 May 2005, pp. 24-28, pp. 33-36; Exhibit 86, confidential.

<sup>652</sup> Transcript of 26 May 2005, TF2-079, pp. 22-23 and 34-35.

and Siaka Lahai.<sup>654</sup> Kamabote was the Base Commander in Talama, a town about ten miles from Tongo.<sup>655</sup> Siaka Lahai was a Battalion Commander for the Lower Bambara Chiefdom who was stationed in Panguma and surrounding towns.<sup>656</sup> The purpose of this first attack was to determine the rebels' location rather than to fight.<sup>657</sup>

381. As found by the Chamber in section V.2.2.10.1, a passing out parade was held between 10 and 12 December 1997 at Base Zero during which Norman addressed the Kamajors. He ordered them to attack and retake Tongo because it was thought that possession of Tongo would determine the outcome of the war.<sup>658</sup> In January 1998, the second and third attacks on Tongo were launched by Kamajors.<sup>659</sup>

382. The local planning for the second attack was done in Panguma and was hosted by BJK Sei, the Chiefdom Commander for the Lower Bambara Chiefdom.<sup>660</sup> The plan was to divide Tongo into four sections and to have four commanders, including Kamabote and Siaka Lahai, attack from four separate directions.<sup>661</sup> After this attack failed, the same commanders regrouped in Panguma and returned to Tongo for the third time, taking the town.<sup>662</sup> This last attack took place around 14 January 1998.<sup>663</sup>

### 2.3.3. Crimes Committed During and Subsequent to the Second Attack on Tongo

#### 2.3.3.1. Talama and Panguma after the Second Attack on Tongo

383. The second attack on Tongo was launched late one morning in early January 1998.<sup>664</sup> More than 1000 civilians attempting to flee the attack were detained at a rebel checkpoint along the Kenema Highway. At some point, 47 Kamajors led by Kamabote attacked the checkpoint and the

<sup>653</sup> Transcript of 18 February 2005, TF2-027, p. 79.

<sup>654</sup> Transcript of 15 May 2006, BJK Sei, pp. 3-4; Transcript of 17 May 2006, Siaka Lahai, p. 6.

<sup>655</sup> Confidential Exhibit 86, SCSL Registry p. 3723.

<sup>656</sup> Exhibit 86, confidential.

<sup>657</sup> Transcript of 18 May 2006, Keikula Amara, p. 25.

<sup>658</sup> Transcript of 17 February 2005, TF2-222, p. 110.

<sup>659</sup> Transcript of 17 May 2006, Siaka Lahai, p. 5; Transcript of 16 May 2006, BJK Sei, pp. 2 and 28.

<sup>660</sup> Transcript of 17 May 2006, Siaka Lahai, pp. 40-41.

<sup>661</sup> Transcript of 18 May 2006, Keikula Amara, pp. 23 and 25.

<sup>662</sup> Transcript of 18 May 2006, Keikula Amara, pp. 33 and 35.

<sup>663</sup> Transcript of 15 May 2006, BJK Sei, p. 84, Transcript of 23 May 2006, Brima Moriba, p. 8

<sup>664</sup> Transcript of 18 May 2006, Keikula Amara, pp. 33-34; Transcript of 01 March 2005, TF2-053, p. 74; Transcript of 14 February 2005, TF2-035, p. 8.



rebels fled.<sup>665</sup> Kamabote and his Kamajors took control of the civilians and led them towards Kenema.<sup>666</sup>

384. Along the road to Kenema, Kamabote redirected the civilians to Panguma. He stopped them in Talama, a small town outside Panguma, and ordered them to place all of their belongings on the side of the road.<sup>667</sup> He then ordered his Kamajors to search the belongings as well as the civilians' pockets. All of the property found was taken to a house in Talama and kept there.<sup>668</sup>

385. After searching their belongings, the Kamajors ordered the civilians to form queues according to their tribes. Loko, Limba and Temne tribe members were ordered to form one queue, which contained 150 men and one 12-year-old boy named Foday Koroma.<sup>669</sup> Madingo, Susu and Fullah tribe members were ordered to form a second queue and Mende, Sherbro and Kissy tribe members were ordered to form a third one.<sup>670</sup>

386. Kamabote asked 12-year-old Foday Koroma what tribe he belonged to and the boy responded that he was a Loko. The boy also said that he was related to Akim, a rebel based in Tongo. Kamabote responded by striking him on the head with a machete, killing him.<sup>671</sup> The remaining Lokos, Limbas and Temnes were taken 20 to 25 feet away and Kamabote ordered his Kamajors to kill them. They used cutlasses to kill each of the 150 people in the queue. Afterwards, the Kamajors slit open the stomach of one victim and displayed his entrails in a bucket before the remaining civilians.<sup>672</sup>

387. The civilians that were not killed remained under Kamabote's control. He took them to the hospital quarters in Panguma where BJK Sei addressed them. BJK Sei told the civilians that the Kamajors were unable to capture Tongo during the second attack, but that they would attack again, and would kill everyone that had not left the town. BJK Sei summoned an imam from Tongo and gave him a letter containing this warning to take to Tongo.<sup>673</sup> BJK Sei eventually told

<sup>665</sup> Transcript of 18 May 2006, Keikula Amara, p. 73; Transcript of 14 February 2005, TF2-035, pp. 11-12.

<sup>666</sup> Transcript of 14 February 2005, TF2-035, p. 12.

<sup>667</sup> Transcript of 14 February 2005, TF2-035, pp. 12-13.

<sup>668</sup> Transcript of 14 February 2005, TF2-035, p. 15.

<sup>669</sup> Transcript of 01 March 2005, TF2-053, p. 89; Transcript of 14 February 2005, TF2-035, pp. 16-18.

<sup>670</sup> Transcript of 14 February 2005, TF2-035, p. 56.

<sup>671</sup> Transcript of 01 March 2005, TF2-053, p. 89.

<sup>672</sup> Transcript of 14 February 2005, TF2-035, pp. 18, 20.

<sup>673</sup> Transcript of 14 February 2005, TF2-035, pp. 21-22

the rest of the civilians that anyone with a home or a relative elsewhere should go there because he did not have the resources to host people on a war front.<sup>674</sup>

388. One member of the group of civilians detained by Kamabote, TF2-035, knew a Kamajor commander named Baggey Waters in Panguma. BJK Sei allowed them to leave together.<sup>675</sup> Sometime later, TF2-035 and Baggey Waters settled together in Ngiehun.<sup>676</sup> TF2-035 had been living there for some time when Kamabote arrived and discovered that he was a Limba and had been a member of the group taken from Tongo.<sup>677</sup> TF2-035 had survived the killing of Limbas in Talama by claiming to be a Madingo.<sup>678</sup> Kamabote gave a single-barrel bullet to a 12-year-old boy named "Small Hunter" and ordered him to kill TF2-035. Two Kamajors intervened on TF2-035's behalf but their efforts were unsuccessful.<sup>679</sup> "Small Hunter" shot TF2-035 five times, but he managed to escape into the bush.<sup>680</sup> One bullet is still in his body.<sup>681</sup>

#### 2.3.4. Crimes Committed During and Subsequent to the Third Attack on Tongo

##### 2.3.4.1. Gathering of Civilians at the National Diamond Mining Corporation Headquarters

389. The Kamajors launched a third attack on Tongo in the afternoon of 14 January 1998.<sup>682</sup> Many civilians had received warnings that the Kamajors were planning the attack and most of those that were able to leave had done so.<sup>683</sup> TF2-144 attempted to escape Tongo when the attack began, but was stopped by Kamajors outside his home. The Kamajors took his bag of belongings and ordered him to join a line of civilians and to go to the National Diamond Mining Corporation headquarters in town ("NDMC Headquarters").<sup>684</sup>

<sup>674</sup> Transcript of 18 May 2006, Keikula Amara, p. 28; Transcript of 16 May 2006, BJK Sei, pp. 21-22.

<sup>675</sup> Transcript of 14 February 2005, TF2-035, pp. 22-23.

<sup>676</sup> Transcript of 14 February 2005, TF2-035, pp. 23-24.

<sup>677</sup> Transcript of 14 February 2005, TF2-035, p. 25.

<sup>678</sup> Transcript of 14 February 2005, TF2-035, p. 16.

<sup>679</sup> Transcript of 14 February 2005, TF2-035, pp. 26 and 28.

<sup>680</sup> See also para. 688(c).

<sup>681</sup> Transcript of 14 February 2005, TF2-035, p. 27.

<sup>682</sup> Transcript of 18 May 2006, Keikula Amara, pp. 33, 35; Transcript of 23 February 2005, TF2-048, p. 8, Transcript of 22 February 2005, TF2-047, p. 125.

<sup>683</sup> Transcript of 17 May 2006, Siaka Lahai, p. 10; Transcript of 15 May 2006, BJK Sei, p. 84; Transcript of 23 February 2005, TF2-048, p. 27; Transcript of 22 February, TF2-048, pp. 71-72.

<sup>684</sup> Transcript of 24 February 2005, TF2-144, pp. 60-61. The National Diamond Mining headquarters were also referred to as the "security headquarters" or the "NDMC security headquarters" because the AFRC and RUF were headquartered there when they occupied Tongo. See Transcript of 18 May 2006, Keikula Amara, pp. 77-78; Transcript

390. There was gunfire in Tongo at the beginning of the attack and chaos created by thousands of civilians running toward the NDMC Headquarters.<sup>685</sup> TF2-027 saw corpses on the side of the road on the way to the headquarters. Some had visible wounds on their bodies and others did not.<sup>686</sup> TF2-015 was shot while running to the NDMC Headquarters, as were three women that he was running with.<sup>687</sup> TF2-144 saw the corpse of a man named Joskie lying on the ground; the back of his neck had been chopped at with a machete. TF2-144 also saw the corpse of an unidentified woman, but he was unable to tell whether she had wounds on her body.<sup>688</sup> After the attack, TF2-027 also saw Joskie Mboma's corpse on the street, as well as three other corpses. TF2-027 recognised one of the corpses as that of a Fullah boy who used to sell bread. This corpse was on its stomach and TF2-027 did not see any marks on the body.<sup>689</sup>

#### 2.3.4.2. 14 January 1998 – NDMC Headquarters

391. Witnesses testified that when they arrived at the NDMC Headquarters they saw hundreds of corpses of men, women and children at the entrance. There were also corpses on the football field inside, where the civilians were gathering.<sup>690</sup> Inside the NDMC Headquarters, there was an exchange of fire between the Kamajors and the rebels. This fighting continued until the rebels were eventually overpowered and began to retreat; many of the rebels changed into civilian clothing as they ran.<sup>691</sup> Before the rebels snuck away, a bomb dropped amongst the civilians.<sup>692</sup> After the rebels dispersed, TF2-022 saw a Kamajor with a cutlass chopping at three people who had been lying on the ground to avoid the crossfire.<sup>693</sup>

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of 26 May 2005, TF2-079, p. 63; Transcript of 01 March 2005, TF2-053, p. 75, pp. 91-92; Transcript of 23 February 2005, TF2-048, pp. 27-28; Transcript of 22 February 2005, TF2-047, pp. 47, 76; Transcript of 18 February 2005, TF2-027, p. 89.

<sup>685</sup> Transcript of 01 March 2005, TF2-053, p. 79; Transcript of 24 February 2005, TF2-144, pp. 61 and 64; Transcript of 23 February 2005, TF2-048, pp. 7-8; Transcript of 22 February 2005, TF2-047, pp. 47-48; Transcript of 22 February 2005, TF2-027, pp.13-14 and 89; Transcript of 11 February 2005, TF2-022, pp. 44-45; Transcript of 11 February 2005, TF2-015, pp. 6-7.

<sup>686</sup> Transcript of 22 February 2005, TF2-027, p. 14.

<sup>687</sup> Transcript of 11 February 2005, TF2-015, p. 6.

<sup>688</sup> Transcript of 24 February 2005, TF2-144, pp. 62-63.

<sup>689</sup> Transcript of 18 February 2005, TF2-027, pp. 106, 109.

<sup>690</sup> Transcript of 24 February 2005, TF2-144, p. 64; Transcript of 22 February 2005, TF2-047, p. 48; Transcript of 18 February 2005, TF2-027, pp. 87-88.

<sup>691</sup> Transcript of 01 March 2005, TF2-053, pp. 81 and 92; Transcript of 11 February 2005, TF2-022, pp. 45-46.

<sup>692</sup> Transcript of 01 March 2005, TF2-053, p. 76.

<sup>693</sup> Transcript of 11 February 2005, TF2-022, p. 46.

392. After the rebels retreated, the Kamajors began singing in Mende that they had captured the NDMC Headquarters.<sup>694</sup> TF2-027, who was hiding in a mosque in town during the attack, was taken at gunpoint to the NDMC Headquarters.<sup>695</sup> When he arrived there, civilians were being gathered at the football field. BJK Sei entered the field with Siaka Lahai.<sup>696</sup> BJK Sei told the Kamajors that he would dismiss anyone that he saw killing people. He then left the headquarters and went to Labour Camp, repeating his order to “please be careful about the civilians”.<sup>697</sup> Shortly after this, a group of Kamajors came to the *barri* inside the headquarters.<sup>698</sup> One Kamajor reported to Norman on a wireless communication set. He said, “[c]hief, chief. We’ve captured Tongo, we have captured Tongo, and we are now in Tongo.”<sup>699</sup>

393. While this was going on, Kamabote stood before the crowd and called on two women to identify rebels.<sup>700</sup> The women identified two men as rebels and Kamabote shot them both dead.<sup>701</sup> The women were ordered to continue identifying rebels and they pointed out more than 10 men.<sup>702</sup> The Kamajors stripped these men and handed them over to armed-Kamajors who took them toward Dodoma, which is a place behind the NDMC Headquarters where cows are slaughtered.<sup>703</sup> TF2-027 saw Kamajors lead another 200 men and women in the same direction. The members of this group had been identified as rebels and included a rebel youth leader, a woman who sold cookery and a man who sold second-hand clothing.<sup>704</sup>

394. TF2-047 saw a woman named Fatmata Kamara identify a rebel named Dr. Blood to Kamabote.<sup>705</sup> She complained that he and his colleagues used to eat at her shop without paying.<sup>706</sup> Kamabote ordered Dr. Blood to sit on the ground and then struck him in the neck and

<sup>694</sup> Transcript of 18 February 2005, TF2-027, pp. 86-87 and 105.

<sup>695</sup> Transcript of 18 February 2005, TF2-027, p. 87.

<sup>696</sup> Transcript of 18 February 2005, TF2-027, p. 92.

<sup>697</sup> Transcript of 22 February 2005, TF2-047, p. 50.

<sup>698</sup> Transcript of 18 February 2005, TF2-027, p. 97.

<sup>699</sup> Transcript of 18 February 2005, TF2-027, pp. 98-99.

<sup>700</sup> Transcript of 01 March 2005, TF2-053, p. 82.

<sup>701</sup> Transcript of 01 March 2005, TF2-053, pp. 82-83.

<sup>702</sup> Transcript of 01 March 2005, TF2-053, pp. 83-84.

<sup>703</sup> Transcript of 01 March 2005, TF2-053, p. 84; Transcript of 18 February 2005, TF2-027, p. 102.

<sup>704</sup> Transcript of 18 February 2005, TF2-027, pp. 101-102.

<sup>705</sup> Transcript of 22 February 2005, TF2-047, pp. 51-52.

<sup>706</sup> Transcript of 22 February 2005, TF2-047, p. 52.

decapitated him.<sup>707</sup> Kamabote then killed Fatmata Kamara with a cutlass for having cooked for the rebels.<sup>708</sup> TF2-047 saw the Kamajors kill another person on that day.<sup>709</sup>

395. TF2-048 testified that she saw Kamajors take her husband's uncle behind a house at the NDMC Headquarters and return with blood on their machetes. She has never seen her husband's uncle again.<sup>710</sup> TF2-048 saw the same thing happen to a woman and a child.<sup>711</sup>

396. Kamajors led groups of Temne, Loko, Koranko and Limba tribe members away from the football field during the night.<sup>712</sup>

#### 2.3.4.3. 15 January 1998 - NDMC Headquarters

397. On the night of 14 January 1998, the civilians slept at the NDMC Headquarters because they were not allowed to leave.<sup>713</sup>

398. The following morning, TF2-022 saw many corpses in the field. Some of these corpses appeared to have been hacked by a machete, while others did not have any visible injuries.<sup>714</sup> The same morning, TF2-022 recognised a rebel named Cobra in a line of 20 men surrounded by armed Kamajors.<sup>715</sup> The men were accused of being rebels and were taken to an open space in the NDMC Headquarters known as the MP office, where they were all hacked to death. The bodies of these rebels were left where they were killed.<sup>716</sup>

399. In a different area of the field, where TF2-048 was staying, everyone except for the Limbas, Lokos and Temnes was allowed to leave.<sup>717</sup> The Kamajors said that the Limbas had tapped wine for the rebels and that they, along with the Lokos and Temnes, should be killed.<sup>718</sup> However, before

<sup>707</sup> Transcript of 22 February 2005, TF2-047, p. 52.

<sup>708</sup> Transcript of 22 February 2005, TF2-047, p. 59.

<sup>709</sup> Transcript of 22 February 2005, TF2-047, p. 58.

<sup>710</sup> Transcript of 23 February 2005, TF2-048, pp. 10-11

<sup>711</sup> Transcript of 23 February 2005, TF2-048, p.11.

<sup>712</sup> Transcript of 24 February 2005, TF2-144, p. 65.

<sup>713</sup> Transcript of 23 February 2005, TF2-048, pp. 12-13; Transcript of 11 February 2005, TF2-015, p. 7.

<sup>714</sup> Transcript of 11 February 2005, TF2-022, p. 50.

<sup>715</sup> Transcript of 11 February 2005, TF2-022, pp. 50-51.

<sup>716</sup> Transcript of 11 February 2005, TF2-022, pp. 51-53.

<sup>717</sup> Transcript of 23 February 2005, TF2-048, p. 13.

<sup>718</sup> Transcript of 23 February 2005, TF2-048, pp. 14-15.

anything happened, a group of men speaking a Liberian language arrived and told everyone to return to their homes.<sup>719</sup>

400. Around noon, a Kamajor commander ordered the civilians to leave the NDMC Headquarters. Before they could do so, another commander, angry that they were trying to leave, ordered Kamajors to shoot at the crowd.<sup>720</sup> The Kamajors began shooting sporadically. The civilians dropped to the ground and remained there until the firing stopped.<sup>721</sup> Many were hit by stray bullets.<sup>722</sup> One man next to TF2-022 was hit by a bullet. While the man was suffering from his wound, he was approached by a Kamajor who chopped at his back with a machete, then stole his belt and hit him with it, telling him to get up. The man eventually died.<sup>723</sup>

#### 2.3.4.4. 15 January - Outside NDMC Headquarters

401. TF2-048 left the NDMC Headquarters with her husband and elder sister after being freed.<sup>724</sup> At an intersection near NDMC Headquarters, a Kamajor confiscated her elder sister's bag, which contained all of their belongings.<sup>725</sup> TF2-048 then went with her family to her sister's house.<sup>726</sup> At the back of the house she was approached by a Kamajor who hit her in the waist with a stick.<sup>727</sup> TF2-048 turned and saw her older brother 15 yards away being held by three Kamajors who took his money and left.<sup>728</sup> Another Kamajor approached her brother and showed him a list of Limbas to be killed. He told him that he had come there for him and then cut off his ear.<sup>729</sup> The brother knelt down and asked the Kamajor to spare his life because he had a wife and children. The Kamajor cut his throat with a machete and then mutilated his body.<sup>730</sup> TF2-048 witnessed this, but did not reveal their relationship because she knew that the Kamajors were looking for Limbas.<sup>731</sup>

<sup>719</sup> Transcript of 23 February 2005, TF2-048, p. 15.

<sup>720</sup> Transcript of 11 February 2005, TF2-022, pp. 55-56.

<sup>721</sup> Transcript of 11 February 2005, TF2-022, p. 56.

<sup>722</sup> Transcript of 11 February 2005, TF2-022, p. 57.

<sup>723</sup> Transcript of 11 February 2005, TF2-022, p. 57.

<sup>724</sup> Transcript of 23 February 2005, TF2-048, p. 16.

<sup>725</sup> Transcript of 23 February 2005, TF2-048, pp. 16-17.

<sup>726</sup> Transcript of 23 February 2005, TF2-048, p. 22.

<sup>727</sup> Transcript of 23 February 2005, TF2-048, p. 22.

<sup>728</sup> Transcript of 23 February 2005, TF2-048, p. 23.

<sup>729</sup> Transcript of 23 February 2005, TF2-048, pp. 24-25.

<sup>730</sup> Transcript of 23 February 2005, TF2-048, p. 25.

<sup>731</sup> Transcript of 23 February 2005, TF2-048, pp. 23-24 and 26.

402. Another group of civilians that was allowed to leave the NDMC Headquarters was escorted by Kamajors to a checkpoint where Kamajors took their bags and belongings.<sup>732</sup> After finding a photograph of a rebel in one man's bag, the Kamajors hacked him to death.<sup>733</sup> TF2-022 knew this man to be a civilian.<sup>734</sup> TF2-022 was allowed to pass and eventually came upon another checkpoint where a boy named Sule was hacked to death for carrying a wallet that resembled SLA fatigues.<sup>735</sup>

#### 2.3.4.5. Burial of Corpses

403. TF2-047 was a sanitary officer in Tongo.<sup>736</sup> Kamabote knew this and approached TF2-047 at the NDMC Headquarters on 14 January, telling him he would be burying a lot of corpses that day. Kamabote ordered TF2-047 to use a wheelbarrow to gather the corpses and place them in a pit at the back of the headquarters.<sup>737</sup> TF2-047 buried 75 corpses on the first day of the attack and 75 more on the second day.<sup>738</sup> On the second day, it was BJK Sei that ordered TF2-047 to continue burying corpses.<sup>739</sup> Three days later Kamabote ordered him to help civilians bury corpses at the Methodist Primary School.<sup>740</sup> TF2-047 then went to a place called Olumatic near Tongo and found 25 corpses of rebels. He was not able to bury the corpses because the Kamajors placed tyres on them and set them on fire.<sup>741</sup>

#### 2.3.5. Bumie and Kamboma

404. A group of civilians at the NDMC Headquarters was organised into lines to walk to Bumie.<sup>742</sup> Before they left the NDMC Headquarters, the Kamajors fired at the people in the lines, killing many of them.<sup>743</sup> The remaining people were brought to a house in Bumie.<sup>744</sup> The women were taken behind the house and the men were placed on the veranda in front.<sup>745</sup> The Kamajors

<sup>732</sup> Transcript of 11 February 2005, TF2-022, pp. 58-59

<sup>733</sup> Transcript of 11 February 2005, TF2-022, p. 59.

<sup>734</sup> Transcript of 11 February 2005, TF2-022, p. 60.

<sup>735</sup> Transcript of 11 February 2005, TF2-022, pp. 60-61.

<sup>736</sup> Transcript of 22 February 2005, TF2-047, p. 53, p. 113.

<sup>737</sup> Transcript of 22 February 2005, TF2-047, pp. 53-54, p. 59.

<sup>738</sup> Transcript of 22 February 2005, TF2-047, pp. 60-62.

<sup>739</sup> Transcript of 22 February 2005, TF2-047, p. 60.

<sup>740</sup> Transcript of 22 February 2005, TF2-047, pp. 64-65.

<sup>741</sup> Transcript of 22 February 2005, TF2-047, p. 66.

<sup>742</sup> Transcript of 11 February 2005, TF2-015, p. 7.

<sup>743</sup> Transcript of 11 February 2005, TF2-015, p. 8.

<sup>744</sup> Transcript of 11 February 2005, TF2-015, pp. 7-8.

<sup>745</sup> Transcript of 11 February 2005, TF2-015, pp. 8-9.

told the men to look at the sun. Five of them were pulled from the group and were shot and killed.<sup>746</sup> Men were then selected from the remaining group to carry loads for the Kamajors.<sup>747</sup>

405. TF2-015 was among the civilians taken to Bumie. He could not carry loads for the Kamajors because he had been shot in the stomach in Tongo.<sup>748</sup> TF2-015 tried to escape, but was caught in the bush and taken to the back of the house where he had been detained previously. He slept there that night and the next morning was taken away along the Kenema Road with a group of 14 other men and women.<sup>749</sup>

406. This group of 15 men and women was joined by other civilians along the Kenema Road. They eventually numbered 65 people.<sup>750</sup> The civilians were attacked by Kamajors at the Kamboma Bridge and taken to a house in Kamboma Town where they were told that the Kamajors had received orders to kill anyone who passed by.<sup>751</sup> The group was separated into two lines. The Kamajors shot each person in both lines and rolled the bodies into a swamp behind the house.<sup>752</sup> When there were only eight civilians left, the commander of Foindu Junction, Mohamed Kaineh,<sup>753</sup> arrived and told the Kamajors that it was an ambush and they should stop spoiling cartridges and use knives to kill the remaining people.<sup>754</sup> The remaining eight people were hacked on the napes of their necks with machetes.<sup>755</sup> TF2-015, who was the last person in the line, was hacked with a machete and rolled into the swamp on top of the other dead bodies. TF2-015 lay there for one hour before he was saved by rebels. He was the only one of the 65 civilians to survive.<sup>756</sup>

<sup>746</sup> Transcript of 11 February 2005, TF2-015, p. 9.

<sup>747</sup> Transcript of 11 February 2005, TF2-015, p. 10.

<sup>748</sup> Transcript of 11 February 2005, TF2-015, p. 10.

<sup>749</sup> Transcript of 11 February 2005, TF2-015, pp. 10-11.

<sup>750</sup> Transcript of 11 February 2005, TF2-015, pp. 11-12.

<sup>751</sup> Transcript of 11 February 2005, TF2-015, pp. 11-12.

<sup>752</sup> Transcript of 11 February 2005, TF2-015, p. 13.

<sup>753</sup> See transcript of 17 May 2006, Siaka Lahai, p. 44; Transcript of 04 May 2006, Arthur Koroma, p. 59; Transcript of 22 February 2006, TF2-027, p. 4. *But see also* Transcript of 19 May 2006, Mohamed Kaineh, pp. 92 and 97.

<sup>754</sup> Transcript of 11 February 2005, TF2-015, pp. 13-14.

<sup>755</sup> Transcript of 11 February 2005, TF2-015, p. 14.

<sup>756</sup> Transcript of 11 February 2005, TF2-015, pp. 14-15.



### 2.3.6. Dodo Junction

407. TF2-144 was among a group of civilians who were led by the Kamajors from the NDMC Headquarters toward Dodo on 15 January 1998.<sup>757</sup> In Panguma, on the way to Dodo, they were stopped by Musa Junisa's troops who checked the civilians for passes and taxes. TF2-144 witnessed Kamajors strike a woman on the back after checking her. She was carrying a child on her back. TF2-144 does not know whether she died.<sup>758</sup> The other civilians were allowed to pass, but Kamajors would occasionally arrive and take civilians from the queue as they were walking to Dodo.<sup>759</sup> At a checkpoint in Dodo, this same group of civilians was stopped and told to remove their passes and taxes. TF2-144 saw Kamajors hack the right hand of a man who was identified as a rebel because of the shoes that he wore.<sup>760</sup>

### 2.3.7. Lalehun

408. In mid-February 1998, Aruna Konowa was tied up and brought to Lalehun by Kamajors.<sup>761</sup> He was forced to sleep at the Kamajors' headquarters in Lalehun that night and the following morning the entire town was gathered at the court *barri*.<sup>762</sup> Chief Baimba Aruna, one of the Kamajor bosses of Lalehun, ordered Aruna Konowa to sit on the ground, denounced him as a rebel collaborator and ordered him to be killed.<sup>763</sup> Kamajors took Konowa to the school compound and slit his throat with a knife and disembowelled him.<sup>764</sup> TF2-016 was present for the meeting at the *barri* and saw the body at the school compound afterwards.<sup>765</sup>

409. Kamajors killed Brima Conteh, the Nyawa Town Speaker, a few days later.<sup>766</sup> He was arrested by Kamajors from Lalehun at a meeting of the chiefs held by BJK Sei in Tongo.<sup>767</sup> Brima Conteh was stripped naked and taken to Lalehun, with a cement block on his head and a rope

<sup>757</sup> Transcript of 24 February 2005, TF2-144, p. 66.

<sup>758</sup> Transcript of 24 February 2005, TF2-144, pp. 67-68.

<sup>759</sup> Transcript of 24 February 2005, TF2-144, p. 68.

<sup>760</sup> Transcript of 24 February 2005, TF2-144, pp. 69-70.

<sup>761</sup> Transcript of 01 March 2005, TF2-016, pp. 33 and 35.

<sup>762</sup> Transcript of 01 March 2005, TF2-016, p. 36.

<sup>763</sup> Transcript of 01 March 2005, TF2-016, pp. 36-38.

<sup>764</sup> Transcript of 01 March 2005, TF2-016, pp. 38-39.

<sup>765</sup> Transcript of 01 March 2005, TF2-016, p. 39.

<sup>766</sup> Transcript of 01 March 2005, TF2-016, p. 39.

<sup>767</sup> Transcript of 01 March 2005, TF2-016, pp. 39-40; Transcript of 24 February 2005, TF2-013, pp. 18-19.

around his neck. He was paraded around town in this condition.<sup>768</sup> Baimba Aruna denounced Brima Conteh as the chief of the rebels and ordered his death.<sup>769</sup> Kamajors took Brima Conteh to a banana plantation and slit open his throat and stomach.<sup>770</sup> Two Kamajors ate the insides of his stomach.<sup>771</sup> The Kamajors severed Brima Conteh's head and left his body in the plantation. A Kamajor was ordered to proceed to town with Brima Conteh's head for a celebration.<sup>772</sup> Another Kamajor named Vandi took Conteh's intestines to town in a five gallon container.<sup>773</sup> The Kamajors proceeded from house to house with his head and intestines; eventually they were left at Baimba Aruna's house.<sup>774</sup>

410. From mid-February to at least mid-March, Kamajors looted in Lalehun: they took doors, roofs and zinc from houses. They also burnt nine houses, including TF2-016's father's house.<sup>775</sup> Kamajors were told to take what they wanted.<sup>776</sup> There was an organized operation whereby the town was divided into different areas and civilians were woken every morning at 6:00am to gather at the town *barri*, where they were ordered to carry loads for the Kamajors. If the civilians refused, they would be threatened or kept in the guard room.<sup>777</sup>

## 2.4. Koribondo

### 2.4.1. Background to Koribondo

411. Koribondo is situated at the intersection of the roads running from Bo to Pujehun and from Matru to Kenema. Koribondo is in Jaiama-Bongor Chiefdom, which is the chiefdom where Norman became Regent Chief in October 1994.<sup>778</sup> It is an amalgamated chiefdom: Koribondo was part of Jaiama Section and Telu was part of Bongor. There was animosity between the inhabitants of these two sections; this was exacerbated by the decision of Chief Norman to reside in Telu.<sup>779</sup>

<sup>768</sup> Transcript of 01 March 2005, TF2-016, p. 40, Transcript of 24 February 2005, TF2-013, pp. 19-20.

<sup>769</sup> Transcript of 24 February 2005, TF2-013, pp. 20-21.

<sup>770</sup> Transcript of 01 March 2005, TF2-016, pp. 40-41; Transcript of 24 February 2005, TF2-013, pp. 22-23.

<sup>771</sup> Transcript of 01 March 2005, TF2-016, p. 41.

<sup>772</sup> Transcript of 01 March 2005, TF2-016, p. 43; Transcript of 24 February 2005, TF2-013, pp. 24-25.

<sup>773</sup> Transcript of 24 February 2005, TF2-013, p. 28.

<sup>774</sup> Transcript of 24 February 2005, TF2-013, p. 29.

<sup>775</sup> Transcript of 01 March 2006, TF2-016, pp. 32-34.

<sup>776</sup> Transcript of 01 March 2006, TF2-016, p. 44.

<sup>777</sup> Transcript of 01 March 2006, TF2-016, p. 44.

<sup>778</sup> Transcript of 30 January 2006, Norman, pp. 43-44.

<sup>779</sup> Transcript of 30 January 2006, Norman, pp. 43-44.

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The inhabitants of Jaiama saw the war as an opportunity to end the amalgamation. The military was quick to notice this strain between Jaiama and Bongor and it decided to establish a base at Koribondo in order to pre-empt any potential arrangement between authorities in Jaiama and the RUF.<sup>780</sup>

412. Since 1991, Koribondo had been the headquarters of the 34<sup>th</sup> Battalion of the SLA.<sup>781</sup> It served as a company-sized military base until 1997.<sup>782</sup> There were no barracks in Koribondo town so the soldiers and civilians were forced to live together.<sup>783</sup> This resulted in a number of marriages between soldiers and civilians.<sup>784</sup>

413. In his capacity as Regent Chief, Norman held numerous meetings with commanders and elders in Koribondo. During these meetings, it was decided that the inhabitants of Jaiama-Bongor Chiefdom should provide men to be trained as vigilantes. These vigilantes were subsequently provided with military uniforms. This was not considered unusual since during the reign of the NPRC Government<sup>785</sup> both vigilantes and soldiers were issued the same uniform. During the reign of the AFRC, the vigilantes were more loyal to the soldiers than to the hunters<sup>786</sup> or ECOMOG.<sup>787</sup>

414. In 1996, Norman, in his capacity as Regent Chief, invited the Kamajors to Koribondo to assist the soldiers in fighting the rebels.<sup>788</sup> While in Koribondo, the Kamajors and soldiers dressed differently: Kamajors wore a special kind of dress called *ronko* which was made of country cloth. The *ronkos* were covered in cowrie shells and had short sleeves. By contrast, the soldiers wore khaki government uniforms.<sup>789</sup>

<sup>780</sup> Transcript of 30 January 2006, Norman, pp. 43-44.

<sup>781</sup> Transcript of 15 June 2004, TF2-198, p. 48.

<sup>782</sup> Transcript of 31 January 2006, Norman, p. 8; Transcript of 30 January 2006, Norman, p. 46.

<sup>783</sup> Transcript of 15 June 2004, TF2-198, p. 48.

<sup>784</sup> Transcript of 30 January 2006, Norman p. 47; Transcript of 15 June 2004, TF2-198, p. 15.

<sup>785</sup> The NPRC Government ruled from 29 April 1992 to 29 March 1996.

<sup>786</sup> Hunters were trained by ECOMOG under the Director of training Chief Police Officer, M.S. Dumbuya.

<sup>787</sup> Transcript of 30 January 2006, Norman, p. 46; Transcript of 30<sup>th</sup> January 2006, Norman, p. 48.

<sup>788</sup> Transcript of 15 June 2004, TF2-198, pp. 15-16.

<sup>789</sup> Transcript of 15 June 2004, TF2-198, pp. 15-16; Transcript of 22 June 2004, TF2-012, p. 30.

415. Initially, the arrival of the Kamajors in Koribondo was welcomed by the soldiers and both lived happily together. However, before the soldiers left Koribondo in 1997, the relationship had soured<sup>790</sup> due to the overthrow of President Kabbah's government by soldiers on 25 May 1997.<sup>791</sup>

416. Before the Coup, Koribondo and its surrounding villages were controlled by rebels. The RUF and AFRC had a battalion stationed at Koribondo. For this reason, the Kamajors wanted to capture Koribondo and flush out the AFRC and RUF rebels from Koribondo.<sup>792</sup> After the Coup, arrangements were put in place at Base Zero for the RUF and AFRC military unit in Koribondo to be captured. The capture and control of Koribondo was expected to facilitate the movement of ECOMOG troops from Pujehun to Bo.<sup>793</sup>

#### 2.4.2. Attacks on Koribondo by Kamajors

417. Between 1997 and 1998, Kamajors armed with RPGs attacked Koribondo on numerous occasions. One attack, a skirmish between hunters and soldiers, occurred between July and September 1997.<sup>794</sup> A subsequent attack took place between September and October 1997.<sup>795</sup> In both attacks, soldiers repelled the Kamajors.<sup>796</sup> While some of these attacks were coordinated from Base Zero, others were planned locally.<sup>797</sup>

#### 2.4.3. Local Planning at Kpetewoma

418. As found in section V.2.2.10.4 above Norman gave an order at Base Zero to attack Koribondo, following which the local planning for the attack was done at Kpetewoma. Albert J Nallo was the intermediary between Norman at Base Zero and Joe Tamidey.<sup>798</sup> There were three meetings; the first and third were operational planning meetings. During the first meeting, local

<sup>790</sup> Transcript of 15 June 2004, TF2-198, p. 45.

<sup>791</sup> Transcript of 15 June 2004, TF2-198, p. 17.

<sup>792</sup> Transcript of 16 September 2004, TF2-082, pp. 136-137; Transcript of 30 January 2006, Norman, pp. 48-49; Transcript of 5 November 2004, TF2-201, p. 101 (CS).

<sup>793</sup> Transcript of 30 January 2006, Norman, pp. 48-49.

<sup>794</sup> Transcript of 30 January 2006, Norman, p. 45.

<sup>795</sup> Transcript of 30 January 2006, Norman, pp. 54-55.

<sup>796</sup> Transcript of TF2-157, 16 June 2004, p. 34; Transcript of TF2-198, 15 June 2004, p. 17; Transcript 15 May 2006, Haroun Collier, p. 9.

<sup>797</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 43-44; Transcript of 16 November 2004, TF2-008, p. 78; Transcript of 8 June 2005, TF2-011, p. 28, (CS); Transcript of 2 November 2004, p. 62; Transcript of 15 May 2006, Haroun Collier, p. 8; Transcript of 15 September 2004, TF2-082, pp.14-15 and 17, Transcript of 10 February 2005, Bob Tucker, pp. 47-48, Transcript of 8 May 2006, Dixon Kosia, pp. 52-53.

<sup>798</sup> Transcript of 15 September 2004, pp. 17-19 (CS); Transcript of 10 February 2005, Bobor Tucker, p. 47.

manpower was provided to assist the Kamajors.<sup>799</sup> At the third meeting, Nallo, on behalf of Norman, supplied cartridges, bombs, G3s and AK-47s to Joe Tamidey. Nallo informed Joe Tamidey that Norman had asked him to bring the ammunitions to Joe Tamidey for the attack on Koribondo.<sup>800</sup>

419. Upon receiving the ammunitions, plans were made, fighters were organized and the arms and ammunition supplied by Nallo were distributed to the various groups by Joe Tamidey.<sup>801</sup> The Kamajors also agreed on the commanders to lead the battle: Bobor Tucker, Joe Tamidey and Lahai George. Bobor Tucker was responsible for the Bo-Koribondo Highway, Lahai George was to attack from the Sumbuya-Koribondo Highway, and Joe Tamidey was to enter Koribondo through Blama.<sup>802</sup> After these strategic arrangements were made, Joe Tamidey informed Nallo so that he could report to Norman on the imminent attack of Koribondo, planned for 13 February 1998.<sup>803</sup>

#### 2.4.4. Final Attack and Capture of Koribondo by Kamajors

420. Around 700 Kamajors attacked Koribondo on Friday, 13 February 1998 at about 1:30pm. The attack lasted for about 45 minutes.<sup>804</sup> The attack started from Jombohun and was commanded by Joe Tamidey, Bobor Tucker, a.k.a. Jegbeyama and Lamin Ngobeh. Although the commanders were operating with different groups, they were all under Albert J Nallo's command.<sup>805</sup> The Kamajors that participated in the attack on Koribondo were predominantly, but not exclusively,

<sup>799</sup> Transcript of 15 September 2004, pp. 14-15 and 17 (CS); Transcript of 10 February 2005, Bobor Tucker, pp. 47-48; Transcript of 8 May 2006, Dixon Kosia, pp. 52-53.

<sup>800</sup> Transcript of 15 September 2004, pp. 17-19 (CS); Transcript of 10 February 2005, Bobor Tucker, p. 47.

<sup>801</sup> Transcript of 15 September 2004, pp. 14-15 and 17 (CS); Transcript of 10 February 2005, Bobor Tucker, pp. 47-48; Transcript of 8 May 2006, Dixon Kosia, pp. 52-53.

<sup>802</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 48-49; Transcript of 8 May 2006, Dixon Kosia, p. 53.

<sup>803</sup> Transcript of 15 September 2004, p. 17 (CS).

<sup>804</sup> Transcript of 15 June 2004, TF2-198, pp. 18-19; Transcript of 16 June 2004, TF2-157, p. 9; Transcript of 10 February 2005, Bobor Tucker, p. 49; Transcript of 8 September 2004, TF2-162, p. 12; Transcript of 15 September 2004, TF2-082, p. 25 (CS); Transcript of 21 June 2004, TF2-012, p. 23; Transcript of 17 June 2004, TF2-176; pp. 75-76; Transcript of 6 October 2006, Brima Tarawally, p. 53; Transcript of 8 May 2006, Dixon Kosia, p. 52; Transcript of 8 May 2006, Dauda Sheriff, p. 95.

<sup>805</sup> Transcript of 14 March 2005, Albert J Nallo, p. 44; Transcript of 4 November 2004, TF2-201, p. 115; Transcript of 2 November 2004, TF2-021, p. 62.

from the Jaiama-Bongor Chiefdom.<sup>806</sup> Others came from Pujehun District, Bonthe District and Bo District.<sup>807</sup> This attack led to the capture of Koribondo.<sup>808</sup>

#### 2.4.5. Crimes Committed by Kamajors in Koribondo

##### 2.4.5.1. Unlawful Killings, Terrorizing Civilian Population and Collective Punishment

421. On Sunday, 15 February 1998<sup>809</sup> at 9:30am, Kamajors arrested five Limba civilians named Sofiania, Sarrah, Momoh, Kamara and Koroma at the Koribondo junction. They were accused of being junta members responsible for killing Kamajors. While they were beaten, wounded and mutilated, the Kamajors sang the usual Kamajor song which precedes a killing.<sup>810</sup> Two of the civilians were shot and the other three were cut on the back of their necks with a cutlass, all five died from their wounds.<sup>811</sup> Sarrah and Momoh were beheaded and their heads were displayed at the junction; one was turned towards Blama Road and the other towards Sumbuya Road.<sup>812</sup>

422. On the same day, Kamajors mutilated and killed two Limba civilians: Sarah Binkolo and Sarah Lamina. Both of them were killed by the bridge along Blama Road in Koribondo. The Kamajors sang a Kamajor song while mutilating these women.<sup>813</sup>

423. On Monday, 16 February 1998, Kamajors killed eight people along Blama Road in Koribondo. The victims were five men belonging to the junta and three women who were the wives of soldiers. The women's names were Amie, Jainaba and Esther. These eight people were arrested, beaten and mutilated.<sup>814</sup> Two of the women were killed by having sticks inserted through their genitals until they came out through the women's mouths.<sup>815</sup> The third was killed with a

<sup>806</sup> Transcript of 4 November 2004, TF2-201, p. 115 (CS); Transcript of 15 September 2004, TF2-082, p. 26; Transcript of 10 March 2005, Albert J Nallo, p. 75; Transcript of 15 June 2004, TF2-198, p. 58.

<sup>807</sup> Transcript of 10 March 2005, Albert J Nallo, p. 75.

<sup>808</sup> Transcript of 10 March 2005, Albert J Nallo, p. 81; Transcript of 16 June 2004, TF2-157, p. 4-5; Transcript of 15 June 2004, TF2-198, p. 60; Transcript of 30 January 2006, Norman, p. 43; Transcript of 15 June 2004, TF2-198, p. 49.

<sup>809</sup> Transcript of 9 September 2004, TF2-159, pp. 27-29; Transcript of 14 September 2004, TF2-140, p. 73.

<sup>810</sup> Transcript of 9 September 2004, TF2-159, p. 29; Transcript of 9 September 2004, TF2-159, p. 28; Transcript of 14 September 2004, TF2-140, p. 73.

<sup>811</sup> Transcript of 9 September 2004, TF2-159, pp. 30-31.

<sup>812</sup> Transcript of 9 September 2004, TF2-159, pp. 31-32.

<sup>813</sup> Transcript of 16 June 2004, TF2-157, pp. 14-15; Transcript of 15 June 2004, TF2-198, p. 33.

<sup>814</sup> Transcript of 9 September 2004, TF2-159, pp. 35-36, 38 and 99.

<sup>815</sup> Transcript of 9 September 2004, TF2-159, p. 37.

cutlass.<sup>816</sup> Four of the men were shot and the fifth was cut on the back of his neck with a cutlass; all five died from their wounds.<sup>817</sup>

424. The Kamajors disembowelled the women and put their entrails in a bucket. The women's stomachs were also removed. Their guts were made into checkpoints so that anyone coming past could see them.<sup>818</sup> Part of their entrails were eaten and their bodies were buried.<sup>819</sup>

425. On the same day, Kamajors killed Chief Kafala.<sup>820</sup> Chief Kafala had been accused of being a junta member who was leading soldiers. He was brought from Bendu to Koribondo in the presence of many people. Chief Kafala was decapitated and his body was mutilated in the street opposite the hospital. This was done in the presence of four civilians. Kamajors took Chief Kafala to the swamp where a Kamajor further mutilated him on the upper right shoulder and then forced him into a small hole with a shovel. Chief Kafala's feet were amputated and he was shot twice. The Kamajors ordered the civilians present to cover him with mud: two of them did so while the Kamajors sang.<sup>821</sup>

#### 2.4.5.2. Flogging Resulting in the Death of Lahai Bassie

426. After the capture of Koribondo, an elderly person named Lahai Bassie was arrested and beaten severely by Kamajors because his son was a soldier. The Kamajors found a picture of his son and also a letter from his son in his house.<sup>822</sup> Lahai Bassie died one week after the serious beatings he suffered at the hands of Kamajors.<sup>823</sup>

#### 2.4.5.3. Burning of Houses

427. Bombs were launched during the Kamajor attack on Koribondo on 13 February 1998; as a result some houses were destroyed or burnt.<sup>824</sup> The nine-room house of TF2-032 was partially

<sup>816</sup> Transcript of 9 September 2004, TF2-159, pp. 37-38.

<sup>817</sup> Transcript of 9 September 2004, TF2-159, p. 37.

<sup>818</sup> Transcript of 9 September 2004, TF2-159, pp. 38-39.

<sup>819</sup> Transcript of 9 September 2004, TF2-159, p. 39.

<sup>820</sup> Transcript of 16 June 2004, TF2-157, p. 16; Transcript of 13 September 2004, TF2-032, p. 25 (CS); Transcript of 15 June 2004, TF2-198, p. 33.

<sup>821</sup> Transcript of 16 June 2004, TF2-157, pp. 16-17.

<sup>822</sup> Transcript of 16 June 2006, TF2-157, p. 18.

<sup>823</sup> Transcript of 16 June 2006, TF2-157, p. 19.

<sup>824</sup> Transcript of 16 June 2004, TF2-157, p. 14; Transcript of 17 June 2004, TF2-157, p. 37; Transcript of 14 September 2004, TF2-140, p. 82, Transcript of 21 June 2004, TF2-012, p. 24; Transcript of 15 June 2004, TF2-198, pp. 32 and 49.

destroyed.<sup>825</sup> The consequences of this continue to upset TF2-032 as since the destruction of his home, his children are scattered and, despite his advanced age, he now sleeps in a kitchen.<sup>826</sup>

428. Between 13 and 15 February 1998,<sup>827</sup> after the capture of Koribondo, Kamajors went on a rampage in Koribondo and burnt down 25 houses. Dry grass was used to set the houses ablaze.<sup>828</sup> Houses belonging to Daniel Habib, Saidu Bah, Pa Musa and others were burnt.<sup>829</sup> Some of those whose houses were burnt were discouraged; others feared for their lives.<sup>830</sup>

429. Albert J Nallo burnt the compound of Shekou Gbao; he had been ordered to do so by Norman at a private meeting at Base Zero. Albert J Nallo had also been ordered to kill Shekou Gbao but could not find him.<sup>831</sup> Albert J Nallo also burnt the house of Father Mike Lamin<sup>832</sup> and the compound of Mr. Biyo on the order of Norman.<sup>833</sup>

#### 2.4.5.4. Looting in Koribondo

430. After the capture of Koribondo, the Kamajors looted property from houses, including videos, tape-recorders, money and generators.<sup>834</sup> Kamajors took about 20 bushels of rice from TF2-162 and also confiscated his household property.<sup>835</sup> Bob Tucker looted fifty-six bundles of eight-foot zinc.<sup>836</sup> Most of the looted properties were taken at Jimmi Highway on Jimmi Road.<sup>837</sup>

#### 2.4.5.5. Captured Enemy Combatants

431. Following the attack on Korbondo, soldiers and their relatives, who were arrested or captured or who surrendered, were detained for a short period of time. They were later transferred

<sup>825</sup> Transcript of 13 September 2004, TF2-032, p. 33; Transcript of 17 June 2004, TF2-157, p. 37.

<sup>826</sup> Transcript of 13 September 2004, TF2-032, p. 29.

<sup>827</sup> Transcript of 9 September 2004, TF2-159, p. 26; Transcript of 10 February 2005, Bob Tucker, p. 51; Transcript of 17 June 2004, TF2-176, p. 80; Transcript of 21 June 2004, TF2-012, p. 24; Transcript of 13 September 2004, TF2-032, p. 52; Transcript of 14 September 2004, TF2-140, p. 82; Transcript of 5 November 2004, TF2-201, p. 54 (CS).

<sup>828</sup> Transcript of 9 September 2004, TF2-159, p. 26; Transcript of 10 February 2005, Bob Tucker, p. 51; Transcript of 17 June 2004, TF2-176, p. 80; Transcript of 21 June 2004, TF2-012, p. 24; Transcript of 13 September 2004, TF2-032, p. 52; Transcript of 14 September 2004, TF2-140, p. 82; Transcript of 5 November 2004, TF2-201, p. 54 (CS).

<sup>829</sup> Transcript of 9 September 2004, TF2-159, pp. 26-27; Transcript of 21 June 2004, TF2-176, p. 80; Transcript of 13 September 2004, pp. 34-35.

<sup>830</sup> Transcript of 17 June 2004, TF2-176, p. 81; Transcript of 9 September 2004, TF2-159, p. 27.

<sup>831</sup> Transcript of 10 March 2005, Albert J Nallo, p. 79.

<sup>832</sup> Transcript of 10 March 2005, Albert J Nallo, p. 79.

<sup>833</sup> Transcript of 10 March 2005, Albert J Nallo, p. 79.

<sup>834</sup> Transcript of 14 September 2004, TF2-140, p. 82.

<sup>835</sup> Transcript of 8 September 2004, TF2-162, p. 21.

<sup>836</sup> Transcript of 10 February 2005, Bobor Tucker, p. 50.

<sup>837</sup> Transcript of 14 September 2004, TF2-140; p. 82.



to ECOMOG<sup>838</sup> except for one soldier, Sergeant Kamanda, who was sent to Norman at Baze Zero to prove that the Kamajors had captured soldiers.<sup>839</sup>

#### 2.4.6. Meeting after the Capture of Koribondo

##### 2.4.6.1. Private Meeting between Joe Tamidey and the two Accused

432. Four days after the capture of Bo, around 21 February 1998, Joe Tamidey met with Fofana, Kondewa and Norman in Koribondo. He was taken to Bo where he was questioned by Fofana, as to his reasons for not killing Sheku Gbao.<sup>840</sup>

##### 2.4.6.2. Meetings at the Court *Barri* in Koribondo

433. Norman attended two meetings in Koribondo after its capture.<sup>841</sup>

##### 2.4.6.2.1. *First Meeting at the Koribondo Court *Barri**

434. During the first meeting, at the end of March 1998, Norman addressed the people of Koribondo at the court *barri*. Approximately about 200 civilians and 400 Kamajors were present.<sup>842</sup>

Norman stated:

Hey, Kamajors, I thank you very much, but you people have not done my work which I told you to do. You have not done my work at all. Fellows, what did I tell you to do? That inside Koribondo I only want three houses, only three houses in Koribondo here. Oh, look at all these houses. I told you that I wanted the mosque, the court *barri* and one house where I would have to reside, but look at all this crowd that I am seeing here. You people are afraid of killing. Why? The soldiers killed, nothing happened; Kapras killed, nothing happened; rebels killed, nothing happened. Why are you afraid of killing? Why? Really, you've not done my work, you've disappointed me.<sup>843</sup>

<sup>838</sup> Transcript of 10 March 2005, TF2-014, p. 76; Transcript of 15 September 2004, TF2-082, p. 47; Transcript of 16 September 2004, TF2-082, pp. 138-139; Transcript of 11 May 2006, Joe Nunie, pp. 35-36; Transcript of 8 May 2006, Dauda Sheriff, pp. 97-98; Transcript of 8 May 2006, Dixon Kosia, p. 80.

<sup>839</sup> Transcript of 15 September 2004, TF2-082, pp.37-38, Transcript of 7 February 2006, Norman, p. 54; See Section on "Crimes Committed in Talia".

<sup>840</sup> Transcript of 15 September 2004, pp. 40-42 (CS).

<sup>841</sup> Transcript of 30 January 2006, Norman, p. 71; Transcript of 15 June 2004, TF2-198, p. 45.

<sup>842</sup> Transcript of 16 June 2004, TF2-157, p. 20, Transcript of 8 May 2006, Dauda Sheriff, p. 99; Transcript of 15 September 2004, TF2-082, p. 48 (CS); Transcript of 15 June 2004, TF2-198, p. 37.

<sup>843</sup> Transcript of 15 June 2004, TF2-198, p. 37; Transcript of 16 June 2004, TF2-157, p. 20-21; Transcript of 15 September 2004, TF2-082, p. 49 (CS); Transcript of 21 June 2004, TF2-012, p. 27; Transcript of 16 June 2004, TF2-157, pp. 20-21; Transcript of 9 September 2004, TF2-159, p. 54; Transcript of 13 September 2004, TF2-032, p. 62, Transcript of 9 September 2004, TF2-162, p. 30; Transcript of 15 September 2004, TF2-082, p. 49.

435. During this visit, Norman was accompanied by Fofana and Kondewa; however, they did not attend the meeting at the court *barri* in Koribondo.<sup>844</sup>

2.4.6.2.2. *Second Meeting at the Koribondo Court Barri*

436. Norman attended a second meeting at the court *barri* in Koribondo in April 1998.<sup>845</sup> At this meeting Norman stated:

Oh Koribondo people bless God. He said the Kamajors did not do what I told them to do. He said, we should stop slaying people's children. All this destruction that the Kamajors did, he says, you have to - and they swore at me because I asked them to do it. You know, stop blaming them. Stop blaming them, anything that the Kamajors did here I commanded them to do it.<sup>846</sup>

437. There is no evidence that either Fofana or Kondewa attended the second meeting at the court *barri* in Koribondo.<sup>847</sup>

2.5. Bo District

2.5.1. Background to the conflict in Bo

438. Before the overthrow of President Kabbah's government, the police were in charge of security in Bo. The military was supported by the SSD, the armed wing of the police.<sup>848</sup> The initial arrival of soldiers in Bo was in 1992.<sup>849</sup> In the early stages of the conflict the police were duty-bound to support the soldiers.<sup>850</sup>

<sup>844</sup> Transcript of 15 September 2004, TF2-082, p. 49; Transcript of 16 September 2004, TF2-082, p. 146 (CS).

<sup>845</sup> Transcript of 15 June 2004, TF2-198, p. 60; Transcript of 9 September 2004, TF2 159, p. 55; Transcript of 7 February 2006, Norman, p. 32; Transcript of 15 September 2004, TF2 082, p. 49; Transcript of 16 June, 2004, TF2-157, p. 21; Transcript of 13 September 2004, TF2-032, p. 62; Transcript of 9 September 2004, TF2-162, p. 3.

<sup>846</sup> Transcript of 15 June 2004, TF2-198, p. 38; Transcript of 15 September 2004, TF2 082, pp. 49 and 50; Transcript of 16 June, 2004, TF2-157, pp. 21-22; Transcript of 13 September 2004, TF2-032, p. 63; Transcript of 9 September 2005, TF2-159, p. 56.

<sup>847</sup> Transcript of 16 September 2004, TF2-082, p. 147(CS).

<sup>848</sup> Transcript of 15 February 2005, TF2-001, p. 15.

<sup>849</sup> Transcript of 15 February 2005, TF2-001, p. 39.

<sup>850</sup> Transcript of 15 February 2005, TF2-001, p. 17.

439. The police initially supported the juntas following the Coup. During this period, the police in Bo were given rifles to save lives and property as well as to defend themselves in case of attacks at night.<sup>851</sup> The police ceased to support the juntas in late 1997.<sup>852</sup>

440. After the coup, the Kamajors left Bo. The police had tried to create a cordial relationship with the Kamajors; however, the Kamajors turned against the police because of their alleged collaboration with the juntas.<sup>853</sup>

441. On 14 February 1998 the soldiers left Bo and immediately thereafter the youth, popularly called vigilantes, took control of Bo for one day before the arrival of the Kamajors on 15 February 1998.<sup>854</sup> During this time, the youth killed and burned collaborators and burned their houses.<sup>855</sup>

#### 2.5.2. Attack on Kebi Town / Local Planning for the Attack on Bo

442. Kebi Town in Bo District was of importance in the Bo campaign because it was the location of the junta's Brigade Headquarters.<sup>856</sup> After receiving orders from Norman to attack Kebi Town and Bo at Base Zero, as found by the Chamber in Section V.2.2.10.5, TF2-017 went with Kamajors to Bumpeh.<sup>857</sup> The tactical planning for the Bo attack was done in Bumpeh which was considered by Norman as the focal point for the eventual attack and capture of Bo.<sup>858</sup> Albert J Nallo knew of the local planning in Bumpeh.<sup>859</sup>

<sup>851</sup> TF2-119 also testified that after the coup, the security situation in Bo was intense, crime rate was high and there was a public outcry for the police to provide security within the township. Amidst this, the police were facing harassment and suppression. Transcript of 24 November 2004, TF2-119, pp. 21-26.

<sup>852</sup> Transcript of 15 February 2005, TF2-001, pp. 17-18.

<sup>853</sup> Transcript of 24 November 2004, TF2-119, p. 11.

<sup>854</sup> Transcript of 25 November 2004, TF2-156, pp. 34-36: The youths carried cutlasses and sticks, they fought against the juntas to protect and defend their community they even had checkpoint prior to the arrival of the Kamajors: Transcript of 25 November 2004, TF2-156, pp. 83-84, Transcript of 27 September 2006, Morries Ngobeh, pp. 7, 9, 12.

<sup>855</sup> Transcript of 27 September 2006, Morries Ngobeh, pp. 5-6, 12-13, 17-19.

<sup>856</sup> Transcript of 19 November 2004, TF2-017, p. 95 (CS)

<sup>857</sup> Transcript of 19 November 2004, TF2-017, p. 95 (CS); Moses Bangura testified that the Kamajors were to attack the Rebels at the Bo Brigade in order to get arms. Transcript of 17 October 2006, Moses Bangura, pp. 12-13.

<sup>858</sup> Transcript of 22 November 2004, TF2-017, p. 1-3 (CS); Bobor Tucker testified that after the capture of Koribondo on 13<sup>th</sup> February 1998, he went to Bo because he heard that the Kamajors had captured Bo and Bo was under their control. Transcript of 10 February 2005, Bobor Tucker, pp. 52-53.

<sup>859</sup> Transcript of 14 March 2005, Albert J Nallo, pp. 23-24.





443. Before the attack on Bo in February 1998, an attack on Kebi Town was launched in early January 1998. It was led by Battalion commander James Kaillie who was the commander at Bumpah and his Deputy was Joseph Lappia.<sup>860</sup>

444. Kebi Town was captured and the Kamajors proceeded to Dar-es-Salaam, Bumpah Chiefdom, where TF2-017 gave a verbal situation report on the Kebi attack. As proof that they had launched the attack on Kebi Town, TF2-017 handed a captured soldier and solar panels from the communication centre in the Kebi Town Headquarters to Norman, in the presence of Fofana, Kondewa and several other Kamajors.<sup>861</sup> Norman handed over the captured soldier to Kondewa who took him to Base Zero.<sup>862</sup>

445. The order to attack Bo in February 1998 was reiterated to TF2-017 in Bumpah by Norman in the presence of Fofana and Kondewa.<sup>863</sup> At Bumpah, Kondewa renewed the initiation of certain Kamajors, to prepare them to attack Bo. These Kamajors took ammunition from Bumpah as they regrouped with the re-initiated Kamajors and went to attack Bo.<sup>864</sup>

446. Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present.<sup>865</sup> Norman gave specific orders to Nallo to kill certain identified civilians in Bo who were labelled as "collaborators", loot and burn their houses, loot the Southern Pharmacy and bring the medicines to Norman. Specifically the name of MB Sesay was mentioned.<sup>866</sup> Norman also ordered Nallo to kill the police officers.<sup>867</sup>

447. The attack on Bo proceeded from four flanks.<sup>868</sup> Nallo, in his capacity as the Regional Director of Operations, was regarded by TF2-017 as his "operational" or "division" Commander for the Bo attacks.<sup>869</sup> TF2-017's group was based at Tikonko Road.<sup>870</sup> James Kaillie was the

<sup>860</sup> Transcript of 19 November 2004, TF2-017, pp. 94-95 (CS).

<sup>861</sup> Transcript of 19 November 2004, TF2-017, pp. 98-99 (CS).

<sup>862</sup> Transcript of 19 November 2004, TF2-017, pp. 98-99 (CS).

<sup>863</sup> Transcript of 19 November 2004, TF2-017, pp. 100-101 (CS).

<sup>864</sup> Transcript of 19 November 2004, TF2-017, pp. 110-111 (CS).

<sup>865</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 70-77; Transcript of 11 May 2006, DW Joe Nunie, pp. 92-93.

<sup>866</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 70-77; Transcript of 8 June 2005, TF2-011, pp. 29-30; Transcript of 22 November 2004, TF2-017, pp. 91-94.

<sup>867</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 75-76; Transcript of 15 March 2005, Albert J Nallo, pp. 55-56.

<sup>868</sup> Transcript of 22 November 2004, TF2-017, pp. 2-3 (CS).

<sup>869</sup> Transcript of 22 November 2004, TF2-017, p. 2 (CS).

<sup>870</sup> Transcript of 22 November 2004, TF2-017, pp. 4-7 (CS).

Battalion Commander of this group from Tikonko Road (Mattru) and Joseph Lappia was his Deputy Battalion Commander.<sup>871</sup> TF2-017 was part of this group and with his 38 Kapras and 270 Kamajors, he participated in the attack.<sup>872</sup>

448. In addition to James Kaillie's group, there were other groups of Kamajors involved in the attack on Bo. The Kamajors attacked Bo from the direction of Gerihun, Dambara, the Bo-Moyamba Highway and the Mattru-Bo Highway.<sup>873</sup> The groups from Gerihun, Dambara and the Bo-Moyamba Highway were all instructed to enter Bo and to wait at a particular area.<sup>874</sup>

### 2.5.3. Kamajors enter Bo Town on 15 February 1998

449. On 15 February 1998, TF2-017 and his group of Kamajors did not meet resistance when they entered Bo Town.<sup>875</sup> There were young boys among the Kamajors.<sup>876</sup> On the morning of their arrival in Bo, there were no forces fighting in Bo.<sup>877</sup> The juntas had pulled out of Bo early in the morning Saturday, 14 February 1998.<sup>878</sup>

#### 2.5.3.1. Crimes Committed Against Policemen by Kamajors on Arrival in Bo

##### 2.5.3.1.1. *Kamajors at the Police Barracks*

450. On 15 February 1998, approximately 2000 Kamajors entered Bo from the direction of Kenema. They were carrying AK-47 guns, RPG bombs, machetes, catapults and sticks with nails attached to them.<sup>879</sup>

<sup>871</sup> Transcript of 22 November 2004, TF2-017, pp. 4-5 (CS).

<sup>872</sup> Transcript of 19 November 2004, TF2-017, p. 97 (CS).

<sup>873</sup> Transcript of 22 November 2004, TF2-017, p. 1-3 (CS); Bobor Tucker testified that after the capture of Koribondo on 13 February 1998, he went to Bo because he heard that the Kamajors had captured Bo and Bo was under their control. Transcript of 10 February 2005, Bobor Tucker, pp. 52-53.

<sup>874</sup> Transcript of 22 November 2004, TF2-017, pp. 3-4 (CS).

<sup>875</sup> Transcript of 22 November 2004, TF2-017, p. 5 (CS); Transcript of 27 September 2006, Morris Ngobeh, p. 13, Transcript of 25 November 2006, TF2-030, p. 3.

<sup>876</sup> Transcript of 9 February 2005, TF2-006, pp. 16-17.

<sup>877</sup> Transcript of 25 November 2004, TF2-030, p. 4.

<sup>878</sup> Transcript of 23 November 2004, TF2-119, pp. 103-104; Numerous witnesses testify that they were able to identify the Kamajors by their uniform, which was commonly known as ronkos, with various items like shells, glasses; cowries were tied to the ronkos like a talisman; Transcript of 23 November 2004, TF2-119, p. 105; Transcript of 29 November 2004, TF2-057, pp. 110-111; Transcript of 9 February 2005, TF2-006, p. 9; Transcript of 25 November 2006, TF2-030, p. 4.

<sup>879</sup> Transcript of 14 February 2005, TF2-001, pp. 70-75.

451. While the Kamajors were in Bo they captured and killed police officers.<sup>880</sup> Those that were missing had been killed; they were not missing in action. The police that had been killed did not have ammunition.<sup>881</sup>

452. On 15 February 1998, Kamajors killed eight police men at the new police barracks; TF2-056 saw the corpses.<sup>882</sup>

2.5.3.1.2. *Beating of OC Bundu, OC Katta and OC Ndanema*

453. On 15 February 1998, Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombah beat OC Bundu (the SSD boss) at the Bo police station. OC Bundu was then forcefully taken to his house in which Kamajors searched for ammunition. The Kamajors took the ammunition that they found at OC Bundu's house and returned to the police station.<sup>883</sup> Later on the same day, TF2-001 witnessed another group of Kamajors capture OC Bundu, OC Ndanema and OC Katta at gunpoint and beat them; OC Katta was beaten particularly harshly and he cried.<sup>884</sup> TF2-001 feared for his own life.<sup>885</sup>

2.5.3.1.3. *Mistreatment of TF2-001 and Looting of his Property*

454. After witnessing this incident, TF2-001 returned to his house where he found Kamajors looting his property. Property worth 3,500,000 leones including a bed, a mattress and his children's property were bundled up by the Kamajors. When TF2-001 objected, the Kamajors threatened to kill him.<sup>886</sup> TF2-001 was distressed by this situation.<sup>887</sup>

2.5.3.1.4. *Killing of Corporal Freeman*

455. On 15 February 1998, while at Kandeyama Road opposite the police barracks, TF2-001 saw a group of Kamajors rush to Corporal Freeman and drag him to the road. The Kamajors then

<sup>880</sup> Transcript of 15 March 2005, Albert J Nallo, pp. 55-56.

<sup>881</sup> Transcript of 14 February 2005, TF2-001, pp. 116-117.

<sup>882</sup> Transcript of 6 December 2004, TF2-056, pp. 68-69; Transcript of 7 December 2004, TF2-056, pp. 95-97.

<sup>883</sup> Transcript of 14 February 2005, TF2-001, p. 77. When the Kamajor leaders came to the police station asked for the SSD Boss OC Bundu when they found him, the Kamajor leaders asked OC Bundu to provide them with the guns he had. OC Bundu responded that the guns and ammunition had been distributed among the officers so he had no guns. One of the leaders, Agbamu Murray said they needed the ammunition, OC Bundu refused and he was forcefully taken to his house to search for ammunition: Transcript of 14 February 2005, TF2-001, pp. 76-77.

<sup>884</sup> Transcript of 14 February 2005, TF2-001, pp. 79-80.

<sup>885</sup> Transcript of 14 February 2005, TF2-001, p. 80.

<sup>886</sup> Transcript of 14 February 2005, TF2-001, pp. 77-79.

<sup>887</sup> Transcript of 14 February 2005, TF2-001, p. 81.

hacked Corporal Freeman to death with a cutlass. Freeman's corpse was dragged along the highway while the Kamajors shouted, "Allahu Akbar, Allahu Akbar". A little girl shouted, "Daddy, Daddy they have killed your brother Freeman."<sup>888</sup>

2.5.3.1.5. *Kamajors Looted TF2-119's Property*

456. On 15 February 1998, a group of Kamajors entered TF2-119's house and threatened him.<sup>889</sup> They searched his house for ammunition and soldiers. While searching, the Kamajors broke suitcases and took valuables belonging to TF2-119's family.<sup>890</sup>

2.5.3.1.6. *Mutilation/Personal Injury to TF2-119*

457. Later that same day, a second group of Kamajors arrived at TF2-119's house. The Kamajors said Norman had ordered all policemen and soldiers to give their particulars and surrender all of the documents pertaining to their jobs, as well as their uniforms, before they were killed. Norman had assured the Kamajors that they would be approved as military officers, policemen and soldiers with salaries.<sup>891</sup>

458. TF2-119 begged for his life but the Kamajors responded that they would execute him and never defy Norman's orders. One Kamajor cut the back of TF2-119's neck while another shouted "Allahu Akbar". TF2-119's ears were partially severed. TF2-119's face and arm were cut with a machete. The Kamajors chopped at TF2-119's back, shoulders, left arm, the back of his head and the bone of the big toe on his right foot. The Kamajors left thinking TF2-119 was dead.<sup>892</sup>

2.5.3.1.7. *Killing of James Vandy*

459. On 16 February 1998, some Kamajors left the police barracks and headed towards Bo Township with loads on their heads. James Vandy, the Sub-Inspector of the Police Criminal Investigations Division, had been captured by the Kamajors and was made to walk in front of them. During this walk some Kamajors turned and struck James Vandy; he fell, dead. The Kamajors cut James Vandy into pieces while singing "Allahu Akbar, Allahu Akbar." James Vandy

<sup>888</sup> Transcript of 14 February 2005, TF2-001, pp. 81-85.

<sup>889</sup> Transcript of 24 November 2004, TF2-119, p. 28.

<sup>890</sup> Transcript of 23 November 2004, TF2-119, pp. 105-106.

<sup>891</sup> Transcript of 23 November 2004, TF2-119, pp. 108-109.

<sup>892</sup> Transcript of 23 November 2004, TF2-119, pp. 111-116.

was decapitated by the Kamajors. His head was thrown in a stream under a bridge and the rest of his body was abandoned on the road.<sup>893</sup>

2.5.3.1.8. *Kamajors Arrest TF2-001 and Loot His Property*

460. After witnessing the death of James Vandy, TF2-001 attempted to flee but was chased by Kamajors because he had been identified as a policeman. The Kamajors were armed with cutlasses and guns but they retreated after hearing heavy gunfire from the direction of Freetown.<sup>894</sup> TF2-001 followed a large crowd of civilians in the direction of Kenema until they reached Kandeyama<sup>895</sup> where, under the orders of Kamajor leaders including Agbamu Murray, the Kamajors separated civilians from police. TF2-001 was identified as a policeman and was arrested along with other policemen. The Kamajors searched TF2-001 and took from him 15,000 leones and his watch.<sup>896</sup>

2.5.3.1.9. *Killings at Bo Government Hospital by Kamajors*

461. On 19 February 1998,<sup>897</sup> while TF2-119 was at Bo Government Hospital, a group of Kamajors came and captured an unidentified man next to TF2-119's bed. The captured man said he had been shot by the juntas when they were pulling out of Bo. The Kamajors carried this man away because they suspected he was a junta.<sup>898</sup>

462. TF2-156 was also a patient at the Bo Government Hospital. He witnessed Kamajors open fire at the hospital because several policemen were patients there. The Kamajors said the policemen were all juntas and should be killed.<sup>899</sup>

2.5.3.2. Looting and Burning

2.5.3.2.1. *Looting and Burning of MB Sesay's House*

463. Upon their arrival in Bo on 15 February 1998, the Kamajors under TF2-017's command went to MB Sesay's hotel on Sewa Road. They looted property belonging to civilians including

<sup>893</sup> Transcript of 14 February 2005, TF2-001, pp. 85-87.

<sup>894</sup> Transcript of 14 February 2005, TF2-001, pp. 87-89.

<sup>895</sup> Transcript of 14 February 2005, TF2-001, pp. 89-90.

<sup>896</sup> Transcript of 14 February 2005, TF2-001, pp. 90-93.

<sup>897</sup> TF2-119 stated that he was saved and brought to Bo Government Hospital by the Red Cross Personnel; he narrates this incident as happening three days later: Transcript of 23 November 2004, TF2-119, pp.118-119.

<sup>898</sup> Transcript of 23 November 2004, TF2-119, p. 119.

<sup>899</sup> Transcript of 25 November 2004, TF2-156, pp. 51-52.

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womens' dresses, mens' clothes and fans.<sup>900</sup> The Kamajors then set the hotel on fire.<sup>901</sup> Norman had ordered Albert J Nallo to loot and burn MB Sesay's property because he was considered a junta collaborator for manufacturing Kamajor *ronkos* which the juntas wore to disguise themselves as Kamajors.<sup>902</sup> This order was given at Base Zero.<sup>903</sup>

2.5.3.2.2. *Other Burning*

464. Albert J Nallo and other Kamajors burned the houses and properties of junta collaborators that they could not find.<sup>904</sup> The house of TF2-058 was burnt by Kamajors.<sup>905</sup> When TF2-056 arrived at the police barracks, he saw four houses that had been burnt by Kamajors.<sup>906</sup>

465. On 15 February 1998, Kamajors under the command of TF2-017 raided and destroyed two pharmacies situated at Tikonko Road and Bojon Street. The Kamajors broke the padlocks and looted all the medicine from these pharmacies. The Kamajors looted these pharmacies because there was a need for medicine at Base Zero; they were implementing a direct order from Norman to loot pharmacies.<sup>907</sup>

2.5.3.2.3. *Other Looting*

466. On 15 February 1998, Kamajors looted TF2-156's property including clothes, shoes, utensils, other household property and his business, which was worth 800,000 leones.<sup>908</sup>

467. Two days after the arrival of Kamajors in Bo, the Kamajors went into people's houses and looted their property. The property of TF2-030 was looted and her landlady's shop was broken

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<sup>900</sup> Transcript of 22 November 2004, TF2-017, pp. 6-7 (CS).

<sup>901</sup> Transcript of 22 November 2004, TF2-017, pp. 6-7 (CS); According to Morries Ngobeh, MB Sesay's property, hotel was looted and burned because it was rumored that he was a junta collaborator who made Kamajor uniforms for other members of the junta: Transcript of 27 September 2006, Morries Ngobeh, pp. 7-10.

<sup>902</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 72-73.

<sup>903</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 71-73.

<sup>904</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 75-77.

<sup>905</sup> Transcript of 3 December 2004, TF2-058, p. 87.

<sup>906</sup> Transcript of 6 December 2004, TF2-056, pp. 68-69.

<sup>907</sup> Transcript of 22 November 2004, TF2-017, pp. 11-12 (CS).

<sup>908</sup> Transcript of 25 November 2004, TF2-156, pp. 37-38.



into by the Kamajors.<sup>909</sup> When Bobor Tucker arrived in Bo on Monday, 16 February 1998, he saw Kamajors all over Bo Town looting shops.<sup>910</sup>

### 2.5.3.3. Killings and Mistreatment of Civilians

468. When the Kamajors led by TF2-017 were in Bo on 15 February 1998, there was fear among the civilians. Many people had been killed. The situation reports of the Kamajors indicated excessive killing of civilians.<sup>911</sup>

#### 2.5.3.3.1. *Killing of Collaborators at MB Sesay's Hotel*

469. During the raid on MB Sesay's hotel on 15 February 1998, an unidentified woman who cooked for the rebels was found hiding; she was shot and killed by Kamajors on the order of TF2-017.<sup>912</sup>

470. On the same occasion, Joseph Lappia, the Kamajor deputy commanding officer ordered the killing of John Musa. John Musa was considered a collaborator because he traded with rebels.<sup>913</sup>

#### 2.5.3.3.2. *Killing of TF2-058's Son*

471. TF2-058's son was killed by Kamajors when they entered Bo.<sup>914</sup>

#### 2.5.3.3.3. *Mutilation of TF2-006 and Wounding of Five People*

472. When the Kamajors entered Bo they chased, captured and chopped at people with cutlasses. TF2-006 witnessed Kamajors attack five people with knives.<sup>915</sup> There was a lot of gunfire and many civilians fled crying. Some civilians were killed and others suffered amputations.<sup>916</sup> The Kamajors hit TF2-006 with a stick and amputated the fingers on his left hand with a cutlass.<sup>917</sup>

<sup>909</sup> Transcript of 25 November 2004, TF2-030, pp. 4 and 16.

<sup>910</sup> Transcript of 10 February 2005, Bobor Tucker, pp. 56-57; TF2-008 also saw houses burning in Bo Town, and people also made reports that their property had been looted by both the junta and Kamajors: Transcript of 16 November 2004, TF2-008, pp. 105 and 111.

<sup>911</sup> Transcript of 22 November 2004, TF2-017, pp. 13-14 (CS).

<sup>912</sup> Transcript of 22 November 2004, TF2-017, pp. 8-9 (CS).

<sup>913</sup> Transcript of 22 November 2004, TF2-017, p.10 (CS).

<sup>914</sup> Transcript of 3 December 2004, TF2-058, p. 52.

<sup>915</sup> Transcript of 9 February 2005, TF2-006, pp. 8-11.

<sup>916</sup> Transcript of 9 February 2005, TF2-006, pp. 67-69.

<sup>917</sup> Transcript of 9 February 2005, TF2-006, pp. 11-13.

2.5.3.3.4. *Killing of a Limba man by Kamajors after 15 February 1998*

473. After their occupation of Bo, the Kamajors identified one man as a junta collaborator because he was a Limba. The Kamajors sang a ritual song, "Allahu Akbar", and hacked the man to death. After killing him, the Kamajors mutilated his body.<sup>918</sup>

2.5.3.3.5. *Killing of a Woman and Mistreatment of Civilians at a Check Point*

474. On 17 February 1998, TF2-001, who left Bo after the attack, reached a Kamajor checkpoint at Fobu village. He saw two men and two women who had been forced to lay naked on the ground on their backs facing the sun. The Kamajors stepped on their stomachs; an unidentified woman's ribs were stepped on and she shouted and then was shot. This woman's guts oozed out between her legs. The woman was taken behind a house and Kamajors came back holding her heart in their hands. The Kamajors threatened to do the same thing to the other people that were lying down. These people were left lying under the sun for hours<sup>919</sup> as the Kamajors opened their anuses to see if they had defecated.<sup>920</sup> Joe Nunie, the senior leader of this group of Kamajors, eventually ordered TF2-001's release.<sup>921</sup>

2.5.3.3.6. *Killing of Enemy Combatant John Hota*

475. While in Bo, TF2-017 handed an unarmed captured child soldier wearing civilian clothes to Albert J Nallo. At the time, Nallo was deployed at office of the Red Cross, near the clock tower where captured soldiers were taken and imprisoned.<sup>922</sup> John Hota was killed by the Death Squad, which had received direct instructions from Norman to kill John Hota because "he had no place to keep prisoners of war and had no food for them".<sup>923</sup> Hota's head was severed from his body and put in a white plastic bag.<sup>924</sup>

<sup>918</sup> Transcript of 6 December 2004, TF2-056, pp. 70-72.

<sup>919</sup> Transcript of 14 February 2005, TF2-001, pp. 94-96.

<sup>920</sup> Transcript of 14 February 2005, TF2-001, pp. 95-96.

<sup>921</sup> Transcript of 14 February 2005, TF2-001, pp. 96-97; Transcript of 15 February 2005, TF2-001, p. 38.

<sup>922</sup> Transcript of 22 November 2004, TF2-017, pp. 18-20 (CS).

<sup>923</sup> Transcript of 22 November 2004, TF2-017, p.19 (CS); Transcript of 10 March 2005, Albert J Nallo, pp. 84-87.

<sup>924</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 84-87.

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476. One week after the capture of Bo, Norman met Nallo in Bo and confirmed that he had sent the Death Squad to kill John Hota.<sup>925</sup>

2.5.3.3.7. *Torture of TF2-198 and Killing of his Brother*

477. On 16 February 1998, Kamajors searched the house of TF2-198's brother and found TF2-198 and his brother. They were thrown to the ground, beaten and tied up by Kamajors.<sup>926</sup> Other people who had come to Bo from Koribondo were also beaten.<sup>927</sup>

478. The Kamajors took TF2-198 and his brother to Sikissi Y-Junction, where burning plastic was dropped on the TF2-198 for 30 minutes.<sup>928</sup> The Kamajors put TF2-198 and his brother in a back room with two corpses dressed in civilian clothes. TF2-198 watched as the Kamajors cut off his brother's head.<sup>929</sup>

2.5.3.4. Crimes Committed by Kamajors After the Attack on Bo by Juntas on 18 February 1998<sup>930</sup>

2.5.3.4.1. Killing of TF2-030's Husband and Six Others on 23 February 1998

479. On 22 February 1998, while TF2-030 and her husband were at their home near CKC Bo, a group of fifteen Kamajors armed with machetes and sharp irons surrounded TF2-030's husband. Her husband ran to a nearby swamp but the Kamajors followed him and chopped at him all over his body using a machete. TF2-030's husband died at 6am the following morning.<sup>931</sup> The Kamajors killed TF2-030's husband because he was a Temne; the Kamajors said they would weed all the Temne from Bo Town.<sup>932</sup> Six other people were hacked to death by Kamajors at the same time.<sup>933</sup>

<sup>925</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 87- 89: Albert J Nallo stated that the Death Squad with two Liberians who were Special Forces] entered Bo Town and said to him that they had received an instruction from Chief Norman that he had no place to keep prisoners of war and no food for them, therefore they should kill John Hota. Nallo said the order was from above and he had no alternative. Transcript of 10 March 2005, Albert J Nallo, pp. 86-88

<sup>926</sup> Transcript of 15 June 2004, TF2-198, pp. 23-25; this incident occurred when TF2-198 flee from Koribondo to Bo just before Kamajors entered Koribondo and arrived on the third day. See Section V.2.4.4: attack occurred on the on 13 February 1998.

<sup>927</sup> Transcript of 15 June 2004, TF2-198, p. 53.

<sup>928</sup> Transcript of 15 June 2004, TF2-198, p. 23.

<sup>929</sup> Transcript of 15 June 2004, TF2-198, pp. 31-32.

<sup>930</sup> On 18 February 1998, the juntas attacked Bo again: Transcript of 22 November 2004, TF2-017, p. 22 (CS); Transcript of 23 November 2004, TF2-119, p. 121; Transcript of 25 November 2004; TF2-156, pp. 39-41.

<sup>931</sup> Transcript of 25 November 2004, TF2-030, pp. 6-10.

<sup>932</sup> Transcript of 25 November 2004, TF2-030, p. 11.

<sup>933</sup> Transcript of 25 November 2004, TF2-030, pp. 11-12.

2.5.3.4.2. Assault on TF2-156 and Killing of his Brothers

480. Around 22 February 1998,<sup>934</sup> a local man named Sorie was chased by Kamajors who were armed with cutlasses, knives and guns.<sup>935</sup> The Kamajors captured TF2-156, his two brothers, Sorie and an unidentified man. Kamajors chopped at TF2-156 with a machete and cut his foot, stomach, chest and face.<sup>936</sup> TF2-156's lip was split in three places; two of his teeth were knocked out and one tooth was broken.<sup>937</sup>

481. The Kamajors chopped at TF2-156's brothers with machetes and killed them.<sup>938</sup> Sorie and the unidentified man were also killed.<sup>939</sup> The Kamajors thought TF2-156 was also dead and left him lying beside the bodies of these four people.<sup>940</sup>

2.5.4. Arrival of ECOMOG in Bo

482. On the 23<sup>rd</sup> of February 1998, ECOMOG entered Bo Town.<sup>941</sup> ECOMOG was unable to control the Kamajors.<sup>942</sup>

2.5.4.1. Crimes committed by Kamajors After the Arrival of ECOMOG

2.5.4.1.1. Looting of TF2-056's House

483. Sometime after the arrival of ECOMOG in Bo, Kamajors came to TF2-056's house and frightened him. The Kamajors took TF2-056's television, freezer, water filter and some other items.<sup>943</sup> They accused TF2-056 of being a junta soldier and said they were taking the items because they had belonged to the junta.<sup>944</sup> TF2-056 was not a junta; the items taken by the Kamajors were his personal property.<sup>945</sup>

<sup>934</sup> TF2-156 says that it was one day before the arrival of ECOMOG: Transcript of 25 November 2004, p.48.

<sup>935</sup> Transcript of 25 November 2004, TF2-156, p. 64.

<sup>936</sup> Transcript of 25 November 2004, TF2-156, pp. 41-43.

<sup>937</sup> Transcript of 25 November 2004, TF2-156, p. 45; see also Exhibit 101 and Exhibit 102.

<sup>938</sup> Transcript of 25 November 2004, TF2-156, p. 46.

<sup>939</sup> Transcript of 25 November 2004, TF2-156, p. 49.

<sup>940</sup> Transcript of 25 November 2004, TF2-156, pp. 48-50.

<sup>941</sup> Transcript of 6 December 2004, TF2-056, p. 72; Transcript of 25 November 2004, TF2-030, pp. 11-12, Transcript of 25 November 2004, TF2-156, p. 48, Transcript of 6 December 2004, TF2-056, p. 72, Transcript of 23 November 2004, TF2-119, p. 122.

<sup>942</sup> Transcript of 7 December 2004, TF2-056, pp. 93-94.

<sup>943</sup> Transcript of 7 December 2004, TF2-056, pp. 86-88.

<sup>944</sup> Transcript of 6 December 2004, TF2-056, pp. 72-73.

<sup>945</sup> Transcript of 7 December 2004, TF2-056, pp. 86-88.

2.5.4.1.2. *Capture of TF2-067 and Targeting of Temnes*

484. TF2-067, a young Temne boy, was captured by Kamajors when they forced their way into his house. The Kamajors searched the house for arms and ammunition, but did not find any.<sup>946</sup> The Kamajors were also searching for Temne people. They told TF2-067 that they were searching for Temnes because Temnes were soldiers and were bad people. The Kamajors captured TF2-067 to try to induce his father, who is also Temne, to come out of hiding; however, TF2-067's father did not appear. The Kamajors left TF2-067 and went to search other houses.<sup>947</sup>

2.5.4.1.3. *Looting by Kamajors at TF2-067's House*

485. A group of Kamajors came to TF2-067's house and took items which belonged to people that lived with him. The Kamajors took a freezer, a tape recorder, a radio and a video. They tried to take a double bed, but it was too large for them to carry.<sup>948</sup>

486. The actions of these Kamajors were reported to ECOMOG who came immediately to the house. The Kamajors ran away. ECOMOG told the inhabitants of the house to make a list of looted property taken by the Kamajors.<sup>949</sup>

487. After ECOMOG left, the Kamajors returned to TF2-067's house and retrieved items which they had left behind.<sup>950</sup>

488. TF2-067 observed Kamajors breaking into people's shops and houses to loot property.<sup>951</sup>

2.5.4.1.4. *Beating of a Pastor by Kamajors*

489. A pastor was staying at TF2-067's house. One day, after Kamajors had been to the house, the pastor put on a pair of slippers which had been left behind by the Kamajors. When the Kamajors returned and saw that the pastor was wearing the slippers, they beat him. The Kamajors kicked the pastor and hit him with the butts of their guns until blood began to ooze from his nose.

<sup>946</sup> Transcript of 1 December 2004, TF2-067, pp. 29-30; Transcript of 29 November 2004, TF2-057, pp. 114-115.

<sup>947</sup> Transcript of 30 November 2004, TF2-067, pp. 87-89.

<sup>948</sup> Transcript of 30 November 2004, TF2-067, pp. 90-92.

<sup>949</sup> Transcript of 30 November 2004, TF2-067, pp. 92-95.

<sup>950</sup> Transcript of 30 November 2004, TF2-067, pp. 95-97.

<sup>951</sup> Transcript of 30 November 2004, TF2-067, pp. 99-100.

The pastor was crying but could do nothing. TF2-067 heard the Kamajors question the pastor in Mende.<sup>952</sup>

2.5.4.1.5. *Killings by Kamajors in a Park*

490. A Temne man was arrested in a park by Kamajors because they thought he was a Temne. When the man protested that he was not a Temne, he was shot. As they left, the Kamajors purposefully stepped on the man's body.<sup>953</sup> Later in the evening, Kamajors burnt the Temne man's body.<sup>954</sup>

2.5.4.1.6. *Arrest of TF2-067 and his Father*

491. TF2-067 and his father were arrested and taken to Kamajor headquarters at 88 Mahei Boima Road.<sup>955</sup> On the way to the headquarters, the Kamajors also arrested TF2-067's uncle. TF2-067's uncle was held at gunpoint and the Kamajors asked him if he was a Temne. TF2-067's uncle was also brought to the Kamajor headquarters.<sup>956</sup>

492. TF2-067's father and uncle were placed with other adults while TF2-067 was placed with children his own age and younger. TF2-067's father spoke in Mende to the Kamajors. The eldest Kamajor, who was the leader of a group of small boys, ordered the release of TF2-067's father. TF2-067's father requested the release of TF2-067 and TF2-067's uncle. The Kamajors released TF2-067, but refused to release TF2-067's uncle because his uncle did not speak Mende. TF2-067 has not seen his uncle since.<sup>957</sup>

2.5.4.1.7. *Killing of a Former Soldier by Kamajors at a Checkpoint*

493. When leaving Bo Town, TF2-067 was stopped at three checkpoints. At the first checkpoint, he saw Kamajors capture a man that they believed to be a former soldier. The man denied the Kamajors' allegations. One of the Kamajors announced that they would kill the man

<sup>952</sup> Transcript of 30 November 2004, TF2-067, pp. 95-99.

<sup>953</sup> Transcript of 1 December 2004, TF2-067, pp. 4-6.

<sup>954</sup> Transcript of 1 December 2004, TF2-067, pp. 43-46.

<sup>955</sup> Transcript of 29 November 2004, TF2-057, pp. 117-119; Transcript of 30 November 2004, TF2-057 p. 71; Transcript of 1 December 2004, TF2-067, pp. 7-10.

<sup>956</sup> Transcript of 1 December 2004, TF2-067, pp. 7-10.

<sup>957</sup> Transcript of 1 December 2004, TF2-067, pp. 7-10.

because he was arguing. TF2-067 saw one Kamajor shoot the man. This killing was also witnessed by a large group of people passing through the checkpoint.<sup>958</sup>

494. At the second checkpoint, Kamajors who called themselves "Black December" stopped the group with whom TF2-067 was travelling. The Kamajors questioned the leader of the group and then allowed them to pass. At the third checkpoint, the leader of the group was again questioned before the group was allowed to pass.<sup>959</sup>

2.5.4.1.8. *Arrest and Beating of a Limba Man*

495. A Limba man was arrested and taken to the Bo District Commander, Kosseh Hindowa, at the Kamajor headquarters located at 88 Mahei Boima Road.<sup>960</sup> The Limba man was beaten in front of Hindowa. He had been arrested because the Kamajors suspected that his daughter was in love with a junta. TF2-056 spoke with Kosseh Hindowa and denied the Kamajors' suspicions. Hindowa requested 100,000 leones for the release of the Limba man.<sup>961</sup> TF2-056 paid the money and the man was released. The Limba man had welts all over his body and was in pain; he died one month later.<sup>962</sup>

2.5.4.1.9. *Arrest and Cruel Treatment of Two Limba Men*

496. Two Limba men were arrested by Kamajors who forced the captives to remove their clothing and tied them with FM rope. The Kamajors planned to put pepper on the prisoner's genitals. TF2-056 offered Moses Sandy, a Kamajor Commander from Koribondo, 110,000 leones for the release of the two men. Moses Sandy accepted the money and demanded 15 bushels of rice. TF2-056 convinced Moses Sandy to accept 10 bushels of rice. The two Limba men were held for two days and were released on the third day.<sup>963</sup>

2.5.4.1.10. *Arrest and Cruel Treatment of a Limba Man*

497. A Limba man accused of being a junta was arrested, undressed and beaten by the Kamajors. They forced the man to roll on the ground over a distance of about 10 metres and then

<sup>958</sup> Transcript of 1 December 2004, TF2-067, pp. 14-19.

<sup>959</sup> Transcript of 1 December 2004, TF2-067, pp. 19-21; Transcript of 30 November, TF2-057, pp. 36-39.

<sup>960</sup> Transcript of 7 December 2004, TF2-056, pp. 81-82.

<sup>961</sup> Transcript of 6 December 2004, TF2-056, pp. 73-75.

<sup>962</sup> Transcript of 7 December 2004, TF2-056, pp. 81-82; Transcript of 6 December 2004, TF2-056, pp. 73-77.

<sup>963</sup> Transcript of 6 December 2004, TF2-056, pp. 77-79.



a Kamajor hit him with a gun. TF2-056, who witnessed the incident, requested the assistance of ECOMOG and paid 300,000 leones to the Kamajor Abu Tawa to secure the release of the Limba man and the return of everything that had been seized by the Kamajors from the Limba man's house. Abu Tawa had requested 400,000 leones but TF2-056 begged him to accept 300,000 leones.<sup>964</sup>

2.5.4.1.11. *Arrest and Beating of a Woman*

498. A Mende woman accused of being a cook for the rebel named Mosquito was captured by a Kamajor commander named Moses Sandy.<sup>965</sup> She was held by ECOMOG at their headquarters and was beaten every day. TF2-056 paid 100,000 leones to ECOMOG and 100,000 leones to the Kamajors to secure the woman's release. Upon determining that the woman was not a cook for Mosquito, the ECOMOG commander released the woman to TF2-056.

2.5.4.1.12. *Killing of TF2-058's Husband*

499. On 27 April 1998, TF2-058 witnessed Kamajors kill her husband in the Duwebu Section of Bo Town. Approximately 15 Kamajors carrying various weapons including cutlasses, RPGs, knives and guns came up behind TF2-058 and her husband as they were walking home. The Kamajors called her husband a junta and began attacking him. He was struck in the eye and then the side with a long knife-like weapon. When he fell, all of the Kamajors stabbed him. TF2-058 ran away.<sup>966</sup> She did not return for her husband's body because she feared that the Kamajors would see and kill her. She did not report the killing or confront the Kamajors because she feared that the Kamajors would kill her or burn down her house.<sup>967</sup>

500. TF2-058 left Bo for two months and returned in early July. She learned that her husband's body had been taken to Gbetema and had been eaten by Kamajors.<sup>968</sup>

2.5.4.1.13. *Killings by Kamajors in a Swamp near Njai Town and at "Washcar"*

501. On 27 April 1998, TF2-058 witnessed Kamajors attack a man in the swamp near Njai Town in Bo. The Kamajors said "Alahu Akbar" as they killed him.<sup>969</sup> That same day, TF2-058

<sup>964</sup> Transcript of 6 December 2004, TF2-056, pp. 79-82; Transcript of 7 December 2004, TF2-056, pp. 66-69.

<sup>965</sup> Transcript of 7 December 2004, TF2-056, pp. 69-74.

<sup>966</sup> Transcript of 3 December 2004, TF2-058, pp. 50-59 and 86.

<sup>967</sup> Transcript of 3 December 2004, TF2-058, pp. 64 and 73-76.

<sup>968</sup> Transcript of 3 December 2004, TF2-058, pp. 69-70.

witnessed Kamajors hack at a man with cutlasses at "washcar" near the Shenge market. They were also saying "Alahu Akbar".<sup>970</sup>

2.5.4.1.14. *Harassment of TF2-156*

502. In order to go to the hospital to receive regular medical treatment, TF2-156 had to pass a checkpoint manned by Kamajors. Each time he passed through the checkpoint, the Kamajors would attack, arrest or harass him. On one occasion, the Kamajors arrested him and held him captive for a short time. They called him a junta and said that the next time they captured him they would eat him.<sup>971</sup>

2.5.4.1.15. *Mistreatment of TF2-119 at the Brigade Junction on the Bo-Freetown Road*

503. On 26 March 1998, TF2-119 was discharged from Bo Government Hospital and referred to Kingtom Hospital in Freetown for further medical treatment.<sup>972</sup> He travelled to Freetown with his younger brother. On the way there, they were stopped by Kamajors at a checkpoint at Brigade Junction on the Bo-Freetown Road. Although TF2-119 was on crutches because of a broken leg, he was harassed by the Kamajors who demanded authentic documents to enable him to pass through.<sup>973</sup>

504. Meanwhile, TF2-119's brother was taken to a booth and accused of being a collaborator. About 30 Kamajors surrounded TF2-119 and threatened to kill him. The Kamajors dragged, pulled and shoved TF2-119. He fell to the ground, crying. TF2-119's plasters were removed. One Kamajor asked for a weapon to be brought to him and another took an AK-47. TF2-119 was dragged to an open pit behind the booth in which there lay naked male bodies. One Kamajor tried to push TF2-119 into the pit but TF2-119 held onto the Kamajor trousers and shouted. TF2-119 was rescued from this ordeal by an ECOMOG soldier. TF2-119 does not know if the Kamajors

<sup>969</sup> Transcript of 3 December 2004, TF2-058, pp. 61-62.

<sup>970</sup> Transcript of 3 December 2004, TF2-058, pp. 62-63.

<sup>971</sup> Transcript of 25 November 2004, TF2-156, p. 54.

<sup>972</sup> Transcript of 23 November 2004, TF2-119, pp. 122-123.

<sup>973</sup> Transcript of 23 November 2004, TF2-119, pp. 123-126.

accepted the ECOMOG dealing with the situation but they had to accept it because by then ECOMOG were their superiors.<sup>974</sup>

#### 2.5.5. Organization in Bo after the Kamajor Takeover

##### 2.5.5.1. Norman Orders War Council Members to set up CDF Office in Bo

505. While at Base Zero, Sam Hinga Norman ordered some members of the War Council to go Bo and administer it like Base Zero.<sup>975</sup>

506. In February 1998, the War Council arrived in Bo and set up the CDF office at 88 Mahei Boima Road.<sup>976</sup> The CDF office was run by Alhaji Daramy Rogers, the Regional Coordinator.<sup>977</sup> Between March and June 1998, Kosseh Hindowa, the District Administrator, was placed in charge of the CDF office and the Kamajors in Bo Town.<sup>978</sup>

##### 2.5.5.2. Establishment of the War Office, Later Called the Peace Office, in Bo

507. Once the members arrived in Bo, the War Council ceased holding meetings. The War Council lost its functional capacity both as an administrative body and an advisory body. There was no administrative structure in Bo to effectively control the Kamajors.<sup>979</sup> They ignored the chain of command and did not follow orders.<sup>980</sup>

508. In June 1998, the resident Minister, Honourable Foday MB Seisay established the War Office.<sup>981</sup> It was located in the Shenge Section of Bo Town at 42 Mahei Boima Road.<sup>982</sup> After the

<sup>974</sup> Transcript of 23 November 2004, PW TF2-119, pp. 123-126, see also Transcript of 24 November 2004, TF2-119, pp. 39-40.

<sup>975</sup> Transcript of 16 November 2004, TF2-008, pp. 95-96 & 105.

<sup>976</sup> Transcript of 5 November 2004, TF2-201, pp. 55-56 (CS).

<sup>977</sup> Transcript of 29 November 2004, TF2-088, p. 118; Transcript of 6 December 2004, TF2-056, pp. 87-88; Transcript of 20 February 2006, Kenneth Koker, pp. 87-88.

<sup>978</sup> Transcript of 8 February 2006, Peter Penfold, pp. 43-44; Exhibit 168.

<sup>979</sup> Transcript of 23 November 2004, TF2-008, pp. 30-34.

<sup>980</sup> The War Council received reports about the actions of the Kamajors. One such report stated that the Kamajors were not taking orders from their superiors. Orders came from the Director of Operations down the chain of command to the Regional Commander and the Battalion Commander. According to the report, the Kamajors were not following the orders because they were undisciplined. They were consequently uncontrollable: Transcript of 23 November 2004, TF2-008, pp. 30-34.

<sup>981</sup> Transcript of 16 November 2004, TF2-008, p. 115.

<sup>982</sup> Transcript of 20 February 2006, Kenneth Koker, pp. 90-91; Exhibit 168, "Witness Statement of Foday Mohammed Duramani Seisay."

7<sup>th</sup> of July 1999, the War Office became the Peace Office. It was tasked with investigating atrocities and excesses committed by the Kamajors. Fofana was the Director of the Peace Office.<sup>983</sup>

#### 2.5.6. Meetings Held by Sam Hinga Norman in Bo

##### 2.5.6.1. First Meeting: Speech Given by Norman in February 1998

509. About a week after the capture of Bo, Norman convened a public meeting attended by Kamajors and civilians. Norman said that people should not grumble or blame the Kamajors because he is the one who gave directives to Kamajors and he took responsibility for their actions.<sup>984</sup>

##### 2.5.6.2. Second Meeting: Visit to the Hospital

510. In late February 1998, Norman visited Bo Government Hospital.<sup>985</sup> He informed the patients of the capture of Tongo Field, Kenema Town and Bo Town. Norman also spoke about the imminent take over of Freetown and urged people to accept losses and deaths because these occurred in war.<sup>986</sup>

##### 2.5.6.3. Third Meeting: Visit to the New Police Barracks

511. In April 1998, Norman came to Bo with Kondewa, Fofana, Kamoh Lahai, Mammy Munda and other Kamajor leaders. The Chief of police ordered all policemen to attend a parade at the new police barracks. Only 150 policemen attended.<sup>987</sup> Norman complained that the Kamajor chiefs, in particular Fofana, had lied to him about the burnt down police barracks and policemen killed in Bo Town. Norman said that he felt deceived after having seen the barracks intact and the police at the parade.<sup>988</sup>

##### 2.5.6.4. Fourth Meeting: Speech Given by Norman at Bo Town Hall

<sup>983</sup> Transcript of 16 November 2004, TF2-008, pp. 111-115; Transcript of 23 November 2004, TF2-008, pp. 19-23.

<sup>984</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 88-89; Transcript of 8 June 2005, TF2-011, pp. 32-33 (CS).

<sup>985</sup> Transcript of 23 November 2004, TF2-119, pp. 126-127.

<sup>986</sup> Transcript of 23 November 2004, TF2-119, pp. 126-127.

<sup>987</sup> Transcript of 14 February 2005, TF2-001, pp. 98-99; TF2-001 testified that prior to the Kamajor attacks, there were 368 policemen. Transcript of 14 February 2005, TF2-001, p. 99.

<sup>988</sup> Transcript of 14 February 2005, TF2-001, pp. 99-102.

512. Around July or August 1998, a meeting facilitated by the European Union and an NGO called Conciliation Resources was held at Bo Town Hall.<sup>989</sup> It was attended by Norman, Kondewa, Fofana, other Kamajor commanders, initiators and civilians. Norman gave a speech in which he took responsibility for the actions of the Kamajors.<sup>990</sup>

#### 2.5.7. Mongere and Gumahun (Valunia Chiefdom)

513. Mongere is located in Valunia Chiefdom, Bo District.<sup>991</sup> It is approximately two to three miles from Yele, Gbonkolenken Chiefdom, Tonkolili District. Kamajors from all of the chiefdoms in Bo District arrived and took control of Mongere in 1997.<sup>992</sup>

514. In November 1997, the Kamajors occupied Gumahun and its surrounding areas.<sup>993</sup> In Gumahun the Kamajors were disorganized and uncontrolled.<sup>994</sup>

#### 2.5.7.1. Crimes in Mongere and Gumahun Areas, November 1997

##### 2.5.7.1.1. *Threat to Kill by Chief Kamajor James Bundu in Gumahun*

515. On 29 November 1997, TF2-088 sent his son and three of his nephews to retrieve his gun so that he could give it to the Kamajors.<sup>995</sup> Later that day TF2-088 saw his gun in the hands of Kamajors at the court *barri*.<sup>996</sup> Those present included the Battalion Commanders Alhaji Hassan Sheriff, Sundifu Samuka and Joseph Kulagbanda. Gibril Mansaray, the Kamajor Secretary, was also present. James Bundu, the Chief Kamajor, refused to return TF2-088's gun and threatened to kill all the people who had gone to collect it.<sup>997</sup> James Bundu said that anyone who did not join the Kamajors would be considered a rebel.<sup>998</sup>

##### 2.5.7.1.2. *Killing of TF2-088's Nephews and Eldest Son*

<sup>989</sup> TF2-008 stated that this meeting took place sometime during the rainy season in mid-1998: Transcript of 16 November 2004, TF2-008, pp. 115-119.

<sup>990</sup> Transcript of 16 November 2004, TF2-008, pp. 115-119.

<sup>991</sup> The Chamber finds that "Mongere" and "Mongeri" refer to the same location.

<sup>992</sup> Transcript of 29 November 2004, TF2-088, pp. 89-92.

<sup>993</sup> Transcript of 26 November 2004, TF2-088, p. 93.

<sup>994</sup> Transcript of 25 November 2004, TF2-088, p. 93.

<sup>995</sup> Transcript of 25 November 2004, TF2-088, pp. 95-96.

<sup>996</sup> Transcript of 25 November 2004, TF2-088, pp. 99-102.

<sup>997</sup> Transcript of 25 November 2004, TF2-088, pp. 101-102.

<sup>998</sup> Transcript of 25 November 2004, TF2-088, p. 101.

516. On 29 November 1997, TF2-088's eldest son and two of his nephews were shot and killed by Sundifu Samuka, Joseph Kulagbanda and Wan Mohammed. These three corpses were thrown into the Taia River.<sup>999</sup> A third nephew was shot while attempting to run from the Kamajors but he survived the shooting.<sup>1000</sup>

2.5.7.1.3. *Killings in Mandu*

517. On 30 November 1997, a nephew of TF2-088 named "Daddy" and his nephew's mother, Jeneba, stood amongst the Kamajors and many civilians at the Kamajor Brima Sheki's compound.<sup>1001</sup> Alhaji Hassan, James Bundu, Gibril Mansaray, Sundifu Samuka and Joseph Kulagbanda arrived at the compound and entered the parlour with the Mandu Battalion Commander Earnest Blango Kandapa.<sup>1002</sup>

518. Jeneba was the town mother of Nyandehun when she was captured by the rebels and was forced to cook and care for them.<sup>1003</sup> The Chief Kamajor James Bundu told Jeneba they would kill her because she had joined the rebels. She was shot by Philip Mboma, a Kamajor Battalion Commander based in Mandu. Her neck was cut with a cutlass by Philip Mboma and she fell to the ground and died.<sup>1004</sup>

519. James Bundu accused Daddy of being a rebel because he caught fish for the rebel's king, Smith Joseph.<sup>1005</sup> Philip Mboma cut Daddy in two at the waist with a cutlass. Daddy's intestines fell to the ground and he died.<sup>1006</sup> Gibril Mansaray forced four civilians and TF2-088's younger son to dig a hole and bury the bodies of Jeneba and Daddy.<sup>1007</sup>

2.5.7.1.4. *Mistreatment of TF2-088 at the Court Barri in Gumahun*

520. On the evening of 30 November 1997, at the Gumahun court *barri*, James Bundu asked TF2-088 whether he had called the Kamajors cannibals. When TF2-088 admitted he had done

<sup>999</sup> Transcript of 25 November 2004, TF2-088, pp. 104-105.

<sup>1000</sup> Transcript of 25 November 2004, TF2-088, pp. 107-108.

<sup>1001</sup> Transcript of 25 November 2004, TF2-088, pp. 107-108.

<sup>1002</sup> Transcript of 26 November 2004, TF2-088, pp. 16-19.

<sup>1003</sup> Transcript of 26 November 2004, TF2-088, pp. 19-20.

<sup>1004</sup> Transcript of 26 November 2004, TF2-088, pp. 21-23.

<sup>1005</sup> Smith Joseph was called the rebel king because he was the rebels' superior in Valunia Chiefdom. Transcript of 26 November 2004, TF2-088, pp. 24-25.

<sup>1006</sup> Transcript of 26 November 2004, TF2-088, pp. 24-26.

<sup>1007</sup> Transcript of 26 November 2004, TF2-088, pp. 27-28.

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so,<sup>1008</sup> Joseph Kulagbanda, Sundifu Samuka and John Rainbo placed him flat on the ground. He was stripped naked while his hands were tied behind his back with FM rope brought by Gibril Mansaray. A mixture of charcoal powder with clay, ash and water brought by James Bundu was put all over the TF2-088's body and pepper was rubbed into his genitals.<sup>1009</sup>

521. James Bundu stepped on TF2-088's stomach and took 41,000 leones that TF2-088 had in his shirt.<sup>1010</sup> James Bundu accused TF2-088 of being a thief and then each of his 13 commanders lashed TF2-088 10 times. TF2-088 was released when his wife's sister paid 5000 leones, which the Kamajors had requested for his release.<sup>1011</sup>

#### 2.5.7.2. Crimes Occurring in Kpetewoma in Valunia Chiefdom in April 1999

##### *2.5.7.2.1. Killing of TF2-088's Son*

522. Late in the evening of 22 April 1999, while TF2-088 was with his son in Kpetewoma village, he heard and saw his son screaming while being held by Kamajors.<sup>1012</sup> There was a gunshot, then a Kamajor named Borbor Aruna cut TF2-088's son's throat with a machete. His son was bleeding from the throat and gasping. There was a celebration in Gumahun after the Kamajors killed his son.<sup>1013</sup> TF2-088 went to the swamp where he saw his son's body. The Kamajors had cut his son open from the throat to the penis and had removed his internal organs, including the heart, lungs and intestines.<sup>1014</sup> The body of his son was burnt in the presence of many commanders including Gibril Mansaray, James Bundu, David Joseph, Sundifu Samuka and Chief Mulai Abu of Nyandehun.<sup>1015</sup>

523. On 24 April 1999, TF2-088 was shown a written notice by Gibril Mansaray. The notice was addressed to checkpoint commanders in the Gumahun area. It contained an order for the killing of TF2-088's son.

<sup>1008</sup> Transcript of 26 November 2004, TF2-088, pp. 32-33.

<sup>1009</sup> Transcript of 26 November 2004, TF2-088, pp. 33-35.

<sup>1010</sup> Transcript of 26 November 2004, TF2-088, pp. 35-36.

<sup>1011</sup> Transcript of 26 November 2004, TF2-088, pp. 35-36.

<sup>1012</sup> Transcript of 26 November 2004, TF2-088, pp. 38-40.

<sup>1013</sup> Transcript of 26 November 2004, TF2-088, pp. 41-43.

<sup>1014</sup> Transcript of 26 November 2004, TF2-088, pp. 44-46; TF2-088 did not do anything to the body because there was a law that if the Kamajors had killed somebody, no civilian had the right to move the body. Transcript of 26 November 2004, TF2-088, p. 46.

<sup>1015</sup> Transcript of 26 November 2004, TF2-088, pp. 47.

524. TF2-088 later learned that the ash from his son's corpse was used to perform the last initiation in Mongere Town in Norman's compound.<sup>1016</sup> After this initiation the Kamajors went to TF2-088's home and beat his children and several Limba people staying at his house. The Kamajors demanded food and took all of TF2-088's property, 250,000 leones of his money and burnt down one of his houses.<sup>1017</sup>

### 2.5.7.3. Reporting of Crimes

#### 2.5.7.3.1. *Report to Hassan Sheriff*

525. On 24 April 1999, TF2-088 reported all the crimes that he knew of the Kamajors committing to Alhaji Hassan Sheriff.<sup>1018</sup> Sheriff told TF2-088 that Sam Hinga Norman had ordered a ceasefire which meant that Kamajors were not supposed to kill anyone.<sup>1019</sup> As the war was over, the Kamajors were told to stop harassing civilians.<sup>1020</sup>

526. On 27 April 1999, two days after Earnest Blango Kandapa completed investigating crimes that had allegedly been committed by Kamajors, TF2-088 was invited to Gumahun court *barri*. Also present were James Bundu, Gibril Mansaray, Sundifu Samuka, Joseph Kulagbanda and Chief Mulai Abu. After listening to TF2-088's complaint, Kandapa asked whether this had in fact occurred. The Kamajor Commanders admitted to the crimes, however James Bundu commented that a "Kamajor never does wrong." These people were not punished.<sup>1021</sup>

527. TF2-088 estimated his financial loss as equivalent to two million leones, however he received only 20,000 leones and five gallons of oil. The Kamajors were instructed to give him 500,000 leones every two weeks, but they did not do so.<sup>1022</sup>

#### 2.5.7.3.2. *Report to Norman*

528. On 5 October 2001, TF2-088 travelled to Freetown. He made a written report about the killings he witnessed in Mongere and Gumahun to Norman and delivered it to Norman's wife at

<sup>1016</sup> Transcript of 26 November 2004, TF2-088, pp. 48-49.

<sup>1017</sup> Transcript of 26 November 2004, TF2-088, pp. 50-51.

<sup>1018</sup> Transcript of 26 November 2004, TF2-088, p. 52.

<sup>1019</sup> Transcript of 26 November 2004, TF2-088, pp. 52-54.

<sup>1020</sup> Transcript of 26 November 2004, TF2-088, pp. 77-78.

<sup>1021</sup> Transcript of 26 November 2004, TF2-088, pp. 62-66.

<sup>1022</sup> Transcript of 26 November 2004, TF2-088, pp. 67-68.







their Spur Road compound.<sup>1023</sup> Two days later, when TF2-088 returned to Norman's house, Norman's wife told TF2-088 that Norman had done nothing. TF2-088 returned to his village.<sup>1024</sup>

2.5.7.3.3. *Meeting with Norman in Mongere*

529. In December 2001, Norman addressed Kamajors and civilians from his compound in Mongere. Norman said that he had come to warn the Kamajors that "when the war is over, anybody who had done something bad to his companion would regret it if the companion comes and overtakes him. Those days that you did those things, there were no places to report you, but [sic] now, the law is here." Norman cited TF2-088's complaint as an example. TF2-088 does not know of any instance where Kamajors were punished for what they did to him.<sup>1025</sup>

2.5.8. Fengehun, Kakua Chiefdom

530. Fengehun is a village located in Kakua Chiefdom in Bo District.<sup>1026</sup> It has a population of approximately 400 people.<sup>1027</sup> Soldiers, rebels and Kamajors all lived in Fengehun, but there was no fighting.<sup>1028</sup>

2.5.8.1. Crimes Committed in Fengehun

531. During the dry season of 1998, five Kamajors arrested TF2-007 and took him to the location where they held his father captive. TF2-007 saw his father tied with a rope around his waist. Part of his father's right ear had been cut off. TF2-007's father was surrounded by approximately ten Kamajors who were dancing.<sup>1029</sup>

532. TF2-007 was told by the Kamajors to say good-bye to his father. TF2-007's father was then tied and put inside a hut which was set on fire. After the burning, Kamajors decapitated TF2-007's father's corpse. Later in the day, TF2-007 saw the Kamajors dancing and holding a stick onto which they had attached his father's head. The Kamajors requested a token from TF2-007 in

<sup>1023</sup> Transcript of 26 November 2004, TF2-088, pp. 69-70; TF2-088 explained in the letter that Kamajors had killed many members of his family and that though he had wanted to make a report earlier he had been unable to do so. In 1997 and 1998 the police stations were banned, the courts were closed and there were no chairmen or chiefs passing decisions: see Transcript of 26 November 2004, TF2-088, pp. 69-70.

<sup>1024</sup> Transcript of 26 November 2004, TF2-088, pp. 69-70.

<sup>1025</sup> Transcript of 26 November 2004, TF2-088, pp. 75-76.

<sup>1026</sup> See Exhibit 37.

<sup>1027</sup> Transcript of 2 December 2004, TF2-007, pp. 43 and 75-76.

<sup>1028</sup> Transcript of 2 December 2004, TF2-007, pp. 45-48.

<sup>1029</sup> Transcript of 2 December 2004, TF2-007, pp. 50-53.

exchange for bringing his father's head but TF2-007 had nothing had to give them and they passed by.<sup>1030</sup> He did not see his father's body again.<sup>1031</sup>

#### 2.5.9. Killing of Jeneba and Juma Joe Betty by Vanjawai in Jiama Bongor Chiefdom, Bo District

533. Vandi Vanjawai was posted to a town called Gondama. He had authority in Soa Chiefdom, Jiama Bongor Chiefdom and Tikonko Chiefdom. Albert J Nallo made a report at Base Zero about two killings involving Vanjawai: the first was the killing of a pregnant woman named as Jeneba in Gbonima village and the second was having had his boys kill a man named Juma Joe Betty in Sulehun village. Albert J Nallo took Juma Joe Betty's elder brother Musa Joe Betty to Base Zero to report his brother's killing.<sup>1032</sup>

### 2.6. Bonthe District

#### 2.6.1. Background to Bonthe Town

534. In 1991, a unit of the Sierra Leone Navy was installed in Bonthe Town because rebels were threatening to invade. The unit had three gun boats.<sup>1033</sup> The Kamajors came to Bonthe for the first time during 1994 and 1995. At this time, the relationship between the Kamajors, the military and the civilians was cordial.<sup>1034</sup>

535. The Kamajors were based in villages near Bonthe Town. They were also installed on the mainland portion of Bonthe District.<sup>1035</sup> Immediately after the overthrow of Kabbah's government, the Kamajors living in Bonthe Town had to retreat to the surrounding villages.<sup>1036</sup> By this time the relationship between the civilians and the SLA had deteriorated; the SLA sometimes mistreated people and beat the civilians.<sup>1037</sup>

<sup>1030</sup> Transcript of 2 December 2004, TF2-007, pp. 57-59.

<sup>1031</sup> Transcript of 2 December 2004, TF2-007, pp. 71-72.

<sup>1032</sup> Transcript of 11 March 2005, Albert J Nallo, pp. 17-18.

<sup>1033</sup> Transcript of 12 November 2004, TF2-071, pp.5-6.

<sup>1034</sup> Transcript of 12 November 2004, TF2-071, pp. 6-7.

<sup>1035</sup> Transcript of 10 November 2004, Father Garrick, pp. 5-6.

<sup>1036</sup> Transcript of 11 November 2004, TF2-071, p. 49.

<sup>1037</sup> Transcript of 11 November 2004, TF2-071, pp. 49-50; Transcript of 12 November, TF2-071, pp. 17-18.

536. The Kamajors operating in Bonthe were of the Shebro tribe and were referred to as the Kassilla Battalion. These Kamajors were seamen and were called "sea devils".<sup>1038</sup>

537. Several meetings were held with the elders of Bonthe town in order to discuss the issue of the continuing harassment of civilians by Kamajors.<sup>1039</sup> On 16 August 1997, a delegation was sent to Kondewa at the Kamajor base at Tihun to discuss the matter.<sup>1040</sup>

538. On 15 September 1997, Kamajors entered Bonthe with the aim of seizing a military gunboat. However, the attack did not succeed and the Kamajors were repelled.<sup>1041</sup>

#### 2.6.2. Attack on Bonthe Town by Kamajors on 15 February 1998

539. On 14 February 1998, soldiers left Bonthe in a Sierra Leone Navy gunboat.<sup>1042</sup> The following morning, a group of approximately 300 to 500 Kamajors entered Bonthe.<sup>1043</sup> The Kamajors came from three chiefdoms, including Sittia and Nongoba Bullom.<sup>1044</sup> Some of the Kamajors were armed with guns and were dressed in the Kamajor uniform with charms and mirrors attached.<sup>1045</sup> The Kamajors fired their guns and sang poro songs and advanced towards Bonthe Town.<sup>1046</sup> They gathered all the civilians in Bonthe at the Sierra Leone Navy Base.<sup>1047</sup>

#### 2.6.3. Crimes committed by Kamajors after arrival

##### 2.6.3.1. 15 February 1998

##### 2.6.3.1.1. *Looting*

540. On 15 February 1998, Kamajor commander Lamina Gbokambama and his men looted household items and equipment from the Bonthe Technical College, the Bonthe Holiday Complex, the government building, the Police station, the state prison, the district office, the

<sup>1038</sup> Transcript of 30 January 2006, Norman, p. 11.

<sup>1039</sup> Transcript of 10 November 2004, Father Garrick, pp. 6-7.

<sup>1040</sup> Transcript of 10 November 2004, Father Garrick, pp. 10-12; Transcript of 11 November 2004, TF2-071, pp. 50-51; see also section V.2.2.2.5.

<sup>1041</sup> Transcript of 9 November 2004, TF2-116, p. 6; Transcript of 10 November 2004, Father Garrick, p. 33.

<sup>1042</sup> Transcript of 9 November 2004, TF2-116, pp. 7-8.

<sup>1043</sup> Transcript of 11 November 2004, TF2-071, pp. 76-77; Transcript of 9 November 2004, TF2-116, pp. 8-9; Transcript of 10 November 2004, Father Garrick, p. 33.

<sup>1044</sup> Transcript of 11 November 2004, TF2-071, p. 76; Transcript of 11 November 2004, Father Garrick, p. 14.

<sup>1045</sup> Transcript of 9 November 2004, TF2-116, p.8.

<sup>1046</sup> Transcript of 9 November 2004, TF2-116, p. 9.

<sup>1047</sup> Transcript of 11 November 2004, TF2-071, p. 77.

elections office, the Ministry of Works and the Fisheries Department, the Post Office and the telecommunications department.<sup>1048</sup> After they finished looting, Lamin Gbokambama announced that he was now the Chief of Bonthe.<sup>1049</sup> At the Fisheries Department Building, Father Garrick pleaded with a young Kamajor called Commander Rambo Conteh to have his Kamajors leave things intact. Rambo answered that they only wanted to take the fuel and then they would leave.<sup>1050</sup>

#### 2.6.3.1.2. *Killing of Kpana Manso*

541. On the same day a Sherbro fisherman, Kpana Manso, was shot by Beigeh, the Kamajor Commander of the invading force.<sup>1051</sup> Kpana Manso was killed because he was wrongfully blamed for being the father of the soldiers.<sup>1052</sup> Baigeh said he was the Battalion Commander of the Kamajor naval battalion, also referred to as the Kassilla Battalion. He said, "From now on Bonthe is under the control of the Kamajors, headed by [...] Commander Morie Jusu Kamara."<sup>1053</sup>

542. After the attack on Bonthe, Kamajor leaders including Nabie Koroma and Chief Sei Mani, Section Chief in Sittia Chiefdom, arrived in Bonthe from Bendu Cha. Father Garrick made a report to them about lootings and killings by Kamajors in Bonthe. Nabie Koroma and Chief Sei Mani said that they would wait until the arrival of Battalion Commander Mori Jusu Kamara before taking any action.<sup>1054</sup>

#### 2.6.3.2. 16 February 1998

##### 2.6.3.2.1. *Looting in Bonthe*

543. On 16 February 1998, a house in Bonthe was looted and vandalized by Commander Julius Squire of Bendu Cha and his troops. These Kamajors took 17,900,000 leones from TF2-116's

<sup>1048</sup> Transcript of 10 November 2004, Father Garrick, pp. 35 and 50-51.

<sup>1049</sup> Transcript of 10 November 2004, Father Garrick, p. 51.

<sup>1050</sup> Transcript of 11 November 2004, TF2-071, p. 77; Transcript of 10 November 2004, Father Garrick, p. 51.

<sup>1051</sup> Transcript of 11 November 2004, TF2-071, p. 77; Transcript of 10 November 2004, Father Garrick, pp. 36-37; Transcript of 9 November 2004, TF2-116, p. 13.

<sup>1052</sup> Transcript of 9 November 2004, TF2-116, p. 14.

<sup>1053</sup> Transcript of 10 November 2004, Father Garrick, pp. 37-38.

<sup>1054</sup> Transcript of 10 November 2004, Father Garrick, pp. 47-48.

house.<sup>1055</sup> Commander Julius Squire directed his men to transport the looted items to his house a few yards away on Nathan Street.<sup>1056</sup>

544. On the same day the Kamajors looted materials and drugs from the government hospital and household materials from the doctors' quarters.<sup>1057</sup>

#### 2.6.3.2.2. Killings in Bonthe

545. On 16 February 1998, a young man named Abu Samukah Mampeh was shot by Kamajors.<sup>1058</sup> His corpse was left at the junction of Medina Street and Lime Street.<sup>1059</sup> It had been mutilated by the amputation of his arms.<sup>1060</sup>

546. On the same day, a fisherman named Kondor Bantiamor was killed by Kamajors on the shore.<sup>1061</sup>

547. On 16 February 1998 Kamajors announced a meeting at the St. Patrick Parish's Compound.<sup>1062</sup> Morie Jusu, the District Battalion Commander, was present at the meeting. Commander Julius Squire, the secretary and spokesman for the meeting, announced that the Kamajors were looking for three collaborators.<sup>1063</sup>

548. At the same meeting, TF2-116 was singled out and placed in the circle by the Kamajors. The Kamajors told TF2-116 that he should be killed.<sup>1064</sup> Commander Julius Squire blamed TF2-116 for being a member of a working Committee which had cooperated with the junta forces.<sup>1065</sup> Julius Squire said that TF2-116 should be killed for this cooperation. District Commander Mori Jusu intervened and said he saw no truth in the allegation and that the killing should be stopped. Kamajor Commander Rambo Conteh insisted that if the District Commander stopped him from

<sup>1055</sup> Transcript of 9 November 2004, TF2-116, pp. 26-28.

<sup>1056</sup> Transcript of 9 November 2004, TF2-116, pp. 26-27.

<sup>1057</sup> Transcript of 10 November 2004, Father Garrick, pp. 41-43.

<sup>1058</sup> Transcript of 9 November 2004, TF2-116, p.18; Transcript of 10 November 2004, Father Garrick, pp. 40-41.

<sup>1059</sup> Transcript of 9 November 2004, TF2-116, p.18; Transcript of 10 November 2004, Father Garrick, pp. 40-41.

<sup>1060</sup> Transcript of 9 November 2004, TF2-116, p.18.

<sup>1061</sup> Transcript of 10 November 2004, Father Garrick, p. 43.

<sup>1062</sup> Transcript of 9 November 2004, TF2-116, pp. 14-15.

<sup>1063</sup> Transcript of 9 November 2004, TF2-116, pp. 16-17.

<sup>1064</sup> Transcript of 9 November 2004, TF2-116, pp.18-20 and 44-47.

<sup>1065</sup> Transcript of 9 November 2004, TF2-116, p. 20.

killing TF2-116, he would surely kill someone else so that it would go on record that he spilled human blood on the soil of Bonthe.<sup>1066</sup>

549. At the same meeting a boy named Bendeh Battiana was accused of being a collaborator. The boy was trapped by Alfred Bobby and dragged to Heddy Road and shot. Rambo Conteh came back to the meeting and said that he was not satisfied, but at least he had spilled human blood on the soil of Bonthe. Rambo Conteh killed the boy.<sup>1067</sup>

550. District Commander Mori Jusu said that no one else would be killed, but that the civilians had to pay 100,000 leones for each of the 14 people that were at the meeting. Father Garrick paid a sum of money and guaranteed that the rest would also be paid.<sup>1068</sup>

#### 2.6.3.3. Killing of Abu Conteh on 17 February 1998

551. On 17 February 1998, a tailor named Abu Conteh was shot at the St. Joseph's Secondary School by Kamajors from Sittia Chiefdom.<sup>1069</sup> He was killed because he was suspected to have prepared talismans and magical concoctions to protect the Soldiers.<sup>1070</sup> The District Commander Mori Jusu was informed that one of his Kamajors had killed Abu Conteh.<sup>1071</sup> Although Mori Jusu was a disciplinarian "in his own right", he did not punish his Kamajors.<sup>1072</sup>

#### 2.6.3.4. Case of Lahai Koroma/Actions by Kondewa

552. On 15 February, Kamajors looked for Lahai Ndokoi Koroma, a Chiefdom Speaker, in the Catholic mission,<sup>1073</sup> who was accused of being a junta collaborator.<sup>1074</sup> They threatened to kill everyone if Lahai Ndokoi Koroma was not produced.<sup>1075</sup> He was captured by Kamajors, stripped naked and tied.<sup>1076</sup> Three delegations came from Base Zero, Talia, to investigate the matter. The first delegation was led by Imam Fuad; the second was led by Commander Vanjawai acting under

<sup>1066</sup> Transcript of 9 November 2004, TF2-116, p. 21.

<sup>1067</sup> Transcript of 9 November 2004, TF2-116, pp. 21-22.

<sup>1068</sup> Transcript of 9 November 2004, TF2-116, p. 23.

<sup>1069</sup> Transcript of 10 November 2004, Father Garrick, p.46; Transcript of 9 November 2004, TF2-116, pp. 24-25.

<sup>1070</sup> Transcript of 10 November 2004, Father Garrick, pp.46-47.

<sup>1071</sup> Transcript of 10 November 2004, Father Garrick, p. 47.

<sup>1072</sup> Transcript of 9 November 2004, TF2-116, p. 46.

<sup>1073</sup> Transcript of 10 November 2004, Father Garrick, pp. 58-59; Transcript of 11 November 2004, TF2-071, p. 78; Transcript of 11 November 2004, Father Garrick, pp. 22-24.

<sup>1074</sup> Transcript of 11 November 2004, Father Garrick, pp. 20-22.

<sup>1075</sup> Transcript of 11 November 2004, TF2-071, p. 78.

<sup>1076</sup> Transcript of 11 November 2004, TF2-071, p. 80.

instructions of Kondewa.<sup>1077</sup> The first delegation told the people of Bonthe that their fate depended on Kondewa and asked to be paid 400,000 leones.<sup>1078</sup> Both delegations asked Father Garrick to pay for those who had a relationship with soldiers; they threatened that if he did not pay they would kill those people.<sup>1079</sup>

553. On 1 March 1998,<sup>1080</sup> a third group of Kamajors came to Bonthe under the leadership of Kondewa. At a public meeting Kondewa said that he had not allowed his men to enter Bonthe, but that they had not listened to his advice and had done what they had done. Kondewa apologized on their behalf. Kondewa also told those assembled that they should forget about ECOMOG, as they were not responsible for Bonthe. Kondewa said that it was the Kamajors who were responsible for security in the area.<sup>1081</sup> He told Father Garrick that he was aware of the atrocities committed by the Kamajors and for this reason he wanted to get Lahai Ndokoi Koroma out of the country.<sup>1082</sup> Father Garrick paid 600,000 leones to Kondewa for the upkeep and security of Lahai Ndokoi Koroma.<sup>1083</sup> Kondewa left alone with Lahai Ndokoi Koroma and went to Talia; later he went to Bo.<sup>1084</sup> Only Kondewa had authority to release Lahai Koroma and claimed to kill without restraint and to send people to Mecca.<sup>1085</sup>

#### 2.6.4. Norman's Visit to Bonthe on 23 February 1998

554. Around 23 February 1998,<sup>1086</sup> Norman came by helicopter to Bonthe. He was accompanied by two ECOMOG officials. There was a celebration in Bonthe Town because the Kamajors had terrorized the civilians; it was expected that Norman had come to find a solution. At a public meeting at the Bonthe town hall Norman said, "Any complaint against the Kamajors is useless as [sic] they had fought and saved the nation. Working with the Kamajors was like working with the

<sup>1077</sup> Transcript of 11 November 2004, TF2-071, pp.81-82; Transcript of 10 November 2004, Father Garrick, p. 56.

<sup>1078</sup> Transcript of 11 November 2004, TF2-071, pp. 92-93.

<sup>1079</sup> Transcript of 10 November 2004, Father Garrick, pp. 54-56.

<sup>1080</sup> The meeting took place 14 days after the attack on 15 February 1998; Transcript of 9 November 2004, TF2-116, p. 57.

<sup>1081</sup> Transcript of 9 November 2004, TF2-116, pp. 30-31.

<sup>1082</sup> Transcript of 10 November 2004, Father Garrick, pp.58-59.

<sup>1083</sup> Transcript of 11 November 2004, TF2-071, pp. 92-93; Transcript of 12 November 2004, TF2-071, pp. 45-47 (CS); Transcript of 10 November 2004, Father Garrick, p. 60.

<sup>1084</sup> Transcript of 10 November 2004, Father Garrick, p. 62; Transcript of 12 November 2004, TF2-071, p. 37 (CS).

<sup>1085</sup> Transcript of 12 November 2004, TF2-071, pp. 46-47(CS).

<sup>1086</sup> Norman came eight days after the attack on Bonthe on 15 February 1998: Transcript of 11 November 2004, TF2-071, p.100.

cutlass [...] It cuts you, you drop it, and you pick it up again.” The people of Bonthe were disappointed by these words.<sup>1087</sup>

#### 2.6.5. Trip to Freetown in 1998 (March 1998)

555. In March 1998, a delegation left Bonthe for Freetown to see President Ahmad Tejan Kabbah and Solomon Berewa, the Attorney-General. The purpose of the trip was to complain about looting and killing by the Kamajors.<sup>1088</sup> Berewa wrote a letter<sup>1089</sup> addressed to the Kamajors in Bonthe.<sup>1090</sup> An ECOMOG officer told the delegation that Norman said that “his boys in Bonthe were under control”.<sup>1091</sup>

556. In Bonthe the letter from Solomon Berewa was given to Commander Morie Jusu Kamara who passed it on to his second in command, Julius Squire. Julius Squire said that he did not recognise the authority of the Attorney-General; he refused to accept the instructions in the letter, unless they came from Norman or Kondewa.<sup>1092</sup>

557. When Father Garrick returned to Bonthe from Freetown in March 1998, Battalion Commander Morie Jusu Kamara told Father Garrick that he would stop the Kamajors from mistreating Chief George Brandon, one of the people hidden at Father Garrick’s mission. However, he was not able to control the Kamajors.<sup>1093</sup>

#### 2.6.6. Crimes Committed Elsewhere in Bonthe District

##### 2.6.6.1. Mosandi, Molakaika, Bembay, Bolloh around 15 September 1997

558. One morning around 15 September 1997,<sup>1094</sup> 34 civilians went to the villages near Bonthe Town to collect food. They were captured by Kamajors and taken to Mosandi. Three of them were killed: Bockarie Kpaka, Junisa and Pa Samuel Kamara. The civilians of Bonthe then took cutlasses and spears and went to Mosandi to liberate the captured civilians. The civilians were supported by

<sup>1087</sup> Transcript of 11 November 2004, TF2-071, p. 94; Transcript of 9 November 2004, TF2-116, pp. 31-32.

<sup>1088</sup> Transcript of 11 November 2004, TF2-071, pp. 84-85; Transcript of 10 November 2004, Father Garrick, p. 64.

<sup>1089</sup> TF2-071 identified Exhibit 24 as this letter.

<sup>1090</sup> Transcript of 11 November 2004, TF2-071, pp. 84-85; Transcript of 10 November 2004, Father Garrick, pp. 64-65.

<sup>1091</sup> TF2-071, 11/11/04, pp. 87-88.

<sup>1092</sup> Transcript of 11 November 2004, TF2-071, p. 90.

<sup>1093</sup> Transcript of 10 November 2004, Father Garrick, pp. 65-66.

<sup>1094</sup> The Trial Chamber finds that TF2-071 narrated this incident and the following ones described in this section as happening around or after 15 September 1997, as these were the acts committed by Kamajors around this time: Transcript of 11 November 2004, TF2-071, p. 56.



the soldiers, who were in effective control of Bonthe at that time.<sup>1095</sup> They freed the remaining civilians and brought them to Bonthe Town.<sup>1096</sup>

559. Sometime after these killings at Mosandi, Mohamed Kamara, Brima, Chokoh, Konglebbie and his wife were captured by Kamajors at Molakaika. Three of them escaped but Mohammed Kamara was killed by the Kamajors.<sup>1097</sup> His corpse was found under a tree next to the bridge going towards Molakaika; his back had been split open.<sup>1098</sup>

560. On the same day, Kamajors burnt 27 houses in Bembay, a village of about 30 houses. Six of the houses belonged to Lahai Koroma. Sei Mani, who sent the Kamajors, came and apologized to TF2-071 for burning houses. The Kamajors then left for Mobayeh Village.<sup>1099</sup>

561. The civilians of Mobayeh fled into the bush after the Kamajors left, except for an old woman, named Musu Fai and a pregnant woman, named Jebbeh Kpaka. The Kamajors killed Musu Fai. They ordered Jebbeh Kpaka to accompany them with the looted properties. They then asked her to go back but before she left, the Kamajors stabbed her to death. Jebbeh Kpaka fell on her back.<sup>1100</sup>

562. Around the same time Kong Sam and Ndogbei, a blind man, were killed in Bolloh village by Kamajor Commander Adu Kai Ne Challey of Masanda Village. Kong Sam was cut and his belly was slit open.<sup>1101</sup>

#### 2.6.6.2. Crimes in Motumbo around March 1998

563. Around the beginning of March 1998, TF2-086 went with her business partner, Jitta, to Sebongie. On their way back to Bonthe many Kamajors, armed with machetes and guns, came out of the bush. TF2-086 was caught by five Kamajors, including Borbor from Motombo, Abu from Gondoma, Jitta from Mosebay and Baigeh from Mu. Abu Jakineh wounded TF2-086 with a cutlass on her head and wrist. Baigeh stabbed TF2-086's belly and cut her neck.<sup>1102</sup> Borbor said: "Look

<sup>1095</sup> Transcript of 11 November 2004, TF2-071, pp. 58-59 and 109.

<sup>1096</sup> Transcript of 11 November 2004, TF2-071, pp. 58-59.

<sup>1097</sup> Transcript of 11 November 2004, TF2-071, pp. 59-61.

<sup>1098</sup> Transcript of 11 November 2004, TF2-071, pp. 64-65.

<sup>1099</sup> Transcript of 11 November 2004, TF2-071, pp. 67-68.

<sup>1100</sup> Transcript of 11 November 2004, TF2-071, pp. 70-71.

<sup>1101</sup> Transcript of 11 November 2004, TF2-071, pp. 73-75.

<sup>1102</sup> Transcript of 8 November 2004, TF2-086, pp. 104-105, 111; Transcript of 11 November 2004, TF2-071, pp. 75-76.

how dead you are. Look how filthy. You are rebels. [...] They [sic] are very dirty, filthy people." TF2-086 responded that she was not a rebel. Baigeh Mu pierced TF2-086's stomach with a stick. The Kamajors then asked TF2-086 to bring money; they took 140,000 leones from Jitta and TF2-086.<sup>1103</sup> After taking the money the Kamajors took Jitta to the bush and killed her. Afterwards Baigeh cut TF2-086 again on her neck with the machete and stabbed her in the stomach. TF2-086 nearly died.<sup>1104</sup>

### 2.6.6.3. Killings at Gambia Village, Jong Chiefdom

#### 2.6.6.3.1. *Killing of Witness TF2-187's Uncle*

564. TF2-187's uncle reported to Kondewa that his initiates from Vaahun had uprooted his cassava. In response Kondewa sent his boys to arrest TF2-187's uncle. TF2-187's uncle was taken to the initiation bush and tied up. Melted plastic was dropped into his eyes until he died.<sup>1105</sup> Kondewa's deputy Sheku Kaillie, a.k.a. Bombowai, was present during the killing of TF2-187's uncle. No one gave instructions during the incident.<sup>1106</sup>

#### 2.6.6.3.2. *Killing of three pregnant women*

565. At the court *barri* in Gambia Village, as the Kamajors heard the sound of Norman's plane approaching, they split open the stomachs of three pregnant women and removed the fetuses, one after the other. The Kamajors decapitated the fetuses and put each of the skulls on a long stick. These were mounted "like a flag" at the junction which goes to Mattru.<sup>1107</sup> All three women died. Many civilians were present during this incident. Commander Sheku Kaillie was also present, but Norman had not yet arrived.<sup>1108</sup> After Norman arrived he went to see Kondewa at the society bush. The fetuses' heads had been put there for Norman to see. Later, the Kamajors removed the heads from the stick and smeared blood on their own faces. The Kamajors sang and celebrated as they went into town.<sup>1109</sup>

<sup>1103</sup> Transcript of 8 November 2004, TF2-086, pp. 94-97.

<sup>1104</sup> Transcript of 8 November 2004, TF2-086, pp. 98-100; Transcript of 11 November 2004, TF2-071, pp. 75-76.

<sup>1105</sup> Transcript of 1 June 2005, TF2-187, pp. 13-14. The Chamber finds that TF2-187 was inconsistent and uncertain with respect to the timing of these incidents.

<sup>1106</sup> Transcript of 1 June 2005, TF2-187, p. 15.

<sup>1107</sup> Transcript of 1 June 2005, TF2-187, pp. 16-20.

<sup>1108</sup> Transcript of 1 June 2005, TF2-187, pp. 29-31.

<sup>1109</sup> Transcript of 1 June 2005, TF2-187, pp. 32-34.

## 2.7. Kenema District

### 2.7.1. Background to Kenema

566. Kenema Town is the Headquarters Town for Kenema District.<sup>1110</sup> Prior to February 1998 the AFRC was in control of Kenema. They worked with the rebels.<sup>1111</sup>

567. SS Camp is in a village known as Tilorma in Nongowa Chiefdom, Kenema District.<sup>1112</sup> SS Camp is about five miles from Kenema on the Dama Road and is on the side of the Moa River closer to Kenema.<sup>1113</sup> The location of SS Camp is very strategic: it is on the main highway between Kenema and Liberia.<sup>1114</sup>

568. Prior to the Coup, Kamajors and soldiers worked together at SS Camp.<sup>1115</sup> SS Camp was a former water treatment facility.<sup>1116</sup> Although it was no longer used for this purpose, the buildings, including an office block and a deep pit, remained.<sup>1117</sup>

569. Blama is the Headquarters Town for Small-Bo Chiefdom in Kenema District.<sup>1118</sup> It is 12 miles east of Kenema on the Bo-Kenema Highway.<sup>1119</sup> After the Coup, the rebels took control of Blama.<sup>1120</sup> Under threat of death, the juntas forced the police to do the juntas' work.<sup>1121</sup>

570. Although the juntas left Blama on 11 February 1998, the Kamajors did not arrive until four days later. During this interval, no one was in control of Blama.<sup>1122</sup>

### 2.7.2. The Capture of SS Camp

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<sup>1110</sup> Exhibit 119B.

<sup>1111</sup> Transcript of 22 September 2004, TF2-151, pp. 7-8.

<sup>1112</sup> Transcript of 28 September 2004, TF2-201, p. 59 (CS); Transcript of 28 September 2004, TF2-223, p. 106(CS); Transcript of 24 May 2006, Lahai Koroma, p. 40; The name "SS Camp" stands for "Special Security Camp"; Transcript of 28 September 2004, TF2-223, p. 59 (CS).

<sup>1113</sup> Transcript of 25 May 2006, Mohamed Swaray, p. 112; Transcript of 24 May 2006, Lahai Koroma, pp. 36-37; Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 71; Transcript of 28 September 2004, TF2-223, p. 57(CS); Transcript of 04 May 2006, Arthur Koroma, p. 115.

<sup>1114</sup> Transcript of 28 September 2004, TF2-223, p. 59 (CS).

<sup>1115</sup> Transcript of 24 May 2006, Lahai Koroma, pp. 40-41.

<sup>1116</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 57; Transcript of 24 May 2006, Lahai Koroma, p. 40.

<sup>1117</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 58; Transcript of 4 May 2006, p. 115.

<sup>1118</sup> Exhibit 119B.

<sup>1119</sup> Transcript of 27 September 2004, TF2-154, p. 47; Transcript of 30 September 2004, TF2-223, p. 41(CS).

<sup>1120</sup> Transcript of 24 September 2004, TF2-041, pp. 14-36.

<sup>1121</sup> Transcript of 24 September 2004, TF2-041, pp. 15-16.

<sup>1122</sup> Transcript of 24 September 2004, TF2-041, p. 13.

571. Mohamed Bhonie Koroma, a Battalion Commander, led the attack on SS Camp.<sup>1123</sup> Other Kamajors that participated in this attack included Mohamed Sara,<sup>1124</sup> Fallah Bindi,<sup>1125</sup> CO Sahr,<sup>1126</sup> and Stephen Lahai Fassay.<sup>1127</sup>

572. Kamajors attacked from the direction of Gofor and took SS Camp easily. Although there was some exchange of fire at the Moa River Bridge, the soldiers fled SS Camp when the Kamajors approached.<sup>1128</sup>

573. SS Camp was taken approximately one week before Kenema.<sup>1129</sup> When the Kamajors took over SS Camp, they found guns, ammunition and food.<sup>1130</sup> During the week after the Kamajors captured SS Camp, soldiers and rebels attacked it repeatedly but were unsuccessful in regaining control of the camp.<sup>1131</sup>

#### 2.7.2.1. Administration of SS Camp

574. Mohamed Bhonie Koroma left SS Camp to attack Kenema on 15 February 1998.<sup>1132</sup> When he left, Stephen Lahai Fassay replaced him as the Kamajor boss.<sup>1133</sup> Fassay maintained this position at least until May 1998.<sup>1134</sup>

575. ECOMOG arrived at SS Camp on approximately 15 February 1998.<sup>1135</sup> ECOMOG stayed at SS Camp from the time they arrived until disarmament.<sup>1136</sup>

<sup>1123</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 13; Transcript of 23 May 2006, Fallah Bindi, p. 63, and 71; Transcript of 25 May 2006, Mohamed Swaray, p. 103; Transcript of 26 May 2006, Mohamed Swaray, p. 26.

<sup>1124</sup> Transcript of 26 May 2006, Mohamed Swaray, p. 10 and 22-27; Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 14.

<sup>1125</sup> Transcript of 23 May 2006, Fallah Bindin, pp. 62-63; Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 14.

<sup>1126</sup> Transcript of 26 May 2006, Mohamed Swaray, p. 44; Transcript of 25 May 2006, Lahai Koroma, p. 11.

<sup>1127</sup> Transcript of 4 May 2006, Arthur Koroma, pp. 54-55; Transcript of 26 May 2006, Mohamed Swaray, p. 14. and.47-48.

<sup>1128</sup> Transcript of 23 May 2006, Fallah Bindi, pp. 62-63.

<sup>1129</sup> Transcript of 23 May 2006, Fallah Bindi, p. 63 (Testified that they went to Kenema on 15 February and that they had been at SS Camp for one week at that time.) See also Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 51 and p. 73; Transcript of 4 May 2006, Arthur Koroma, pp. 54-55; Transcript of 25 May 2006, Mohamed Swaray, p. 104.

<sup>1130</sup> Transcript of 23 May 2006, Fallah Bindi, p. 63; Transcript of 25 May 2006, Mohamed Swaray, p. 105; Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 13; Transcript of 24 May 2006, Lahai Koroma, p. 49.

<sup>1131</sup> Transcript of 23 May 2006, Fallah Bindi, p. 63; Transcript of 24 May 2006, Lahai Koroma, p. 50; Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 14 and p. 51; Transcript of 25 May 2006, Mohamed Swaray, p. 105.

<sup>1132</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 73.

<sup>1133</sup> Transcript of 26 May 2006, Mohamed Swaray, pp. 13-14 and 44-45; Transcript of 23 February 2006, Ishmael Koroma, p. 54.

<sup>1134</sup> Transcript of 04 May 2006, Arthur Koroma, pp. 54 and 105-109.

2.7.3. Crimes Committed in or around Blama on 15 and 16 February 1998

576. Kamajors entered Blama on Sunday, 15 February 1998.<sup>1137</sup> Key commanders in this attack included Alhaji Bockarie, Sau Vibbie and Foday Saidu.<sup>1138</sup>

2.7.3.1. Mistreatment of and Threats to Kill TF2-041; Killing of Sergeant Fosana

577. Kamajors fired into the air as they entered the police barracks in Blama. TF2-021 was frightened, so he went and hid in the bush outside the town.<sup>1139</sup> That evening, Kamajors searched the bush and found TF2-041. They brought him to a Kamajor CO at Koribondo Road who became angry and hit TF2-041 in the face with a stick, breaking one of his teeth.<sup>1140</sup>

578. Kamajors then took TF2-041 and Sergeant Fosana to Alhaji Medama, the Ground Commander in Blama.<sup>1141</sup> On the way there, the Kamajors beat TF2-041 and told him that Norman had instructed that police should be killed.<sup>1142</sup>

579. In Blama, the Ground Commander dismissed TF2-041 and Sergeant Fosana with a wave of his hand. TF2-041 and Sergeant Fosana were taken to the back of a house where Kamajors discussed how to kill them.<sup>1143</sup> Sergeant Fosana was killed.<sup>1144</sup> TF2-041 was cut with a knife; he lost consciousness and was left for dead.<sup>1145</sup>

580. After some time, TF2-041 woke up and returned to the bush to hide.<sup>1146</sup> Over the course of a week, he walked 12 miles to a village with a hospital.<sup>1147</sup> Some Kamajors in the village threatened to kill TF2-041 but the town Chief intervened on his behalf.<sup>1148</sup> TF2-041 was taken to Blama for

<sup>1135</sup> Transcript of 26 May 2006, Mohamed Swaray, pp. 45-50; Transcript of 24 May 2006, Lahai Koroma, p. 53; Transcript of 25 May 2006, Lahai Koroma, pp. 16-17; Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 51-52.

<sup>1136</sup> Transcript of 24 May 2006, Lahai Koroma, pp. 54.

<sup>1137</sup> Transcript of 24 September 2004, TF2-041, pp. 13-14, 18 and 73 (CS); Transcript of 04 May 2006, Arthur Koroma, p. 55.

<sup>1138</sup> Transcript of 04 May 2006, Arthur Koroma, p. 55.

<sup>1139</sup> Transcript of 24 September 2004, TF2-041, pp. 16 and 19.

<sup>1140</sup> Transcript of 24 September 2004, TF2-041, pp. 20, 22 and 41.

<sup>1141</sup> Transcript of 24 September 2004, TF2-041, pp. 22-23, 42 and 53 (CS).

<sup>1142</sup> Transcript of 24 September 2004, TF2-041, pp. 22-23, 42 and 73, (CS).

<sup>1143</sup> Transcript of 24 September 2004, TF2-041, pp. 23-24.

<sup>1144</sup> Transcript of 24 September 2004, TF2-041, pp. 33 and 53(CS).

<sup>1145</sup> Transcript of 24 September 2004, TF2-041, p. 30.

<sup>1146</sup> Transcript of 24 September 2004, TF2-041, pp. 30-31, 65 and 68 (CS).

<sup>1147</sup> Transcript of 24 September 2004, TF2-041, pp. 31 and 69.

<sup>1148</sup> Transcript of 24 September 2004, TF2-041, pp. 31 and 69 (CS).

treatment; on the way there, the Kamajors escorting him again threatened to kill him but TF2-041 begged for his life and was spared.<sup>1149</sup>

2.7.3.2. Unlawful Killing of a Temne man

581. On Monday 16 February 1998, TF2-154 fled with her family from Kenema to Blama.<sup>1150</sup> Kamajors separated all those who arrived in Blama into straight lines according to their tribe.<sup>1151</sup> The Kamajors said that "Temnes are all relatives of Sankoh" and that "Sankoh [...] brought the war".<sup>1152</sup> A man tried to run from the Temne line but was caught and decapitated with a cutlass. His head was put on a stick and a cigarette was put in his mouth. The Kamajors sang and danced with this man's head.<sup>1153</sup>

2.7.4. Arrival of Kamajors in Kenema on 15 February 1998

582. Kamajors took control of Kenema Town on Sunday, 15 February 1998.<sup>1154</sup> Mohamed Bhonie Koroma led the first battalion of Kamajors, which entered Kenema from the direction of SS Camp.<sup>1155</sup> Twenty to thirty units from different sections, comprising at least one thousand Kamajors, entered Kenema on the same day.<sup>1156</sup> The rebels were not in Kenema when the Kamajors arrived, so the Kamajors captured it easily, without firing shots.<sup>1157</sup> The Kamajors found ammunition, food, and guns at the Brigade in Kenema and they took these things.<sup>1158</sup>

583. Many police officers watched the Kamajors enter Kenema from a position near the police barracks on Hangha Road. The Kamajors entering Kenema wore cotton cloths with talismans

<sup>1149</sup> Transcript of 24 September 2004, TF2-041, pp. 32 and 70-71.

<sup>1150</sup> Transcript of 27 September 2004, TF2-154, pp. 47-48.

<sup>1151</sup> Transcript of 27 September 2004, TF2-154, p. 48.

<sup>1152</sup> Transcript of 27 September 2004, TF2-154, p. 49.

<sup>1153</sup> Transcript of 27 September 2004, TF2-154, pp. 49-50.

<sup>1154</sup> Transcript of 23 May 2006, Fallah Bindi, p. 64; Transcript of 17 September 2004, TF2-042, p. 96; Transcript of 23 September 2004, TF2-039, p. 95; Transcript of 20 September 2004, TF2-033, pp. 7-8; Transcript of 27 September 2004, TF2-154, p. 41; Transcript of 3 May 2006, Arthur Koroma, p. 33; Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 18; Transcript of 23 May 2006, Brima Moriba, pp. 13-14.

<sup>1155</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 73.

<sup>1156</sup> Transcript of 30 September 2004, TF2-223, p. 60 (CS); Transcript of 17 September 2004, TF2-042, pp. 99-100; Transcript of 27 September 2004, TF2-154, p. 41.

<sup>1157</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 19.

<sup>1158</sup> Transcript of 24 May 2006, Fallah Bindi, p. 5.





("ronkos").<sup>1159</sup> They were armed with guns, sticks, machetes and cutlasses.<sup>1160</sup> As they marched, they sang Kamajor songs.<sup>1161</sup>

#### 2.7.5. Crimes Committed in Kenema Town on Sunday, 15 February 1998

##### 2.7.5.1. Killing of Two Young Tenants at TF2-154's Father's House

584. From the house of a neighbour, directly across the street from her father's house, TF2-154 watched Kamajors surround her home. She heard them say that they had come to kill her father and her family and to burn the house.<sup>1162</sup>

585. TF2-154 observed that Kamajors launched an RPG into her father's house and two young male tenants came running out.<sup>1163</sup> The tenants, who were aged approximately 19 and 22, were not related to TF2-154.<sup>1164</sup> Although both young men protested that they were not part of the junta, they were killed by the Kamajors.<sup>1165</sup> The Kamajors set TF2-154's father's house on fire.<sup>1166</sup>

##### 2.7.5.2. Killing of Police Officers at the Kenema Police Barracks

###### 2.7.5.2.1. *Arrival of Kamajors at the Police Barracks*

586. On the morning of 15 February 1998, more than one hundred Kamajors entered Kenema via Sanoh Street and Suppui Street and went to the barracks.<sup>1167</sup> Some of the Kamajors were in traditional dress and had something smeared on their faces.<sup>1168</sup> They were armed with guns, bows and cutlasses.<sup>1169</sup> Gunshots were fired; after quite some time, they ceased.<sup>1170</sup>

###### 2.7.5.2.2. *The Killing of Sergeant Mason, Corporal Fandai and Momoh Tawol*

<sup>1159</sup> Transcript of 27 September 2004, TF2-154, p. 41.

<sup>1160</sup> Transcript of 17 September 2004, TF2-042, p. 100; Transcript of 20 September 2004, TF2-033, p. 8; Transcript of 27 September 2004, TF2-154, p. 41.

<sup>1161</sup> Transcript of 20 September 2004, TF2-033, p. 8.

<sup>1162</sup> Transcript of 27 September 2004, TF2-154, pp. 42 and 82-83.

<sup>1163</sup> Transcript of 27 September 2004, TF2-154, pp. 42-43, and 103-104.

<sup>1164</sup> Transcript of 27 September 2004, TF2-154, pp. 43 and 55.

<sup>1165</sup> Transcript of 27 September 2004, TF2-154, pp. 43-46, 75, 104-105 and 135-136.

<sup>1166</sup> Transcript of 27 September 2004, TF2-154, pp. 44 and 104.

<sup>1167</sup> Transcript of 21 September 2004, TF2-040, p. 22; Transcript of 20 September 2004, TF2-033, p. 11.

<sup>1168</sup> Transcript of 21 September 2004, TF2-040, p. 23.

<sup>1169</sup> Transcript of 21 September 2004, TF2-040, p. 23.

<sup>1170</sup> Transcript of 21 September 2004, TF2-040, pp. 26 and 87; Transcript of 23 September 2004, TF2-039, p. 120.

587. Two Kamajors chased Sergeant Mason through the police barracks on 15 February 1998.<sup>1171</sup> One Kamajor with a gun shot Sergeant Mason three times.<sup>1172</sup> Sergeant Mason fell to the ground and another Kamajor chopped at his head and neck with a cutlass. Sergeant Mason died from the wounds inflicted by these Kamajors.<sup>1173</sup>

588. A group of Kamajors stopped Corporal Fandai and asked him who he was. Corporal Fandai responded that he was a police officer. The Kamajors, who were speaking in Krio, told Corporal Fandai that they wanted to kill him. Corporal Fandai asked for time to pray but was shot three times.<sup>1174</sup> Corporal Fandai's corpse was found on the ground near his home.<sup>1175</sup>

589. Momoh Tawol was sitting on his veranda when Corporal Fandai was killed. He asked in Krio who had fired; one of the Kamajors responded in Krio that they had made a mistake. One of the Kamajors then shot Momoh Tawol four times. Momoh Tawol fell on his knees and was shot three more times. The same Kamajor who had chopped at Sergeant Mason's head chopped at Tawol's head and neck.<sup>1176</sup> Momoh Tawol's corpse was left outside near his home.<sup>1177</sup>

590. The same group of Kamajors killed Sergeant Mason, Corporal Fandai and Momoh Tawol.<sup>1178</sup>

2.7.5.2.3. *The Killing of Sergeant Turay*

591. TF2-039, a police officer, was stopped by a group of Kamajors that came to Kenema on Sunday morning, 15 February 1998.<sup>1179</sup> While the Kamajors were questioning him, Sergeant Turay came up to the group of Kamajors and was identified by one of them as the police supervisor.<sup>1180</sup> Sergeant Turay raised his hand to show the Kamajors an identification card and Brima Massaquoi,

<sup>1171</sup> Transcript of 20 September 2004, TF2-033, pp. 7 and 11-12.

<sup>1172</sup> Transcript of 20 September 2004, TF2-033, p. 12.

<sup>1173</sup> Transcript of 20 September 2004, TF2-033, p. 12; Transcript of 17 September 2004, TF2-042, p. 102; Transcript of 21 September 2004, TF2-040, p. 28.

<sup>1174</sup> Transcript of 20 September 2004, TF2-033, pp. 13-15.

<sup>1175</sup> Transcript of 21 September 2004, TF2-040, p. 28.

<sup>1176</sup> Transcript of 20 September 2004, TF2-033, pp. 15-16.

<sup>1177</sup> Transcript of 21 September 2004, TF2-040, p. 28; Transcript of 23 September 2004, TF2-039, p. 109.

<sup>1178</sup> Transcript of 20 September 2004, TF2-033, p. 17.

<sup>1179</sup> Transcript of 23 September 2004, TF2-039, pp. 97-98, and 100; Transcript of 27 September 2004, TF2-042, pp. 59-60.

<sup>1180</sup> Transcript of 23 September 2004, TF2-039, p. 103.



a Kamajor commander, chopped his hand.<sup>1181</sup> Sergeant Turay begged for his life and started backing up but Brima Massaquoi ordered the Kamajors to fire.<sup>1182</sup> Sergeant Turay was hit in the neck and did not get up again because there was constant firing.<sup>1183</sup> He died from wounds inflicted by the Kamajors.<sup>1184</sup>

2.7.5.2.4. *The Killing of SI Mimor*

592. SI Mimor, who was partially paralyzed, was limping towards his quarters when he was spotted by Kamajors who shouted in Krio, “[l]ook, at the policeman [...] that we’ve been [sic] looking for.” One of the Kamajors took his cutlass and chopped SI Mimor on his arm and leg. SI Mimor fell down, bleeding.<sup>1185</sup> His corpse was left outside.<sup>1186</sup>

2.7.5.2.5. *The Killing of OC Kano and Desmond Pratt*

593. OC Kano and Desmond Pratt were stopped and questioned by Kamajors as they walked across the police football field.<sup>1187</sup> OC Kano produced an identity card. After examining the card the Kamajors shot OC Kanu and Desmond Pratt.<sup>1188</sup> Desmond Pratt’s corpse was left outside.<sup>1189</sup>

2.7.5.3. Looting of TF2-033’s House

594. Armed Kamajors came to TF2-033’s house in the police barracks and threatened his life.<sup>1190</sup> The Kamajors grabbed his property and said they would return to collect the things that they had grabbed.<sup>1191</sup>

2.7.6. Fighting in Kenema Town on 16 February 1998

<sup>1181</sup> Transcript of 23 September 2004, TF2-039, pp. 103, 117-119.

<sup>1182</sup> Transcript of 23 September 2004, TF2-039, p. 104.

<sup>1183</sup> Transcript of 23 September 2004, TF2-039, p. 105; Transcript of 17 September 2004, TF2-042, pp. 64-67.

<sup>1184</sup> Transcript of 23 September 2004, TF2-039, p. 107; TF2-040 saw Sergeant Turay’s corpse: Transcript of 21 September 2004, TF2-040, p. 28; Transcript of 23 September 2004, TF2-039, p. 107.

<sup>1185</sup> Transcript of 20 September 2004, TF2-033, pp. 25-26 and 125.

<sup>1186</sup> Transcript of 23 September 2004, TF2-039, p. 109.

<sup>1187</sup> Transcript of 17 September 2004, TF2-042, pp. 64-67.

<sup>1188</sup> Transcript of 17 September 2004, TF2-042, pp. 64-67; Transcript of 20 September 2004, TF2-033, p. 27; Transcript of 20 September 2004, TF2-039, p. 108.

<sup>1189</sup> Transcript of 21 September 2004, TF2-040, p. 28; Transcript of 21 September 2004, TF2-040, p. 28; Transcript of 20 September 2004, TF2-033, p. 27; Transcript of 21 September 2004, TF2-040, p. 28.

<sup>1190</sup> Transcript of 20 September 2004, TF2-033, pp. 23-25 and 77.

<sup>1191</sup> Transcript of 20 September 2004, TF2-033, pp. 23-25 and 77.

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595. On the morning of Monday, 16 February 1998,<sup>1192</sup> the juntas returned and attacked Kenema.<sup>1193</sup> There was heavy exchange of fire between Kamajors and rebels for several hours.<sup>1194</sup>

596. Some of the firing against Kamajors came from the direction of the police barracks on Hangha Road.<sup>1195</sup> Fallah Bindi recognized policemen among the rebels that were shooting at the Kamajors: the police were wearing their blue uniforms, which had insignia on the shoulders and the trousers.<sup>1196</sup>

597. Eventually, the rebels were pushed out of Kenema.<sup>1197</sup> After they left, Kamajors established checkpoints and began patrolling the town.<sup>1198</sup>

598. Houses were burnt in Kenema during the fighting.<sup>1199</sup> Some of these houses were burnt by civilians because juntas were alleged to have lived there.<sup>1200</sup> Others were burnt by rebels as they retreated from Kenema.<sup>1201</sup>

## 2.7.7. Crimes Committed in Kenema Town on and after Monday, 16 February 1998

### 2.7.7.1. Killing of Police Officers at the Kenema Barracks

<sup>1192</sup> Transcript of 27 September 2004, TF2-154, p. 47.

<sup>1193</sup> Transcript of 27 September 2004, TF2-154, p. 47; Transcript of 25 May 2006, Lahai Koroma, pp. 14-15; Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 19-20; Transcript of 24 May 2006, Fallah Bindi, p. 65; Transcript of 23 May 2006, Brima Moriba, pp. 19-20 and 28-29; Transcript of 25 May 2006, Mohamed Swaray, p. 106.

<sup>1194</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 19-20; Transcript of 2 November 2004, TF2-021, p. 68; Transcript of 24 May 2006, Fallah Bindi, pp. 7-8 and p. 65; Transcript of 23 May 2006, Brima Moriba, pp. 13-14 and 17-20; Transcript of 28 September 2004, TF2-223, pp. 88-89 (CS); Transcript of 26 May 2006, Mohamed Kineh Swaray, pp. 17-18.

<sup>1195</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 19-20; Transcript of 28 September 2004, TF2-223, pp. 88-89 (CS); Transcript of 24 May 2006, Fallah Bindi, pp. 7-8; Transcript of 25 May 2006, Mohamed Kineh Swaray, p. 107.

<sup>1196</sup> Transcript of 24 May 2006, Fallah Bindi, pp. 10-11.

<sup>1197</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 19-20; Transcript of 2 November 2004, TF2-021, p. 68; Transcript of 24 May 2006, Fallah Bindi, pp. 7-8 and 65; Transcript of 23 May 2006, Brima Moriba, pp. 13-14 and 17-20; Transcript of 28 September 2004, TF2-223, pp. 88-89 (CS); Transcript of 26 May 2006, Mohamed Kineh Swaray, pp. 17-18.

<sup>1198</sup> Transcript of 23 May 2006, Brima Moriba, pp. 13-14, and 17-20; Transcript of 22 May 2006, Mohamed Bhonie Koroma, p. 61.

<sup>1199</sup> Transcript of 25 May 2006, Lahai Koroma, pp. 15-16; Transcript of 28 September 2004, TF2-223, pp. 80-81 (CS).

<sup>1200</sup> Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 20-23 and 62-63; Transcript of 24 May 2006, Fallah Bindi, p. 6; Transcript of 24 May 2006, Lahai Koroma, pp. 51-52.

<sup>1201</sup> Transcript of 05 November 2004, TF2-201, pp. 90-91; Transcript of 27 September 2004, TF2-152, p. 101; Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 20-21.

599. On Monday, 16 February 1998, after driving off the rebels, Kamajors entered the Kenema Police Barracks and started searching the houses.<sup>1202</sup> A group of three Kamajors searched the houses and killed some policemen that were hiding under their beds.<sup>1203</sup> At least one body was taken outside and burnt in the field.<sup>1204</sup>

#### 2.7.7.2. Looting in Kenema

600. In February 1998, Kamajors looted the property of a Mr. Samai from his house on the outskirts of Kenema.<sup>1205</sup>

601. One day in late February 1998,<sup>1206</sup> armed Kamajors arrived at TF2-144's house on Kahunla Street in Kenema. TF2-144 and his family were told to vacate their house, as the Kamajors had come from Kailahun and planned to worship there. Through CO Foday, TF2-144 managed to secure the intervention of Kamoh Brima and the Kamajors left.<sup>1207</sup> Five days later, a different group of Kamajors entered TF2-144's house and started removing his belongings, including a mattress in which TF2-144 stored his money. TF2-144 offered to pay the Kamajors to bring back the mattress, but they refused and threatened to kill him if he didn't leave.<sup>1208</sup> The Kamajors left with TF2-144's property.<sup>1209</sup>

#### 2.7.7.3. Arrest and Mistreatment of TF2-151; Killing of Alleged Junta

602. In late February 1998,<sup>1210</sup> TF2-151 was asked to accompany some Kamajors to the CDF office on Kaisamba Terrace.<sup>1211</sup> As they reached the junction closest to the CDF office, TF2-151 saw a boy run from the CDF office. He was pursued by people who shouted, "[c]atch him, he's a

<sup>1202</sup> Transcript of 2 November 2004, TF2-021, p. 68; Transcript of 28 September 2004, TF2-223, pp. 88-89 (CS).

<sup>1203</sup> Transcript of 2 November 2004, TF2-021, p. 69; Transcript of 3 November 2004, TF2-021, p. 59: Note it is only during cross-exam that TF2-021 elaborates that he was the person shooting under the beds.

<sup>1204</sup> Transcript of 2 November 2004, TF2-021, p. 69.

<sup>1205</sup> Transcript of 4 May 2006, Arthur Koroma, pp. 11-12.

<sup>1206</sup> When TF2-144 arrived in Kenema, ECOMOG and the Kamajors were both there. (Transcript of 24 February 2005, TF2-144, p. 73) Therefore it couldn't have been earlier than the 19<sup>th</sup> of February 1998. This event occurred at least a couple days after he first arrived in Kenema. (Transcript of 24 February 2005, TF2-144, p. 72)

<sup>1207</sup> Transcript of 24 February 2005, TF2-144, pp. 73 and 75; See also Transcript of 25 February 2005, TF2-144, p. 10.

<sup>1208</sup> Transcript of 24 February 2005, TF2-144, pp. 75-76.

<sup>1209</sup> Transcript of 24 February 2005, TF2-144, pp. 76 and 94.

<sup>1210</sup> TF2-151 testified that the AFRC was removed from power in February 1998: Transcript of 22 September 2004, TF2-151, pp. 6-7. When this event occurred, there were lots of Kamajors present in Kenema: Transcript of 22 September 2004, TF2-151, pp. 11-12. The events described in this paragraph may have happened just a few days after this: Transcript of 22 September 2004, TF2-151, p. 12.

<sup>1211</sup> Transcript of 22 September 2004, TF2-151, pp. 12 and 17.

junta."<sup>1212</sup> The boy was caught by a Kamajor who chopped at him with a machete.<sup>1213</sup> The boy fell and was set on fire by a group of Kamajors.<sup>1214</sup> The Kamajors accompanying TF2-151 to the CDF office started to beat him and warned that if he did not cooperate, they would do to him what had been done to the boy.<sup>1215</sup>

603. TF2-151 was taken to Mr. Fefegula's office inside the CDF Headquarters.<sup>1216</sup> He was stripped naked and was accused of being a junta.<sup>1217</sup> Though he denied the allegations the Kamajors continued to beat him.<sup>1218</sup> One Pa came and asked the Kamajors not to kill TF2-151; he was then released.<sup>1219</sup>

#### 2.7.7.4. Killing of Mr. Ojuku and Other Mistreatment

604. One morning, some time after the arrival of ECOMOG,<sup>1220</sup> when TF2-144 was at his house in Nyandeyama, he saw Kamajors come for Mr. Ojuku, who was sitting on a veranda.<sup>1221</sup> MO Foday gave an order and one of the Kamajors raised his gun and hit Mr. Ojuku on his chest.<sup>1222</sup> Mr. Ojuku fell down. The Kamajors trampled him and then dragged him to the back of the house.<sup>1223</sup> TF2-144 later heard people say that the Kamajors cut off Mr. Ojuku's head and took it to the market where Mr. Ojuku's wife was doing business.<sup>1224</sup>

605. Two days after the killing of Mr. Ojuku, TF2-144 saw Kamajors catch a man of 25 or 30 years at a checkpoint between Kahunla Street and Nyandeyama. The man was beaten, tied up and stabbed. TF2-144 left after seeing a Kamajor named Yamorto pierce the man's chest with a knife.<sup>1225</sup>

<sup>1212</sup> Transcript of 22 September 2004, TF2-151, pp. 12- 13.

<sup>1213</sup> Transcript of 22 September 2004, TF2-151, pp. 13 and 15.

<sup>1214</sup> Transcript of 22 September 2004, TF2-151, pp. 15 and 10-23.

<sup>1215</sup> Transcript of 22 September 2004, TF2-151, p. 15.

<sup>1216</sup> Transcript of 22 September 2004, TF2-151, p. 21.

<sup>1217</sup> Transcript of 22 September 2004, TF2-151, pp. 17- 18.

<sup>1218</sup> Transcript of 22 September 2004, TF2-151, p. 20.

<sup>1219</sup> Transcript of 22 September 2004, TF2-151, pp. 20-21.

<sup>1220</sup> When TF2-144 arrived in Kenema, ECOMOG and the Kamajors were both there, (Transcript of 24 February 2005, TF2-144, p. 73), meaning that the incidents described took place after 19 February 1998 (Transcript of 24 February 2005, TF2-144, p. 76, lines 19-20).

<sup>1221</sup> Transcript of 24 February 2005, TF2-144, p. 77.

<sup>1222</sup> Transcript of 24 February 2005, TF2-144, p. 78.

<sup>1223</sup> Transcript of 24 February 2005, TF2-144, p. 78.

<sup>1224</sup> Transcript of 24 February 2005, TF2-144, p. 78; See also Transcript of 25 February 2005, TF2-144, p. 13.

<sup>1225</sup> Transcript of 24 February 2005, TF2-144, pp. 79 and 81.

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#### 2.7.7.5. Other Killings

606. Between mid-September 1998 and mid-December 1998,<sup>1226</sup> TF2-152 was arrested by Kamajors and taken to a cell at the CDF office at Kaisamba Terrace.<sup>1227</sup> KBK Magonna handed TF2-152 and one other person over to Colonel Biko, a.k.a. Yamorto, who took them to Nyandeyama Yamorto Base, which is by the roundabout near the town council and the court.<sup>1228</sup> On the way there, Colonel Biko cut open the stomach of TF2-152's friend and created a checkpoint by stringing this person's guts between two sticks.<sup>1229</sup> The friend was not yet dead.<sup>1230</sup> Colonel Biko and the Kamajors said, "[y]ou are going to die here."<sup>1231</sup> Various organs were removed from TF2-152's friend's torso. TF2-152 was taken to the Kamajor base where he was tied and stripped naked. A friend of TF2-152's arrived and rescued him.<sup>1232</sup>

607. During the same period, TF2-152 saw Kamajors kill two people at the NP petrol station on Blama Road. A tire was put on one and hatch on the other and they were set on fire. On Hangha Road, three people were killed opposite Capitol by the police barracks.<sup>1233</sup>

#### 2.7.7.6. Second Arrest and Further Mistreatment of TF2-151

608. In December 1998, a Kamajor came into TF2-151's shop and asked him to come along with him and Mr. Fefegula. They drove to a shop where spare parts were sold. Brima Kpaka came out of the shop and accused TF2-151 of being a junta.<sup>1234</sup> TF2-151 was taken to the CDF office at Kaisamba Terrace. The Kamajors beat him and put him in a cell. The following day, Mr. Fefegula and Brima Kpaka questioned TF2-151 and threatened to kill him if he lied. TF2-151 was again accused of being a junta. His hands were tied behind his back with FM rope and he was beaten by the Kamajors. Hours later, when Mr. Fefegula instructed that he should be released, TF2-151 was

<sup>1226</sup> TF2-152 testified that he was arrested a "long time" after his father's house was burnt down: Transcript of 27 September 2004, TF2-152, p. 106. Magonna was taking care of Kenema: Transcript of 27 September 2004, TF2-152, p. 111; see also Exhibit 89, p. 2, para. 7(b): "Mr Magona took up appointment as the National Task Force Commander CDF/SL in september [sic] 98 [...]"; see also p. 1, para. 1: "[Mr Magona] was arrested and detained on 14 Dec 98 in HQ 15 ECOMOG [...]".

<sup>1227</sup> Transcript of 27 September 2004, TF2-152, p. 110.

<sup>1228</sup> The Chamber finds that "Yandiamo Yamorto Base" and "Nyandeyama Yamorto Base" are the same location. Transcript of 27 September 2004, TF2-152, pp. 30-31.

<sup>1229</sup> Transcript of 27 September 2004, TF2-152, pp. 114-117.

<sup>1230</sup> Transcript of 27 September 2004, TF2-152, p. 152.

<sup>1231</sup> Transcript of 27 September 2004, TF2-152, p. 117.

<sup>1232</sup> Transcript of 27 September 2004, TF2-152, pp. 118-120.

<sup>1233</sup> Transcript of 27 September 2004, TF2-152, pp. 121 and 123.

<sup>1234</sup> Transcript of 22 September 2004, TF2-151, pp. 29-31.

in a great deal of pain. He was unable to use his hands for seven months. His wife had to clean him when he went to the toilet.<sup>1235</sup>

609. Two or three days after he was released, TF2-151 was re-arrested by KBK Magonna and was taken back to the CDF office. At the CDF office, KBK Magonna ordered that TF2-151's radio, money, jeans and sandals be taken from him. KBK Magonna ordered some Kamajors to beat TF2-151 and told him that he would come and kill him later. TF2-151 was put in a cell and remained there for some hours.

#### 2.7.8. Administration of Kenema after the Arrival of ECOMOG

610. ECOMOG arrived in Kenema on approximately 18 February 1998.<sup>1236</sup> This same day, Kenema was attacked by soldiers and rebels. Fallah Bindi's group chased the rebels out of Kenema, towards Kombema village.<sup>1237</sup> The rebels set fire to houses in Kombema as they were retreating.<sup>1238</sup>

##### 2.7.8.1. Establishment of a CDF Office in Kenema

611. While at Base Zero, Norman ordered some members of the War Council to leave Base Zero and establish CDF offices in Bo and Kenema.<sup>1239</sup> TF2-079 and TF2-201 are among those that opened the Kenema Office.<sup>1240</sup>

612. When TF2-079 and TF2-201 arrived in Kenema in mid- to late-February 1998, the CDF commanders in Kenema were KBK Magonna, Eddie Massallay and Arthur Koroma.<sup>1241</sup> Two days after the arrival of TF2-079 and TF2-201, a Kamajor Office was established at 27 Kaisamba Terrace.<sup>1242</sup> George Jambawai, the Regional Coordinator for the Eastern Region, became the head

<sup>1235</sup> Transcript of 22 September 2004, TF2-151, pp. 33-38. FM rope is a thin wire cord used to set traps to kill small animals. When someone is tied with FM rope, the rope goes into the flesh: see Transcript of 25 November 2004, TF2-088, pp. 93-94.

<sup>1236</sup> Transcript of 23 May 2006, Fallah Bindi, pp. 66-67 and 24 May 2006, pp. 14-16; Transcript of 21 September 2004, TF2-040, pp. 34 and 60; Transcript of 22 September 2004, TF2-151, pp. 79-80; Transcript of 17 September 2004, TF2-042, p. 72.

<sup>1237</sup> Transcript of 23 May 2006, Fallah Bindi, pp. 66-67.

<sup>1238</sup> Transcript of 23 May 2006, Fallah Bindi, pp. 66-67; Transcript of 05 November 2004, TF2-201, pp. 90-91.

<sup>1239</sup> Transcript of 26 May 2005, TF2-079, p. 66.

<sup>1240</sup> Transcript of 26 May 2005, TF2-079, p. 66; Transcript of 05 November 2004, pp. 56-59 (CS)

<sup>1241</sup> Transcript of 26 May 2005, TF2-079, p. 76.

<sup>1242</sup> Transcript of 05 November 2004, TF2-201, pp. 56-59 and 90-91 (CS); Transcript of 3 May 2006, Arthur Koroma, pp. 35-38; Transcript of 26 May 2006, Mohamed Swaray, p. 36; Transcript of 28 September 2004, TF2-223, p. 109 (CS); Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 69-70; Transcript of 26 May 2005, TF2-079, pp. 66-69.

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of the new administration. TF2-079 was also part of the executive.<sup>1243</sup> Jambawai's administration lasted until June 1998. He was succeeded by Arthur Koroma, the District Administrator.<sup>1244</sup> During the administration of Arthur Koroma a base was opened at SS Camp where civilians were taken for detention.<sup>1245</sup>

613. One day after setting up the CDF office, TF2-201 went with ECOMOG Major Yayah Abu Bakarr, other Kamajors and police to SS Camp where they were shown a deep pit which Kamajors said was used to punish alleged rebel collaborators.<sup>1246</sup>

#### 2.7.8.2. National War Council Meeting of 20 and 21 April 1998 in Kenema Town

614. On 20 and 21 April 1998, George Jambawai chaired a meeting of the War Council in Kenema.<sup>1247</sup> The meeting was attended by TF2-068, RP Kombe Kajue and Eddie Massallay, among others.<sup>1248</sup> Minutes of this meeting were prepared by Chief Quee.<sup>1249</sup>

615. Various issues relating to command and control of the CDF were discussed at this meeting. For instance, a formal request was made to ECOMOG to transfer the responsibility for discipline to the CDF.<sup>1250</sup> CDF members were admonished to "stop all forms of reprisal killings" and to "refer all cases of junta collaboration to the police or to ECOMOG".<sup>1251</sup> They were also ordered to stop looting.<sup>1252</sup> All "active combatants and children associated with the fighting forces" were instructed to register themselves.<sup>1253</sup>

616. The War Council was dismantled after the meeting in Kenema.<sup>1254</sup>

#### 2.7.8.3. Meeting with Vice-President Demby on 28 June 1998 at Kenema Town Council

<sup>1243</sup> Transcript of 26 May 2005, TF2-079, pp. 78-83.

<sup>1244</sup> Transcript of 26 May 2005, TF2-079, pp. 78-83; Transcript of 22 May 2006, Mohamed Bhonie Koroma, pp. 69-70.

<sup>1245</sup> Transcript of 26 May 2005, TF2-079, pp. 81-82; Transcript of 27 May 2005, TF2-079, pp. 6-8.

<sup>1246</sup> Transcript of 05 November 2004, pp. 57-59 (CS).

<sup>1247</sup> Transcript of 18 September 2004, TF2-068, pp. 34-36 (CS).

<sup>1248</sup> Transcript of 18 September 2004, TF2-068, pp. 34-36 (CS).

<sup>1249</sup> Exhibit 28, Confidential, p. 5.

<sup>1250</sup> Exhibit 28, para. 1(a).

<sup>1251</sup> Exhibit 28, para. 3(a).

<sup>1252</sup> Exhibit 28, para. 4.

<sup>1253</sup> Exhibit 28, para. 10.

<sup>1254</sup> Transcript of 18 September 2004, TF2-068, pp. 79 and 25-29 (CS).

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617. Norman, Vice-President Demby, Charles Margai and others attended a meeting at the Kenema Town Council on 28 June 1998.<sup>1255</sup> CDF members were instructed to return to their home chiefdoms and to register with their chiefdom authorities.<sup>1256</sup> There is no evidence that either Fofana or Kondewa were present at this meeting.

#### 2.7.8.4. Norman in Kenema and at SS Camp

618. Norman visited SS Camp when he made his first visit to Kenema after the overthrow of President Kabbah's government, some time between June and October 1998.<sup>1257</sup> In October 1998, President Kabbah assigned Norman and Vice-President Demby to Kenema to assist ECOMOG. In fulfilment of this assignment, Norman and Demby were resident in Kenema for almost one and a half months. During this time, they often went to see the displaced people at SS Camp.<sup>1258</sup>

### 2.8. Talia / Base Zero

#### 2.8.1. Inhumane Treatment of Civilians

##### 2.8.1.1. Capture and Beating of TF2-134 by Kamajors

619. TF2-134 was captured by Kamajors in a village near Bonthe and forcefully brought to Talia.<sup>1259</sup> The Kamajors were armed with cutlasses and machetes. After two separate unsuccessful attempts to escape,<sup>1260</sup> she was tied with FM rope and beaten until she vomited blood.<sup>1261</sup> TF2-134 was then kept in a guardroom until sometime later in the day when a Kamajor came and ordered her to leave.<sup>1262</sup>

620. During her captivity,<sup>1263</sup> TF2-134 learned that Moinina Fofana, "Sildia" and Allieu Kondewa were leaders in Talia.<sup>1264</sup> On one occasion, she saw a man complain to Kondewa that the Kamajors stole property. He wanted Allieu Kondewa to tell the Kamajors to stop. That evening, she heard Allieu Kondewa tell his boys that he had been receiving reports concerning their

<sup>1255</sup> Exhibit 134, para. B.

<sup>1256</sup> Exhibit 134, para. D.3-D.4.

<sup>1257</sup> Transcript of 02 February 2006, Sam Hinga Norman, p. 68.

<sup>1258</sup> Transcript of 02 February 2006, Sam Hinga Norman, p. 70.

<sup>1259</sup> Transcript of 3 June 2005, TF2-134, pp. 24-25.

<sup>1260</sup> Transcript of 3 June 2005, TF2-134, pp. 31-32.

<sup>1261</sup> Transcript of 3 June 2005, TF2-134, p. 33.

<sup>1262</sup> Transcript of 3 June 2005, TF2-134, pp. 33-34.

<sup>1263</sup> Transcript of 3 June 2005, TF2-134, p. 25.

<sup>1264</sup> Transcript of 3 June 2005, TF2-134, p. 26.



behaviour. He said that the Kamajors were supposed to assist civilians and told them to stop harassing civilians and to stop stealing their property.<sup>1265</sup>

#### 2.8.1.2. Capture of TF2-109 and Looting

621. TF2-109 was captured by Kamajors along with other women and three men in her village of Matru Jong and was taken to Talia. A Kamajor named Kamoh Bonnie told TF2-109 that they were taking her to Talia to save her from the rebels. The Kamajors also took their property including furniture, household items and clothing. TF2-109 was held in Talia for three days.<sup>1266</sup> During that time, she met TF2-108.<sup>1267</sup>

#### 2.8.2. Killing of Civilians in Talia/Base Zero

##### 2.8.2.1. Killing of a Man by Kondewa at the Water Well in Talia

622. Sometime towards the end of 1997,<sup>1268</sup> several Kamajors entered Talia while dancing.<sup>1269</sup> The two men leading the dance were Town Commanders from another town in the direction of Kongo.<sup>1270</sup> They had been appointed Town Commanders by rebels, but they did not bear any signs of the RUF. The rebels had forced these men to organize the civilians from their town to provide assistance to the rebels.<sup>1271</sup>

623. When they entered Talia, the Town Commanders were not carrying guns.<sup>1272</sup> Allieu Kondewa and Kamoh Bonnie, Kondewa's priest,<sup>1273</sup> were among the Kamajors. They were standing behind the town commanders. TF2-096 witnessed Allieu Kondewa take a gun from Kamoh Bonnie, and shoot one of the Town Commanders.<sup>1274</sup> The next morning, TF2-096 saw two graves.

<sup>1265</sup> Transcript of 3 June 2005, TF2-134, pp. 29-30.

<sup>1266</sup> Transcript of 30 May 2005, TF2-109, pp. 31 and 33.

<sup>1267</sup> Transcript of 30 May 2005, TF2-109, pp. 38-39. See also the killings of Jusu Shalley, Baggie Vaiey and Lahai Lebbie.

<sup>1268</sup> Transcript of 8 November 2004, TF2-096, p. 27: TF2-096 describes this incident as occurring near the end of 1997 and during the period when Sam Hinga Norman arrived in Talia, though he was not there when this incident occurred. Norman arrived in Talia around mid-September, see section V.2.2.3.

<sup>1269</sup> Transcript of 8 November 2004, TF2-096, p. 24.

<sup>1270</sup> Transcript of 8 November 2004, TF2-096, p. 26.

<sup>1271</sup> Transcript of 8 November 2004, TF2-096, pp. 40-41.

<sup>1272</sup> Transcript of 8 November 2004, TF2-096, pp. 39-41.

<sup>1273</sup> Kamoh Bonnie is also spelt as Kamoh Boni.

<sup>1274</sup> Transcript of 8 November 2004, TF2-096, pp. 24-26.

She was told that the Town Commanders were buried within them.<sup>1275</sup> Joe Tamidey and Ngobeh were also present in Talia on the day Kondewa shot the Town Commander.<sup>1276</sup>

2.8.2.2. Capture of TF2-133 and Killing of her Mother

624. TF2-133 was captured on York Island by Kamajors. She was taken to Talia Yawbeko, where she stayed for one month. During that time, TF2-133 saw Kamajors kill her mother in the palm oil plantation.<sup>1277</sup>

2.8.2.3. Capture of TF2-188 and Killing of Her Mother

625. TF2-188 was captured together with her mother in Blama and both women were made to carry loads to Talia. When they arrived in Talia, Allieu Kondewa told his boys to capture TF2-188's mother and said that the mother should be killed. TF2-188 saw the Kamajors kill her mother.<sup>1278</sup>

2.8.2.4. Capture of TF2-189 and Killing of Her Husband

626. During the rainy season of 1997, TF2-189 was captured by Kamajors and taken to Talia Yawbeko.<sup>1279</sup> When TF2-189's husband came to Talia to see her, he was captured.<sup>1280</sup> The following morning, TF2-189's husband was surrounded by a crowd of civilians and Kamajors. The Kamajors cut TF2-189's husband's throat and decapitated him.<sup>1281</sup>

2.8.2.5. Killing of Jusu Shalley, Baggie Vaicy and Lahai Lebbie by Kamajors

627. The killings of Jusu Shalley, Baggie Vaicy and Lahai Lebbie were witnessed by women held in Talia Yawbeko. The three men were captured together and brought to Talia and were killed the same night that they arrived.<sup>1282</sup> A large group of Kamajors and civilians surrounded them. Lahai

<sup>1275</sup> Transcript of 8 November 2004, TF2-096, p. 27.

<sup>1276</sup> Transcript of 8 November 2004, TF2-096, p. 73; See section V.2.2.10.4; Joe Tamidey was called to Talia in order to attend the planning meeting for the attack on Koribondo. Although Joe Tamidey in his testimony does not specify when exactly he was called to Talia, the Chamber finds that he attended a meeting in January 1998 and subsequently left to lead the last attack on Koribondo, which occurred on 13 February 1998.

<sup>1277</sup> Transcript of 6 June 2005, TF2-133, pp. 5-6.

<sup>1278</sup> Transcript of 31 May 2005, TF2-188, pp. 14-18.

<sup>1279</sup> Transcript of 3 June 2005, TF2-189, pp. 4 and 7.

<sup>1280</sup> Transcript of 3 June 2005, TF2-189, p. 9.

<sup>1281</sup> Transcript of 3 June 2005, TF2-189, pp. 11-12. The Witness remained in Talia for approximately four months and then moved to Kalleh Wanjama for approximately five months. After that time, she returned to her home in Malima Yawbeko.

<sup>1282</sup> Transcript of 30 May 2005, TF2-108, pp. 5-6; Transcript of 30 May 2005, TF2-109, p. 35.

Lebbi was tied up by Kamajors and burnt to death.<sup>1283</sup> Jusu Shalley and Baggie Vaiey were killed with machetes.<sup>1284</sup> All three men were civilians.<sup>1285</sup>

628. The morning after the killing of these three men, the Kamajors summoned some of the captives, including TF2-109, to a parade. Sam Hinga Norman and Allieu Kondewa also attended the parade.<sup>1286</sup>

### 2.8.3. Treatment of Captured Enemy Combatants

629. There was no policy about keeping prisoners at Base Zero and there were no prisons in which to house prisoners.<sup>1287</sup> Once the government was reinstated, prisoners came solely under the purview of ECOMOG.<sup>1288</sup>

#### 2.8.3.1. Killing of a Surrendered Soldier from Koribondo in Talia

630. Sometime after 13 February 1998,<sup>1289</sup> a soldier, named Sgt. Kamanda<sup>1290</sup> was brought to Talia from Koribondo to surrender. Norman was not in Talia when the soldier arrived. Sgt. Kamanda was killed. When Norman returned to Talia and learned of the soldier's death, he said that the soldier should not have been killed, but should have been used for training.<sup>1291</sup>

### 2.8.4. Treatment of Collaborators

#### 2.8.4.1. Detention of TF2-096's Friend by Kondewa

631. Kondewa's bodyguards Kafi Jini, Jahman,<sup>1292</sup> Junisa and Bokindeh came to Talia to buy cassava from TF2-096. They said that TF2-096's friend, who was also selling cassava, was a rebel.<sup>1293</sup> Jahman reported TF2-096's friend to Kondewa and later that day, Kamajors arrested TF2-096

<sup>1283</sup> Transcript of 30 May 2005, TF2-108, pp. 12 and 14; Transcript of 30 May 2005, TF2-109, p. 34.

<sup>1284</sup> Transcript of 30 May 2005, TF2-108, pp. 6-8, and 12; Transcript of 30 May 2005, TF2-109, pp. 42-43.

<sup>1285</sup> Transcript of 30 May 2005, TF2-108, p. 12. The Chamber has determined that Jusu Shalley was also a civilian.

<sup>1286</sup> Transcript of 30 May 2005, TF2-109, pp. 35-37.

<sup>1287</sup> Transcript of 8 June 2005, TF2-011, p. 26 (CS).

<sup>1288</sup> Transcript of 6 February 2006, Sam Hinga Norman, p. 35; Transcript of 7 February 2006, Sam Hinga Norman, pp. 54-55.

<sup>1289</sup> Transcript of 8 November 2004, TF2-096, p. 21.

<sup>1290</sup> See section V.2.4.5.5.

<sup>1291</sup> Transcript of 8 November 2004, TF2-096, p. 20-22.

<sup>1292</sup> Jahman is also spelt as German.

<sup>1293</sup> Transcript of 8 November 2004, TF2-096, pp. 28-29.

friend and took her to Nyandehun. She was held in a cage and was not released until 40,000 leones were paid to Kondewa.<sup>1294</sup>

#### 2.8.5. Killings as Part of Kamajor Rituals

##### 2.8.5.1. Killing of Mustafa Fallon in the Poro Bush in Talia

632. Sometime between January and March 1998, Mustafa Fallon was killed in the *Poro Bush*<sup>1295</sup> in Talia as part of a Kamajor ritual. Mustafa Fallon was a fighting Kamajor who had been enlisted by Bobor Tucker, a.k.a. Jegbeyama, of the Death Squad.<sup>1296</sup> Many Kamajors were present when he was killed including Junisa, Gaima, Gibrilla, Amara Sengay, Jahman, Dr. Jigbao and Mustafa Fallon's two brothers, Momoh Rogers and Sheku Massaquoi. Norman, Fofana and Kondewa were also present. Norman threatened to kill anyone who told the truth about Mustafa Fallon's death. He said "[i]f you go and explain outside and if somebody should cry, if that secret leaks, we will kill you because you have nowhere to go. You cannot go to Bo. As long as you are within the Kamajor zone I have absolute power to get you wherever you are."<sup>1297</sup>

##### 2.8.5.2. Killing of Alpha Dauda Kanu

633. Alpha Dauda Kanu was one of about 40 Kapras from Gbonkolenken Chiefdom in Tonkolili District who had come to Talia for training. He was killed sometime between December 1997 and January 1998 in the palm oil plantation near Talia as part of a Kamajor ritual.<sup>1298</sup> Upon learning of Alpha Dauda Kanu's killing, the Kapra leader lodged a complaint with Fofana, who then brought the complaint to Norman.<sup>1299</sup>

634. Norman explained to the Kapras' leader that Kanu's death was necessary because parts of his body would be used to make a garment and other items that would make Norman very powerful.<sup>1300</sup> Kondewa began dissecting Alpha Dauda Kanu's corpse. When the Kapra's leader

<sup>1294</sup> Transcript of 8 November 2004, TF2-096, pp. 29-30 and 33-35.

<sup>1295</sup> The Poro Bush is a place where men go to be initiated into male society. It is found in most Mende settlements. See Transcript of 7 February 2006, Sam Hinga Norman, pp. 76-77.

<sup>1296</sup> Transcript of 27 September 2006, Mohammed Fallon, p. 25. Mohammed Fallon was not found to be a credible witness during his testimony concerning the death of Mustafa Fallon.

<sup>1297</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 54 and 59 lines 11-15.

<sup>1298</sup> Transcript of 19 November 2004, TF2-017, pp. 58-60 and 62. (CS).

<sup>1299</sup> Transcript of 19 November 2004, TF2-017, pp. 66 and 69 (CS).

<sup>1300</sup> Transcript of 19 November 2004, TF2-017, pp. 69-70 (CS); Transcript of 10 March 2005, Albert J Nallo, p. 60.

continued to complain, Fofana began shouting. He told the Kapras' leader to stop arguing and said that he should be satisfied with the explanation given by Norman.<sup>1301</sup>

## 2.8.6. Looting

### 2.8.6.1. Arrival of a Truck in Talia

635. A truck carrying cocoa and coffee arrived in Talia. It was unloaded and the contents were given to the Director of War, Fofana and the High Priest, Kondewa. The truck was detained in Talia.<sup>1302</sup>

## 2.9. Moyamba District

### 2.9.1. Background to Moyamba District

636. During the first stage of the conflict, from 1991 to 1994, SLA forces were deployed in Moyamba District. These forces harassed civilians and took away their property. Cases of rape and killing were reported; the harassment of alleged collaborators increased by the end of 1994 as rumours of imminent RUF attacks grew stronger.<sup>1303</sup>

637. During the second stage of the conflict, from 1994 to 1998, the RUF forces settled in Moyamba District. At the same time, Kamajor society developed in Moyamba District. In early 1995, RUF forces entered Moyamba District. The RUF made incremental advances towards Freetown but were stopped by SLA forces; however, the RUF forces settled where they had been stopped and progressively reached all the chiefdoms in Moyamba District. The RUF established a strong base in the north. The chiefdoms in the south of the District were less affected as most of the actions of the RUF were concentrated in the northern part of the district.

638. In June 1997 the AFRC attacked Moyamba Town; they remained<sup>1304</sup> in control for eight days.<sup>1305</sup> Between the middle and the end of August 1997,<sup>1306</sup> the Kamajors went to Tihun.<sup>1307</sup>

<sup>1301</sup> Transcript of 19 November 2004, TF2-017, pp. 77, line 29 and 78, lines 1-4 (CS).

<sup>1302</sup> Transcript of 17 November 2004, TF2-068, p. 92 (CS).

<sup>1303</sup> Exhibit 119G.

<sup>1304</sup> Transcript of 7 March 2005, TF2-165, pp. 4 and 27.

<sup>1305</sup> Transcript of 7 March 2005, TF2-165, p. 5.

<sup>1306</sup> TF2-165 testified that a few weeks or two months after the AFRC Coup on 25 May 1997 the AFRC were in control of Moyamba for eight days. TF2-165 was waiting 19 days in the bush before he went back to Moyamba. Subsequently, this must have been around middle to the end of August 1997.

<sup>1307</sup> Transcript of 7 March 2005, TF2-165, pp. 6-7.

After some time they returned to Moyamba in full strength under the leadership of Mustapha Ngobeh.<sup>1308</sup> Kenei Torma<sup>1309</sup> was the second-in-command to Mustapha Ngobeh.<sup>1310</sup>

2.9.2. Crimes committed in Moyamba Town

2.9.2.1. Murder of Mr. Thomas in Moyamba

639. After the Kamajors returned to Moyamba they searched for collaborators.<sup>1311</sup> The Kamajors looked specifically for Mr. Thomas,<sup>1312</sup> who was suspected of collecting information from Moyamba and selling it to the AFRC at Camp Charlie in Mile 91.<sup>1313</sup> When the Kamajors found Mr. Thomas they took him to Mustapha Ngobeh's place.<sup>1314</sup> Three or four days later, TF2-165 saw Mr. Thomas in the midst of a group of Kamajors<sup>1315</sup> who were singing, and dancing as they headed towards Shenge Park in Moyamba Town.<sup>1316</sup> People from the town stood around and waited to see what was going to happen to Mr. Thomas. TF2-165 heard the Kamajors say: "Go, [...] you are now a free man [...]"<sup>1317</sup> Mr. Thomas began to leave but was shot in the back by a Kamajor and fell.<sup>1318</sup> Kamajors dragged Mr. Thomas' corpse to Langowa Street where they decapitated him.<sup>1319</sup> Some Kamajors drank blood from the body of Mr. Thomas; some rubbed the blood on their bodies; and one Kamajor took Thomas' head and placed it on his own head.<sup>1320</sup> The Kamajors proceeded along Langowa Street with Mr. Thomas' head still on one of the Kamajor's heads. The headless body of Mr. Thomas was left in Langowa Street for some time.<sup>1321</sup>

2.9.2.2. Killing of One Person in Shenge Park (Moyamba Town)

<sup>1308</sup> Transcript of 7 March 2005, TF2-165, p. 7: the spelling Moustafa Ngobea is also used in the transcript.  
<sup>1309</sup> The spelling Kini Torma is also used in the transcript.  
<sup>1310</sup> Transcript of 7 March 2005, TF2-165, p. 9.  
<sup>1311</sup> Transcript of 7 March 2005, TF2-165, pp. 10-14.  
<sup>1312</sup> Transcript of 7 March 2005, TF2-165, p. 10.  
<sup>1313</sup> Transcript of 7 March 2005, TF2-165, p. 10.  
<sup>1314</sup> Transcript of 7 March 2005, TF2-165, p. 11.  
<sup>1315</sup> Transcript of 7 March 2005, TF2-165, p. 12.  
<sup>1316</sup> Transcript of 7 March 2005, TF2-165, p. 12.  
<sup>1317</sup> Transcript of 7 March 2005, TF2-165, p. 12.  
<sup>1318</sup> Transcript of 7 March 2005, TF2-165, p. 12-13.  
<sup>1319</sup> Transcript of 7 March 2005, TF2-165, p. 13.  
<sup>1320</sup> Transcript of 7 March 2005, TF2-165, p. 14.  
<sup>1321</sup> Transcript of 7 March 2005, TF2-165, p. 14. The Chamber notes that TF2-165 testified that Mr. Thomas was killed three or four weeks before Mustapha Ngobeh died (Transcript of 7 March 2005, p. 15).





640. In late 1997 or early 1998, Kamajors brought three people to Shenge Park.<sup>1322</sup> The Kamajors set fire to a tire on Chief Siaka Stevens Street opposite the court *barri*.<sup>1323</sup> A few minutes later they brought three hairless men from the Native Administration cell.<sup>1324</sup> The Kamajors said that they would give justice to one of the three in Moyamba but that the other two would be taken back to Shenge so that their people would know they were "bad" people.<sup>1325</sup> The hands of all three men were tied.<sup>1326</sup> The Kamajors placed one of the men on the fire and he burnt to ashes.<sup>1327</sup> Kenei Torma and Chuck Norris were in control of the Kamajors in Moyamba at that time.<sup>1328</sup>

### 2.9.3. Sembehun and Surroundings

#### 2.9.3.1. Arrival of Kamajors and Setting up of Checkpoints

641. In November 1997, Kamajors came to Sembehun, Bagruwa Chiefdom, Moyamba District<sup>1329</sup> and took control of security there.<sup>1330</sup> They wore Kamajor attire and were armed with guns.<sup>1331</sup> These Kamajors took control of the exit and entry checkpoints that had been manned by local Kamajors.<sup>1332</sup> The newly arrived Kamajors waited at the checkpoints and pounced on villagers returning from their farms and looted food and other properties from the villagers.<sup>1333</sup> The Kamajors also went to the surrounding villages and looted food and other goods.<sup>1334</sup> The newly arrived Kamajors were based with the head of the local Kamajors, a Ground Commander named Teacher Edward Challe.<sup>1335</sup>

642. On the evening the Kamajors arrived, Mr. Nbada Fofana was harassed at the Sembehun entry check point by the visiting Kamajors.<sup>1336</sup> He was stopped, forced out of his Mercedes Benz car and stripped of his money and his clothes. Nbada Fofana's car was taken from him by the

<sup>1322</sup> Transcript of 7 March 2005, TF2-165, p. 15.

<sup>1323</sup> Transcript of 7 March 2005, TF2-165, p. 16.

<sup>1324</sup> Transcript of 7 March 2005, TF2-165, p. 16.

<sup>1325</sup> Transcript of 7 March 2005, TF2-165, p. 17.

<sup>1326</sup> Transcript of 7 March 2005, TF2-165, p. 17.

<sup>1327</sup> Transcript of 7 March 2005, TF2-165, p. 17.

<sup>1328</sup> Transcript of 7 March 2005, TF2-165, pp. 17-18.

<sup>1329</sup> Transcript 2 March 2005, TF2-073, p. 28.

<sup>1330</sup> Transcript of 2 March 2005, TF2-073, p. 28.

<sup>1331</sup> Transcript of 2 March 2005, TF2-073, p. 30.

<sup>1332</sup> Transcript of 2 March 2005, TF2-073, p. 29.

<sup>1333</sup> Transcript of 2 March 2005, TF2-073, p. 30.

<sup>1334</sup> Transcript of 2 March 2005, TF2-073, p. 30.

<sup>1335</sup> Transcript of 2 March 2005, TF2-073, p. 31.

<sup>1336</sup> Transcript of 2 March 2005, TF2-073, p. 31.

Kamajors.<sup>1337</sup> Nbada Fofana managed to get the local Kamajors to return the vehicle to him, but when he attempted to leave Sembehun, the Kamajors at the exit checkpoint refused to allow him to leave. They said, “[n]o, you can't get this vehicle out of this place.” Nbada Fofana went to TF2-073 and they decided to drive the vehicle to Shenge. They drove the vehicle 36 miles to Shenge and left the car there in the hands of the Shenge Kamajors.<sup>1338</sup>

643. The same evening, Mrs. Gorvie was stopped by Kamajors at the same checkpoint. Although she was sick, Mrs. Gorvie was forced out of her car and left on the ground.<sup>1339</sup> Her car was taken away from her.<sup>1340</sup>

### 2.9.3.2. Crimes Committed by Kamajors on their Second Day in Sembehun

#### 2.9.3.2.1. *Looting in the Villages Surrounding Sembehun*

644. The day after the Kamajors arrived in Sembehun, they went the surrounding villages and looted livestock, food and clothing.<sup>1341</sup>

#### 2.9.3.2.2. *Threatening of the Witness TF2-073's Children and Pillage*

645. The second day after the Kamajors arrival, six Kamajors came to TF2-073's house in the evening. The Kamajors led TF2-073 out to the veranda at gunpoint and surrounded him.<sup>1342</sup> They said that they were Kondewa's Kamajors and that they had come from Talia, Tihun, Gbangbatoke and other surrounding villages. Three of them introduced themselves as Steven Sowa, Moses Mbalacolor and Mohamed Sankoh. Mohamed Sankoh said he was Deputy Director of War under Norman.<sup>1343</sup> The Kamajors wanted to inspect TF2-073's garage for arms and ammunition but he did not have the keys. The Kamajors then went to his garage anyway and saw TF2-073's Mercedes Benz car through a hole in the garage wall. The Kamajors told TF2-073 that they wanted to run a few errands with the car.<sup>1344</sup> The Kamajors sent for six more Kamajors to reinforce their group.<sup>1345</sup> They then broke into TF2-073's house, beat his children with gun butts and ransacked the house.

<sup>1337</sup> Transcript of 2 March 2005, TF2-073, p. 32.

<sup>1338</sup> Transcript of 2 March 2005, TF2-073, pp. 40-41.

<sup>1339</sup> Transcript of 2 March 2005, TF2-073, p. 32.

<sup>1340</sup> Transcript of 2 March 2005, TF2-073, p. 32.

<sup>1341</sup> Transcript of 2 March 2005, TF2-073, pp. 33-34.

<sup>1342</sup> Transcript of 2 March 2005, TF2-073, p. 34.

<sup>1343</sup> Transcript of 2 March 2005, TF2-073, pp. 34-35.

<sup>1344</sup> Transcript of 2 March 2005, TF2-073, p. 35.

<sup>1345</sup> Transcript of 2 March 2005, TF2-073, p. 35.



The Kamajors found TF2-073's car keys and garage keys took TF2-073's car to their base in town.<sup>1346</sup> The Kamajors also took other things that were in the garage, including a generator, car tires and many other gadgets.<sup>1347</sup>

646. From Sembehun TF2-073's vehicle was taken to Talia where it was used by Norman and then given to Kondewa.<sup>1348</sup>

647. Some time later, TF2-073 received information that his car was being used by Kondewa in Bo.<sup>1349</sup> TF2-073 went to ECOMOG's Anti-Looting Committee at the Brookfields Office in Freetown.<sup>1350</sup> He eventually obtained a letter ordering the return of his car from Charles Margai, the Minister of Internal Affairs for the Regional Minister of the Southern Province. The ECOMOG office in Freetown gave TF2-073 a similar letter for him to give to ECOMOG in Bo.<sup>1351</sup>

648. In Bo, TF2-073 saw his car being driven around; Kondewa was a passenger in the back of the car.<sup>1352</sup> On the back of the car was written "King Kindo".<sup>1353</sup> TF2-073 was invited by ECOMOG to inspect the car which he found had been severely damaged. When TF2-073 regained possession of his car he spent a lot of money on repairs.<sup>1354</sup>

### 2.9.3.3. Looting and Murder in Yakarji

649. On the morning of the third day after the Kamajors arrived in Sembehun, they travelled two miles to a village called Yakarji.<sup>1355</sup> In Yakarji the Kamajors looted a Mazda van which had been in the care of TF2-073's brother-in-law.<sup>1356</sup> The Kamajors beat TF2-073's brother-in-law severely and forced him to show them where the van was located.<sup>1357</sup> They looted the vehicle and

<sup>1346</sup> Transcript of 2 March 2005, TF2-073, p. 37.

<sup>1347</sup> Transcript of 2 March 2005, TF2-073, p. 37.

<sup>1348</sup> Transcript of 15 March 2005, Albert J Nallo, p. 48.

<sup>1349</sup> Transcript of 2 March 2005, TF2-073, p. 42.

<sup>1350</sup> Transcript of 2 March 2005, TF2-073, p. 42.

<sup>1351</sup> Transcript of 2 March 2005, TF2-073, p. 43.

<sup>1352</sup> Transcript of 2 March 2005, TF2-073, p. 45.

<sup>1353</sup> Transcript of 2 March 2005, TF2-073, p. 45.

<sup>1354</sup> Transcript of 2 March 2005, TF2-073, pp. 45- 46.

<sup>1355</sup> Transcript of 2 March 2005, TF2-073, p. 39.

<sup>1356</sup> Transcript of 2 March 2005, TF2-073, p. 39.

<sup>1357</sup> Transcript of 2 March 2005, TF2-073, p. 39.

brought it back to their base in Sembehun. TF2-073's brother-in-law died from the beatings a few weeks after this event.<sup>1358</sup>

#### 2.9.4. Looting in Shenge, Kagboro Chiefdom

650. The same morning the Kamajors went to Shenge, 36 miles from Sembehun,<sup>1359</sup> in the three cars that they had looted.<sup>1360</sup> They returned from Shenge in the evening with goods, livestock, food and a drum of petrol.<sup>1361</sup>

#### 2.9.5. CDF Control of Rokonta and Surrounding Areas

##### 2.9.5.1. CDF Control in Rokonta and Mabang

651. At the end of 1997, the CDF attacked Rokonta Village and Mabang and gained control of these areas. At this time the CDF was under the leadership of Obai.<sup>1362</sup> The relationship between the CDF and the general population was not good because the CDF were armed and they harassed the civilians.<sup>1363</sup>

##### 2.9.5.2. Looting by Kamajors and CDF Meeting on 23 December 1997

652. On 23 December 1997, nearly 20 CDF militants<sup>1364</sup> came to Rokonta and attacked the house of TF2-166's father under the guise of looking for him.<sup>1365</sup> They took all of her father's property.<sup>1366</sup> TF2-166 reported the incident to the Honourable Minister Alex Koroma, who called a CDF meeting in Waterloo Town.<sup>1367</sup> At a meeting in the last week of December 1997, which was chaired by Alex Koroma and Paramount Chief Charles Caulker, Kamajor Obai told TF2-166: "You [...] tell your father that we suspect that he's a junta or he's a collaborator, and we must make

<sup>1358</sup> Transcript of 2 March 2005, TF2-073, p. 39.

<sup>1359</sup> Transcript of 2 March 2005, TF2-073, p. 38.

<sup>1360</sup> Transcript of 2 March 2005, TF2-073, p. 38.

<sup>1361</sup> Transcript of 2 March 2005, TF2-073, p. 38.

<sup>1362</sup> Transcript of 8 March 2005, TF2-166, p. 57.

<sup>1363</sup> Transcript of 8 March 2005, TF2-166, p. 57.

<sup>1364</sup> Transcript of 8 March 2005, TF2-166, p. 58.

<sup>1365</sup> Transcript of 8 March 2005, TF2-166, p. 58.

<sup>1366</sup> Transcript of 8 March 2005, TF2-166, p. 58.

<sup>1367</sup> Transcript of 8 March 2005, TF2-166, p. 60.

sure that we kill him.”<sup>1368</sup> Paramount Chief Caulker then added: “The Pa, if it is true that he is a junta or a collaborator, we’ll make sure that these people see him again.”<sup>1369</sup>

### 2.9.5.3. Arrest of TF2-166’s Family and Killing of her Father on 11 May 1998

653. The CDF returned and entered Rokonta Village on Sunday, 11 May 1998 at 8:00pm.<sup>1370</sup> The Kamajors arrived at TF2-166’s father’s house and opened fire. The family tried to escape to Mabang<sup>1371</sup> but some of them were captured, including TF2-166 and her parents. TF2-166’s father was hit<sup>1372</sup> and taken in a vehicle with some family members<sup>1373</sup> to Masanki Village<sup>1374</sup> where Amadou Mahoi was the CDF commander.<sup>1375</sup> Those captured had to carry her father’s looted property.<sup>1376</sup> Gibrille Kamara, a CDF from Rokonta, came and tied her father’s hands;<sup>1377</sup> the latter shouted and offered 500,000 leones to the CDF to spare his life. They took the money and Lamina Pupil, a CDF member, said that they would kill TF2-166’ father. One CDF said: “This child [...] is sharp, [...] let’s tie her and kill her after killing the father. [sic]” They said they would rape TF2-166 before killing her.<sup>1378</sup> One CDF, Mohamed Lingon, tied TF2-166’s left foot. Mohamed Koroma of Mayenoh and Commander Amadou Muhoi<sup>1379</sup> stabbed the witness’ father in the eye with a knife,<sup>1380</sup> cut his mouth<sup>1381</sup> and threw hot water on him. TF2-166’s father died.<sup>1382</sup> TF2-166 escaped with the help of one Kamajor.<sup>1383</sup>

## 2.9.6. Bradford

### 2.9.6.1. Background to Bradford

<sup>1368</sup> Transcript of 8 March 2005, TF2-166, p. 61.

<sup>1369</sup> Transcript of 8 March 2005, TF2-166, p. 62.

<sup>1370</sup> Transcript of 8 March 2005, TF2-166, p. 63.

<sup>1371</sup> Transcript of 8 March 2005, TF2-166, pp. 66-67.

<sup>1372</sup> Transcript of 8 March 2005, TF2-166, p. 67.

<sup>1373</sup> Transcript of 8 March 2005, TF2-166, p. 68.

<sup>1374</sup> Transcript of 8 March 2005, TF2-166, p. 67.

<sup>1375</sup> Transcript of 8 March 2005, TF2-166, p. 69.

<sup>1376</sup> Transcript of 8 March 2005, TF2-166, p. 68.

<sup>1377</sup> Transcript of 8 March 2005, TF2-166, p. 69.

<sup>1378</sup> Transcript of 8 March 2005, TF2-166, p. 70-71.

<sup>1379</sup> Transcript of 8 March 2005, TF2-166, p. 71.

<sup>1380</sup> Transcript of 8 March 2005, TF2-166, p. 73.

<sup>1381</sup> Transcript of 8 March 2005, TF2-166, p. 75.

<sup>1382</sup> Transcript of 8 March 2005, TF2-166, pp. 76-77.

<sup>1383</sup> Transcript of 8 March 2005, TF2-166, p. 77.

654. In 1996, rebels based in Bradford troubled, harassed and looted farmers.<sup>1384</sup> When soldiers came to Bradford during the AFRC period, all the civilians had fled.<sup>1385</sup> In 1997, the CDF was based in Bumpeh. ECOMOG was based in Bradford, so the CDF did not go to come to town. After ECOMOG left Bradford, the CDF and the Kamajors went there on 8 March 1998.<sup>1386</sup> The relationship between Kamajors and civilians was poor; when the Kamajors saw civilians, they would beat them.<sup>1387</sup> During this time there was no Paramount Chief in Bradford and everyone who could afford to do so had left Bradford for Freetown. It was relatively safe in Bradford and there was no rebel activity.<sup>1388</sup>

#### 2.9.6.2. Murder of Ruffus Charlie speaker at Bradford in 1997

655. In late 1997 Albert J Nallo was the CDF Director of Operations in Moyamba.<sup>1389</sup> In this capacity Albert J Nallo had control over Moyamba District. When Albert J Nallo went to Moyamba Town, he learned from Mustapha Ngobeh that four days earlier Abu Bawote, the Commander in the Ribbi area,<sup>1390</sup> had killed the Chiefdom Speaker. Mustapha Ngobeh related that he had seen Abu Bawote in Bradford with the severed hand of the Chiefdom Speaker; Bawote had dried the hand and tied in to his neck as a necklace. Albert J Nallo reported this incident to Fofana and Norman and told Norman that this Chiefdom Speaker was a collaborator. Norman responded: "Well, a Collaborator deserves that. That was the standing order. You know that was the standing order I passed long ago."<sup>1391</sup>

#### 2.9.6.3. Meeting of Kamajors in Bradford on 8 March 1998 (First Arrival)

656. On 8 March 1998, the Kamajors arrived in Bradford under the leadership of Obai. Obai called a meeting with the residents of Bradford.<sup>1392</sup> Obai informed those assembled that Norman had appointed him to the position of commander for the area between Bumpe and Ribbi.

<sup>1384</sup> Transcript of 3 March 2005, TF2-168, p. 54.

<sup>1385</sup> Transcript of 4 March 2005, TF2-173, p. 87.

<sup>1386</sup> Transcript of 3 March 2005, TF2-168, pp. 55-56.

<sup>1387</sup> Transcript of 4 March 2005, TF2-173, p. 87.

<sup>1388</sup> Transcript of 4 March 2005, TF2-168, p. 42.

<sup>1389</sup> Transcript of 10 March 2005, Albert J Nallo, p. 60.

<sup>1390</sup> Transcript of 10 March 2005, Albert J Nallo, p. 61.

<sup>1391</sup> Transcript of 10 March 2005, Albert J Nallo, p. 62, lines 21-28.

<sup>1392</sup> Transcript of 3 March 2005, TF2-168, p. 56; Transcript of 8 March 2005, TF2-167, p. 52.

Although Obai did not show a letter of appointment, nobody dared to ask him for it.<sup>1393</sup> The Kamajors who came with Obai and were present at the meeting were from Rotifunk, Bumpe, Moyamba and Malako. After the meeting Obai and his group returned to Bumpe.<sup>1394</sup> Obai led a group that patrolled between Bumpe and Ribbi.<sup>1395</sup>

2.9.6.4. Pillage in Bradford on 19 March 1998 (Second Arrival)

657. During the night of 19 March 1998, Kamajors came to Bradford and raided the entire town.<sup>1396</sup> The Kamajors were armed with guns, machetes, axes and knives.<sup>1397</sup> They entered civilian homes and forcefully looted clothing and food.<sup>1398</sup> The Kamajors entered TF2-167's house and looted 63 bags of husk rice.<sup>1399</sup>

2.9.6.5. Third Arrival at Bradford on 23 March 1998

658. On 23 March 1998, Kamajors came to Bradford at 7:00am. There were Kamajors from Moyamba as well as Obai's group; Obai commanded them all. The Kamajors fired indiscriminately at the civilian population. All the families of Bradford ran and hid in the bush.<sup>1400</sup> TF2-167's grandson Aluseini, who was three and a half years old, was shouting. One Kamajor shot at him and Aluseini died.<sup>1401</sup> The Kamajors threatened to kill all of TF2-167's children.<sup>1402</sup>

659. TF2-167's son Ibrahim was shot in the head by Kamajors while he was trying to escape. TF2-167 found Ibrahim alive and although his son survived, Ibrahim no longer behaves normally all the time. During this attack, Kamajors looted from TF2-167.<sup>1403</sup>

2.9.6.6. Fourth Arrival at Bradford of the Kamajors on 25 March 1998

660. On 25 March 1998, Kamajors under the command of Obai returned to Bradford and again fired at civilians. TF2-168's wife ran into the thick bush but was caught by the Kamajors.

<sup>1393</sup> Transcript of 3 March 2005, TF2-168, p. 57; Transcript 4 March 2005, TF2-168, p. 47.

<sup>1394</sup> Transcript of 4 March 2005, TF2-168, p. 46.

<sup>1395</sup> Transcript of 3 March 2005, TF2-168, p. 57; Transcript 4 March 2005, TF2-168, p. 47.

<sup>1396</sup> Transcript of 8 March 2005, TF2-167, p. 30.

<sup>1397</sup> Transcript of 8 March 2005, TF2-167, p. 28; Transcript of 3 March 2005, TF2-168, pp. 47-48.

<sup>1398</sup> Transcript of 8 March 2005, TF2-167, pp. 29, 33.

<sup>1399</sup> Transcript of 4 March 2005, TF2-168, p. 25.

<sup>1400</sup> Transcript of 3 March 2005, TF2-168, p. 59.

<sup>1401</sup> Transcript of 8 March 2005, TF2-167, p. 32.

<sup>1402</sup> Transcript of 8 March 2005, TF2-167, pp. 33, 37.

<sup>1403</sup> Transcript of 8 March 2005, TF2-167, p. 33, 37.

TF2-168 saw the Kamajors approaching with his wife. A Kamajor Commander named Kakpata asked TF2-168's wife to give him some money which she had wrapped around her waist. TF2-168's wife said that the money was something that she was afraid to lose and gave the Kamajors the money which was 1,600,000 leones.<sup>1404</sup> Afterwards, Kakpata said to other Kamajors: "Don't you want to shoot at the woman?" The Kamajors shot TF2-168's wife and she fell down slowly.<sup>1405</sup> A six-year old child was present when TF2-168's wife was shot.<sup>1406</sup>

661. Norman sent a message to Obai through Kenie Spencer that the Kamajors were going via Bradford to Mabang to remove the soldiers there.<sup>1407</sup> When TF2-173 heard this news from Kenie Spencer he decided to flee Bradford. However, Kenie Spencer told Bradford residents that they should not run away; as a result, many of them stayed in town.<sup>1408</sup> When the Kamajors arrived they were dressed in the usual way, some Kamajors were wearing wool some were wearing masks and some had bells hanging on them. The Kamajors were armed with guns and cutlasses. Sanawi was their leader.<sup>1409</sup>

662. The Kamajors arrested TF2-173, his friends and other people and held them at gunpoint.<sup>1410</sup> TF2-173 was lying on the ground. When he tried to raise his head he was shot in his right arm. The Kamajors had gone wild and were firing indiscriminately. Kamajors chased TF2-173 and two other people and called out for him; TF2-173 and the others ran and hid in the bush.<sup>1411</sup>

#### 2.9.6.7. Capture and Murder of One Civilian near Makabi Loko in June 1998

663. One day in June 1998 at about 4:00am,<sup>1412</sup> the Vondos<sup>1413</sup> came to Makabi Loko from various villages.<sup>1414</sup> They started firing indiscriminately in the village and TF2-170 ran away. No bullets hit him but TF2-170 fell down and was captured.<sup>1415</sup> A member of the CDF hit TF2-170 in

<sup>1404</sup> Transcript of 3 March 2005, TF2-168, pp. 61- 63.

<sup>1405</sup> Transcript of 3 March 2005, TF2-168, pp. 64- 65; Transcript of 4 March 2005, TF2-173, p. 62.

<sup>1406</sup> Transcript of 3 March 2005, TF2-168, pp. 65-66.

<sup>1407</sup> Transcript of 4 March 2005, TF2-173, p. 55.

<sup>1408</sup> Transcript of 4 March 2005, TF2-173, p. 56.

<sup>1409</sup> Transcript of 4 March 2005, TF2-173, p. 56.

<sup>1410</sup> Transcript of 4 March 2005, TF2-173, p. 58.

<sup>1411</sup> Transcript of 4 March 2005, TF2-173, pp. 63- 64.

<sup>1412</sup> Transcript of 7 March 2005, TF2-170, p. 84.

<sup>1413</sup> "Vondos" are the name of the traditional hunters in Moyamba District.

<sup>1414</sup> Transcript of 7 March 2005, TF2-170, p. 51, pp.57-58.

<sup>1415</sup> Transcript of 7 March 2005, TF2-170, p. 57; Transcript of 7 March 2005, TF2-170, pp. 56-57.

the back with his gun. They took him to their Patrol Commander Kakpata.<sup>1416</sup> TF2-170 discovered that four of his relatives were also captives:<sup>1417</sup> Pa Jibo, Pa Serry Bangura, Pa Santigie Salami and Aluseini Kabbah.<sup>1418</sup> Kakpata said that Aluseini Kabbah had been captured for the second time and that he had failed to show the Vondos where the Gbethis were despite a promise to do so. For this reason, Kakpata stated he would kill Aluseini Kabbah and leave him there.<sup>1419</sup>

664. One of the CDF took a long sharp knife and cut Aluseini Kabbah's head. Blood oozed from his mouth.<sup>1420</sup> Some of the CDF reported the incident to Kakpata.<sup>1421</sup> Kakpata took a gun from Amadou Lavalie, cocked it and shot Aluseini Kabbah twice. Aluseini Kabbah fell over.<sup>1422</sup>

665. The three remaining captives were taken to Losint Loko Village to guard looted items that had been stored there. The CDF told TF2-170 that they would kill him in Bradford. They took him to Makabi Loko. There they met there other civilians who had five jerry cans of oil. These civilians were captured and were taken with TF2-170's group to Makabi Loko. TF2-170 was a made to carry load from Bradford but was eventually released by Kakpata because he was a civilian.<sup>1423</sup>

#### 2.9.7. Murders in Kongonani

666. In February or March 1999, a report of two murders that occurred in Kongonani,<sup>1424</sup> was made to TF2-073 in Sembehun.<sup>1425</sup> Three traders were captured by eight Kamajors. One of them escaped; the other two were shot.<sup>1426</sup> On the day he received this report, TF2-073 attended a meeting of Kamajors called by the local chief to investigate the killings.<sup>1427</sup> Eight Kamajors suspected of having committed the killings confessed. One was Tiby Bangura, the other John Aruna. TF2-073 informed the District Officer of these killings; the matter was then referred to the Criminal

<sup>1416</sup> Transcript of 7 March 2005, TF2-170, p. 59.

<sup>1417</sup> Transcript of 7 March 2005, TF2-170, p. 60.

<sup>1418</sup> Transcript of 7 March 2005, TF2-170, pp. 70-71.

<sup>1419</sup> Transcript of 7 March 2005, TF2-170, pp. 60-61

<sup>1420</sup> Transcript of 7 March 2005, TF2-170, p. 62-63.

<sup>1421</sup> Transcript of 7 March 2005, TF2-170, p. 63.

<sup>1422</sup> Transcript of 7 March 2005, TF2-170, p. 65.

<sup>1423</sup> Transcript of 7 March 2005, TF2-170, pp. 66-67.

<sup>1424</sup> Kongonani is about 1 mile from Sembehun: Transcript of 2 March 2005, TF2-073, p. 47.

<sup>1425</sup> Transcript of 2 March 2005, TF2-073, p. 46.

<sup>1426</sup> Transcript of 2 March 2005, TF2-073, p. 48.

<sup>1427</sup> Transcript of 2 March 2005, TF2-073, p. 48.

Investigation Division of the Sierra Leone Police.<sup>1428</sup> The eight Kamajors were taken to Tihun. Kondewa was in Tihun at this time.<sup>1429</sup> The Kamajors were detained for about a month by the police.<sup>1430</sup>

2.10. Child Soldiers

2.10.1. Testimony of Child Soldiers

2.10.1.1. Witness TF2-140

667. TF2-140 was born on 19 January 1983.<sup>1431</sup> He was abducted by the RUF in 1996. At this time, TF2-140 was 13 years old. He was forced to fight with the RUF until he was captured by the CDF in Koidu in 1997.<sup>1432</sup> The Kamajors held TF2-140 and five others in a cage made of palm fronds.<sup>1433</sup> Eventually, a Kamajor named Sandi promised to free TF2-140 if he agreed to help the Kamajors.<sup>1434</sup> TF2-140 feared for his life and felt that he had no option but to comply. He led the Kamajors to various hidden stores of ammunition and helped them to capture certain strategic points.<sup>1435</sup> TF2-140 spent a month assisting the Kamajors in this way.<sup>1436</sup> At this time, TF2-140 was 14 years old.<sup>1437</sup>

668. In August or September 1997, TF2-140 was taken to Pujehun District and was initiated into Kamajor society.<sup>1438</sup> Some of those initiated with him were adults and others were children of 10 or 11 years.<sup>1439</sup> Initiation fees were paid to the district initiator, Mualemu Sherrif, who sent the fees to Kondewa, the Kamajor High Priest.<sup>1440</sup>

<sup>1428</sup> Transcript of 2 March 2005, TF2-073, p. 49.  
<sup>1429</sup> Transcript of 3 March 2005, TF2-073, p. 39.  
<sup>1430</sup> Transcript of 3 March 2005, TF2-073, p. 41.  
<sup>1431</sup> Transcript of 14 September 2004, TF2-140, pp. 67, 141 and 148.  
<sup>1432</sup> Transcript of 14 September 2004, TF2-140, pp. 69-70.  
<sup>1433</sup> Transcript of 14 September 2004, TF2-140, pp. 69-71.  
<sup>1434</sup> Transcript of 14 September 2004, TF2-140, p. 72.  
<sup>1435</sup> Transcript of 14 September 2004, TF2-140, p. 72.  
<sup>1436</sup> Transcript of 14 September 2004, TF2-140, p. 132.  
<sup>1437</sup> Transcript of 14 September 2004, TF2-140, p. 71.  
<sup>1438</sup> Transcript of 14 September 2004, TF2-140, pp. 74 and 160-161.  
<sup>1439</sup> Transcript of 14 September 2004, TF2-140, pp. 74-75.  
<sup>1440</sup> Transcript of 14 September 2004, TF2-140, pp. 75-77.



669. From Pujehun, TF2-140 travelled with Sandi to Mano Junction. On the way they encountered fighting at Kenema; TF2-140 was armed and he participated in the fighting.<sup>1441</sup>

670. After reaching Mano Junction, TF2-140 was re-initiated along with 28 other boys.<sup>1442</sup> By this time, TF2-140 was 15 years of age.<sup>1443</sup> Some of the boys who took part in this initiation were the same age as TF2-140 and others were as young as 10 or 11 years.<sup>1444</sup> It was widely believed that little boys were more effectively immunized because they had not had any time with women.<sup>1445</sup>

671. In February 1998, TF2-140 passed through Blama and Koribondo.<sup>1446</sup> An attack took place in Koribondo shortly before TF2-140 arrived there.<sup>1447</sup> As TF2-140 passed through the town he saw Joe Tamidey, a Kamajor commander, who was being guarded by four small boys. TF2-140 estimated that these boys were younger than he was.<sup>1448</sup>

672. From Koribondo, TF2-140 made his way to Pujehun and then Bo.<sup>1449</sup> In Bo, TF2-140 stayed in a compound adjacent to Fofana's Mahei Boima Road residence.<sup>1450</sup> TF2-140 gradually became involved with the Kamajors in Fofana's compound and acted as part of the security team for the house and its occupants. While there, he met Fofana and Norman.<sup>1451</sup>

673. Some time after Christmas in 1998, TF2-140 went with Norman to Freetown.<sup>1452</sup> TF2-140 began to visit the Kamajor base at Brookfields Hotel regularly.<sup>1453</sup> At Brookfields, there were boys younger than TF2-140.<sup>1454</sup> Throughout 1999, child soldiers continued to gather at Brookfields.<sup>1455</sup>

<sup>1441</sup> Transcript of 14 September 2004, TF2-140, pp. 76-77.

<sup>1442</sup> Transcript of 14 September 2004, TF2-140, pp. 78-79.

<sup>1443</sup> Transcript of 14 September 2004, TF2-140, p. 79.

<sup>1444</sup> Transcript of 14 September 2004, TF2-140, pp. 77-78.

<sup>1445</sup> Transcript of 14 September 2004, TF2-140, p. 78.

<sup>1446</sup> Transcript of 14 September 2004, TF2-140, pp. 80 and 135.

<sup>1447</sup> Transcript of 14 September 2004, TF2-140, pp. 80 and 134. This attack has been described in greater detail in section V.2.4.4.

<sup>1448</sup> Transcript of 14 September 2004, TF2-140, p. 86.

<sup>1449</sup> Transcript of 14 September 2004, TF2-140, p. 86.

<sup>1450</sup> Transcript of 14 September 2004, TF2-140, pp. 86-87.

<sup>1451</sup> Transcript of 14 September 2004, TF2-140, pp. 88-89.

<sup>1452</sup> Transcript of 14 September 2004, TF2-140, p. 90.

<sup>1453</sup> Transcript of 14 September 2004, TF2-140, p. 97.

<sup>1454</sup> Transcript of 14 September 2004, TF2-140, p. 97.

<sup>1455</sup> Exhibit 100, confidential, para. 35.

TF2-140, along with other small boys, was involved in various attacks that were planned from Brookfields, including attacks on Makoro and Mile 38.<sup>1456</sup>

2.10.1.2. Witness TF2-021

674. TF2-021 was born in 1986.<sup>1457</sup> He was abducted by rebels in 1995, along with other young boys from his village in Kailahun District.<sup>1458</sup> At the time of his abduction, TF2-021 was approximately nine years old. TF2-021 remained with the rebels until 1997, when he was captured by Kamajors in Ngiehun, Kailahun District.<sup>1459</sup> Seven other little boys and three women were captured at the same time.<sup>1460</sup> One of the captured boys was 15; the rest were all younger.<sup>1461</sup> The name of the Kamajor that captured TF2-021 is German (a.k.a. Jahman).<sup>1462</sup>

675. After the attack on Ngiehun, Kamajors made the boys carry looted property.<sup>1463</sup> TF2-021 was then taken to Base Zero for initiation.<sup>1464</sup> At Base Zero TF2-021 saw many other young boys who had already been initiated.<sup>1465</sup> About 20 other young boys were initiated at the same time as TF2-021. They were initiated by Kondewa.<sup>1466</sup> As part of the initiation process, the boys were told that they would be made powerful for fighting and were given a potion to rub on their bodies before going into battle.<sup>1467</sup>

676. TF2-021 stayed at Base Zero for some time after his initiation.<sup>1468</sup> German gave TF2-021 a gun and taught him how to shoot.<sup>1469</sup> After this training, TF2-021 started going on missions; his first mission was to Masiaka, where he and other young boys engaged in combat with the rebels.<sup>1470</sup> In the course of this fighting, TF2-021 shot an unarmed woman in the stomach. She fell, and TF2-

<sup>1456</sup> Transcript of 14 September 2004, TF2-140, pp. 97 and 99.

<sup>1457</sup> Transcript of 2 November 2004, TF2-021, pp. 28 and 31-32.

<sup>1458</sup> Transcript of 2 November 2004, TF2-021, pp. 29 and 130.

<sup>1459</sup> Transcript of 3 November 2004, TF2-021, p. 48.

<sup>1460</sup> Transcript of 2 November 2004, TF2-021, pp. 32-33 and 35.

<sup>1461</sup> Transcript of 2 November 2004, TF2-021, p. 33.

<sup>1462</sup> Transcript of 3 November 2004, TF2-021, p. 8.

<sup>1463</sup> Transcript of 2 November 2004, TF2-021, pp. 33-35.

<sup>1464</sup> Transcript of 2 November 2004, TF2-021, p. 37.

<sup>1465</sup> Transcript of 2 November 2004, TF2-021, pp. 37-38.

<sup>1466</sup> Transcript of 2 November 2004, TF2-021, p. 38, lines 26-29; p. 39, lines 22-25 and p. 42, lines 20-23. This initiation is covered in greater detail in section V.2.2.8, para. 317.

<sup>1467</sup> Transcript of 2 November 2004, TF2-021, pp. 41-42.

<sup>1468</sup> Transcript of 2 November 2004, TF2-021, p. 43.

<sup>1469</sup> Transcript of 2 November 2004, TF2-021, pp. 43-44 and 84.

<sup>1470</sup> Transcript of 2 November 2004, TF2-021, pp. 44 and 83.

021 left her on the ground.<sup>1471</sup> After the shooting subsided, TF2-021 and other Kamajors looted tapes, bicycles and clothing.<sup>1472</sup> They also captured women and brought them back to Base Zero.<sup>1473</sup>

677. At Base Zero, TF2-021 saw Norman arrive in a helicopter and deliver arms and ammunitions.<sup>1474</sup> TF2-021 also witnessed Norman deliver arms to the Kamajor base at Gendema.<sup>1475</sup> These arms were used in combat at Kenema and Joru.<sup>1476</sup>

678. In addition to the fighting at Masiaka, TF2-021 participated actively in the February 1998 attacks on SS Camp and Kenema.<sup>1477</sup> On Sunday, 15 February 1998, TF2-021 was part of a group of three Kamajors that searched Kenema police barracks and killed some police that were found there.<sup>1478</sup> TF2-021 also fought in Joru and Daru.<sup>1479</sup> Other boys of TF2-021's age also participated in these attacks.<sup>1480</sup>

679. In 1996, when TF2-021 was 12 years old, he was involved in screening people at checkpoints in Kenema and Joru to ensure they had Kamajor passes.<sup>1481</sup>

680. In early January 1999, Norman convened a meeting in Bo which was attended by CO Ngobeh, TF2-021's commander. After this meeting, CO Ngobeh told TF2-021 that they would participate in 6 January 1999 invasion of Freetown.<sup>1482</sup> TF2-021 and 3 other young boys went to Freetown by helicopter with their commanders.<sup>1483</sup> The boys were given guns and taken to Congo Cross, where there was heavy firing between the rebels and ECOMOG. The children started fighting against the rebels.<sup>1484</sup> After the rebels were driven away, TF2-021 went to Brookfields Hotel and set up a checkpoint.<sup>1485</sup>

<sup>1471</sup> Transcript of 2 November 2004, TF2-021, p. 45.

<sup>1472</sup> Transcript of 2 November 2004, TF2-021, pp. 45-46.

<sup>1473</sup> Transcript of 2 November 2004, TF2-021, p. 47.

<sup>1474</sup> Transcript of 2 November 2004, TF2-021, p. 61.

<sup>1475</sup> Transcript of 2 November 2004, TF2-021, p. 64.

<sup>1476</sup> Transcript of 2 November 2004, TF2-021, p. 61.

<sup>1477</sup> Transcript of 2 November 2004, TF2-021, pp. 65-66 and 68.

<sup>1478</sup> Transcript of 2 November 2004, TF2-021, pp. 68 and 70.

<sup>1479</sup> Transcript of 2 November 2004, TF2-021, pp. 82-84.

<sup>1480</sup> Transcript of 2 November 2004, TF2-021, p. 66.

<sup>1481</sup> Transcript of 2 November 2004, TF2-021, p. 83, see also Exhibit 18, confidential.

<sup>1482</sup> Transcript of 2 November 2004, TF2-021, pp. 85 and 87; The Chamber is of the view that CO Gobey and CO Ngobeh is the same person.

<sup>1483</sup> Transcript of 2 November 2004, TF2-021, pp. 85-86.

<sup>1484</sup> Transcript of 2 November 2004, TF2-021, pp. 85-86; Transcript of 4 November 2004, TF2-021, p. 27.

<sup>1485</sup> Transcript of 2 November 2004, TF2-021, p. 86.

681. When TF2-021 fought with the Kamajors he took marijuana. He was also supposed to take brown-brown, which was a form of cocaine.<sup>1486</sup> Kondewa's boys gave them drugs at Base Zero.<sup>1487</sup>

682. In 1999, TF2-021 was initiated into the Avondo Society, a group of Kamajors led by Kondewa.<sup>1488</sup> After the initiation TF2-021 received a certificate bearing his photograph, to prove that he was one of Kondewa's Kamajors.<sup>1489</sup> TF2-021 was thirteen years old at this time.<sup>1490</sup>

### 2.10.1.3. Witness TF2-004

683. TF2-004 testified that he was 20 years old at the time he testified and that he turned 20 in the year 2004.<sup>1491</sup> The Chamber therefore finds that he was born between 1 January 1984 and 9 November 1984.<sup>1492</sup> He was abducted by the rebels from Fyndah, his village in Pujehun District.<sup>1493</sup> The rebels took TF2-004 to Maka. Kamajors attacked Maka and captured TF2-004 and five other boys who ranged in age from 10 to 16.<sup>1494</sup> The boys were taken from Maka to Liya, Kpaka Chiefdom, Pujehun District.<sup>1495</sup>

684. From Liya, TF2-004 was taken to Telu-Bongor. The rebels attacked the Kamajors there. TF2-004 was armed with a machete and participated in the fighting.<sup>1496</sup>

685. After the fighting at Telu-Bongor, TF2-004 returned to Liya where he was initiated by Muniro Sherrif.<sup>1497</sup> Many others were initiated at the same time, including children as young as 10 years old.<sup>1498</sup> The purpose of the initiation was to fight the war.<sup>1499</sup>

686. On the same day that he was initiated, TF2-004 left Liya to go fight in Zimmi.<sup>1500</sup> TF2-004 witnessed his commander, CO Small, kill an unarmed male collaborator who had warned the

<sup>1486</sup> Transcript of 3 November 2004, TF2-021, p. 50-53.

<sup>1487</sup> Transcript of 4 November 2004, TF2-021, p. 36.

<sup>1488</sup> Transcript of 2 November 2004, TF2-021, pp. 87-89 and 91; Transcript of 3 November 2004, TF2-021, p. 20, Exhibit 100, para. 54.

<sup>1489</sup> Transcript of 2 November 2004, TF2-021, pp. 91-94, and Exhibit 18, confidential.

<sup>1490</sup> Transcript of 2 November 2004, TF2-021, pp. 91-94, and Exhibit 18, confidential.

<sup>1491</sup> Transcript of 9 November 2004, TF2-004, p. 61, pp. 85-86.

<sup>1492</sup> Transcript of 9 November 2004, TF2-004, pp. 60-64, *ibid.*, pp. 85-87.

<sup>1493</sup> Transcript of 9 November 2004, TF2-004, pp. 60-64.

<sup>1494</sup> Transcript of 9 November 2004, TF2-004, pp. 64-66.

<sup>1495</sup> Transcript of 9 November 2004, TF2-004, pp. 68-69.

<sup>1496</sup> Transcript of 9 November 2004, TF2-004, pp. 73-75.

<sup>1497</sup> Transcript of 9 November 2004, TF2-004, pp. 75-77.

<sup>1498</sup> Transcript of 9 November 2004, TF2-004, pp. 75-77.

<sup>1499</sup> Transcript of 9 November 2004, TF2-004, pp. 75-77.

rebels that the Kamajors were approaching Zimmi.<sup>1501</sup> The Kamajors won the battle at Zimmi and then burnt the houses. TF2-004 was actively involved in the fighting at Zimmi.<sup>1502</sup> After this battle, TF2-004 returned to Liya with the Kamajors.<sup>1503</sup>

687. TF2-004 was also involved in other battles with Kamajors.<sup>1504</sup> He does not know how long he remained with them.<sup>1505</sup>

#### 2.10.2. The Use of Child Soldiers Throughout Sierra Leone

688. In addition to the evidence set out above, there is further evidence that during the time period relevant to the Indictment, children who appeared to be aged less than 15 were conscripted, enlisted, or used to participate actively in hostilities in the following locations: Kenema;<sup>1506</sup> Base Zero;<sup>1507</sup> Bo;<sup>1508</sup> Daru;<sup>1509</sup> Masiaka;<sup>1510</sup> Port Loko;<sup>1511</sup> Yele;<sup>1512</sup> and Ngiehun.<sup>1513</sup>

- (a) Initiators, including Kondewa, used child soldiers as body guards at Base Zero.<sup>1514</sup>
- (b) There was a Kamajor named "Junior Spain" at Base Zero who was around 12 -15 years of age.<sup>1515</sup>
- (c) In Ngiehun, Kamabote ordered a child soldier named Small Hunter, who was about 12 years old, to shoot TF2-035. There is still one bullet in TF2-035's body.<sup>1516</sup>

The Chamber accepts the testimony of TF2-079 that the name "Small Hunter" was

<sup>1500</sup> Transcript of 9 November 2004, TF2-004, pp. 77-82.

<sup>1501</sup> Transcript of 9 November 2004, TF2-004, pp. 77-82.

<sup>1502</sup> Transcript of 9 November 2004, TF2-004, p. 82.

<sup>1503</sup> Transcript of 9 November 2004, TF2-004, p. 83.

<sup>1504</sup> Transcript of 9 November 2004, TF2-004, p. 83.

<sup>1505</sup> Transcript of 9 November 2004, TF2-004, p. 83.

<sup>1506</sup> Transcript of 15 February 2005, TF2-005, p. 110, (CS); Transcript of 5 November 2004, TF2-201, pp. 62-63.

<sup>1507</sup> Transcript of 8 June 2005, TF2-011, pp. 23-24, (CS); Transcript of 27 May 2005, TF2-079, pp. 12-15; Transcript of 8 June 2005, TF2-011, pp. 23-24 (CS); Transcript of 19 November 2004, TF2-017, pp. 89-91; Transcript of 27 May 2005, TF2-079, pp. 12-15; Transcript of 5 November 2004, TF2-201, pp. 62-63; Transcript of 7 June 2005.

<sup>1508</sup> Transcript of 5 November 2004, TF2-201, p. 62-63.

<sup>1509</sup> Transcript of 7 June 2005, TF2-218, p.16 (CS); Transcript of 7 June 2005, TF2-218, pp. 11-15 (CS). Boys as young as 7 years danced in front of the CDF as they went into battle. This practice was not limited to Daru: Exhibit 100, confidential, para. 51.

<sup>1510</sup> Exhibit 116, p. 9.

<sup>1511</sup> Exhibit 116B, pp. 9-10.

<sup>1512</sup> Exhibit 116B, p. 9.

<sup>1513</sup> Transcript of 14 February 2005, TF2-035, pp. 24-26, see also *ibid.* pp. 56-59.

<sup>1514</sup> Transcript of 27 May 2005, TF2-079, pp. 12-13.

<sup>1515</sup> Transcript of 11 March 2005, TF2-014, pp. 15-16.

<sup>1516</sup> Transcript of 14 February 2005, TF2-035, pp. 24-27, see also *ibid.* p. 56-59. See para. 388 in section on Togo for further particulars of this incident.

given to all of the child combatants in the CDF, and that children were called by that name instead of their true names.<sup>1517</sup>

- (d) In May 1998, in Daru, children as young as 13 years were present and were armed with knives, cutlasses and guns.<sup>1518</sup> At this time, Daru was an active combat zone.<sup>1519</sup> It was the responsibility of a small boy dressed in Kamajor clothing to carry a stick known as "the commander" and lead the Kamajors into combat.<sup>1520</sup> There is similar evidence that children as young as 7 years danced in front of the Kamajors as they went into battle.<sup>1521</sup>
- (e) Children were involved in monitoring checkpoints in Daru.<sup>1522</sup>
- (f) According to Colonel Abu Bakar, elders liked to use children in combat because they are obedient.<sup>1523</sup>
- (g) In July 1998, a small proportion of the 4000 registered Kapras in Massingbi were children under the age of 15.<sup>1524</sup>
- (h) By mid-August 1998, between 315 and 350 children under the age of 15 had been registered in a demobilization and reintegration program in Bo.<sup>1525</sup>
- (i) In 1999, the CDF registered over 300 children aged less than 14 in a disarmament, demobilization and reintegration program in the Southern Province.<sup>1526</sup>

### 2.10.3. Norman's address at a Meeting at Base Zero

689. In January 1998, Norman spoke at a meeting at Base Zero. He complained that the child combatants were outperforming the adult fighters. Children were present at this meeting.<sup>1527</sup>

<sup>1517</sup> Transcript of 27 May 2005, TF2-079, p. 11.

<sup>1518</sup> Transcript of 7 June 2005, TF2-218, pp. 16-17; Transcript of 7 June 2005, TF2-218, pp. 11-15 (CS).

<sup>1519</sup> Transcript of 7 June 2005, TF2-218, p. 16-17 (CS) and Transcript of 7 June 2005, TF2-218, p. 11-15 (CS).

<sup>1520</sup> Transcript of 7 June 2005, TF2-218, p. 16-17 (CS); The use of armed children to at CDF checkpoints was not limited to Daru: Exhibit 100, confidential, para. 50.

<sup>1521</sup> Transcript of 16 June 2005, TF2-EW2, p. 15-19.

<sup>1522</sup> Transcript of 7 June 2005, TF2-218, pp. 32-33 (CS).

<sup>1523</sup> Transcript of 7 June 2005, TF2-218, pp. 32-33 (CS).

<sup>1524</sup> Transcript of 7 June 2005, TF2-218, pp. 20-22 (CS).

<sup>1525</sup> Transcript of 7 June 2005, TF2-218, pp. 24-25 (CS).

<sup>1526</sup> Exhibit 100, confidential, paras 29-30.

<sup>1527</sup> Transcript of 19 November 2004, TF2-017, pp. 89-91 (CS).

### 3. Legal Findings

#### 3.1. Findings on the General Requirements for Crimes Against Humanity, War Crimes and Other Serious Violations of International Humanitarian Law

#### 3.2. Findings on the General Requirements for Crimes Against Humanity, War Crimes and Other Serious Violations of International Humanitarian Law

##### 3.2.1. Article 2: Crimes Against Humanity

690. As stated in the section on Applicable Law, the general requirements that must be established to prove a Crime against Humanity are as follows:

1. There must be an attack;
2. The attack must be widespread or systematic;
3. The attack must be directed against any civilian population;
4. The acts of the Accused must be part of the attack; and
5. The Accused knew or had reason to know that his acts constitute part of a widespread or systematic attack directed against any civilian population.

691. The Chamber finds that the following events constitute part of a widespread attack:

1. The attacks by Kamajors on Tongo in late November/ early December 1997; in early January 1998; and on 14 January 1998;
2. The attack by Kamajors on Koribondo between 13 and 15 February 1998;
3. The attack of Kamajors on Bo Town between 15 and 23 February 1998;
4. The attack by Kamajors on Bonthe on 15 February 1998; and
5. The attack by Kamajors on Kenema between 15 and 18 of February 1998;

692. In the light of the broad geographical area over which these attacks occurred, the Chamber is satisfied that the requirement of a widespread attack has been established in this case. Since the requirement that an attack be widespread or systematic is disjunctive, the Chamber does not need to consider whether the attack was also systematic.

693. The Chamber finds, however, that the evidence adduced does not prove beyond reasonable doubt that the civilian population was the primary object of the attack. By contrast,

there is evidence that these attacks were directed against the rebels or juntas that controlled towns, villages, and communities throughout Sierra Leone.<sup>1528</sup> In this regard the Chamber recalls the admission of the Prosecutor that “the CDF and the Kamajors fought for the restoration of democracy”.<sup>1529</sup>

694. Having thus found that the essential requirement of an attack against the civilian population has not been satisfied beyond reasonable doubt, the Chamber finds that the Fofana and the Kondewa are not guilty of Crimes against Humanity as charged in Count 1 (Murder as a Crime against Humanity) and Count 3 (Other Inhumane Acts as a Crime against Humanity).

### 3.2.2. Article 3: War Crimes

695. As stated in the section on Applicable Law, the general requirements that must be established to prove a War Crime are as follows:

1. An armed conflict existed at the time of the alleged violation of Common Article 3 or Additional Protocol II;
2. There existed a nexus between the alleged violation and the armed conflict;
3. The victim was a person not taking direct part in the hostilities at the time of the alleged violation; and
4. The accused knew or had reason to know that the person was not taking a direct part in the hostilities at the time of the act or omission.

696. As regards the first requirement the Chamber recalls that it has taken judicial notice of the fact that the “armed conflict in Sierra Leone occurred from March 1991 until January 2002.”<sup>1530</sup>

<sup>1528</sup> Transcript of 26 January 2006, Sam Hinga Norman, pp. 2-5; Transcript of 30 January 2006, Sam Hinga Norman, pp. 21-22; Transcript of 3 February 2006, Sam Hinga Norman, p. 55; Transcript of 6 February 2006, Sam Hinga Norman, pp. 83-85; Transcript of 13 February 2006, Albert Joe Demby, pp. 42-43 and 49.

<sup>1529</sup> Statement of Mr. Desmond De Silva, “Prosecutor”: Transcript of 8 May 2006, pp. 2-3; Transcript of 9 February 2006, Peter Penfold, p. 8, 13-14 and 46-47; Transcript of 13 February 2006, Albert Joe Demby, pp. 55-56, 65-66; Transcript of 6 February 2006, Sam Hinga Norman, pp. 17, 23-24, 54, 80 and 93; Transcript of 16 February 2005, TF2-005, pp. 67-69; Transcript of 17 November 2004, TF2-008, pp. 31-34; Transcript of 11 November 2004, TF2-071, pp. 110-112.

<sup>1530</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence (TC), 2 June 2004, Annex I, Fact A [Decision on Judicial Notice]. This finding was upheld on appeal in *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal Against







697. With respect to the other general requirements for war crimes, where findings have been made of murder (Count 2), cruel treatment (Count 4), pillage (Count 5), acts of terrorism (Count 6) or collective punishments (Count 7) as war crimes, the Chamber is satisfied that the perpetrators were aware of the protected status of the victims who were either civilians (a category which includes “collaborators”<sup>1531</sup> and police officers) or captured enemy combatants. Similarly, where such findings have been made the Chamber is satisfied that the alleged crimes were closely related to the armed conflict.

### 3.2.3. Article 4: Other Serious Violations of International Humanitarian Law

698. As stated in the section on Applicable Law, the general requirements that must be established to prove an “Other Serious Violation of International Humanitarian Law” are as follows:

1. An armed conflict existed at the time of the alleged offence; and
2. There existed a nexus between the alleged offence and the armed conflict.

699. Again, the Chamber recalls that it has taken judicial notice of the fact that an armed conflict existed in all parts of the Republic of Sierra Leone throughout the period relevant to the Indictment.<sup>1532</sup>

700. Where findings have been made on the enlistment or use of children under the age of 15 to participate actively in the hostilities (Count 8), the Chamber finds that the alleged crimes were closely related to the armed conflict.

### 3.3. Responsibility

701. The Indictment alleges that Fofana and Kondewa, by their acts or omissions, are individually criminally responsible pursuant to Article 6(1) of the Statute for the crimes charged under Counts 1 through 8 of the Indictment, which they are said to have planned, instigated,

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“Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence” (AC), 16 May 2005, paras 34-40 [Appeal Decision on Judicial Notice].

<sup>1531</sup> The Chamber accepts the Prosecution’s definition of “collaborators” as “[c]ivilians, including women and children, who were suspected to have supported, sympathized with, or simply failed to actively resist the combined RUF/AFRC forces.” See Indictment, para. 23.

<sup>1532</sup> See Decision on Judicial Notice and Appeal Decision on Judicial Notice.

ordered, committed, or in which planning, preparation or execution they have aided and abetted.<sup>1533</sup>

702. Fofana and Kondewa are further alleged to have committed these crimes through participation in the first, or alternatively, the third category of a joint criminal enterprise, acting individually and in concert with Norman and subordinate members of the CDF. The Prosecution alleges that the JCE involved the use of “any means necessary” to defeat and completely eliminate the RUF/AFRC forces, their supporters, sympathisers, and anyone who did not actively resist their occupation of Sierra Leone, as well as gaining and exercising control over the territory of Sierra Leone and its population.<sup>1534</sup>

703. In addition, or alternatively, the Indictment alleges that Fofana and Kondewa are individually criminally responsible pursuant to Article 6(3) of the Statute for the crimes charged under Counts 1 through 8 of the Indictment, which are said, to have been committed by their subordinates.<sup>1535</sup>

704. On the basis of the factual findings made by the Chamber in section V.2. “Factual Findings” of this Judgement, we now proceed to determine whether the allegations against Fofana and Kondewa as set out in the Indictment have been proved beyond reasonable doubt.

### 3.3.1. President Kabbah’s Role in the Conflict

705. As has been briefly mentioned in the introduction of this Judgement, persistent references and allusions were made by the Defence Team in the course of the proceedings that have preceded this Judgement, to President Kabbah and his alleged involvement in the conflict on the side of the CDF.

706. In this regard, and again as well mentioned in passing in the introduction of this Judgement, the Chamber recalls that the three Accused Persons all along in the course of these proceedings, raised a veiled Defence that all they did and stand charged for was as a result of their struggle to restore to power, President Kabbah’s democratically elected government that had been

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<sup>1533</sup> Indictment, para. 20.

<sup>1534</sup> Indictment, para. 19.

<sup>1535</sup> Indictment, para. 21.

ousted in a *coup d'Etat* by the Armed Forces Revolutionary Council (AFRC) on the 25<sup>th</sup> of May 1997.

707. In view of the fact that the exigencies of justice require that a defence whether directly or indirectly raised by an accused in a criminal matter needs to be examined, we will proceed to determine, whether the President's alleged role, viewed in the light of his political status and that of his government-in-exile, constitutes a legal defence that is available to the Accused Persons.

708. In the light of the evidence adduced We have no doubt in Our minds that President Kabbah occupied and played a central role in this conflict because it was his overthrown Government that was waiting in the wings to be restored after the bitter wrangling and struggle that preceded it and continued after the Kabbah Government was ousted.

709. In February/March 1997, the then Vice President, Albert Joe Demby, organised two meetings to address military dissatisfaction over rice distributions because while senior officers were receiving only one bag for every two officers. A plan to reduce the rice rations provoked discontent and unrest in the Army.<sup>1536</sup>

710. In a meeting between President Kabbah, the vice President Demby and the Army Officers, the late Accused Norman accused two army officials, Hassan Conteh and Col Marx Kanga of planning a coup; an accusation which they denied.<sup>1537</sup>

711. Peter Penfold the British High Commissioner to Sierra Leone, the American Ambassador John Hirsh and the UN Special Representative, Ambassador Berhanu Dinka, in a meeting with President Kabbah, warned him of a possible *coup* against his government. He told them that he had already heard about that coup and that he would be talking to the Military.<sup>1538</sup>

712. Meantime, late Norman, on April 1997, had seen President Kabbah and handed over to him the strategic keys, a bag with working parts of dangerous weapons for safe keeping.

713. Like the Ambassadors who preceded him, Norman told President Kabbah that there was an imminent plot to overthrow him but that the *coup d'Etat* may not be deadly or destructive

<sup>1536</sup> Transcript of 8 February 2006, Peter Penfold, pp. 7-9.

<sup>1537</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 22-23; Transcript of 24 January 2006, Samuel Hinga Norman, pp. 80-83.

<sup>1538</sup> Transcript of 8 February 2006, Peter Penfold, pp. 9-13.

without those parts of the weapons. On the 5<sup>th</sup> of May 1997, President Kabbah told Norman that he returned the contents of the bag to the Chief of Defence Staff and the Army Chief, late Brigadier Hassan Conteh and late Max Kanga. Norman then told President Kabbah that the *coup d'Etat* against his government could not be averted.

714. After the *coup d'Etat* of the 25<sup>th</sup> of May 1997, President Kabbah went into exile in Guinea. His government-in-exile was still recognised and from Conakry he encouraged late Norman and his Kamajor collaborators like the Accused, Moinina Fofana and Allieu Kondewa and other CDF personnel who were engaged in this struggle to restore him to power.

715. He bought a satellite phone for Norman's use to report to him regularly on the progress of the war. He continued to provide logistics support to the Kamajors and their leaders. Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa who were involved in the delegation from Bonthe, went to Freetown to see President Kabbah amongst others to complain about lootings and killings by Kamajors. The President sent 100 bags of rice to the Kamajors in Bonthe Town.<sup>1539</sup>

716. In view of the international recognition accorded to his Government, President Kabbah made it possible for the Economic Community of West African States through ECOMOG to provide military assistance to the CDF to enable it attain the objective of restoring his ousted Government to power. Indeed ECOMOG fought alongside the CDF Kamajor forces against the combined forces of the RUF and of the AFRC as the war raged inside the country for control of areas occupied by enemy forces.

717. It is also on record that Lady Patricia Kabbah gave the sum of \$10,000US to Hon. Meme Momoh Pujoh to be conveyed to late Norman for use as part of logistical support to the fighters particularly the amphibious Kassilla battalion in Bonthe. She said that she was very proud of them. She even promised them that she was communicating by a letter and that she would give further offers.<sup>1540</sup>

<sup>1539</sup> Transcript of 21 November 2004, TF2-071, pp. 82-83.

<sup>1540</sup> Transcript of 30 January 2006, Samuel Hinga Norman, pp. 10-12.





718. The President's wife, Lady Patricia Kabbah was particularly very concerned about that part of Sierra Leone she came from and she was always asking about Bonthe, about Borhoi, her birth Village.<sup>1541</sup>

719. Defence Witness, Osman Vandj, testified that a meeting which President Kabbah held in Bo, he thanked the Kamajors for dislodging the junta and restoring him as President and that he promised the Kamajors more rice which he later did.<sup>1542</sup>

720. In a second meeting held in Bo and at which prominent dignitaries were in attendance, President Kabbah told the Kamajors he would return and give them all medals. He left two sample medals at the Hall.<sup>1543</sup>

#### 3.4. Towns of Tongo Field

721. The Chamber outlines below, the facts as found in Sections V.2.2 and V.2.3.2 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

- (i) Base Zero existed as the headquarters for the CDF High Command from about 15 September 1997 to 10 March 1998. Norman, as the National Coordinator, Fofana, as the National Director of War, and Kondewa, as the High Priest, were the key and essential components of the leadership structure of the organisation. They were the executives of the CDF actually taking the decisions, while nobody else could take a decision in their absence. They were the leaders of the CDF and all the Kamajors looked up to them.
- (ii) Base Zero was a central storage and distribution site for all of the CDF's logistics. Commanders came to Base Zero from every group and location in the country to take instructions from the High Command or Norman and to receive logistics. Reports were being delivered to Base Zero from the frontlines. Thousands of civilians and Kamajors travelled to Base Zero for initiation and military training. Although the CDF was a cohesive force under one central command, there were some fighters who acted on their own without the knowledge of central command. Commanders' authority to discipline their men on the ground was entirely their own.

<sup>1541</sup> Transcript of 30 January 2006, Samuel Hinga Norman, pp. 10-12

<sup>1542</sup> Transcript of 17 February 2006, Osman Vandj, pp. 99-101.

<sup>1543</sup> Transcript of 17 February 2006, Osman Vandj, pp. 99-101.





- (iii) Norman, Fofana, Kondewa, Mohamed Orinco Moosa, Joseph Koroma, Lamin Ngobeh, Albert J Nallo and the battalion commanders made strategic war decisions of determining when and where to go to war.
- (iv) Fofana in his capacity as Director of War at Base Zero planned and executed the war strategies and received frontline reports from the commanders. In executing these functions he was largely assisted by Albert J Nallo and on occasion Fofana passed on his responsibilities to Nallo. These war strategies did not include the commission of criminal acts, such as killing of civilians or looting.
- (v) Fofana selected commanders to go to battle and could, on occasion, issue direct orders to these commanders. For example, he issued the order to Joe Tamidey not to release captured vehicles and other items to any other person until they are registered with the CDF Headquarters. Fofana was responsible for the receipt and provision of ammunitions at Base Zero to the commanders upon the instruction of Norman.
- (vi) Fofana was seen as having power and authority at Base Zero and was the overall boss of the commanders at Base Zero.
- (vii) Kondewa in his capacity as High Priest was in charge of the initiations at Base Zero and was the head of all the CDF initiators in the country. The Kamajors believed in mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them "bullet-proof". The Kamajors looked up to Kondewa and admired the man with such powers. They believed that he was capable of transferring his powers to them to protect them. By virtue of these powers Kondewa had command over the Kamajors in the country. He never went to the war front himself, but whenever a Kamajor was going to war, Kondewa would give his advice and blessings, as well as the medicine which the Kamajors believed would protect them against bullets. No Kamajor would go to war without Kondewa's blessings.
- (viii) Kondewa attended passing out parades at Base Zero, which signified that the Kamajors had passed their training and could present their skills. He, along with Norman and Mbogba, signed a training certificate, which each trainee received after the training.
- (ix) On 16 November 1997 TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms. It requested arms and ammunitions and described attacks which had been launched in the area. It also narrated crimes which were committed by Kamajors in that area. The report was endorsed by Musa Junisa, the then Commander-in-chief of Zone II Operational Frontline and Mohamed Orinco Moosa, his deputy. TF2-079, Junisa and Moosa with 100 other Kamajors then travelled to Base Zero. At Base Zero they gave the report first to Fofana and then to Norman. Norman commended





their efforts and told them that a good number of that group should return to the area with another senior commander to keep the area strong and only a few of them should remain at Base Zero to await ammunitions. Seven people, including Moosa and TF2-079 stayed at Base Zero.

- (x) At a passing out parade at Base Zero between 10 and 12 December 1997 Norman gave instructions for the Tongo and Black December operations. Norman said that the attack on Tongo would determine who wins the war. He also said that there was no place to keep captured prisoners like the juntas, let alone their collaborators. He directed the Kamajors that instead of wasting their bullets, to chop off the left hand of any captured junta as a signal to any group that would want to seize power through the barrels of the gun and not the ballot paper. He also told the fighters not to spare the houses of the juntas. After hearing Norman's instructions, Fofana addressed the Kamajors saying that any commander failing to perform accordingly and "losing your own ground", should kill himself and not come to report to Base Zero. Then all the fighters looked at Kondewa, admiring him as a man with a mystic power, and he gave the last comment saying that the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels. He then gave his blessings.
- (xi) A subsequent meeting was held by Norman at Base Zero, which was attended by, among others, Fofana, Kondewa, Mohamed Orinco Moosa and some commanders from the Tongo area, such as, Musa Junisa, TF2-079 and Vandi Songo. Norman repeated that whoever took Tongo would win the war and therefore it should be taken "at all costs". He ordered them not to spare anyone working with the juntas or mining for them. He also said that all collaborators should forfeit their properties and be killed. Everyone in the meeting contributed to the discussion, including Fofana and Kondewa. Norman then ordered Fofana to provide logistics for the operation.

### 3.4.1. Responsibility of Fofana

#### 3.4.1.1. Responsibility Pursuant to Article 6(1)

722. Based on the above evidence the Chamber finds that Fofana's speech at the passing out parade in December 1997 when the attack on Tongo was discussed was clearly an encouragement and support of Norman's instructions to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. At this parade Fofana, as Director of War, addressed the fighters immediately after the National Coordinator for the CDF had given his instructions about Tongo. Fofana not only encouraged the Kamajors to follow Norman's unlawful orders to commit criminal acts but also told them that if they failed to perform accordingly, they should not come back to Base Zero to report but to kill themselves rather than





losing their own ground. As found by the Chamber above, those Kamajors who then proceeded to attack Tongo not only received a direction from Norman to commit specific criminal acts, they also had a clear encouragement and support from Fofana, as one of their leaders, to commit such acts.

723. The Chamber is satisfied that Fofana's speech had a substantial effect on the perpetration of those criminal acts. Although this speech was given by Fofana at Base Zero in December 1997, prior to the commission of the criminal acts by Kamajors in Tongo in January 1998, the Chamber finds that the Accused is liable for aiding and abetting even when his conduct occurred before the principal crime had been perpetrated and at a location geographically removed from that of the principal crime.<sup>1544</sup>

724. The Chamber observes that in order to make a finding that Fofana aided and abetted in the commission of the alleged crimes it is irrelevant whether he shared the intent of the perpetrators. Similarly, the Chamber need not examine whether Fofana knew of the precise crime that was intended by the principal perpetrator. However, the Chamber is satisfied that Fofana was aware that one of a number of crimes would probably be committed by the Kamajors and that one of those crimes was in fact committed. The Chamber finds that Fofana knew of Norman's orders that the Kamajors were to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. The Chamber finds that, based on his awareness that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct, which had been reported to Base Zero,<sup>1545</sup> Fofana knew that it was probable that the Kamajors would commit at least one of these acts in compliance with the instructions issued. With this knowledge and his knowledge of the orders given by Norman, the National Coordinator, Fofana encouraged and supported the Kamajors in their actions, in consequence of which they committed acts of killing and infliction of physical suffering or injury in Tongo, as found by the Chamber above.

<sup>1544</sup> The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime: see Section IV.4.1.6 "Aiding and Abetting".

<sup>1545</sup> See fact in para. 721(ix).







725. The Chamber further finds that Fofana was present and contributed to the discussion at the subsequent commanders' meeting in December 1997 at Base Zero where plans to attack Tongo were discussed. At this meeting Norman further reiterated, clarified and expanded his unlawful orders, which now included looting, to the Kamajor commanders from Tongo. In the absence of any evidence showing how Fofana contributed to the discussion and decision at this meeting the Chamber finds that in the circumstances there is no evidence to prove beyond reasonable doubt that Fofana either planned the commission of this additional crime of looting or that he aided and abetted in the planning, preparation or execution of this additional crime in Tongo.

726. The Chamber notes that Fofana was ordered by Norman to provide logistics to the commanders from Tongo following this meeting. The Chamber observes that no specifications have been provided as to what these logistics consisted of. Although at this stage Fofana knew that the order to attack Tongo included not only instructions to kill, inflict physical suffering or injury or destroy houses, but also to loot, it is not the only reasonable inference that the logistics provided by Fofana were used to commit those specific crimes in Tongo or that such provision of logistics had a substantial effect upon the perpetration of these specific crimes in Tongo. The Chamber finds that this action by Fofana did not constitute further aiding and abetting in the planning, preparation or execution of the criminal acts committed by Kamajors in Tongo subsequently.

727. The Chamber finds, however, that Fofana's speech at the passing out parade constitutes aiding and abetting only of the preparation of those criminal acts which were explicitly ordered by Norman, namely, killing of captured enemy combatants and "collaborators", infliction of physical suffering or injury upon them and destruction of their houses,<sup>1546</sup> which the Chamber found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

728. With respect to Count 7, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that the specific intent to impose a punishment on persons for acts or omissions they have not committed can reasonably be inferred from the circumstances that existed at the

<sup>1546</sup> The Chamber notes that while the Indictment charges under Count 5 "unlawful taking and destruction by burning of civilian-owned property" burning does not constitute the offence of pillage. See the section on Applicable Law for further discussion of this point.





time and in particular from Norman's order. The Chamber therefore finds that it has been established beyond reasonable doubt that Fofana was aware of the required specific intent to punish collectively.

729. The Chamber recognises that other criminal acts alleged in the Indictment were in fact committed in the towns of Tongo Field. However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana aided and abetted in the preparation of all the other criminal acts, such as infliction of mental harm or suffering and looting, which we found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

730. Under the sub-heading "Counts - Tongo Field", the Chamber will therefore examine only those particular criminal acts that were explicitly included in Norman's order.

731. With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman's primary purpose in issuing the order to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond reasonable doubt that Fofana had the requisite knowledge, an essential element of the crime of acts of terrorism.

732. In addition, the Chamber finds that no evidence has been adduced that Fofana planned, instigated, ordered or committed any of the other criminal acts which the Chamber found were committed in the towns of Tongo Field during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

3.4.1.2. Responsibility Pursuant to Article 6(3)

733. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that there was a superior-subordinate relationship, either *de jure* or *de facto*, between Fofana and all of the Kamajors, who committed other criminal acts in the towns of Tongo Field prior to, during, and after the second and third attacks on Tongo, which the Chamber found were committed during the time frame charged in the Indictment, so as to conclude that he could or did exercise effective control over those Kamajors.

734. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to other criminal acts which the Chamber found were committed by Kamajors in the towns of Tongo Field during the time frame charged in the Indictment.

#### 3.4.2. Responsibility of Kondewa

##### 3.4.2.1. Responsibility Pursuant to Article 6(1)

735. The Chamber finds that at the passing out parade in December 1997 when the attack on Tongo was discussed Kondewa addressed the fighters as the High Priest after the National Coordinator and the Director of War had made their comments. All the fighters looked at Kondewa, admiring him as a man with mystic powers, and he made the last comment saying that the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels. The Chamber finds that in uttering these words Kondewa effectively supported Norman's instructions and encouraged the Kamajors to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. Kondewa then gave his blessings for these criminal acts as the High Priest. The Chamber notes that no fighter would go to war without Kondewa's blessings because they believed that Kondewa transferred his mystical powers to them and made them immune to bullets.

736. As found by the Chamber above, the Kamajors who then proceeded to attack Tongo not only received a direction from Norman to commit specific criminal acts, they also had encouragement and support from Kondewa through his blessing, as one of their leaders with mystical powers, to commit such acts. The Chamber is satisfied that Kondewa's words had a substantial effect on the perpetration of those criminal acts. Although Kondewa's speech was given at Base Zero in December 1997 prior to the commission of the criminal acts by Kamajors in Tongo



in January 1998, the Chamber finds that the Accused is liable for aiding and abetting even when his conduct occurred before the principal crime had been perpetrated and at a location geographically removed from that of the principal crime.

737. The Chamber observes that in order to make a finding that Kondewa aided and abetted in the commission of the alleged crimes it is irrelevant whether he shared the intent of the perpetrators. Similarly, the Chamber need not examine whether Kondewa knew of the precise crime that was intended by the principal perpetrator. However, the Chamber should be satisfied that Kondewa was aware that one of a number of crimes would probably be committed by the Kamajors and that one of those crimes was in fact committed. The Chamber finds that Kondewa knew of Norman's orders that the Kamajors were to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. The Chamber finds that, based on his awareness that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct, which had been reported to Base Zero,<sup>1547</sup> Kondewa knew that it was probable that the Kamajors would commit at least one of these acts in compliance with the instructions issued. With this knowledge and his knowledge of the orders given by the National Coordinator, Kondewa encouraged and supported the Kamajors in their actions, in consequence of which they committed acts of killing and infliction of physical suffering or injury in the towns of Tongo Field, as was found by the Chamber above.

738. We further find that Kondewa was present and contributed to the discussion at the subsequent commanders' meeting in December 1997 at Base Zero where plans to attack Tongo were discussed. At this meeting Norman further reiterated, clarified and expanded his unlawful orders, which now included looting, to the Kamajor commanders from Tongo. In the absence of any evidence showing how Kondewa contributed to the discussion and decision at this meeting, the Chamber finds that in the circumstances there is no evidence to prove beyond reasonable doubt that Kondewa either planned the commission of this additional crime of looting or that he aided and abetted in the planning, preparation or execution of this additional crime in Tongo.

739. The Chamber finds, however, that the speech by Kondewa at the passing out parade constitutes aiding and abetting in the preparation of those criminal acts which were explicitly

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<sup>1547</sup> See para. 721(ix).



ordered by Norman, namely, killing of captured enemy combatants and “collaborators”, infliction of physical suffering or injury upon them and destruction of their houses,<sup>1548</sup> which the Chamber found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

740. With respect to Count 7, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that the specific intent to impose a punishment on persons for acts or omissions they have not committed can reasonably be inferred from the circumstances that existed at the time and in particular from Norman’s order. The Chamber therefore finds that it has been established beyond reasonable doubt that Kondewa was aware of the required specific intent to punish collectively.

741. The Chamber recognises that other criminal acts alleged in the Indictment were in fact committed in the towns of Tongo Field. However, the Chamber finds that such acts were not included in Norman’s order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Kondewa aided and abetted in the preparation of all the other criminal acts, such as infliction of mental harm or suffering and looting, which we found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

742. Under the sub-heading “Counts - towns of Tongo Field”, the Chamber will therefore examine only those particular criminal acts that were explicitly included in Norman’s order.

743. With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman’s primary purpose in issuing the order to kill captured enemy combatants and “collaborators”, to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond

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<sup>1548</sup> The Chamber notes that while the Indictment charges under Count 5 “unlawful taking and destruction by burning of civilian-owned property” burning does not constitute the offence of pillage. See the section on Applicable Law for further discussion of this point.

reasonable doubt that Kondewa had the requisite knowledge, an essential element of the crime of acts of terrorism.

744. In addition, the Chamber finds that no evidence has been adduced that Kondewa planned, instigated, ordered or committed any of the other criminal acts which the Chamber found were committed in the towns of Tongo Field during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

3.4.2.2. Responsibility Pursuant to Article 6(3)

745. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that there was a superior-subordinate relationship, either *de jure* or *de facto*, between Kondewa and all of the Kamajors, who committed other criminal acts in the towns of Tongo Field prior to, during, and after the second and third attacks on Tongo, which the Chamber found were committed during the time frame charged in the Indictment, such as to conclude that he could or did exercise effective control over those Kamajors.

746. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to other criminal acts which the Chamber found were committed by Kamajors in the towns of Tongo Field during the time frame charged in the Indictment.

3.4.2.3. Counts - The Towns of Tongo Field

747. The Chamber recognises that other criminal acts have been committed by Kamajors in the towns of Tongo Field during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability



alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

748. The Chamber observes that the allegations against Fofana and Kondewa for criminal acts alleged to have been committed by the Kamajors in the towns of Tongo Field are identical. The evidence relied on by the Chamber to make its factual findings on the criminal acts committed by Kamajors in these locations are also identical. While the Chamber has dealt with the factual findings underlying each count together, it has considered the individual criminal liability of each Accused, with respect to each count, separately.

3.4.2.3.1. Count 2: Murder

749. The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the unlawful killing of an unknown number of civilians and captured enemy combatants at or near Tongo Field and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, between about 1 November 1997 and 30 April 1998.<sup>1549</sup>

750. As set out above in Sections V.2.3.3 - V.2.3.7 of the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

- (i) In early January 1998, a 12 year-old boy named Foday Koroma was killed in Talama because he was related to a rebel from Tongo.
- (ii) In early January 1998, 150 Loko, Limba and Temne tribe members were separated from members of other tribes and were killed in Talama.
- (iii) On 14 January 1998, two men identified as rebels were killed by Kamabote at the NDMC Headquarters in Tongo.
- (iv) On 14 January 1998, Kamabote killed a man named "Dr. Blood" and a woman named Fatmata Kamara at the NDMC Headquarters in Tongo. Both were considered to be collaborators.
- (v) On 14 January 1998, at the NDMC Headquarters in Tongo, two women identified more than 10 men as collaborators. These men were led by armed Kamajors to a place behind the Headquarters where cows were slaughtered. Two hundred others who had been identified as rebels were also led in the same direction.

<sup>1549</sup> Indictment, para. 25(a).

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- (vi) On 14 January 1998, Kamajors took TF2-048's uncle, an unidentified woman and an unidentified child behind a house at the NDMC Headquarters in Tongo. The Kamajors returned with blood on their machetes. These people have not been seen again.
- (vii) On 15 January 1998, 20 men who had been accused of being rebels were hacked to death with machetes at the NDMC Headquarters in Tongo.
- (viii) Around noon on 15 January 1998, Kamajors shot at a crowd of civilians at the NDMC Headquarters in Tongo. Many civilians were hit by stray bullets and at least one died.
- (ix) On 15 January 1998, at an intersection near the NDMC Headquarters in Tongo, TF2-048's brother was killed by a Kamajor.
- (x) On 15 January 1998, Kamajors at a checkpoint hacked one man to death for carrying a photograph of a rebel.
- (xi) On 15 January 1998, Kamajors at another checkpoint hacked a boy named Sule to death for carrying a wallet that resembled SLA fatigues.
- (xii) Kamajors separated men and women in Bumie and killed five men after making them stare at the sun.
- (xiii) Shortly after the third attack on Tongo, a group of 65 civilians was separated into two lines in Kamboma; the Kamajors shot the first 57 people and rolled the bodies into a swamp behind a house. The last eight people were hacked in the neck with machetes and rolled into the swamp with the other bodies. Only one man survived.
- (xiv) In mid-February 1998, Aruna Konowa was killed in Lalehun, on the order of a Kamajor boss named Chief Baimba Aruna, because he was considered to be a collaborator.
- (xv) A few days after the killing of Aruna Konowa, Brima Conteh was killed in Lalehun by Kamajors who accused him of being "the chief of the rebels".

751. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (xv) and concludes that all of the perpetrators were Kamajors. We find that individuals were killed intentionally; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 750(i) - 750(iv) and 750(vi) - 750(xv) was sufficiently related to the armed conflict to



satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 750, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

752. In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established beyond reasonable doubt with respect to each incident described in paragraph 750.

753. With respect to those incidents described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv), above, the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been met with respect to each incident. However, the Chamber finds that the specific elements of the crime of murder have not been established with respect to paragraph 750, as the conclusion that these people were killed is not the only reasonable inference to be drawn from the evidence.

3.4.2.3.2. Count 4: Cruel Treatment

754. The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the intentional infliction of serious physical harm and serious physical suffering on an unknown number of civilians in Tongo Field and the surrounding areas, between 1 November 1997 and 30 April 1998.<sup>1550</sup>

755. Additionally, the Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians in Tongo Field and the surrounding areas, between November 1997 and December 1999, through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;

<sup>1550</sup> Indictment, para. 26(a).

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- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.<sup>1551</sup>

756. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

- (i) On 14 January 1998, at the NDMC Headquarters in Tongo, a Kamajor hacked at three people with a cutlass.
- (ii) On 15 January 1998, at a checkpoint in Dodo, Kamajors hacked the right hand of a man they thought was a rebel.
- (iii) Shortly after the third attack on Tongo, a group of 65 civilians was separated into two lines in Kamboma; 64 were killed. One man was hacked in the neck with a machete but survived.
- (iv) Some time after escaping from a checkpoint in Panguma, Kamabote found TF2-035 in Ngiehun. On discovering that TF2-035 was a Limba, Kamabote ordered a child soldier named "Small Hunter" to kill TF2-035. Small Hunter shot TF2-035 five times; one bullet is still in his body.

757. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(iv) and concludes that all these acts were committed by Kamajors. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 756 (i) - (iv) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 756, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

758. In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to each incident described in paragraph 756.

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<sup>1551</sup> Indictment, para. 26(b).

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3.4.2.3.3. *Count 7: Collective Punishments*

759. The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for committing the crimes charged in Counts 1 through 5 of the Indictment as part of a campaign to punish the civilian population of the relevant geographical areas.<sup>1552</sup>

760. The Chamber recalls that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for collective punishments. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2, 4 and 7 in the towns of Tongo Field.

761. The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv) [Count 2] and in paragraph 756 [Count 4] were perpetrated with the specific intent to punish the civilian population in Tongo Field and the surrounding areas.

762. The Chamber is therefore satisfied, in relation to those acts described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv) and in paragraph 756, that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

3.4.3. Conclusion

3.4.3.1. Responsibility of Fofana

763. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4 and 7 above.

3.4.3.2. Responsibility of Kondewa

764. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for

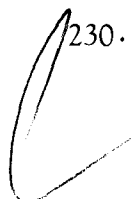
<sup>1552</sup> Indictment, para. 28.

aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4 and 7 above.

### 3.5. Koribondo

765. In addition to the facts listed above in paragraph 721 (i) to (viii), the Chamber outlines below the facts as found in Sections V.2.2, V.2.4.2, V.2.4.3, V.2.4.4 and V.2.4.6 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa with respect to Koribondo:

- (i) At a passing out parade at Base Zero in early January 1998 Norman gave orders to the Kamajors to launch an "all-out offensive" in all the areas occupied by the Juntas and laid-down military instructions on how to conduct this operation.
- (ii) Fofana addressed the Kamajors at this parade, confirming Norman's order to attack various junta-held territories. During this speech Fofana told the fighters to attack the villages where the juntas were located and "to destroy the soldiers from where they were [...] settled". He also said that the failure to take Koribondo was a disgrace to the Kamajors and that this time he wanted them to go and capture Koribondo.
- (iii) Kondewa gave his blessings and the medicines which would make the fighters fearless if they did not spoil the law. He also said that all of his powers had been transferred to them to protect them, so that no cutlass would strike them and that they should not be afraid.
- (iv) A subsequent commanders' meeting for Koribondo was held by Norman at Base Zero on the same day as the passing out parade, which had in attendance, among others, Fofana, Kondewa, Lamin Ngobeh, Joe Tamidey, Bobor Tucker and other commanders. Norman chose Joe Tamidey to lead the attack on Koribondo. Norman ordered that Koribondo should be taken "at all costs" because they had already spent a lot on Koribondo. Norman gave specific orders to the commanders to destroy or burn everything in Koribondo, except for a mosque, church, the Barri and the school. He also said that anyone left in town should be termed an enemy or a rebel since they had been forewarned and should be killed.
- (v) At the same meeting Bobor Tucker's group was specifically ordered to reinforce the Bo-Koribondo Highway so that no one could come from Bo to help the juntas.


- (vi) At the request of Joe Tamidey, Norman ordered Lumeh to provide Tamidey with ammunition, food and money. Bobor Tucker had reserve ammunitions from before that he used for the attack.
- (vii) Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present. Norman told Nallo that the Kamajors had tried to capture Koribondo many times and that they had failed because the civilians had given their children to the juntas in marriage and thus they were all "spies and collaborators". Therefore, when he goes to Koribondo "anybody that was met there should be killed" and nothing should be left "not even a farm" or "a fowl". All houses were to be burnt, and he was given petrol for the job. Some specific names were mentioned. Shekou Gbao, the driver, should be killed and his compound be burnt because he was giving his vehicle to the juntas. The house of Mike Lamin's father was also to be burnt, because Mike Lamin was a RUF. Mr Biyo, a driver, should have his compound burnt as well. Although Joe Tamidey was appointed by Norman to lead the attack on Koribondo, he and the other commanders involved in that attack were all under Nallo's overall command.
- (viii) Fofana as Director of War and one of the leaders at Base Zero was the superior of Nallo by virtue of Nallo's positions in the hierarchical structure of the organisation that existed at Base Zero. Nallo was the Deputy National Director of Operations and the Regional Director of Operations for the Southern Region, which included Districts of Bo, Moyamba, Pujehun and Bonthe. In his capacity as Deputy National Director of Operations, Nallo was responsible for transmitting general and specific instructions from Norman to the warfront commanders, for collecting reports he received from the frontline upon his visits and transmitting them to Fofana before presenting them to Norman, and bringing arms and ammunitions to the fighters.
- (ix) As Regional Director of Operations Nallo was responsible for implementing commands he received from Base Zero with his commanders. In implementing those commands he did not distinguish between the lawful and unlawful orders and did not recognise that he had discretion to implement them or not.
- (x) The local operational planning for the attack on Koribondo was done at Kpetewoma. Nallo was the intermediary between Norman at Base Zero and Joe Tamidey. During the first meeting local manpower was provided to assist the Kamajors. At the third meeting, Nallo supplied cartridges, bombs, G3s and AK-47s to Joe Tamidey, which he had said were given by Norman for the attack on Koribondo. Thereafter plans were made, fighters were organized and the arms and ammunition were distributed to the various groups by Joe Tamidey. The following commanders were to lead the battle from three flanks: Bobor Tucker from the Bo-Koribondo Highway; Lahai George from the Sumbuya-Koribondo Highway; and Joe





Tamidey from Blama. Joe Tamidey then informed Nallo for further report to Norman that the attack was planned for the 13th of February 1998.

- (xi) The attack started from Jombohun and was commanded by Joe Tamidey, Bobor Tucker and Lamin Ngobeh. Although the commanders were operating with different groups, they were all under Nallo's command. Around 700 Kamajors that attacked Koribondo were predominantly, but not exclusively, from the Jaiama-Bongor Chiefdom. Others came from the Districts of Pujehun, Bonthe and Bo.
- (xii) Four days after the capture of Bo, Joe Tamidey met with Fofana, Kondewa and Norman in Koribondo. He was taken to Bo where he was questioned by Fofana as to his reasons for not killing Shekou Gbao.
- (xiii) At the end of March 1998, Norman addressed approximately 200 civilians and 400 Kamajors at the Court Barri in Koribondo. Norman scolded the Kamajors for not having done the work he had told them to do, in particular to destroy all the houses, except for three. On this visit Fofana and Kondewa accompanied Norman but they did not attend this meeting.

### 3.5.1. Responsibility of Fofana

#### 3.5.1.1. Responsibility pursuant to Article 6(1)

766. The Chamber takes the view that Fofana's speech at the passing out parade in early January 1998, when Norman gave orders to the Kamajors to launch an "all-out offensive" in all the areas occupied by the Juntas and laid-down military instructions on how to conduct this operation, was words of encouragement to the Kamajor fighters who were about to conduct those military operations. The Chamber finds, however, that this speech does not amount to urging, encouraging or prompting the Kamajors to commit criminal acts. Although this speech contained an instruction to "attack the villages", "destroy the soldiers" and "capture Koribondo" and was given by Fofana in his position as Director of War to his subordinates, it did not include the instruction to commit criminal acts. This evidence does not demonstrate beyond reasonable doubt that Fofana intended to provoke or induce or bring about the commission of the criminal acts which the Chamber found were committed by Kamajors subsequently during the attack on Koribondo or that Fofana had reasonable knowledge that criminal acts would likely be committed as a result of this speech.

767. Furthermore, the Chamber finds that uttering these words of encouragement to the Kamajor fighters who were about to conduct military operations against the junta-held territories,

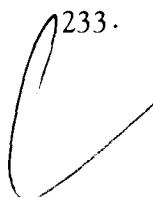
does not constitute aiding and abetting in the planning, preparation or execution of the criminal acts alleged. We find that there is no evidence to conclude beyond reasonable doubt that at the time of giving of his speech Fofana was aware of the Kamajors' intention to commit any of the criminal acts, which the Chamber found were committed in Koribondo by the Kamajors during the attack.

768. Although Fofana was present at the subsequent commanders' meeting where the attack on Koribondo was planned, we find that this evidence together with the evidence of his speech at the passing out parade does not establish beyond reasonable doubt that Fofana planned the commission of any of the criminal acts in Koribondo.

769. We further find that the mere presence of Fofana at this commanders' meeting as well at the private meeting with Nallo, at which Norman gave orders to Nallo, Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other Kamajor commanders to commit criminal acts does not establish beyond reasonable doubt that Fofana aided and abetted in the planning, preparation or execution of these criminal acts.

770. The Chamber further finds that no evidence has been adduced of Fofana physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Koribondo during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

771. On the basis of the foregoing the Chamber now finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.



3.5.1.2. Responsibility pursuant to Article 6(3)

772. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

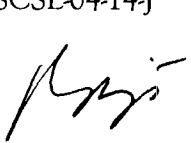
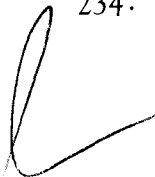
3.5.1.2.1. *Superior-subordinate relationship*

773. We find that there was a superior-subordinate relationship between Fofana and Nallo and that Fofana had authority and control over Nallo's actions. By virtue of his *de jure* status as Director of War Fofana exercised this control over Nallo, who in the hierarchical structure of the CDF organisation was his subordinate as Deputy National Director of Operations and Director of Operations for the Southern Region. Fofana also had *de facto* control over Nallo. Fofana had the legal and material ability to issue orders to Nallo, both by reason of his leadership role at Base Zero, being part of the CDF High Command, and the authority he exercised in his position as Director of War.

774. Nallo regularly brought frontline reports to Base Zero. These reports were brought to Fofana before being given to Norman. Further, Fofana and Nallo together planned and executed the war strategies. Fofana's authority at Base Zero was such that people would not approach him unless summoned by him. Finally, he acted as the overall boss of the commanders at Base Zero. The Chamber finds that Fofana had both the legal and material ability to prevent the commission of criminal acts by Nallo and other subordinates or to punish them for these acts.

775. Consonant with our earlier finding, Nallo in addition to being in charge of the commanders in the Southern Region in his capacity as Regional Director of Operations was also specifically assigned the responsibility for the Koribondo operation. Although Joe Tamidey was chosen by Norman to lead the attack on Koribondo, Nallo was the overall commander for this operation. We find that Nallo exercised command over Joe Tamidey, Bobor Tucker and Lahai George as well as the Kamajors under their immediate command.

776. The Chamber finds that the evidence of the local planning in Kpetewoma for the attack on Koribondo demonstrates not only the direct participation of Nallo in the preparation of this attack but also that his participation then ensured that the orders for the attack which the commanders




received at Base Zero were implemented by the Kamajors on the ground. Prior to the attack Nallo acted as an intermediary between Base Zero (High Command) and Kpetewoma through bringing arms and ammunitions from Base Zero to Kpetewoma and bringing reports back to Base Zero from Kpetewoma and from Joe Tamidey. Despite the fact that there were 700 Kamajors involved in the attack and that not all of them came from Jaiama-Bongor Chiefdom, they were all placed under Nallo's command. Nallo knew how the attack would proceed and who would be involved in that attack.

3.5.1.2.2. *Knew or had reasons to know*

777. Fofana knew that the attack on Koribondo would involve the commission of criminal acts by Nallo, Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other commanders. He was present at the meetings at which the unlawful orders, namely, to take Koribondo "at all costs", kill everyone who was left in town for being "collaborators" and destroy or burn everything in Koribondo, except for a mosque, church, the Barri and the school, had been given to these Kamajor commanders by Norman. The Chamber further finds that the fact that Fofana met with Joe Tamidey together with Norman and Kondewa after the attack and questioned him as to his reasons for not killing Shekou Gbao, further shows that Fofana knew about the orders given by Norman to kill certain identified "collaborators" in Koribondo.

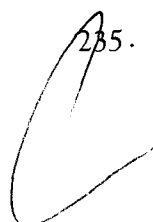
778. With respect to Count 7, the Chamber finds that it can reasonably be inferred from Norman's order that Fofana knew or had reasons to know that his subordinates were about to commit collective punishments in Koribondo.

779. With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Koribondo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman's order.

780. Similarly, while some of the criminal acts which were committed subsequently by the Kamajors in Koribondo might have been committed with the primary purpose of spreading terror, the Chamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.



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781. The Chamber recognises that other criminal acts alleged in the Indictment, such as looting, were in fact committed in Koribondo.<sup>1553</sup> However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Koribondo.

3.5.1.2.3. *Measures to prevent or punish*

782. The Chamber finds that Fofana as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates received unlawful orders from Norman and were about to execute those orders. We find that Fofana's duty to prevent included both the obligation not to comply with the unlawful orders of Norman and the obligation to ensure that his subordinates did not obey those orders. We find, however, that he did nothing to prevent the commission of these criminal acts by his subordinates. As a result of this failure on his part the Kamajors under his effective control committed the criminal acts of killing, destruction and burning, which the Chamber found were committed by the Kamajors in Koribondo. Thus, he failed as a superior in the exercise of his duties to prevent the commission of these specific criminal acts by his subordinates. Under the sub-heading "Counts - Koribondo", the Chamber will examine only those particular criminal acts that were explicitly included in Norman's order.

783. Since the Chamber finds that Fofana failed his duty as a superior to prevent the commission of criminal acts by his subordinates, it is not necessary to examine whether Fofana also failed to punish those Kamajors for those same acts.

3.5.1.3. Counts - Koribondo

784. The Chamber recognises that other criminal acts have been committed by Kamajors in Koribondo during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were

<sup>1553</sup> See Section V.2.4.5.4, "Looting in Koribondo".

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involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

3.5.1.3.1. *Count 2: Murder*

785. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians or captured enemy combatants, committed by his subordinates on or about January and February 1998, in locations in Bo District, including Koribondo.<sup>1554</sup>

786. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

- (i) On 15 February 1998, the mutilation and killing at Koribondo junction of five Limba who had been accused of being collaborators.
- (ii) On 15 February 1998, the mutilation and killing at Blama Road of two Limba civilians.
- (iii) On 16 February 1998, the killing of eight people along the Blama Road: five men belonging to the junta and three soldier's wives.
- (iv) On 16 February 1998, the killing and mutilation of Chief Kafala took place in the street opposite the hospital. Chief Kafala had been accused of collaboration; this killing took place in the presence of many people.
- (v) After the capture of Koribondo, Lahai Bassie was arrested, beaten and accused of being a collaborator because his son was a soldier. He died of his wounds one week later.

787. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (v) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 786(i)-(v) was sufficiently related

<sup>1554</sup> Indictment, para. 25(d).

to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 786, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

788. In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 786.

789. With respect to those incidents described in paragraph 786 (i)-(v), listed above, the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been established with respect to each incident.

#### 3.5.1.3.2. Count 4: Cruel Treatment

790. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Koribondo and surrounding areas. These crimes are alleged to have occurred between November 1997 and December 1999, through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.<sup>1555</sup>

791. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

- (i) On 13 February 1998, TF2-032's nine-room house in Koribondo was set on fire by Kamajors. TF2-032 testified that he is still suffering from the

<sup>1555</sup> Indictment, para. 26(b).

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loss: his children are scattered and, despite his advanced age, he currently sleeps in a kitchen.

- (ii) Between 13 and 15 February 1998, after the capture of Koribondo, Kamajors went on a rampage and burned 25 houses. People felt helpless, discouraged, and feared for their lives.

792. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) and concludes that all of the perpetrators of these acts were Kamajors under the effective control of Fofana. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 791(i)-(ii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to in paragraph 791, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

793. In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to the burning of TF2-032's house described in paragraph 791(i) and the burning of many houses, described in paragraph 791(ii).

#### 3.5.1.3.3. *Count 7: Collective Punishments*

794. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for committing the crimes alleged in Counts 1 through 5, including threats to kill, destroy and loot, to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.<sup>1556</sup>

795. The Chamber reiterates that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for acts of collective punishment. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2 and 4 in Koribondo.

<sup>1556</sup> Indictment, para. 28.

796. The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4] were perpetrated with the specific intent to punish the civilian population in Koribondo and the surrounding areas.

797. The Chamber is therefore satisfied, in relation to those acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4], that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

#### 3.5.1.4. Conclusion

798. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed in Koribondo as found under Counts 2, 4 and 7 above.

#### 3.5.2. Responsibility of Kondewa

##### 3.5.2.1. Responsibility pursuant to Article 6(1)

799. The Chamber takes the view that Kondewa's speech at the passing out parade in early January 1998 was words of moral support and encouragement to the Kamajor fighters who were about to conduct military operations on the junta-held territories. The Chamber finds, however, that this speech does not amount to urging, encouraging or prompting the Kamajors to commit criminal acts. This evidence does not demonstrate beyond reasonable doubt that Kondewa intended to provoke or induce the commission of the criminal acts which the Chamber found were committed by Kamajors subsequently during the attack on Koribondo or that Kondewa had reasonable knowledge that criminal acts would likely be committed as a result of his speech.

800. Furthermore, the Chamber finds that giving moral support or blessing as well as providing medicine which the Kamajors believed would protect them against the bullets does not constitute aiding and abetting in the planning, preparation of execution of the criminal acts. We find that there is no evidence to conclude beyond reasonable doubt that at the time of giving his speech and providing his medicine Kondewa was aware of the Kamajors' intention to commit any criminal acts, which the Chamber found were committed by the Kamajors in Koribondo during the attack.



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801. Although Kondewa was present at the subsequent commanders' meeting where the attack on Koribondo was planned, we find that this evidence together with the evidence of his speech at the passing out parade does not establish beyond reasonable doubt that Kondewa planned the commission of any of the criminal acts in Koribondo.

802. The Chamber finds that the mere presence by Kondewa at this subsequent commanders' meeting, at which Norman gave orders to Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other Kamajor commanders to commit criminal acts does not establish beyond reasonable doubt that Kondewa aided and abetted in the planning, preparation or execution of these criminal acts.

803. The Chamber further finds that no evidence has been adduced of Kondewa ordering or physically or otherwise directly perpetrating any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

804. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

3.5.2.2. Responsibility pursuant to Article 6(3)

805. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

3.5.2.2.1. *Superior-subordinate relationship*

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806. We find that there is no evidence upon which to conclude beyond reasonable doubt that Kondewa had a superior-subordinate relationship with any of the Kamajors involved in the commission of criminal acts in Koribondo. Although he possessed command over all the Kamajors from every part of the country, this was, however, limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive, however, to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts. The Chamber noted that Kondewa's *de jure* status as High Priest of the CDF gave him the authority over all the initiators in the country as well as put him in charge of the initiations. This authority did not give him the power to decide who should be deployed to go to the war front. He also never went to the war front himself. The evidence adduced, therefore, has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with the Kamajors who operated in Koribondo during the attack.

807. Since an essential element of superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Koribondo during the time frame charged in the Indictment.

### 3.5.2.3. Conclusion

808. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

### 3.6. Bo District

809. In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii), (viii) and (ix) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.5.2 and V.2.5.3, V.2.5.6 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:



- (i) After a passing out parade at Base Zero in early January 1998 a subsequent commanders' meeting was held on the same day at the back of the field at Base Zero. At this meeting Norman ordered the Kamajor commanders James Kaillie, Joseph Lappia and TF2-017 to attack Kebi and Bo Towns. Norman gave specific orders to these commanders to kill enemy combatants and "collaborators", to burn down their houses and loot big shops, especially pharmacies. Fofana and Kondewa were both present at this meeting.
- (ii) After the commanders' meeting Fofana provided arms, ammunitions and a vehicle to James Kaillie, Joseph Lappia and TF2-017.
- (iii) In Dar-es-Salam TF2-017 presented a verbal situation report on the Kebi attack and handed over a captured soldier and two solar panels to Norman, in the presence of Fofana and Kondewa. Norman handed over the captured soldier to Kondewa who took him to Base Zero.
- (iv) The order to attack Bo was reiterated by Norman to TF2-017 in Bumpeh, in the presence of the Director of War Fofana and the High Priest Kondewa. Kondewa renewed the initiation of certain Kamajors to prepare them for the attack.
- (v) Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present. Norman gave specific orders to Nallo to kill certain identified civilians in Bo who he labelled as "collaborators", loot and burn their houses, loot the Southern Pharmacy and bring the medicines to Norman. Specifically the name of MB Sesay was mentioned. Norman also ordered Nallo to kill the police officers.
- (vi) The attack on Bo proceeded from four flanks. James Kaillie was the Battalion Commander and the commander of the group coming from the Tikonko road (Mattru). Joseph Lappia was his deputy. TF2-017 was part of this group with his 38 Kapras. Nallo, in his capacity as the Regional Director of Operations, was in charge of the commanders below him but could not exercise full or strict control over all of them because of their large numbers. In Bo operation specifically, he was regarded by TF2-017 as his "operational" or "division" commander.
- (vii) In addition to the James Kaillie's group, there were at least three other groups of Kamajors who attacked Bo from Gerihun, Dambara and Moyamba-Bo Highway. At least 270 Kamajors participated in this attack. The tactical planning for the Bo attack was done in Bumpeh, which was considered by Norman as a focal point for this attack. Nallo knew about the local planning in Bumpeh.
- (viii) In April 1998, Norman, Fofana and Kondewa with other Kamajor leaders and initiators visited the New Police barracks in Bo Town. Norman complained that the Kamajor chiefs, in particular Fofana, had lied to him

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about the burnt down police barracks and policemen killed in Bo Town. Norman said that he felt deceived after having seen the barracks intact and the police at the parade.

- (ix) Sometime after the attack on Bo in February 1998, a CDF office was set up in Bo. It was initially run by Alhaji Daramy Rogers, the Regional Coordinator for the Southern Region. Around June 1998, the position of Regional Coordinator was replaced by that of the District Administrator. Kosseh Hindowa occupied the latter position in Bo.
- (x) After the dissolution of Base Zero, Fofana retained his position of Director of War. However, he was no longer responsible for the conduct of the war and the fighting forces. His duties included distribution of logistics to the various parts of the country. In mid-1999 he became the Director of the Peace Office in Bo.

### 3.6.1. Responsibility of Fofana

#### 3.6.1.1. Responsibility pursuant to Article 6(1)

810. The Chamber reiterates that Fofana's speech at the passing out parade in early January 1998 does not constitute instigating or ordering the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Bo District.

811. The Chamber finds that although Fofana was present at the subsequent commanders' meeting where the attack on Bo was planned, this evidence does not establish beyond reasonable doubt that Fofana planned the commission of any of the criminal acts in Bo.

812. The Chamber finds that the mere presence by Fofana at this commanders' meeting as well at the private meeting with Nallo, at which Norman gave orders to Nallo, James Kaillie, Joseph Lappia and TF2-017 to commit criminal acts does not establish beyond reasonable doubt that Fofana aided and abetted in the planning, preparation or execution of these criminal acts.

813. We found that although Fofana was responsible at Base Zero for the receipt and the provision of ammunitions to the commanders, he could only perform these acts, if and when directed to do so by Norman. Furthermore, the Chamber finds that Fofana provided logistics to launch military attacks on Kebi and Bo Towns. Although at this stage Fofana knew that the plan to attack Bo Town included the commission of criminal acts, it is not the only reasonable inference that the logistics provided by Fofana were used to commit specific criminal acts in Bo

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Town or that such provision had a substantial effect upon the perpetration of these specific criminal acts in Bo. Therefore, these actions by Fofana do not constitute aiding and abetting in the planning, preparation or execution of the criminal acts committed by Kamajors subsequently in Bo.

814. The Chamber further finds that no evidence has been adduced of Fofana physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Bo District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

815. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

3.6.1.2. Responsibility pursuant to Article 6(3)

816. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

3.6.1.2.1. *Superior-subordinate relationship*



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817. The Chamber reiterates its finding above that there was a superior-subordinate relationship between Fofana and Nallo and that Fofana exercised effective control over Nallo, in a sense of having the material ability to prevent Nallo's criminal acts or punish him for these acts.<sup>1557</sup>

818. Nallo, in addition to being in charge of the commanders in the Southern Region in his capacity as Regional Director of Operations, was also specifically assigned the responsibility for the Bo operation. We find that he exercised command over the group of Kamajors led by James Kaillie, which included Joseph Lappia and TF2-017 as well as the Kamajors under their immediate command. Having received the specific instructions from Norman at Base Zero, in the presence of Fofana, Nallo ensured that his subordinates implemented those instructions. Indeed, as was found by the Chamber above, it was the group of Kamajors led by James Kaillie, who committed the criminal acts in Bo as specifically ordered by Norman. Thus, we find that the command and control exercised by Nallo over this group of Kamajors was effective.

819. However, there is no evidence from which the Chamber can conclude beyond reasonable doubt that Nallo did exercise the same degree of control over other Kamajor commanders and fighters who operated in Bo both during the attack and subsequently. By Nallo's own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region due to their large numbers. Moreover, the evidence as to the local planning in Bumpah for the attack in Bo is inconclusive as to the participation of Nallo in it. Hence, on the basis of this evidence it cannot be established beyond reasonable doubt that other Kamajors who participated in the Bo attack were also under the overall command of Nallo, as the group of James Kaillie. Finally, there is no evidence to conclude beyond reasonable doubt that these other Kamajors were present at the commanders' meeting at Base Zero in early January 1998.

820. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with all the Kamajors who operated in Bo District and who committed criminal acts during the attack on Bo as well as subsequently as found by the Chamber above, except those Kamajors who are specifically mentioned above. Since the first element of a superior responsibility is not established, it is not necessary to examine the

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<sup>1557</sup> Finding on 6(3) for Fofana in Koribondo.



two remaining elements with respect to the criminal acts which the Chamber found were committed in Bo District by other Kamajors during the time frame charged in the Indictment.

3.6.1.2.2. *Knew or had reasons to know*

821. Fofana knew that the attack on Bo Town would involve the commission of criminal acts by Nallo, James Kaillie, Joseph Lappia and TF2-017. He was present at the meetings at which the unlawful orders, namely to kill “collaborators”, burn their houses and loot, had been given to these Kamajor commanders by Norman. In Dar-es-Salam Norman in the presence of Fofana, received a situation report about the Kebi attack from TF2-017. The Chamber finds that the evidence of Fofana’s presence at the third meeting held by Norman in Bo Town in April 1998, where Norman complained that Fofana lied to him about the killing of policemen and burning of their barracks in Bo Town because he could see them intact, further shows that Fofana knew about the orders given by Norman to kill policemen in Bo.

822. With respect to Count 7, the Chamber finds that it can reasonably be inferred from Norman’s order that Fofana knew or had reasons to know that his subordinates were about to commit collective punishments in Bo Town.

823. With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Bo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman’s order.

824. Similarly, while some of the criminal acts which were committed subsequently by the Kamajors in Bo might have been committed with the primary purpose of spreading terror, the Chamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.

825. The Chamber recognises that other criminal acts alleged in the Indictment, such as infliction of mental harm or suffering, were in fact committed in Bo. However, the Chamber finds that such acts were not included in Norman’s order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Bo.

3.6.1.2.3. *Measures to prevent or punish*

826. The Chamber finds that Fofana as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates received unlawful orders from Norman and were about to execute those orders. We find that Fofana's duty to prevent included both the obligation not to comply with the unlawful orders of Norman and the obligation to ensure that his subordinates did not obey those orders. We find, however, that he did nothing to prevent the commission of these criminal acts. As a result of this failure on his part the Kamajors under his effective control committed the criminal acts of killing, burning and looting, as will be found by the Chamber below. Thus, he failed as a superior in the exercise of his duties to prevent the commission of the criminal acts by his subordinates. Under the sub-heading "Counts - Bo District", the Chamber will examine only those particular criminal acts that were explicitly included in Norman's order.

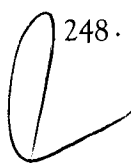
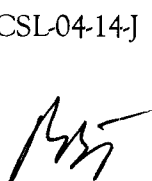
827. Since the Chamber finds that Fofana failed his duty as a superior to prevent the commission of criminal acts by his subordinates, it is not necessary to examine whether Fofana also failed to punish those Kamajors for those same acts.

3.6.1.3. Counts - Bo District

828. The Chamber recognises that other criminal acts have been committed by Kamajors in Bo District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

3.6.1.3.1. *Count 2: Murder*

829. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians or captured enemy combatants committed by his subordinates on or about January and February 1998, in locations in



Bo District, including the District Headquarters town of Bo, Kebi Town, Kpeyama, Fengehun and Mongere.<sup>1558</sup>

830. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

- (i) The killing of an unidentified woman who was alleged to have cooked for the rebels, by Kamajors, on the order of TF2-017.
- (ii) The killing of John Musa, an alleged collaborator, by Kamajors under the control of Joseph Lappia.

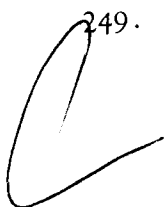
831. The Chamber has examined the facts and circumstances surrounding both incidents set out above in points (i)-(ii) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in both cases they were specifically targeted because of the perpetrator's belief that they were "collaborators". Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 830(i)-(ii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 830, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

832. In light of the findings set out, above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 830.

833. With respect to those incidents described in paragraph 830 (i)-(ii) the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been proved with respect to each incident.

3.6.1.3.2. Count 4: Cruel Treatment

<sup>1558</sup> Indictment, para. 25(d).



834. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Bo and surrounding areas. These crimes are alleged to have occurred between November 1997 and December 1999, through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.<sup>1559</sup>

835. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

- (i) On 15 February 1998 OC Bundu was detained and beaten by Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombeh.
- (ii) On 16 February 1998, in Kandeyama, TF2-001 and other police were separated from other civilians on the order of Kamajor leaders including Agbamu Murray. The police were arrested.

836. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) and concludes that all of the perpetrators of these acts listed above were under the effective control of Fofana. The Chamber finds that OC Bundu and TF2-001 were targeted by the Kamajors because of their status as police officers, a group that was considered by the Kamajors to have collaborated with the juntas.<sup>1560</sup> Furthermore, the incidents described immediately above occurred on the day the Kamajors entered Bo or the following day. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 835(i) - (ii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The Chamber finds that, in light of the circumstances under

<sup>1559</sup> Indictment, para. 26(b).

<sup>1560</sup> Factual Findings, 3<sup>rd</sup> para. of Bo Section.



which these events occurred, it is a reasonable inference that the screening for collaborators experienced by OC Bundu and TF2-001 caused serious mental suffering. Having considered the particular facts and circumstances of each of the incidents referred to in paragraph 835, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

837. In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been met with respect to each incident described paragraph 835.

3.6.1.3.3. *Count 5: Pillage*

838. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful taking of civilian-owned property between about 1 November 1997 and 1 April 1998.<sup>1561</sup> These crimes are alleged to have occurred at various locations in Bo District, including the towns of Bo and the surrounding areas.<sup>1562</sup>

839. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 5, Pillage:

- (i) On 15 February 1998, OC Bundu was forced to go to his house by Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombeh. The Kamajors took ammunition which they found in OC Bundu's house.
- (ii) On 15 February 1998, Kamajors under the control of TF2-017 looted MB Sesay's hotel on Sewa Road.
- (iii) On 15 February 1998, Kamajors under command of TF2-017 looted medicine from two pharmacies in Bo.
- (iv) On 16 February 1998, on the order of Kamajor leaders including Agbamu Murray, TF2-001 was searched; the Kamajors took his watch and 15,000 leones.

<sup>1561</sup> The Chamber notes that while the Indictment charges "unlawful taking and destruction by burning of civilian-owned property" burning does not constitute the offence of pillage. See the section on Applicable Law for further discussion of this point.

<sup>1562</sup> Indictment, para. 27.

840. The Chamber has examined the facts surrounding each incident set out above in points (i)-(iv) and concludes that all of the perpetrators of these acts were Kamajors under the effective control of Fofana. The Chamber reiterates that the Kamajors entered Bo on 15 February 1998. Acts (i) through (iv), described immediately above, all occurred on the day the Kamajors entered Bo or on the day immediately following the capture of Bo. The Chamber recalls its findings that OC Bundu and TF2-001 were targeted by the Kamajors because of their status as police officers, a group the Kamajors considered to have collaborated with the juntas; similarly, the Chamber finds that MB Sesay and TF2-058 were targeted because they were considered collaborators. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 835(i)-(iv) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The Chamber is also satisfied that none of the victims were persons taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

841. In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of pillage as a war crime have been established with respect to the looting of ammunition from OC Bundu's house; the looting of various objects at MB Sesay's hotel; the looting of medicine from two pharmacies; and the looting of TF2-001's watch and money.

3.6.1.3.4. *Count 7: Collective Punishments*

842. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for committing the crimes alleged in Counts 1 through 5, including threats to kill, destroy and loot, to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.<sup>1563</sup>

843. The Chamber reiterates that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal

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<sup>1563</sup> Indictment, para. 28.





responsibility for acts of terrorism. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2, 4 and 5 in Bo.

844. The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 830 [Count 2], paragraph 835[Count 4] and in paragraph 839[Count 5] were perpetrated with the specific intent to punish the civilian population in Bo and the surrounding areas.

845. The Chamber is therefore satisfied, in relation to those acts described paragraph 830 [Count 2], paragraph 835[Count 4] and in paragraph 839 [Count 5], that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

#### 3.6.1.4. Conclusion

846. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed in Bo District as found under Counts 2, 4, 5 and 7 above.

#### 3.6.2. Responsibility of Kondewa

##### 3.6.2.1. Responsibility pursuant to Article 6(1)

847. The Chamber reiterates that Kondewa's speech at the passing out parade in early January 1998 does not constitute instigating the commission of the criminal acts by Kamajors which the Chamber found were committed in Bo District during the time frame charged in the Indictment. The Chamber also reiterates that this speech as well as the provision of the medicine by Kondewa, does not establish beyond reasonable doubt that Kondewa aided and abetted in the planning, preparation or execution of those criminal acts.

848. The Chamber finds that although Kondewa was present at the subsequent commanders' meeting where the attack on Bo was planned, this evidence does not establish beyond reasonable doubt that Kondewa planned the commission of any of the criminal acts in Bo.

849. The Chamber finds that mere presence by Kondewa at this commanders' meeting at which Norman gave orders to Nallo, James Kaillie, Joseph Lappia and TF2-017 to commit criminal acts

in Bo does not establish beyond reasonable doubt that Kondewa aided and abetted in the planning, preparation or execution of these criminal acts.

850. The Chamber further finds that no evidence has been adduced of Kondewa ordering or physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Bo District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

851. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

#### 3.6.2.2. Responsibility pursuant to Article 6(3)

852. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

##### 3.6.2.2.1. *Superior-subordinate relationship*

853. We find that Kondewa had no superior-subordinate relationship with any of the Kamajors involved in the commission of criminal acts in Bo District. Although he possessed command over all the Kamajors from every part of the country, this was, however, limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive, however, to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts. The

Chamber noted that Kondewa's *de jure* status as High Priest of the CDF gave him the authority over all the initiators in the country as well as put him in charge of the initiations. This authority did not give him the power to decide who should be deployed to go to the war front. He also never went to the war front himself. The evidence adduced, therefore, has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with the Kamajors who operated in Bo District.

854. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Bo District during the time frame charged in the Indictment.

#### 3.6.2.3. Conclusion

855. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

### 3.7. Bonthe District

856. In addition to the facts, listed in in paragraphs 721 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.6.2 and V.2.6.3 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

- (i) On 16 August 1997, a delegation from Bonthe Town was sent to Kondewa at the Kamajor base at Tihun Sogbini to discuss the continuing harassment of civilians by soldiers and the security of the island. Kondewa was considered the supreme head of Kamajors.
- (ii) At Momaya Kamajors were shooting all around the delegation and threatening them. Kamajor Commander Sheku Kaillie ("Bombowai") pleaded on the delegation's behalf and led them, under his protection, to Kondewa, who by then was no longer in Tihun but in Talia. From Mattru Jong the delegation was led to Talia by Ngobeh, the district grand Kamajor commander.

- (iii) The delegation arrived at Kondewa's house in Talia on 24 August 1997. A boy was playing guitar and percussion and singing about the greatness of Kondewa and the Kamajor society. Kamajors armed with rifles and guns were guarding the house. The delegation explained to Kondewa the dreadful effects of the war. In response Kondewa stated: "war means to know that you will die; to know that you have no control over your life; to know that you have no dignity; to know that your property is not yours". Kondewa then called a meeting at the Court Barri that was attended by all of the elders of the region, the paramount chiefs and Kamajor commanders. Kondewa said at the meeting that he was not going to give any of the areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah. Kondewa agreed on the cessation of hostilities between the Kamajors and the Soldiers, the stopping of the harassment of civilians and the free movement of boats, and wrote a letter to this effect to all Kamajor commanders around Bonthe. The agreement did not work.
- (iv) The delegation accompanied by Ngobeh was stopped in Tihun by a Kamajor who presented a letter, which he demanded to be read in the presence of Kondewa. The letter was written by a commander from Gambia and was accusing the delegation of bringing the soldiers to Bonthe. When the letter was read to Kondewa in Talia, he declared that if the information was true, all of the delegation would be killed; if it was not true, those responsible for the lie would experience a terrible death. In Gambia Kondewa ordered a court sitting and placed Pa Lewis, Ngobeh and Bombowai in charge of the investigation. Those responsible for the letter pleaded guilty. They were supposed to be killed, but the delegation pleaded with Kondewa to spare their lives and he agreed.
- (v) The Kamajors operating in Bonthe were of the Shebro tribe and were referred to as the Kassilla Battalion. Baigeh was the Battalion Commander of the Kassilla Battalion.
- (vi) On 15 February 1998 a group of approximately 300 to 500 Kamajors entered Bonthe. The Kamajors came from three chiefdoms, including Sittia and Nongoba Bullom.
- (vii) From 15 February 1998, Bonthe Town was under the control of the Kamajors, headed by the District Battalion Commander, Morie Jusu Kamara. Commander Julius Squire was the second in command to Morie Jusu Kamara and was from Bendu Cha.
- (viii) On 16 February 1998 Kamajors announced a meeting at the St. Patrick Parish's Compound. Morie Jusu Kamara, was present at the meeting together with Commander Julius Squire, the secretary and spokesman for the meeting.

- (ix) Although Morie Jusu was a disciplinarian "in his own right", he did not punish his Kamajors. He promised that that no one else would be killed in Bonthe but demanded money from the civilians.
- (x) On 15 February, Kamajors looked for Lahai Ndokoi Koroma, a Chiefdom Speaker, in the Catholic mission who was accused of being a junta collaborator. They threatened to kill everyone if they did not produce this person. Two delegations were sent to Bonthe from Base Zero under Kondewa's instructions. On 1 March 1998, a third group of Kamajors came to Bonthe under the leadership of Kondewa. At a public meeting Kondewa said that he had not allowed his men to enter Bonthe, but that they had not listened to his advice and had done what they had done. Kondewa apologized on their behalf. Kondewa also told those assembled that they should forget about ECOMOG, as they were not responsible for Bonthe. Kondewa said that it was the Kamajors who were responsible for security in the area. He told Father Garrick that he was aware of the atrocities committed by the Kamajors and for this reason he wanted to get Lahai Ndokoi Koroma out of the country. After getting paid 600,000 leones Kondewa took Lahai Ndokoi Koroma to Talia and later to Bo. Only Kondewa had authority to release Lahai Koroma and claimed to kill without restraint and to send people to Mecca.
- (xi) Around 23 February 1998, Norman, accompanied by two ECOMOG officials, came to Bonthe. At a public meeting at the Bonthe town hall Norman said that any complaint against the Kamajors was useless as they had fought and saved the nation and that working with the Kamajors was like "working with the cutlass".
- (xii) In March 1998 a letter from Solomon Berewa addressed to the Kamajors in Bonthe requesting them to stop looting and killing, was given to Commander Morie Jusu Kamara, who passed it on to his second in command, Julius Squire. Julius Squire said that he did not recognise the authority of the Attorney-General; he refused to accept the instructions in the letter, unless they came from Norman or Kondewa. Morie Jusu Kamara told Father Garrick that he was not able to control the Kamajors.

### 3.7.1. Responsibility of Fofana

#### 3.7.1.1. Responsibility pursuant to Article 6(1)

857. The Chamber finds that it is a reasonable inference that the order to attack Bonthe Town was included in the instructions given by Norman at the passing out parade held at Base Zero in early January 1998, when he ordered to launch an "all-out offensive" in all the areas occupied by the juntas. This inference can be drawn on the basis of the fact that at the time of the parade Bonthe Town was one of those areas and furthermore because according to the evidence the attack on Bonthe Town took place on the same day as the attack on Bo and Kenema Towns, *i.e.* the 15<sup>th</sup>

of February 1998. However, the Chamber reiterates its earlier finding that Fofana's speech at this particular parade did not constitute instigating or ordering the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Bonthe District.

858. The Chamber further finds that there is no evidence beyond reasonable doubt that Fofana was involved, either directly or otherwise, in the attack on Bonthe Town or in any of the criminal acts, which the Chamber found were committed by Kamajors in Bonthe District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

859. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

#### 3.7.1.2. Responsibility pursuant to Article 6(3)

860. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with any of the Kamajors who operated in Bonthe District and committed criminal acts during and after the attack on Bonthe Town or elsewhere in Bonthe District as found by the Chamber above. The Chamber reiterates its finding above that there was a superior-subordinate relationship between Fofana and Nallo, who at the relevant time was the Director of Operations for the Southern Region, which included Bonthe District, and that Fofana exercised effective control over Nallo, in a sense of having the material ability to prevent Nallo's criminal acts or punish him for these acts.<sup>1564</sup>

<sup>1564</sup> See the Chamber's finding on Fofana's responsibility pursuant to Article 6(3) in Koribondo.



861. The Chamber finds, however, that the evidence adduced has not established beyond reasonable doubt whether there was a superior-subordinate relationship between Nallo and the Kamajors who operated in Bonthe District and committed criminal acts during the time frame charged in the Indictment. The evidence has not established beyond reasonable doubt that Nallo exercised effective control over all the Kamajors in Bonthe District. By Nallo's own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region due to their large numbers.

862. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Bonthe District during the time frame charged in the Indictment.

#### 3.7.1.3. Conclusion

863. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

#### 3.7.2. Responsibility of Kondewa

##### 3.7.2.1. Responsibility pursuant to Article 6(1)

864. The Chamber reiterates its earlier finding that Kondewa's conduct at the passing out parade at Base Zero in early January 1998 does not constitute instigating the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were committed by Kamajors subsequently in Bonthe District.

865. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

866. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

3.7.2.2. Responsibility pursuant to Article 6(3)

867. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Bonthe District during the time frame charged in the Indictment.

3.7.2.2.1. *Superior-subordinate relationship*

868. We find that on the evidence adduced there was a superior-subordinate relationship between Kondewa and Morie Jusu Kamara, District Battalion commander of Bonthe District, Julius Squire, Kamara's second in command and Kamajor Baigeh, Battalion commander of the Kassilla battalion. Kondewa had authority and control over the actions of these Kamajor commanders and the Kamajors under their immediate command. By virtue of his *de jure* status as High Priest Kondewa and his *de facto* status as a superior to these Kamajors in that District, Kondewa exercised effective control over them. Kondewa had the legal and material ability to issue orders to Kamara, both by reason of his leadership role at Base Zero, being part of the CDF High Command, and the authority he enjoyed in his position as High Priest in Sierra Leone and particularly so in Bonthe District.

869. Kondewa had exercised effective control over Kamajors in Bonthe District since before the establishment of Base Zero, as early as August 1997. As "the supreme head of Kamajors" in the area, the delegation from Bonthe chose to plead with him in order to cease hostilities between the Kamajors and the soldiers, stop the Kamajors from harassing civilians and from attacking Bonthe Town. At that time Kondewa had authority and power to issue oral and written directives to the Kamajors in that area, order investigations for misconduct and hold court hearings. He could threaten the imposition of sanctions of "a terrible death" on the Kamajors, if they lied to him. The

Kamajor commanders, who the delegation met on its way to Talia, all recognised Kondewa's authority. Kondewa himself acknowledged his control over this area as he publicly refused "to give any areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah." The authority and power of Kondewa is further demonstrated by the fact that it was only him who could "spare" lives of his own misbehaved Kamajors, to release Lahai Ndokoi, "to kill without restraint and to send people to Mecca".

870. The Chamber finds that Kondewa had both the legal and material ability to prevent the commission of criminal acts by his subordinate Morie Jusu Kamara and other subordinates and to punish them for those criminal acts.

871. Morie Jusu Kamara was the overall commander for the Bonthe attack. We find that Kamara exercised command over Julius Squire, Baigeh, Rambo Conteh, Lamina Gbokambama as well as the Kamajors under their immediate command. The Kamajors who arrived in Bonthe on 15 February 1998, indeed declared that from then on Bonthe Town was under the control of the Kamajors headed by Morie Jusu Kamara.

872. Finally, the effective control that Kondewa exercised over the Kamajors who operated in Bonthe Town during the attack is further demonstrated by the fact that Morie Jusu Kamara and Julius Squire refused to recognise the authority of the Attorney-General and to accept any instructions, unless they came from Norman or Kondewa.

873. The Chamber finds, however, that there is no evidence from which the Chamber can conclude beyond reasonable doubt that Kondewa did exercise the same degree of control over other Kamajor commanders and fighters who operated in the surrounding areas of Bonthe Town prior to the attack on Bonthe or subsequently.

3.7.2.2.2. *Knew or had reasons to know*

874. Kondewa knew that the attack on Bonthe Town involved the commission of criminal acts by the Kamajors under the command of Morie Jusu Kamara. On the basis of the evidence adduced it is not entirely clear when precisely Kondewa obtained the knowledge that his subordinates in fact were about to commit, were committing or had committed criminal acts.

875. The Chamber is satisfied, however, that Kondewa knew at least as of 15 February 1998, that the Kamajors were looking for Lahai Ndokoi Koroma in Bonthe Town, who was perceived to be a 'collaborator'. Kondewa was informed about it at Base Zero, in response to which he sent two delegations to Bonthe Town under his instructions. Therefore, the Chamber concludes that it has been established beyond reasonable doubt that Kondewa had reasons to know that the Kamajors under his effective control were about to commit or were committing criminal acts in Bonthe District, particularly that they were targeting suspected "collaborators".

876. Furthermore, the Chamber observes that on 1 March 1998, Kondewa came to Bonthe Town himself leading the third delegation. At the meeting held by Kondewa in Bonthe Town on the same day he publicly acknowledged that he had not allowed his men to enter Bonthe, but that they had not listened to his advice and had done what they had done. He also apologized on their behalf. When speaking to Father Garrick on the same day he also admitted that he was aware of the atrocities committed by the Kamajors during the attack and for this reason he wanted to get Lahai Ndokoi Koroma out of the country.

877. The Chamber, therefore, concludes that it has been established beyond reasonable doubt that at this stage Kondewa knew that the Kamajors under his effective control had in fact committed criminal acts in Bonthe District.

878. With respect to Count 7, the Chamber finds that it can reasonably be inferred from all the circumstances that Kondewa knew or had reasons to know that his subordinates were about to commit collective punishments or were committing them or had committed such acts in Bonthe Town.

879. With respect to Count 6, the Chamber finds, however, that while some of the criminal acts which were committed by the Kamajors in Bonthe Town might have been committed with the primary purpose of spreading terror among the civilian population, the Chamber finds on the totality of the evidence adduced that it has not been established beyond reasonable doubt that Kondewa knew or had reasons to know that such acts had been committed by his subordinates for the primary purpose of spreading terror.

3.7.2.2.3. *Measures to prevent or punish*

880. The Chamber finds that Kondewa as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates were about to commit criminal acts. He should have exercised his duty to punish when he learnt that his subordinates did in fact commit criminal acts in Bonthe Town during and subsequently to the attack. He did not properly exercise his duty to prevent the commission of the criminal acts as a superior simply by telling his subordinate Kamajors that they were not allowed to enter Bonthe. His duty was to ensure that an effective mechanism was in place so that his subordinates would in fact comply with his orders. We find that Kondewa did nothing to prevent the commission of these criminal acts nor did he punish his subordinates for other criminal acts once he had been informed that they indeed had committed such other criminal acts. Thus, we find that he failed as a superior in the exercise of his duties to prevent or to punish the commission of the criminal acts by his subordinates.

### 3.7.2.3. Counts - Bonthe District

881. The Chamber recognises that other criminal acts have been committed by Kamajors in Bonthe District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

#### 3.7.2.3.1. *Count 2: Murder*

882. The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians between October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town.<sup>1565</sup>

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<sup>1565</sup> Indictment, para. 25(f).

883. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

- (i) On 15 February 1998, Kpana Manso was killed by Beigeh, a Kamajor Commander subordinate to Morie Jusu Kamara.
- (ii) On 16 February 1998, Bendeh Battiamma was accused of being a collaborator and was killed by a Kamajor named Rambo Conteh.
- (iii) On 17 February 1998, Abu Conteh was killed at St. Joseph's Secondary School by one of Mori Jusu's Kamajors.
- (iv) In early March 1998, a woman named Jitta was killed by a Kamajor named Beigeh between Sebongie and Bonthe.
- (v) TF2-087's uncle was killed in Gambia Village by Kondewa's deputy Sheku Kallie, after having reported to Kondewa the misconduct of some of his boys.
- (vi) During the same period of time, three pregnant women were killed in Gambia Village by Kondewa's boys before Norman's arrival in Gambia.

884. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (vi) and concludes that all of the perpetrators were Kamajors under the effective control of Kondewa. We find that individuals were intentionally killed; in the majority of these cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 883 was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of these incidents, referred to above in paragraph 883, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and also that the perpetrator knew that the victims were not taking an active part in the hostilities.

885. In light of the above the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 883.

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886. With respect to those incidents described in paragraph 883 (i)-(iv), the Chamber is satisfied that Kamajors under the effective control of Kondewa intentionally caused the deaths of Kpana Manso, Bendeh Battiama, Abu Conteh and a woman named Jitta.

887. The Chamber is therefore satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been established with respect to the killing of Kpana Manso, Bendeh Battiama, Abu Conteh and Jitta.

888. The Chamber finds, however, that the evidence adduced has not established beyond reasonable doubt that the killings described in paragraph 883 (v) and (vi) occurred during the time period set out in the Indictment. The Chamber finds that Kondewa is not guilty with respect to these killings.

3.7.2.3.2. *Count 4: Cruel Treatment*

889. The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Bonthe District. These crimes are alleged to have occurred between November 1997 and December 1999, , through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.<sup>1566</sup>

890. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

- (i) On 15 February 1998, Kamajors captured Lahai Ndokoi Koroma. He was stripped naked and tied; three delegations came from Talia to investigate the matter.

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<sup>1566</sup> Indictment, para. 26(b).

- (ii) On 16 February 1998, at a meeting at St. Patrick's Parish Compound in Bonthe Town, Juilus Squire announced that the Kamajors were looking for three collaborators. At the same meeting TF2-116 was singled out and his life was threatened because of alleged collaboration with the juntas.
- (iii) At the same meeting, a boy named Bendeh Battiana was singled out and accused of being a collaborator. He was later killed by Rambo Conteh.
- (iv) In early March 1998, TF2-086 was detained by Kamajors, including Baigeh, along the road between Sebongie and Bonthe. The Kamajors threatened her life, saying, "Look how dead you are."

891. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) concludes that all of the perpetrators of these acts were Kamajors under the effective control of Kondewa. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 889 (i)-(v) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to in paragraph 889, the Chamber is also satisfied that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

892. The Chamber finds that, in light of the circumstances under which these events occurred, it is a reasonable inference that the screening for collaborators experienced by Lahai Ndokoi Koroma, TF2-116, Bendeh Battiana and TF2-086 caused serious mental suffering, particularly in the case of TF2-116 and TF2-086, whose lives were threatened at the same time.

893. In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to the incidents described in paragraph 889 (i)-(v).

894. By contrast, the Chamber finds that the specific elements of the crime of cruel treatment have not been established with respect to paragraph 889 (i), as it has not been proved beyond reasonable doubt that those people whose homes were burnt endured serious mental suffering or injury.





3.7.2.3.3. *Count 5: Pillage*

895. The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for the unlawful taking of civilian-owned property between about 1 November 1997 and 1 April 1998.<sup>1567</sup> These crimes are alleged to have occurred at various locations in Bo District, including the towns of Talia (Base Zero), Bonthe Town, Mobayeh and the surrounding areas.<sup>1568</sup>

896. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 5, Pillage:

- (i) On 15 February 1998, Lamina Gbokambama and his men looted household items and equipment from a number of locations in Bonthe Town.
- (ii) On 16 February 1998, Julius Squire and his troops looted a house in Bonthe and took 17,900,000 leones from TF2-116's house.
- (iii) In early March 1998, a group of Kamajors including Baigeh took 140,000 leones from TF2-086 and her business partner Jitta on the road between Sebongie and Bonthe.

897. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(iii) and concludes that all of the perpetrators of these acts were Kamajors under the effective control of Kondewa. The Chamber reiterates that the Kamajors entered Bonthe on the 15<sup>th</sup> of February 1998. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 896 (i)-(iii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to in paragraph 896, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

<sup>1567</sup> The Chamber notes that while the Indictment charges "unlawful taking and destruction by burning of civilian-owned property" burning does not constitute the offence of pillage. See the section on Applicable Law for further discussion of this point.

<sup>1568</sup> Indictment, para. 27.

898. In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of pillage as a war crime have been established with respect of the criminal acts described in paragraph 896 (i)-(iii).

3.7.2.3.4. *Count 7: Collective Punishments*

899. The Prosecution alleges that Kondewa is individually criminally responsible, pursuant to Article 6(3), for committing the crimes alleged in Counts 1 through 5, including threats to kill, destroy and loot, to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.<sup>1569</sup>

900. The Chamber reiterates that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for acts of terrorism. In this regard, the Chamber recalls that it has found that Kondewa bears criminal responsibility as a superior under Counts 2, 4 and 5 in Bonthe.

901. The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 883 [Count 2] and in paragraph 889 [Count 4] and paragraph 896 [Count 5] were perpetrated with the specific intent to punish the civilian population in Bonthe District.

902. The Chamber is therefore satisfied, in relation to those acts described in paragraph 883 [Count 2] and in paragraph 889 [Count 4] and paragraph 896 [Count 5], that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

3.7.2.4. Conclusion

903. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed by Kamajors in Bonthe Town and the surrounding areas as found under Counts 2, 4, 5 and 7 above.

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<sup>1569</sup> Indictment, para. 28.

### 3.8. Kenema District

904. In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.7.2, V.2.7.3 and 2.7.8 of the Factual Findings, which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

- (i) Mohamed Bhonie Koroma, a Battalion Commander, led the attack on SS Camp. Other Kamajors that participated in this attack included Mohamed Swaray, a Battalion Commander from Kenema, Fallah Bindi, a Commander, CO Sahr, a Section CO and Stephen Lahai Fassay. SS Camp was taken approximately one week before Kenema.
- (ii) Mohamed Bhonie Koroma left SS Camp to attack Kenema on 15 February 1998. When he left, Stephen Lahai Fassay replaced him as the Kamajor boss and maintained this position at least until May 1998.
- (iii) Kamajors entered Blama on Sunday, 15 February 1998. Key commanders in this attack included Alhaji Bockarie, Sau Vibbie and Foday Saidu.
- (iv) Kamajors took control of Kenema Town on Sunday, 15 February 1998. Mohamed Bhonie Koroma led the first battalion of Kamajors, which entered Kenema from the direction of SS Camp. Twenty to thirty units from different sections, comprising at least one thousand Kamajors, entered Kenema on the same day.
- (v) ECOMOG arrived in Kenema approximately on 18 February 1998.
- (vi) While at Base Zero Musa Junisa was the Director of Operations for the Eastern Region.
- (vii) In mid-February 1998, TF2-079 and TF2-201 traveled from Base Zero to Bo and Kenema on the orders of Norman to set up a CDF office. At that time the CDF commanders in Kenema were KBK Magonna, Eddie Massallay and Arthur Koroma. George Jambawai, the Regional Coordinator for the Eastern Region became the head of the new administration; TF2-079 was also part of the executive. Jambawai's administration lasted until June 1998. He was succeeded by the District Administrator, Arthur Koroma. During the administration of Arthur Koroma a base was opened at SS Camp where civilians were taken for detention.

#### 3.8.1. Responsibility of Fofana

##### 3.8.1.1. Responsibility pursuant to Article 6(1)

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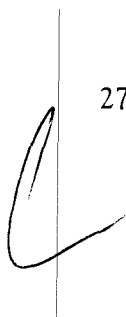
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905. The Chamber finds that it is a reasonable inference that the order to attack Kenema Town was included in the instructions given by Norman at the passing out parade held at Base Zero in early January 1998, when he ordered to launch an "all-out offensive" in all the areas occupied by the juntas. This inference can be drawn on the basis of the fact that at the time of the parade Kenema Town was one of those areas and also because according to the evidence the attack on Kenema Town took place on the same day as the attack on Bo and Bonthe Towns, *i.e.* 15 February 1998. However, the Chamber reiterates its earlier finding that Fofana's speech at this particular parade did not constitute instigating or ordering the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Kenema District.

906. The Chamber further finds that there is no evidence beyond reasonable doubt that Fofana was involved, either directly or otherwise, in the attacks on Kenema Town, SS Camp and Blama or in any of the criminal acts, which the Chamber found were committed by Kamajors during and after the attacks on those locations. The evidence shows that the existence of the plan to capture Kenema was known at Base Zero because Norman then ordered the War Council members to open the CDF office there but this evidence, even considered with the evidence as a whole, is not sufficient to conclude to any individual criminal liability of the accused beyond reasonable doubt.

907. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

908. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.



### 3.8.1.2. Responsibility pursuant to Article 6(3)

909. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with any of the Kamajors who operated in Kenema District and committed criminal acts during and after the attacks on Kenema Town, SS Camp and Blama as found by the Chamber above. The Chamber found that Musa Junisa was appointed to a position of Director of Operations for the Eastern Region at Base Zero and as such was a *de jure* subordinate of Fofana, the Director of War, in the hierarchical structure of the CDF organisation. However, the evidence adduced has not established beyond reasonable doubt that there was any superior-subordinate relationship, either *de jure* or *de facto*, between Musa Junisa and the Kamajors who operated in Kenema District and committed criminal acts during the time frame charged in the Indictment, such as to conclude that he could or did exercise effective control over those Kamajors.

910. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed by Kamajors in Kenema District during the time frame charged in the Indictment.

### 3.8.1.3. Conclusion

911. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

## 3.8.2. Responsibility of Kondewa

### 3.8.2.1. Responsibility pursuant to Article 6(1)

912. The Chamber reiterates its earlier finding that Kondewa's conduct at the passing out parade at Base Zero in early January 1998 does not constitute instigating the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Kenema District.

913. The Chamber further finds that there is no evidence beyond reasonable doubt that Kondewa was possibly involved, directly or otherwise, in the attacks on Kenema Town, SS Camp and Blama or in any of the criminal acts, which the Chamber found were committed by Kamajors during and after the attacks on those locations. The evidence shows that the existence of the plan to capture Kenema Town was known at Base Zero because Norman then ordered the War Council members to open the CDF office there but this evidence alone is not sufficient to attach individual criminal liability to the accused beyond reasonable doubt.

914. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

915. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

#### 3.8.2.2. Responsibility pursuant to Article 6(3)

916. The Chamber reiterates its earlier finding that although Kondewa had a *de jure* status as High Priest in the CDF and as such possessed command over all the Kamajors in the country, this was limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts in Kenema District. The Chamber further finds that the evidence adduced has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with any of the Kamajors who operated in Kenema District and committed criminal acts during and after the attacks on Kenema town, SS Camp and Blama as found by the Chamber above.



917. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to the criminal acts which the Chamber found were committed by Kamajors in Kenema District during the time frame charged in the Indictment.

3.8.2.3. Conclusion

918. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Kenema District during the time frame charged in the Indictment.

3.8.3. Counts - Kenema District

919. The Chamber recognises that criminal acts have been committed by Kamajors in Kenema District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber did not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

3.9. Talia / Base Zero

920. In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.8 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

- (i) By late 1996 or early 1997 the Kamajors had taken over Talia from the rebels. The first Kamajor leaders who came to Talia were Ngobeh and Joe Tamidey. Kondewa, who was a herbalist, came two weeks later with his priests and was performing initiations in Mokusi. By the time of the coup the Kamajors were also in control of the surrounding villages around Talia.
- (ii) After the coup and before the arrival of Norman to Talia around 15 September 1997, Fofana and Kondewa were both in Talia. Around July-

August 1997 Kondewa was in Tihun performing initiations. At that time Kondewa was considered the supreme head of Kamajors in Bonthe District.

- (iii) Fofana and Kondewa stayed in Talia for the entire period of time of the existence of Base Zero.

921. As set out above in the Factual Findings, the Chamber found that the following criminal acts have been committed in Talia / Base Zero, which the Chamber will consider for the purposes of making its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa in this area:

- (i) TF2-134 was captured by Kamajors and forcefully brought to Talia. She was tied with FM rope and beaten until she vomited blood. She was then kept in a guardroom and released later in the day.
- (ii) TF2-109 was captured by Kamajors along with other women and three men in her village of Matru Jong and was taken to Talia by Kamajor Kamoh Bonnie. She was held in Talia for three days. The Kamajors also looted her property in Matru, including furniture, household items and clothing.
- (iii) Sometime towards the end of 1997, two "Town Commanders" were brought to Talia. Kondewa took a gun from Kamoh Bonnie, Kondewa's priest, shot and killed one of the town commanders. The next morning witness saw two graves where the bodies of the two town commanders were buried.
- (iv) TF2-133 was captured and taken to Talia, where she stayed for one month. During that time, TF2-133 saw Kamajors kill her mother in the palm oil plantation.
- (v) TF2-188 and her mother were captured and made to carry loads to Talia. In Talia, Kondewa told his boys to capture TF2-188's mother and kill her. TF2-188 saw the Kamajors kill her mother.
- (vi) During the rainy season of 1997, TF2-189 was captured by Kamajors and taken to Talia. While in Talia, TF2-189's husband was captured, his throat was cut by Kamajors and he was decapitated.
- (vii) Jusu Shalley, Baggie Vaiey and Lahai Lebbie were captured together and brought to Talia. They were killed in front of a large group of Kamajors and civilians. All three men were civilians. Next morning the Kamajors summoned civilians to a parade, which had Norman and Kondewa in attendance.

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- (viii) Sometime after 13 February 1998, a surrendered soldier, named Sgt. Kamanda was brought to Talia from Koribondo. Sgt. Kamanda was killed.
- (ix) Kondewa's bodyguards Kafi Jini, Jahman, Junisa and Bokindeh accused TF2-096's friend, who was selling cassava, to be a rebel. Jahman reported TF2-096's friend to Kondewa and she was arrested and taken to Nyandehun. She was held in a cage and was not released until 40,000 leones were paid to Kondewa.
- (x) Sometime between January and March 1998, Mustafa Fallon was killed at the Poro Bush in Talia as part of a Kamajor ritual. Mustafa Fallon was a fighting Kamajor who had been enlisted by Bobor Tucker. Norman, Fofana and Kondewa and many other Kamajors were present.
- (xi) Sometime between December 1997 and January 1998, Alpha Dauda Kanu was killed in the palm oil plantation near Talia as part of a Kamajor ritual. Kanu was one of about 40 Kapras from Gbonkolenken Chiefdom in Tonkolili District who had come to Talia for training. Norman, Fofana and Kondewa approved the killing.
- (xii) A truck carrying cocoa and coffee arrived in Talia. It was unloaded and the contents were given to the Director of War, Fofana and the High Priest, Kondewa. The truck was detained in Talia.

922. The Chamber notes that the allegations advanced by the Prosecution in relation to the alleged crimes in Talia / Base Zero include the following time frames: for Count 2 - between about October 1997 and December 1999, for Count 4 - between November 1997 and December 1999, for Count 5 - between about 1 November 1997 and about 1 April 1998 and for Counts 6 and 7 - as charged in the previous counts. These allegations are particularised in paragraphs 882, 889, 895, 899 above.<sup>1570</sup>

923. The Chamber finds that based upon the evidence adduced in support of the acts listed above under paragraph 921 (i), (iv), (v) and (ix) it cannot conclude beyond reasonable doubt what the timing of the occurrence of these incidents was. The incident described in paragraph 921 (vi) may have occurred any time during "the rainy season of 1997" which could have been between the months of June through September 1997. The Chamber also recalls that Kondewa arrived at Talia by late 1996 or early 1997. Both Kondewa and Fofana were in Talia before the arrival of Norman and the establishment of Base Zero around 15 September 1997. Therefore, the Chamber concludes that the evidence has not established beyond reasonable doubt that the incidents listed

<sup>1570</sup> These allegations are identical for Fofana.

under paragraph 921 (i), (iv), (v), (vi) and (ix) had taken place within the time frame charged in the Indictment.

924. We find that the incident listed under paragraph 921 (viii) involves the killing of “a surrendered soldier” from Koribondo. While the Chamber recognises that this act may have constituted an unlawful killing, it holds that the Prosecution has limited the allegations in Count 2 for Talia / Base Zero to the unlawful killing of “an unknown number of civilians” only and not that of “captured enemy combatants”.<sup>1571</sup>

925. The Chamber further finds that the incidents listed under paragraph 921 (x) and (xi) do not constitute a war crime since both Fallon and Kanu fighters and members of the CDF. Here the Chamber particularly recalls the final position of the Prosecution in respect of these two killings made during their closing arguments as follows:

[T]he best approach is simply to see these two men’s deaths as examples of where the three accused stood in the hierarchy, their ability to do acts without sanction from anyone else. In fact, it demonstrates that they were in absolute control of the CDF. That is, we would say, how the deaths of those two men fit into the Prosecution case.<sup>1572</sup>

### 3.9.1. Responsibility of Fofana

926. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for the acts listed by the Chamber above under paragraph 921 (ii), (iii), (vii) and (xii).

927. In relation to the acts described under paragraph 921 (ii), (iii) and (vii) above the Chamber finds that the presence of Fofana at Base Zero when these incidents took place is not sufficient by itself to establish beyond reasonable doubt that Fofana had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment.

928. In relation to the incident described under paragraph 921 (xii) the Chamber finds that the fact that a truck was brought to Talia and the contents of it was given to Fofana is not sufficient to establish beyond reasonable doubt that either the truck might have been looted or that Fofana knew or had reasons to know that the truck might have been looted.

<sup>1571</sup> Indictment, para. 25(f).

<sup>1572</sup> Transcript of 28 November 2006, pp. 104-107.

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929. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Talia / Base Zero during the time frame charged in the Indictment.

930. Likewise, the Chamber concludes that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(3) as a superior for any of the criminal acts which the Chamber found were committed in Talia / Base Zero by Kamajors during the time frame charged in the Indictment.

### 3.9.2. Responsibility of Kondewa

931. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) or 6(3) for the incidents listed by the Chamber above under paragraph 921 (ii), (iii), (vii) and (xii).

932. In relation to the incidents described under paragraph 921 (ii) and (vii) above the Chamber finds that the presence of Kondewa at Base Zero when these incidents took place is not in itself sufficient to establish beyond reasonable doubt that Kondewa had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment. On the basis of the evidence adduced it cannot be established beyond reasonable doubt that there existed a superior-subordinate relationship between Kondewa as High Priest and the said Bonnie who was said to be a "Kondewa's priest".<sup>1573</sup>

933. In relation to the incident described under paragraph 921 (xii) the Chamber finds that the fact that a truck was brought to Talia and the contents of it was given to Kondewa is not sufficient to establish beyond reasonable doubt that either the truck might have been looted or that Fofana knew or had reasons to know that the truck might have been looted.

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<sup>1573</sup> See paragraph 220 (iii).

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934. The Chamber finds that the incident listed under paragraph 921 (iii) constitutes an intentional killing perpetrated by Kondewa. The Chamber further finds that these two men were killed because they were considered to be “collaborators”, after having been appointed to the position of “Town Commanders” by the rebels, these men organized civilians from their town to assist the rebels. In the context of the widely-held Kamajor belief that anyone who assisted the rebels was a “collaborator”, the Chamber finds that the unlawful killing of the two “Town Commanders” was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes.

935. In light of the particular facts and circumstances of each of the events referred to above, the Chamber is also satisfied both that neither of the victims was taking an active part in the hostilities at the time that they were killed and, furthermore, finds that Kondewa knew that the victims were not taking an active part in the hostilities.

936. In light of the above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of murder have been established with respect to each incident described in paragraph 921 (iii).

937. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for committing murder as a war crime as charged under Count 2 of the Indictment and as found above.

### 3.10. Moyamba District

### 3.11. Moyamba District

938. In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii), (viii) and (ix) and 809 (vi) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.9 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

- (i) Sometime after August 1997, the Kamajors returned to Moyamba in full strength under the leadership of Mustapha Ngobeh. Kenei Torma was the second-in-command to Mustapha Ngobeh. Sometime after Ngobeh's death, Torma became the first in command. In late 1997 and early 1998,

Kenei Torma and Chuck Norris were in control of the Kamajors in Moyamba town.

- (ii) Albert J Nallo in late 1997 was the Director of Operations for the Southern Province, which included Moyamba District. In this capacity Albert J Nallo had control over Moyamba District. When Albert J Nallo went to Moyamba Town he learned from Mustapha Ngobeh that four days earlier Abu Bawote, the Commander in the Ribbi area, had killed the Chiefdom Speaker. Mustapha Ngobeh related that he had seen Abu Bawote in Bradford with the severed hand of the Chiefdom Speaker; Bawote had dried the hand and tied to his neck as a necklace. Albert J Nallo reported this incident to Fofana and Norman and told Norman that this Chiefdom Speaker was a collaborator. Norman responded: "Well, a Collaborator deserves that. That was the standing order. You know that was the standing order I passed long ago."

### 3.11.1. Responsibility of Fofana

#### 3.11.1.1. Responsibility pursuant to Article 6(1)

939. The Chamber finds that there is no evidence beyond reasonable doubt that Fofana was possibly involved, directly or otherwise, in the attack on Moyamba town by Kamajors or in any of the criminal acts, which the Chamber found were committed by Kamajors in Moyamba District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

940. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

#### 3.11.1.2. Responsibility pursuant to Article 6(3)

941. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible as a superior pursuant

to Article 6(3) for any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

3.11.1.2.1. *Superior-subordinate relationship*

942. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had any direct superior-subordinate relationship with any of the Kamajors who operated in Moyamba District and committed criminal acts as found by the Chamber above during the time frame charged in the Indictment.

943. The Chamber reiterates its finding above that there was a superior-subordinate relationship between Fofana and Nallo, who was Director of Operations for the Southern Region, which included Moyamba District, and that Fofana exercised effective control over Nallo, in a sense of having the material ability to prevent the commission of criminal acts by Nallo or punish him for these acts when he learnt of their commission.<sup>1574</sup> The evidence has established beyond reasonable doubt that this relationship between Fofana and Nallo existed at least from the time of the appointment of Nallo at Base Zero to the position of Deputy National Director of Operations for the CDF and Director of Operations for the Southern Region, until the dissolution of Base Zero. Although the Chamber found that Nallo had control over Moyamba District at least in late 1997, the evidence has not established beyond reasonable doubt that at that time Nallo's control was such as to be considered to be effective over all the Kamajors in Moyamba District. By Nallo's own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region due to their large numbers.

944. In relation to the incident involving the killing of the chiefdom speaker the Chamber finds that the evidence has not established beyond reasonable doubt when exactly the killing took place. Furthermore as we found, the fact that Bawote was seen with a "dried" hand would indicate that the killing had taken place some time earlier but is not sufficient to conclude beyond reasonable doubt as to the timing of the occurrence of this killing. While noting that Nallo was informed of this killing sometime in late 1997, there is no evidence as to the timing of the killing itself. The Chamber takes the view that this evidence has not established beyond reasonable doubt that the

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<sup>1574</sup> Finding on 6(3) for Fofana in Koribondo.



killing took place either within the time frame of the Indictment or at the time when Nallo was in control of Moyamba District.

945. The evidence also does not establish beyond reasonable doubt whether there was any superior-subordinate relationship between Ngobeh and Bawote at the time when Ngobeh saw Bawote with a dried hand. The Chamber further finds that there is no evidence beyond reasonable doubt that the killing of the chiefdom speaker was done by a person who at the time of the commission of the killing was a subordinate of Fofana.

946. The Chamber therefore finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with all the Kamajors who operated in Moyamba District and who committed criminal acts as found by the Chamber above during the time frame charged in the Indictment.

947. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to any of the criminal acts which the Chamber found were committed in Moyamba District by the Kamajors during the time frame charged in the Indictment.

#### 3.11.1.3. Conclusion

948. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

#### 3.11.2. Responsibility of Kondewa

##### 3.11.2.1. Responsibility pursuant to Article 6(1)

949. The Chamber finds that there is no evidence beyond reasonable doubt that Kondewa was possibly involved, directly or otherwise, in the attack on Moyamba town by Kamajors or in any of the criminal acts, which the Chamber found were committed by Kamajors in Moyamba District during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt



that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

950. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Moyamba District during the time frame charged in the Indictment.

### 3.11.2.2. Responsibility pursuant to Article 6(3)

951. The Chamber reiterates its earlier finding that although Kondewa had a *de jure* status as High Priest in the CDF and as such possessed command over all the Kamajors in the country, this was limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts in Moyamba District. The only incident in the Factual Findings made by the Chamber in Moyamba District and which could be attributable to Kondewa for Count 5, Pillage, is set out below as follows:

- (i) In November 1997, Kamajors under the control of Kondewa took TF2-073's Mercedes Benz from his home in Sembehun. The Kamajors said that they were Kondewa's Kamajors and that they had come from Talia, Tihun, Gbangbatoke and other surrounding villages. Three of them introduced themselves as Steven Sowa, Moses Mbalacolor and Mohamed Sankoh. Mohamed Sankoh said he was Deputy Director of War under Norman. The car was eventually given to Kondewa, who kept the car and used it without permission.
- (ii) On the same occasion these Kamajors also took a generator, car tires and other gadgets from TF2-073.

952. The Chamber has examined the facts surrounding each incident set out in both points above and is satisfied that, having regard to all the evidence adduced, each incidence of pillage is sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The Chamber further finds, given the circumstances surrounding the occurrence of pillage as set out above, that the victims were persons not taking a direct part in the hostilities at the time of the



commission of the crimes. The Chamber is additionally satisfied that the perpetrator knew that the victims were not taking an active part in the hostilities.

953. In the light of the above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of pillage have been met with respect to each incident described in paragraph 951.

954. This incident demonstrates that the looting was done by the Kamajors who operated under the direct orders of Kondewa. Kondewa's knowledge that his subordinates committed crimes of pillage can be established on the basis that the looted car was then given to him to be driven around. The Chamber finds that Kondewa not only failed in the exercise of his duties to punish his subordinates for looting, but chose to support their actions by using the looted vehicle himself.

#### 3.11.2.3. Conclusion

955. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible as a superior, pursuant to Article 6(3), for pillage as charged under Count 5 on the Indictment and as found by the Chamber above.

#### 3.11.3. Counts - Moyamba District

956. The Chamber recognises that other criminal acts have been committed by Kamajors in Moyamba District during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability alleged in the Indictment. Therefore, the Chamber did not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

#### 3.12. Count 8

957. The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1) or 6(3), for enlisting children under the age of 15 years ("child soldiers")

into armed forces or groups or using them to participate actively in hostilities at all times relevant to the Indictment throughout the Republic of Sierra Leone.<sup>1575</sup>

958. In addition to the facts, listed in paragraph 721 (i) to (viii) and 809(i) (iii) above, the Chamber outlines below the facts as found in Sections V.2.2 and V.2.10 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa with respect to Count 8.

- (i) A commanders' meeting was held by Norman after the passing out parade at Base Zero in early January 1998, which had in attendance, among others, Fofana, Kondewa and commanders for the Bo attack. Norman added that the adult fighters were doing less than the children, and just eating and looting.
- (ii) Child fighters were present at various times at Base Zero.

### 3.12.1. Responsibility of Fofana

#### 3.12.1.1. Responsibility pursuant to Article 6(1)

959. The Chamber finds that the evidence adduced has not proved beyond reasonable doubt that Fofana planned, ordered or committed the crime of enlisting child soldiers into an armed group, or using them to participate actively in hostilities.

960. Specifically regarding the commanders' meeting, the Chamber finds that Fofana's mere presence does not demonstrate beyond reasonable doubt that he encouraged anyone to make use of child soldiers. Neither does it demonstrate beyond reasonable doubt that he aided and abetted in the planning, preparation or execution of either the enlistment of child soldiers into the armed forces or the use of child soldiers to participate actively in hostilities anywhere in the Republic of Sierra Leone during the time frame specified in the Indictment.

961. The Chamber further finds that the presence of Fofana at Base Zero where child soldiers were also seen is not sufficient by itself to establish beyond reasonable doubt that Fofana had any involvement in the commission of these criminal acts under any of the modes of liability charged in the Indictment.

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<sup>1575</sup> Indictment, para. 29.

962. The trial record contains ample evidence that the CDF as an organisation was involved in the recruitment of children under the age of 15 to an armed group, and used them to participate actively in hostilities, however this does not demonstrate beyond a reasonable doubt that Fofana was personally involved in such crimes.

963. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of enlistment of child soldiers into armed forces or groups or use of child soldiers to participate actively in hostilities.

3.12.1.2. Responsibility pursuant to Article 6(3)

964. In addition to the facts, listed above in paragraph 958 the Chamber outlines below the fact upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(3) of Fofana with respect to Count 8:

- (i) In February 1998 TF2-140 passed through the town of Koribondo, he saw Joe Tamidey, a Kamajor commander [under the command of Fofana] being guarded by four small boys. The Witness estimated the boys to be younger than he was.

965. TF2-140 was 15 years old when he witnessed this event. The Chamber has accepted the credibility of TF2-140's statement on this event, however there is room for doubt that the boys referred to were actually younger than 15 years of age. It is conceivable that the boys were younger than the witness, but still older than 15 years. It is also conceivable that TF2-140 may have been incorrect in his estimation that the boys were younger than he. Aside from that, the evidence does not establish that Fofana was aware of the situation regarding his subordinate Joe Tamidey. In conclusion, the Chamber finds that the evidence adduced does not prove beyond reasonable doubt the criminal liability of the Accused.

966. The Chamber finds that the evidence adduced does not prove beyond a reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(3) as a superior for the enlistment or use of child soldiers to participate actively in hostilities anywhere in the Republic of

Sierra Leone during the time frame specified in the Indictment. Proof of knowledge alone is insufficient to establish the individual criminal responsibility of an Accused, and the Chamber is unable to conclude that Fofana's presence alone at this or other such meetings has either a condoning or encouraging effect upon the commission of any crimes by his subordinates relating to the enlistment or use of child soldiers.

### 3.12.1.3. Conclusion

967. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to either Article 6(1) or 6(3) for Count 8.

### 3.12.2. Responsibility of Kondewa

#### 3.12.2.1. Responsibility pursuant to Article 6(1)

968. In addition to the facts, listed in paragraph 958 above, the Chamber outlines below the fact upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) of Kondewa with respect to Count 8:

- (i) TF2-021 was nine years old when he was abducted by rebels. In 1997, when the witness was eleven years old he was captured by Kamajors and forced to carry looted property. The Kamajors subsequently took him to Base Zero for initiation.
- (ii) At Base Zero, the witness was initiated along with around 20 other young boys. Kondewa performed the initiation and told the boys that they would be made powerful for fighting. He gave them a potion to rub on their bodies before going into battle.
- (iii) After receiving training, TF2-021 was sent on his first mission to Masiaka, where he shot a woman in the stomach and left her there on the ground. On subsequent missions, he fought with the Kamajors at Kenema, SS Camp, Joru and Daru. In 1999 TF2-021 was flown by helicopter into Freetown with three other small boys and their commanders where they were given guns and sent to support ECOMOG who were fighting the rebels at Congo Cross.
- (iv) In 1999, when TF2-021 was thirteen years old, he was initiated into the Avondo Society, a group of Kamajors led by Kondewa. He received a certificate (Exhibit 18) which proved his membership in this group. The certificate bears details showing the place of initiation (Bumpeh), the

initiate's name, photograph and age. It also bears Kondewa's name, signature and stamp.

969. The Chamber understands from the evidence that initiation into the Kamajor Society does not necessarily amount to enlistment in an armed force or group.<sup>1576</sup> Some parents put their children through initiation for other reasons. Thus, the Chamber has looked at the details of the actual initiation ceremony, the circumstances surrounding initiation, as well as the subsequent events, to determine whether in fact a child could be said to have been enlisted in an armed force or group.

970. Having considered the evidence outlined above, that during the first initiation of TF2-021 initiates were given potions to rub on their bodies before going into battle, were told that they would be made strong for fighting, were subsequently given military training, and soon afterwards were sent into battle, the evidence is absolutely clear that on this occasion, the initiates had taken the first step in becoming fighters. It is beyond reasonable doubt that Kondewa, in these circumstances, when initiating the boys, was also performing an act analogous to enlisting them for active military service. TF2-021 was eleven years old when Kondewa enlisted him. In the Chamber's view, there can be no mistaking a boy of eleven years old for a boy of fifteen years or older, especially for a man such as Kondewa who regularly performed initiation ceremonies. Kondewa knew or had reason to know that the boy was under fifteen years of age, and too young to be enlisted for military service. Although the Chamber found this evidence entirely sufficient to establish enlistment beyond a reasonable doubt, TF2-021 was given a second initiation, into the Avondo Society, headed by Kondewa himself, when he was thirteen years old. Exhibit 18, dated 10 June 1999, bears Kondewa's signature and stamp of approval and lists the boy's age (incorrectly) as twelve.

971. Thus, the Chamber concludes that this evidence has established beyond reasonable doubt that Kondewa committed the crime of enlisting a child under the age of 15 into an armed force or group.

972. The Indictment charges use of child soldiers as an alternative to enlistment. Therefore, having found that Kondewa is individually criminally responsible for enlisting child soldiers, the

<sup>1576</sup> Expert Witness TF2-EW2 testified that in her belief, initiation was a stepping stone to recruitment as a soldier. Transcript of 16 June 2005, p.17 (CS).

Chamber need not consider the evidence in relation to their use actively participating in armed hostilities.

3.12.2.2. Responsibility pursuant to Article 6(3)

973. Having found the Accused liable under Article 6(1) if the Statute, the Chamber need not consider the Accused's liability under Article 6(3) of the Statute.

## VI. CUMULATIVE CONVICTIONS

### 1. Applicable Law

974. The issue of cumulative convictions arises when more than one conviction is imposed for the same criminal conduct. The Chamber is of the view that an Accused may only be convicted of multiple criminal convictions under different statutory provisions, but based on the same conduct, "if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other."<sup>1577</sup> In other words, multiple convictions may only be upheld if both of the provisions require proof of an element that is not required by the other provision. If an additional element is only required for one of the provisions, then the Accused will be convicted on that count, but not on the other count for which no distinct element is required.

### 2. Findings on Cumulative Convictions

975. For all of the reasons discussed above, the Chamber has found that the elements of the offences of murder (Count 2), cruel treatment (Count 4) and collective punishments (Count 7) have been established against the Fofana and the Kondewa in Tongo District. It has also found that the elements of the offences of murder (Count 2), cruel treatment (Count 4) and collective punishments (Count 7) have been established against the Fofana in Bonthe District, and that the elements of the offences of murder (Count 2), cruel treatment (Count 4), pillage (Count 5) and collective punishments (Count 7) were established against him in Bo. It has also has found that the elements of the offences of murder (Count 2), cruel treatment (Count 4), pillage (Count 5) and collective punishments (Count 7) were established against the Kondewa in Bonthe.

<sup>1577</sup> *Celebici Appeal Judgement*, para. 412. See also: *Prosecutor v. Musema*, ICTR-96-13-A, Judgement (AC), 16 November 2001 [*Musema Appeal Judgement*], paras 361-363; *Naletilic and Martinovic Appeal Judgement*, paras 584-585.

976. Given that the Accused, in some instances, were found liable in each District for collective punishments (Count 7) on the basis of the same underlying conduct for which they were found liable for Counts 2, 4 and 5, the Chamber must consider whether it is possible to convict them both for Counts 2, 4 and 5, as well as for Count 7.

977. The offence of collective punishment under Article 3(b) of the Statute requires two materially distinct elements from those required by Counts 2, 4 and 5. First, the offence of collective punishment requires a specific intent to punish collectively. Second, punishment must be imposed on multiple persons.

978. The Chamber is also of the view that the offences of murder and cruel treatment (under Article 3(a) of the Statute) and pillage (under Article 3(f) of the Statute) have material elements not required by the offence of collective punishment. In the Indictment, the Prosecution has pleaded "punishments" that consist only of crimes enumerated in Counts 1-5. However, the Chamber has held that the term "punishment" for this offence should be understood in its broadest sense, and refers to all types of punishments, not only those imposed by penal law.<sup>1578</sup> Punishment can therefore be imposed collectively by means of a variety of different acts, not all of which are crimes under the Statute. The *actus reus* of the offence of collective punishment therefore does not necessarily include the commission of the *actus reus* of any of the crimes of murder, pillage or cruel treatment. Nor is it required, in order to find liability for collective punishments, that the *mens rea* of any of these offences needs to be satisfied.<sup>1579</sup> The Chamber therefore finds that the material elements for each of these crimes are distinct from those that need to be proved to find liability for the offence of collective punishment. It is therefore permissible, in the Chamber's view, to enter convictions under Count 7 as well as under Counts 2-5 even where the underlying facts for the convictions are the same.

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<sup>1578</sup> See para. 181.

<sup>1579</sup> See *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-T, Judgement (TC), 20 June 2007, where the Chamber held that it is permissible to convict an accused person for collective punishments under Article 3(b) of the Statute or acts of terrorism under Article 3(d) of the Statute, as well as for underlying crimes such as murder and mutilation (under Article 3(a) of the Statute) or outrages upon personal dignity (under Article 3(e) of the Statute) (para. 2108). See also *Kordic and Cerkez* Appeal Judgement, paras 1041-1043 and *Naletilic and Martinovic* Appeal Judgement, para. 590 where the Appeals Chamber held that it was permissible to convict the accused both for the offence of "persecution" (which also requires a specific intent) as well as for the underlying offences or "murder", "inhumane acts", "torture" and imprisonment".

## VII. DISPOSITION

FOR THE FOREGOING REASONS, having considered all the evidence along with the arguments of the Parties, the Trial Chamber finds with respect to the Accused, **Moinina Fofana**, as follows:

Count 1: *Unanimously* - Murder, a Crime against Humanity; **NOT GUILTY**

Count 2: *By a majority, Hon. Justice Bankole Thompson dissenting* - Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

Count 3: *Unanimously* - Other Inhumane Acts, a Crime Against Humanity; **NOT GUILTY**

Count 4: *By a majority, Hon. Justice Bankole Thompson dissenting* - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

Count 5: *By a majority, Hon. Justice Bankole Thompson dissenting* - Pillage, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

Count 6: *Unanimously* - Acts of Terrorism, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **NOT GUILTY**

Count 7: *By a majority, Hon. Justice Bankole Thompson dissenting* - Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

Count 8: *By a majority, Hon. Justice Benjamin Mutanga Itoe dissenting* - Enlisting children under the age of 15 years into an armed forces or groups or using them to participate actively in hostilities, an other serious violation of international humanitarian law; **NOT GUILTY**





FOR THE FOREGOING REASONS, having considered all the evidence along with the arguments of the Parties, the Trial Chamber finds with respect to the Accused, Allieu Kondewa, as follows:

Count 1: *Unanimously* - Murder, a Crime against Humanity; **NOT GUILTY**

Count 2: *By a majority, Hon. Justice Bankole Thompson dissenting* - Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

Count 3: *Unanimously* - Other Inhumane Acts, a Crime Against Humanity; **NOT GUILTY**

Count 4: *By a majority, Hon. Justice Bankole Thompson dissenting* - Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

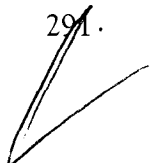
Count 5: *By a majority, Hon. Justice Bankole Thompson dissenting* - Pillage, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

Count 6: *Unanimously* - Acts of Terrorism, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **NOT GUILTY**

Count 7: *By a majority, Hon. Justice Bankole Thompson dissenting* - Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; **GUILTY**

Count 8: *By a majority, Hon. Justice Bankole Thompson dissenting* - Enlisting children under the age of 15 years into an armed groups and/or using them to participate actively in hostilities, an other serious violation of international humanitarian law; **GUILTY**

For the purposes of clarity in the record, the Chamber would like to summarise its findings as follows: Fofana has been held to be guilty and convicted on Counts 2, 4, 5 and 7 of the Indictment; Kondewa has been held to be guilty and convicted on Counts 2, 4, 5, 7 and 8 of the Indictment.

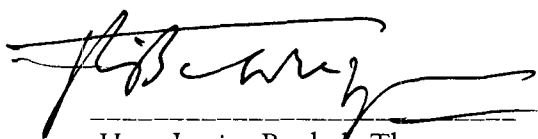


Hon. Justice Benjamin Mutanga Itoe appends his "Separate and Partially Dissenting Opinion Only on Count 8" to the written Judgement;

Hon. Justice Pierre Boutet appends his "Separate Concurring Opinion" to the written Judgement;

Hon. Justice Bankole Thompson appends his "Separate Concurring and Partially Dissenting Opinion" to the written Judgement; Hon. Justice Bankole Thompson acquitting both Accused on all Counts of the Indictment.

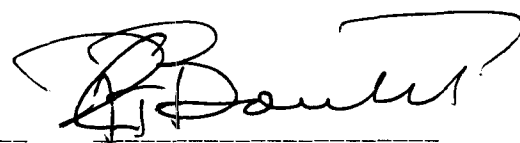
Done in Freetown, Sierra Leone, this 2<sup>nd</sup> day of August 2007.



Hon. Justice Bankole Thompson



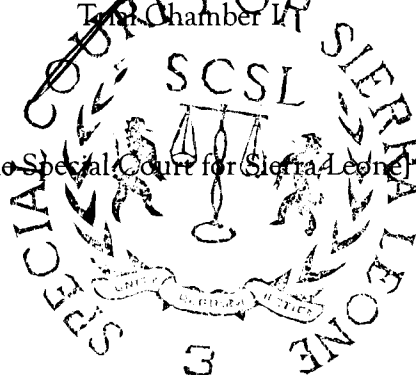
Hon. Justice Benjamin Mutanga Itoe



Hon. Justice Pierre Boutet

Presiding Judge  
Top Chamber

[Seal of the Special Court for Sierra Leone]



## LIST OF ANNEXES

- Annex A: Separate and Partially Dissenting Opinion Only on Count 8 of Hon. Justice Benjamin Mutanga Itoe (including attachment)
- Annex B: Separate and Concurring Opinion of Hon. Justice Pierre Boutet
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**ANNEX A - SEPARATE AND PARTIALLY DISSENTING OPINION ONLY ON  
COUNT 8 OF HON. JUSTICE BENJAMIN MUTANGA ITOE, PRESIDING JUDGE  
OF THE CHAMBER ON THE JUDGEMENT OF THE LEARNED JUSTICES OF  
TRIAL CHAMBER I IN THE CASE OF MOININA FOFANA AND ALLIEU  
KONDEWA**

I, Hon. Justice Benjamin Mutanga Itoe, Presiding Judge of Trial Chamber I;

MINDFUL of the Chamber Majority Decision issued this 2<sup>nd</sup> day of August 2007 in this case;

**DO HEREBY ISSUE THE FOLLOWING SEPARATE AND PARTIALLY DISSENTING  
OPINION BUT ONLY ON COUNT 8**

1. The remark I make before submitting this Opinion to the records is that it indeed would not have been necessary if the Chamber were in accord on certain issues which We could not, for a lack of a consensus, agree on.
2. This concerned particularly, the applicability of the notion of circumstantial evidence in International Criminal law and particularly, in the context of the case whose judgement We have just rendered. It relates to determining the liability of the two Accused for offences under Count 8 for the 300 child soldiers under the age of 15 years who Norman, acting on behalf of the CDF, handed over to the DDR programme as CDF former combatants, after negotiations with Child Protection Agencies.
3. The Majority Chamber Opinion was that neither Fofana nor Kondewa could be held criminally responsible under Count 8 for this contingent of 300 child soldiers and that it was only Norman who handed them over, that could have been held responsible for this offence.
4. The other issue of disagreement relates to my perspective which I presented to the Chamber on the basis of the responsibility of the Accused Persons for the serious war crimes and crimes against humanity which they committed even though they state, and rightfully so, that they were fighting to restore President Kabbah and his democratically elected Government to power.
5. This said, may I indicate that my Learned Brothers and my humble self, for the most part, have shared common positions on the benchmarks that have characterised these proceedings and

unanimity excepting on certain issues where each Judge has opted to treat and dispose of a particular issue in the manner that he best conceives and appreciates.

6. I would also like to reiterate here in this Separate Opinion, the fact, as was mentioned in the Introduction of Our Judgement, that I did not and still do not, with all due deference and respect which my Brothers always deserve, agree or accept the deletion of the name of the deceased 1<sup>st</sup> Accused, Samuel Hinga Norman from this Judgement and from other processes relating to this case.

7. For these reasons I would still like to reiterate My Dissenting Opinion which I filed in this regard on the 22<sup>nd</sup> of June, 2007 and for the records, do again attach a record of it to this Separate Concurring Opinion on the Final Judgement in this case that we are delivering today.

8. In our usual judicial traditions however, I consider myself, at this point in time, bound and guided by this majority position which has had the effect of deleting late Samuel Hinga Norman's name from the records and from this decision; a reality which I treat with equal deference, respect and esteem in which I hold my Distinguished Brothers and Colleagues.

#### ENLISTING AND USE OF CHILD SOLDIERS

9. The offence of use of Children under the age of 15 years for combat activities is defined in Article 4(c) of the Statute as follows:

The Special Court shall have power to prosecute persons who committed the following serious violations of international humanitarian law:

- (c) Conscripting or enlisting children under the age of 15 years into armed forces or armed groups or using them to participate actively in hostilities.

10. In the light of the above elements it is clear that Article 4(c), criminalises not only conscripting or enlisting, but also using children under the age of 15 years to participate actively in hostilities. The Chamber will therefore, as far as the concept of use of this category of children is concerned, want to make the following categorisation of acts which amount to active participation in hostilities categories which include:

1. A direct involvement in combat activities in the frontlines by carrying a weapon and using it to exchange fire to the extent that his life or existence is, as a result, exposed to peril and jeopardy.

2. The participation in military activities or duties such as guarding military establishments or equipment belonging to a warring faction in times of hostilities and in the defence of occupied territory or of persons against threats of aggression from enemy forces, either by defending military installations or garrisons; mounting of checkpoints or acting as body guards to Commanders, indeed, being employed to assume roles which place them in a permanent state of alert and readiness for combat.

3. Participation in the transportation to the frontlines, of supplies of a strategic military nature and importance such as arms, ammunitions and other lethal weapons or equipment that are destined for use in sustaining combat activities.

11. In order therefore to prove a charge of using children under the age of 15 years to participate actively in hostilities, I am of the opinion that the elements embodied in any of the categories that I have outlined above, must be established beyond reasonable doubt.

12. From the foregoing analysis and having regard to the statutory provisions of Article 4(c), the conclusion to be drawn here is that the law as it is worded, allows for the participation of children under 15 years of age in activities that do not amount to an 'active participation' in hostilities, in other words activities that are remote from those defined in the three categories that I have outlined.

13. It stands to reason therefore, that a line of demarcation has to be drawn between acts which amount to participating actively in hostilities and those which, even though they may have a semblance of this connection to active participation, are considered as remote from, and not falling under the ambit of the phrase 'active participation in hostilities'. These would include children who are involved in performing in the homes or camps of combatants who are actively involved in hostilities in the frontlines, domesticated jobs of a purely civilian character like cooking, food finding, laundry or running routine errands.

14. I am of the view that even if this could be interpreted to amount to logistic support to a warring faction, it does not attain the threshold of what, in a strict legal sense, is or could be

considered as amounting to an active participation in hostilities. The situation will however, be different if this same child is used by his master, a combatant, to convey combat equipment or weapons to the war front for purposes of his master to sustain the hostilities because such conduct will come under the purview of criminality under Article 4(c) of the Statute.

15. In this regard, it is pertinent to refer to the comments in the *travaux préparatoires* on consultations during the establishment the International Criminal Court where it was said that:

“The word ‘using’ and ‘participate’ have been adopted in order to cover both participation in combat and also active participation in military activities linked to combat such as scouting spying, sabotage and use of children as decoys, couriers or at military check points.”

16. In the light of the potential difficulty in drawing the line and distinction as to when such conduct is culpable or when it is not, a Court would, in such circumstances, only be able to make a determination on a case by case basis and on the strength of the evidence adduced by the Parties.

17. The Chamber recalls here that the Prosecution in Count 8, charges the 3 Accused Persons for initiating or enlisting children under the age of 15 years into armed forces or groups, or in the alternative, for using them to participate actively in hostilities at all times relevant to this indictment<sup>1</sup> which alleges in addition, that they took part in policy, planning and operational decisions of the CDF.<sup>2</sup>

18. The Indictment further alleges that each Accused acted individually and in concert with subordinates, to carry out the said plan, purpose or design<sup>3</sup> and in addition, that the crimes were within a common purpose, plan or design in which each Accused participated,<sup>4</sup> a statement which alleges Accomplice or Co-Accused responsibility or liability under Article 6(1) of the Statute.

19. The Prosecution, in the Indictment,<sup>5</sup> also alleges that the 3 Accused persons knew and approve the use of children under the age of 15 years to participate actively in hostilities and that

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<sup>1</sup> The Indictment, para 29.

<sup>2</sup> The Indictment, para 14.

<sup>3</sup> The Indictment, para 19.

<sup>4</sup> The Indictment, para 20.

<sup>5</sup> The Indictment, para 17.

all Accused acted individually and in concert with subordinates to carry out the said plan, purpose or design.<sup>6</sup>

20. The common purpose here and the design which the Prosecution is imputing on all the Accused for all the Counts charged, and in this particular Count, is to enlist in the armed group of combatants of the CDF Kamajors, children under the age of 15 years, with a view to using them to participate actively in hostilities in order to defeat the combined forces of the RUF and of the AFRC as alleged in paragraph 19 of the Indictment.

21. The Chamber has already defined the specific elements that are required to establish the offence of enlisting as defined in Article 4(c) of the Statute and charged under count 8 of the Indictment and which include:

- (i) The accused enlisted one or more persons into an armed force or into an armed group;
- (ii) Such person or persons were under the age of 15 years;
- (iii) The accused know or had reason to know that such person or persons were under the age of 15 years; and
- (iv) The accused intended to enlist the said persons into the armed force or group.

22. We have also defined the specific elements which are constitutive of the offence of using children under the age of 15 years to participate actively in hostilities as defined in Article 4(c) of the Statute and charged under Count 8 of the Indictment and which include:

- (i) The accused used one or more persons to actively participate 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; and
- (iv) The accused intended to use the said persons to actively participate in hostilities.

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<sup>6</sup> The Indictment, para 19.



## THE CDF KAMAJOR POLICY OF ENLISTING COMBATANTS

23. Having regard to the evidence that has been adduced by both the Prosecution and the Defence which I consider credible, I find that tradition and policy for the recruitment of combat forces into the CDF armed groups required these fighters called Kamajors, to first of all, to go through the initiation ritual followed by the ritual of immunisation.

24. These rituals which were conducted in Talia and in other locations by the High Priest, Allieu Kondewa, the 3<sup>rd</sup> Accused, were intended, again as confirmed by the evidence adduced by the Parties which I consider credible, to render the Kamajor combatants bullet proof and invulnerable in the course of participating in hostilities or in any combat activities.

25. It is the quest for the acquisition of this combat protection that attracted the influx of thousands of Kamajors and other non initiates on a pilgrimage to Talia to undergo these rituals that in Talia were conducted by the 3<sup>rd</sup> Accused. In fact, before the conflict intensified, initiation and immunisation were distinct rituals, the former proceeding the latter. As the conflict intensified however, the 3<sup>rd</sup> Accused merged the two rituals appear to have been merged. This allowed the 3<sup>rd</sup> Accused to turn out many more immunised Kamajors. It is also revealed in the evidence that there was also at that time, a Military Training Centre which had been created in Talia by the late 1<sup>st</sup> Accused for purposes of training Kamajors. The evidence adduced also reveals that thousands of Kamajors were trained there by one M.S. Dumbuya, a Sierra Leonean Police retiree of what was then known as the Special Security Division (SSD), today known as the Operational Support Division (OSD).

26. In the light of the foregoing, it is my finding that no enlistment children under the age of 15 years into the Kamajor armed group could take place, nor could they be used to participate actively in hostilities, if they were not initiated into the Kamajor society and immunised by the 3<sup>rd</sup> Accused or by any of the other Kamajor Initiators<sup>7</sup> who in hierarchy, were subordinate to the 3<sup>rd</sup> Accused who, for this reason, was referred to as the High Priest.

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<sup>7</sup> Mama Munda Fortune, Siaka Sheriff Mualimu, K. Saddam, Kamara Kaneh Brima, Kamoh Lahai Bangura, Moalem Sessay: Transcript of 22 February 2006, DW Ishmael Koroma, p. 29-35; Transcript of 31 May 2006, Lansana Bockarie, p. 17; Transcript of 10 March 2005, Albert Nallo, p. 9; Transcript of 15 February 2005, TF2-001, pp. 80-85 (CS); Transcript of 10 February 2006, Joe Demby, p. 13

27. I find, based on the evidence that has been adduced, that the culture of the Kamajor Society, like that of any other traditional society or cult, is based on absolute secrecy in their beliefs, their practices, their rituals and their traditional mysticism as manifested by the initiation process itself and the post initiation rituals and laws they would have gone through and were constrained to observe. This was the case in order to conserve the bullet proof armour which they strongly believed was bestowed and mystically clad on them by Kondewa the 3<sup>rd</sup> Accused, through the instrumentality of traditional herbs and the Tevie<sup>8</sup> which were rubbed on their bodies and which, they were very strongly convinced, effectively made them bullet proof. Some Defence Witnesses proudly professed this belief and affirmed that if they survived in combat, it was because the immunisation from bullets.

28. This belief, which I find, featured in the testimony of both Prosecution and Defence witnesses, constituted a strong galvanising force and motivation for the Kamajors to face the enemy bravely in battle and to endure the process with a spiritually motivated and propelled inspiration and determination. There is no doubt in my mind that this psychological belief in their invincibility that they owe to their initiation and immunisation, contributed largely and decisively and to a very considerable extent, to the indomitable morale of Kamajor combatants. They believed in it and were ritually and resolutely committed to it.

29. In a pitched battle at the Congo Cross Bridge in Freetown, between the Kamajors and the Rebels, General Richards who witnessed the combat was so impressed with the bravery and tenacity of the CDF militia, not too well equipped or organised, and wished he could have elements of that calibre of bravery and tenacity in the rank and file of his western and sophisticated army.

**INITIATION AS AN OFFENCE**

30. It is my finding that the Prosecution erred and misconceived the purport of the ritual by alleging and charging initiation as one of the elements of the offence of enlisting as spelt out in Article 4(c) of the Statute, because initiation, per se, which the Chamber characterises as a

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<sup>8</sup> Tevie in Mende means to mark the initiates bodies. The initiator uses the tevie, together with some herbs to mark the bodies of Kamajors joining the society. Transcript of 10 March 2005, Albert Nallo, pp. 25-26.



traditional cult and ritual, does not constitute an offence as defined under the Statute. It would indeed, therefore, be a misconception and a mis-statement of the law to hold otherwise.

31. However, given the processes that were involved in enlisting fighters into the Kamajor CDF armed group for combat, I find that even if initiation did not automatically give rise to enlistment into the CDF Kamajor fighting forces, it provided an evidentiary element and a preparatory stage for purposes of proving the offence of enlistment.

32. As I have already indicated, there was a massive and sustained influx of people from other Chiefdoms to Talia to undergo the ritual of initiation which was being conducted exclusively, as has been said earlier, by the 3<sup>rd</sup> Accused, Allieu Kondewa. From the available evidence, it is clear from the record that every initiate had to pay a fee to Kondewa for this exercise. In fact, the communities were so actively mobilised to undergo the process that wealthy elites had to contribute funds to pay for the initiation of people from their communities.<sup>9</sup>

**WHAT FACTUAL CONCLUSION CAN BE DRAWN FROM THE PROCESS OF INITIATION**

33. The evidence discloses that Kondewa carried out the ritual on thousands of people in ceremonies that he conducted in bush called Mokossi.<sup>10</sup> The Chamber finds as we have indicated earlier, that there was a military training base in Base Zero that was fully operational at the same time that Kondewa was conducting his initiations in Talia. The Chamber has already found that Kondewa, in the presence of the late 1<sup>st</sup> Accused, Norman and the 2<sup>nd</sup> Accused, Moinina Fofana, addressed the assembly of Kamajors who had graduated from their training in Base Zero. Kondewa told them that they had his spiritual benediction to go to war.

**DIRECT EVIDENCE**

34. In view of the secrecy and mythology that characterised Kamajor activities in the enlistment of children under the age of 15 into the armed group of the CDF and or their use by the Accused Persons to participate actively in hostilities, the direct oral evidence to prove Count 8 of the indictment against the 2 remaining Accused Persons is rare. In this regard, the Chamber has been

<sup>9</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 13-14.  
<sup>10</sup> Transcript of 10 March 2005, Albert J Nallo, p. 31.



able to find conclusive evidence only against the 3<sup>rd</sup> Accused, Allieu Kondewa under Article 6(1) and this, in relation to only two child soldiers. The evidence also reveals the use of children as 'Commanders', who danced in front of advancing CDF warriors as they went to battle<sup>11</sup> and furthermore, the revelation of their use in check points in an unidentified location or command structure that would clearly have established under whose command they were operating in order to facilitate the determination of responsibility for the offence so disclosed under Count 8.

35. It is in evidence, that at the early stages of the war, children went through the initiation and immunisation process only for their protection and with the consent of their Parents, participated alongside the said parents and elders to defend their communities against rebel incursions. There is however, no evidence volunteered by the Defence or by the Prosecution as to the evolution of their status thereafter and as to whether they were used eventually to participate actively in hostilities since they had fulfilled the CDF criteria for enlistment into their combat wing.

#### ACTIVITIES OF CDF CHILD SOLDIERS ALSO KNOWN AS 'SMALL HUNTERS'

36. In the Kamajor culture and terminology, these child soldiers were called 'Small Hunters' and they were involved in committing certain atrocities during the conflict. There is evidence on record that is credible, that one Keikura Amara aka Komabotie, a very ruthless Kamajor who in a place called Talama, killed 150 civilians in a queue, slit open the stomach of one victim and displayed his entrails in a bucket before the remaining civilians.<sup>12</sup> He gave a single barrel bullet to a 12 year old boy named 'small hunter' and ordered him to kill Witness TF2-035. Two Kamajors intervened on TF2-035's behalf but their efforts were unsuccessful. 'Small Hunter' shot Witness TF2-035 five times but he, TF2-035, managed to escape to the bush. One bullet is still in his body.<sup>13</sup>

#### THE AVONDO SOCIETY

37. Sometime after March 10, 1998, Kondewa founded the Avondo Society together with one Skeke Kaillie, 'aka Bombowai'. From the evidence, Avondo means that when you go to the

<sup>11</sup> Exhibit 100.

<sup>12</sup> Transcript of 14 February 2005, TF2-035, pp. 49-50.

<sup>13</sup> Transcript of 14 February 2005, TF2-035, pp. 56-68.

warfront, the medicine enters your body when you sweat.<sup>14</sup> There was a cabinet of the Society which was responsible for marking the bodies of the initiates.<sup>15</sup> Members of the cabinet were: Kamoh Gboni, Kamoh Fuwad, Gibrilla, CO Makossi, Hallie Namoi and Woodie.<sup>16</sup>

38. Members of Avondo Society were the Kamajors, the notorious group. They had no sympathy for anyone. Whoever they caught they would kill or amputate.<sup>17</sup>

39. In 1999, when Witness TF2-021 was thirteen years old, he was initiated into the Avondo Society, a group of Kamajors led by Kondewa. He received a certificate (exhibit 18) which shows his membership in this group. The certificate bears details showing the place of initiation (Bumpeh), the initiate's name, photograph and age. It also bears Kondewa's name, signature and stamp.

40. From the available evidence, the children who were initiated into the Avondo Society acted differently. They did not want to be touched by or stand near female teachers. They did not want to hold a sweeping brush, unlike other children who would sweep at the schools. They began to show violent behaviour and acted like they were better than the other children even the other children that had been initiated into the CDF.<sup>18</sup> (See Factual Findings of 20/7/07 Page 29 of Footnotes Folder.

41. Still in relation to the activities of CDF Child Soldiers, the deceased 1<sup>st</sup> Accused, Norman, had threatened the War Council and said 'These small boys you have seen here, if they kill, you have nobody to be responsible for you. These boys you are dealing with, when they do bad, they kill you here, and nobody will be responsible. I have no security guarantee here.' When two War Council members were molested, late Norman did not do anything to the Kamajors. So this created fear in the War Council members. A young Kamajor with a gun molested Hon. R.P. Kombe Kajne, a 70 year old former member of Parliament and member of the War council who was placed on the ground and stepped onto. When this matter was reported to late Norman, he just laughed and said 'I have told you.' No disciplinary measure was taken against the Kamajor.

<sup>14</sup> Transcript of 11 March 2004, TF-021, pp. 20-21 and 49.

<sup>15</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 28-30

<sup>16</sup> Transcript of 10 March 2005, Albert J Nallo, pp. 28-30

<sup>17</sup> Transcript of 14 February 2005, TF2-001, pp. 77-78.

<sup>18</sup> TF2-EW2, 2005.06.16, pp. 21-22.

Alhaji Duramy Rogers, also a notable and a member of the War Council based in Base Zero, suffered a similar fate and Norman only laughed and again said he had told them.<sup>19</sup>

42. I would like to observe here that those major incidents provoked by 'small hunters' in Base Zero against these two respected and reputed notables and member of the War Council, could not have occurred in the geographically small village of Talia, without their being reported to or coming to the knowledge of Fofana and Kondewa who after Norman were the 2<sup>nd</sup> and 3<sup>rd</sup> in the real command hierarchy of the CDF in that village. I do observe here that the evidence reveals that Kondewa moved around Talia with his body guards because of the importance of Initiators within the hunter's society also known as the Kamajor society. He also had a child soldier acting as one of his body guards.

43. It is plausible to adopt as credible, the evidence that Father Garrick went to see Kondewa who was considered supreme head of the Kamajors in Tihun Sogbini<sup>20</sup>

44. His powers are further highlighted and demonstrated in a meeting at Base Zero to plan the attack on Tongo at which the 3 Accused were in attendance. Norman and Fofana spoke first. Then all the fighters looked at Kondewa, admiring him as a man with mystic power and he gave them the last command saying, 'a rebel is a rebel; surrendered, not surrendered, they're all rebels; The time for their surrender had long since been exhausted, so we don't need a surrendered rebel.' He then said, 'I give you my blessings; go my boys, go.'<sup>21</sup>

45. In fact, he was so powerful and influential in the organisation that Father Garrick testified<sup>22</sup> that on the 24<sup>th</sup> of August when his delegation from Bonthe arrived in Talia to discuss the restoration of security issues with Kondewa who had command and control over the Kamajors in Bonthe. On reaching Kondewa's house, they met a young boy of 15 years of age playing a guitar outside the house and were singing about the greatness of Kondewa and the Kamajor society. The Kamajors were guarding the house, armed with rifles and guns.

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<sup>19</sup> Transcript of 8 June 2005, TF2-011, pp. 23-24 (CS).

<sup>20</sup> Transcript of 11 November 2004, TF2-071, pp. 50-52; Transcript of 18 February 2005, TF2-222, pp. 48-50; Transcript of 10 October 2006, JD Murana, pp. 23-33 and 45.

<sup>21</sup> Transcript of 17 February 2005, TF2-222, p. 119, line 24 - p. 120 line 11.

<sup>22</sup> Transcript of 10 November 2004, Father Garrick, p. 10.

46. On the strength of the evidence adduced which is credible, and which confirms his powers and the very high esteem and exaltation he enjoyed amongst the Kamajors and in the CDF as an organisation, it is said that Kondewa's job was to prepare herbs which the Kamajors smeared on their bodies to protect them from bullets.<sup>23</sup> Kondewa was not a fighter,<sup>24</sup> he himself never went to the war front<sup>25</sup> or into active combat,<sup>26</sup> but whenever a Kamajor was going to war, he would go to Kondewa for advice and blessing.<sup>27</sup> Kondewa's role was to decide whether a Kamajor could go to the war front that day. Before combat, the Kamajors would go in a line and Kondewa would say, "You go out of the line. You not go this time." Although, he could say, "don't go", it was similar to a fortune teller saying so.<sup>28</sup> Because of the mystical powers Kondewa possessed, he had command over the Kamajors from every part of the country. No Kamajor would go to war without Kondewa's blessing.<sup>29</sup> For example, he did this for the Kamajors leaving Base Zero for Tongo.<sup>30</sup>

47. Kondewa walked around Base Zero with his bodyguards<sup>31</sup> because of the importance of initiators within the hunters' society.<sup>32</sup> He also had a child soldier acting as one of his bodyguards at Base Zero.<sup>33</sup> Kondewa had a house in Nyandehun, which was about a quarter mile from Talia.<sup>34</sup>

#### NORMANS KNOWLEDGE OF USE OF CHILDREN UNDER THE AGE OF 15 TO PARTICIPATE ACTIVELY IN HOSTILITIES

48. In January 1998, Norman spoke at a meeting at Base Zero. He complained that the child combatants were out performing the adults, who spent more of their time in looting.<sup>35</sup> Children were present at this meeting. Norman acknowledged that there were children serving under his command. President Kabbah made many commitments to cease the recruitment of children

<sup>23</sup> Transcript of 4 November 2004, TF2-201, p. 107 (CS).

<sup>24</sup> Transcript of 15 March 2005, Albert J Nallo, p. 46.

<sup>25</sup> Transcript of 16 November 2004, TF2-008, pp. 48-50.

<sup>26</sup> Transcript of 23 November 2004, TF2-008, pp. 57-60.

<sup>27</sup> Transcript of 23 November 2004, TF2-008, pp. 57-60.

<sup>28</sup> Transcript of 23 November 2004, TF2-008, pp. 57-60.

<sup>29</sup> Transcript of 16 November 2004, TF2-008, pp. 48-50.

<sup>30</sup> Transcript of 4 November 2004, TF2-201, p. 107 (CS).

<sup>31</sup> Transcript of 15 March 2005, Albert Nallo, p. 46; *see also* Transcript of 8 June 2005, TF2-011, pp. 45-47 (CS).

<sup>32</sup> Transcript of 3 February 2006, Sam Hinga Norman, pp. 74-76.

<sup>33</sup> Transcript of 27 May 2005, TF2-079, p. 13.

<sup>34</sup> Transcript of 18 February 2005, TF2-222, pp. 48-50; Transcript of 11 October 2006, JD Murana, pp. 32-33 and 45.

<sup>35</sup> Transcript of 19 November 2004, TF2-017, pp. 89-91.

during the time when Norman was Deputy Defence Minister.<sup>36</sup> Norman acknowledged that children took part in hostilities on the 'defending side' prior to the Coup. From the time of the Coup until 10<sup>th</sup> March, 1998, Norman knew that children under 15 were being actively involved in hostilities on the side of the CDF. Norman informed President Kabbah that action should be taken to discourage children from across the Country from participating in the conflict.<sup>37</sup>

49. Norman publicly agreed to stop using child soldiers in the CDF at a social event in Freetown on the 28<sup>th</sup> of May, 1998, (There was no indication the Fofana or Kondewa were present) though he repeated this promise at the UNAMSIL Headquarters on the 25<sup>th</sup> of June, 1998, on this second occasion Norman qualified his words by adding that it would not be possible to disengage and demobilise children if the war went badly. There is no indication that Fofana or Kondewa were present.

50. Besides the case of the 3<sup>rd</sup> Accused, Allieu Kondewa, no direct evidence has been led by the Prosecution against the establishment of enlistment of children under 15 years of age into the armed Kamajor groups or of using them to participate actively in hostilities. There is evidence, however, that as many as 300 children under the age of 15 years were demobilised by the CDF during the DDR programme as shown in Exhibit 100. Norman, accompanying President Kabbah, assured Mr. Olara Otunnu, the SRSG in a meeting that there was going to be a halt in the enlistment of children into the armed groups.

51. Paragraph 50 of Exhibit 100 states as follows:

"I saw armed children from between the ages of 12 - 15 years of age manning CDF checkpoints. As a Child Protection Officer, I was forced to speak with these children in areas where all agencies had free access."

<sup>36</sup> Transcript of 7 June 2005, TF2-218, pp. 32-33. Note however that many of these commitments refer to children aged less than 18, not children aged less than 15: *see e.g.* Exhibit 100, para 52. [No Registry page numbers indicated.] REPORT IS CONFIDENTIAL. Exhibit 104A, "Report of the UN Secretary General, 9 June 1998", (S/1998/486), para 23; Exhibit 105A, "Report of the UN Secretary General, 12 August 1998", (S/1998/750), para 16; Exhibit 105B, "Report of the UN Secretary General, 12 August 1998", (S/1998/750), para 43; Exhibit 105C, "Report of the UN Secretary General, 12 August 1998", (S/1998/750), para 59; Exhibit 107, "Report of the UN Secretary General, 16 December 1998", (S/1998/1176), para 39; Exhibit 108B, "Report of the UN Secretary General, 4 June 1999", (S/1999/645), para 36; Exhibit 114, "Sierra Leone Humanitarian Situation Report, 15 June 1998", para 13.

<sup>37</sup> Transcript of 2 February 2006, Sam Hinga Norman, pp. 18-19.



52. In paragraph 55 of the Exhibit 100 it is reported that late Norman acknowledged that children were present amongst CDF and that they were being initiated for their own protection. The Author says:

“I held later meetings with Norman where I referred to CDF child soldiers which he did not deny.”

53. TF2-041 (PW-15) testified that up to 81 boys were handed over to a child protection agency monitored by the Minister of Children and Gender Affairs.<sup>38</sup> They lived in a camp in Moyami and were taught to forget the war. Children were given training or schooling, depending on which they requested.<sup>39</sup> Norman used to visit the camp and check whether the boys were properly cared for.<sup>40</sup> TF2-140 (PW-8, a child soldier) testified that the program he was in failed and he was left in the street; he had nowhere to go, so he decided to go to Norman's house in Freetown.<sup>41</sup> According to TF2-140 (PW-8), since Norman pushed him into a program that failed, he had no option. So Norman sent him to school in Pujehun; Norman continued to support TF2-140 (PW-8) until he was arrested.<sup>42</sup>

54. TF2-EW2 (PW-74)'s report notes the following:

Demobilisation of children associated with the Civil Defence Force (CDF) was also a major concern in child protection. The NCDDR [National Committee on Disarmament, Demobilization and Reintegration] also secured an agreement to ensure the non-recruitment of children by the CDF and to commence the demobilisation of children associated with their forces. The CDF, in collaboration with child protection agencies, carried out the pre-demobilisation registration of over 300 children in the Southern Province in 1999.

These 300 children were registered as child combatants by the CDF themselves. UNICEF received CDF registration forms that included the child's name, individual age - all of which were under 14, and the name of commander [sic] that the child was under, the location where the child was based and the type of weapon that the child had been assigned.

<sup>38</sup> Transcript of 14 September 2004, TF2-140, p. 96.

<sup>39</sup> Transcript of 14 September 2004, TF2-140, pp. 97-98.

<sup>40</sup> Transcript of 14 September 2004, TF2-140, pp. 97-98.

<sup>41</sup> Transcript of 14 September 2004, TF2-140, pp. 97-98.

<sup>42</sup> Transcript of 14 September 2004, TF2-140, pp. 118-119.

UNICEF later changed the format of this CDF registration form to include names of the child's parents and the original home.<sup>43</sup>

55. TF2-EW2 (PW-74) noted further that:

As the war effort intensified in 1998, child protection agencies started to receive reports of children being initiated into the CDF and actually joining the older fighters in battle. With the evidence gathered and due to the fact that the CDF were a pro-government group, this practice was given special attention by Mr Olara Otunnu during his visit to Sierra Leone in July 1998. The President, His Excellency Dr. Ahmed Tejan-Kabbah and the Deputy Minister of Defence Honourable Hinga Norman, agreed to halt all recruitment of children into the CDF as part of their commitments to Mr Olara Otunnu, SRSG for Children and Armed Conflict in May.

Following this meeting, the CDF registered child combatants. Over 300 children in the Southern Province under the CDF were registered. However, these 300 children were not provided with the agreed disarmament and demobilization as per the national DDR plan and the earlier commitment that had been made to the SRSG. Despite these agreements and efforts, UNICEF continued to receive reports from across the country of the increase in the initiation and the arming of children among the CDF.

56. In the light of such consistent and coherent evidence of the presence of children under the age of 15 years within the ranks of the CDF where they were at times being used to take part in combat or combat related activities. The following facts are also clearly established:

1. That during the demobilisation processes 300 children under the age of 15 years were handed over by Norman as CDF child soldiers to the DDR;
2. Late Norman admitted that children were being initiated for their own protection coupled with the fact that child soldiers were present in Talia which was the Command Headquarters of the 3 Accused Persons, where we learn from the evidence that thousands of people from other communities congregated for purposes of initiations by the 3<sup>rd</sup> Accused Allieu Kondewa I Base Zero.
3. That the 2<sup>nd</sup> Accused, Moinina Fofana, Director of war was permanently based in Talia where initiations of Kamajors and their military training by Ms. Dumbuya was taking place.

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<sup>43</sup> Exhibit 100, paras 29-30.

4. That the 2<sup>nd</sup> Accused, Moinina Fofana, addressed the trainees during passing out ceremonies and in late Norman's presence with who he collaborated very closely.

57. The issue to be clarified at this juncture is whether the two remaining Accused Persons did or did not know, or even approve, either expressly or tacitly, of this massive enlistment, at least of the identified 300 children under the age of 15 years, into their Kamajor armed groups and facilitating their use to participate actively in hostilities or in combat related activities.

58. The evidence on the record is that although it was Norman who featured prominently in the demobilisation of the child soldiers, and on the face of it, appears to have been privy to their enlistment and use, it is clear that he was not alone in this plan because the evidence establishes that he was after all, not permanently resident in Talia where Kondewa was conducting his initiations at the same time that military training of Kamajors was going in.

59. Base zero, through Kondewa's initiations and Dumbuya's Military training of the Kamajors, who of course could not undergo the said training for purposes of enlistment into the CDF armed group without having gone through a prior initiation, was a nursery and the breeding ground for CDF combat troops and manpower. The 2<sup>nd</sup> and the 3<sup>rd</sup> Accused were basically permanently resident in Base zero and followed up all the activities that were going on in that village that has been described as very small.

#### LIABILITY OF THE 2<sup>ND</sup> ACCUSED, MOININA FOFANA UNDER COUNT 8

60. As far as the 2<sup>nd</sup> Accused is concerned, there is no direct evidence whatsoever linking him with any of the elements of the offences charged under Count 8 of the Indictment. The only evidence available is that he was the Director of War in charge of conducting the war whose execution, it must be affirmed and stated here, necessarily depends on the availability, first of all, and more importantly, of combat man power, and then, of the traditional military equipments and supplies for use in the conduct of the hostilities against the enemy.

## THE DEMOBILISED 300 CHILD SOLDIERS

61. In this same vein, the only alleged evidence also available on the records for the commission of offences under Count 8 is what is recorded in terms of the activities of the late 1<sup>st</sup> Accused Norman, during the DDR.

62. What therefore, are the proven facts which would allow one and one inference only to be drawn which is that Moinina Fofana and Allieu Kondewa, acting in concert, did or did not facilitate, plan, instigate or order the recruitment of 300 child combatants who were clearly and positively identified by the CDF organisation itself as their ex child combatants. These children, who were all under the age of 15 years, were turned in by the late 1<sup>st</sup> Accused, Samuel Hinga Norman, to the DDR programme at the end of the conflict, a factor which necessitated their demobilisation and reintegration into normal civilian and ordinary life. Is there any other inference or inferences as the case may be, that would tend to weaken or to destroy an inference that Moinina Fofana and Allieu Kondewa, acting in concert with the late 1<sup>st</sup> Accused Norman are liable for offences under Article 6(1) for the 300 demobilised under 15 children who were handed in to the DDR by the late 1<sup>st</sup> Accused as children who had taken part as CDF fighters, actively in hostilities.

63. In the context of these proven realities on how enlistment into the CDF Kamajor armed group was conducted, it is necessary to make a determination on the nature and consequences on the liability of the two Accused, on the evidence to the effect that the deceased 1<sup>st</sup> Accused, Samuel Hinga Norman, who at all material times as the Indictment alleges, acted in concert and in furtherance of a common purpose with the two remaining Accused Persons, Moinina Fofana the Director of War and the 2<sup>nd</sup> Accused, Initiator into the Kamajor cult and High Priest of the establishment, handed over to the DDR programme, at least an identified group of 300 child soldiers under the age of 15 years.

64. As has been observed earlier, the intent, the common purpose and the design which the Prosecution is seeking to impute on all the original three, now two Accused Persons, is that of agreeing to enlist children under the age of 15 years into the Kamajor armed group or in the alternative, to use them to participate actively in hostilities in order to defeat the combined forces of the RUF and of the AFRC as alleged in paragraph 19 of the Indictment.

65. The allegation by the Prosecution given the state of the evidence, is that the Accused Persons, Fofana and Kondewa, were acting in concert and in pursuit of the common objective that is criminalised by Article 4(c) of the Statute and by International Humanitarian Law as defined as well in Article 77(2) of Additional Protocol I and in Article 4(c) of Additional Protocol II of the Geneva Convention of 12<sup>th</sup> of August 1949. Is this allegation sustainable having regard to the state of the entire evidence in the records?

#### CIRCUMSTANTIAL EVIDENCE

66. I would like to, in addressing this question, reiterate the rules relating to the burden of proof in criminal matters which is discharged by the Prosecution either by adducing direct or in its absence, and on condition of the fulfilment of certain criteria, by relying on circumstantial evidence. I observe here that the application of the rule of circumstantial evidence and the dependence on it by Courts to enter a verdict of guilty or not guilty is a universally accepted rule of law that is applied by the community of civilised nations and in civilised legal systems in the world.

67. The reliance on and use of circumstantial evidence in the absence of direct evidence, We would say, has acquired such notoriety that it can, without any reservations, be considered as a rule of customary international law in international criminal procedure. Pursuant therefore to the provisions of Rule 72bis of the Rules of Procedure and Evidence, it is proper to invoke in this case, the application of the principle of circumstantial evidence as a general principle of law derived from national legal systems of the world and particularly the common law systems.

68. I would like to say here that if the principle of applying circumstantial evidence were not available to the Courts, many offences and offenders, in situations where direct evidence is not available or handy or where it cannot provide a solution on whether a verdict of guilty or not guilty should be entered would go either unpunished or unjustly punished.

69. This rule of evidence finds its justification and in fact justifiably steps in where direct evidence is not, or cannot, because of its unavailability, be adduced to prove a material fact in issue which could determine the guilt or innocence of an accused. In such a situation the law allows for the application of the evidentiary rule of circumstantial evidence which permits that a fact or facts in issue can be inferred from already proven and established facts, on the condition that the

inference on which such proof is grounded, is the only one that can be drawn from the facts which have been proven and established by direct oral or documentary evidence.

70. As Lord Normand put it on this subject in the case of *Teper v. R*,<sup>44</sup> such evidence 'must always be narrowly examined if only because evidence of this kind may be fabricated to cast suspicion on another..... It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.'<sup>45</sup>

### FACTS IN ISSUE WHICH ARE BORNE BY THE RECORDS IN THIS CASE

71. The facts which have been clearly proven by direct oral and documentary evidence, and also by Prosecution and Defence admissions are as follows to mention just some amongst others that are in the record:

1. Talia also known as Base Zero is, the evidences goes, a very small village. Intimacy and regular interaction would, of necessity, be the norm.
2. Fofana and Kondewa, after the deceased first Accused, Norman, were the most prominent figures in Base Zero.
3. In the absence of Norman, Fofana deputised for him.<sup>46</sup>
4. The three Accused Persons were fighting to restore the democratically elected government of President Kabbah which was ousted in a *coup d'Etat* by the AFRC on the 25<sup>th</sup> of May 1997.
5. The Accused Persons were acting in concert and with a common design and purpose to achieve that goal to defeat the AFRC which ousted the Kabbah Government. The Accused therefore needed to organise themselves by constituting an armed group.
6. An organisation called the CDF was accordingly formed and the Accused persons embarked on the recruitment of traditional hunters called Kamajors including others, into the Kamajor organisation to serve as combatants to ensure the restoration of the Kabbah Government.

<sup>44</sup> [1952] AC 480 at p. 489 (PC).

<sup>45</sup> See Archbold, *Criminal Pleadings Evidence and Practice*, 1997 Edition, p. 1138, para 10.3 on circumstantial evidence.

<sup>46</sup> Transcript of 4 November 2004, TF2-201, pp. 97-98 (CS).

7. No Kamajor could be recruited into the armed and combat group of the CDF without having undergone the ritual of initiation and immunisation. It was a condition precedent for any recruitment for reasons already stated.

8. Initiation and immunisation were performed by Initiators, one of who was Kondewa, who because he was at the head of all of them, was designated and known as the High Priest.

9. Initiation and immunisation did not amount the offence of enlistment into the armed force or group but in the Kamajor setting, it constituted a preliminary stage to recruitment and use as combatants in that they were, having acquired the bullet proof protection, were predisposed for recruitment and active participation in hostilities.

10. There was an influx of thousands of people into the tiny village of Talia, for purposes of undergoing initiation and immunisation.<sup>47</sup>

11. Before the establishment of Base Zero, children under the age of 15 years were also initiated and immunised at the behest of their parents and elders so as to have them protected against bullets as they fought alongside their elders to defend their communities against any possible rebel incursions.

12. There was a training base in Talia for the military training of the Kamajors before participating in combat.

13. Fofana and Kondewa, after Norman had done so first, also addressed the crowd of trained Kamajors at their passing out ceremonies and urged them to go to war.

14. There were child soldiers in Talia perpetrating terror and violence against their elders.<sup>48</sup>

15. The last and the crowning established fact from which the inference that is sought can be made in order to hold the two Accused Persons responsible for crimes charged in Count 8 of the Indictment as a violation of Article 4(c) of the Statute is that the deceased 1<sup>st</sup> Accused, Samuel Hinga Norman, handed over former CDF child combatants,

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<sup>47</sup> Transcript of 8 May 2005, TF2-011, pp. 16-17 (CS); Transcript of 8 June 2005, TF2-011, pp. 16-17 [CS]; Transcript of 23 November 2004, TF2-008, p. 56.

<sup>48</sup> Transcript of 14 February 2005, TF2-035, pp. 24-27; Transcript of 11 March 2005, TF2-014, pp. 56-59.

indeed 300 of them, all of who were under the age of 15 years, to the DDR programme for their integration into normal civilian and family life.

72. If this fact were accepted as credible as it indeed is, given all the circumstances of this case, the question is whether the inference can or should be drawn to conclude that Fofana and Kondewa, acting in concert with the now deceased 1<sup>st</sup> Accused, Samuel Hinga Norman, should bear responsibility under Article 6(2) of the Statute for enlistment of these under 15 years children into the CDF armed group through initiations, immunisations or other complicity, and of using them to participate actively in hostilities, by either encouraging, facilitating, planning, ordering, instigating or aiding and abetting in the planning, preparation or execution of the above mentioned crimes charged in the indictment as being contrary to and punishable under Article 4(c) of the Statute.

73. The remaining two Accused in this case, Moinina Fofana and Allieu Kondewa are, as they were in this Indictment which concerned the three of them, together charged with the late Samuel Hinga Norman for what, in another legal expression, would amount to accomplice responsibility which has been characterised by the Appeals' Chamber of the ICTY in the *Tadić* case as a Joint Criminal Enterprise. An accomplice is defined as any person who aids and abets, counsels or procures the commission of an offence. The accomplice is tried and punished for that offence as a principle offender.<sup>49</sup>

74. Accomplice, just as joint criminal enterprise liability, requires a plurality of persons who have all agreed and embarked on the commission of a criminal offence like this one which, for our purposes, is defined under Article 4(e) as read with Article 6(1) of the Statute.

75. In the case of *Rook*<sup>50</sup> it was held that the same principles apply to a party who is absent as to one who is present because the absent party may be the mastermind and the most culpable party.

76. The evidence in this case reveals that it was the late 1<sup>st</sup> Accused who handed over the 300 child soldiers to DDR programme following a series of negotiations with the UN Representative Mr. Olara Otunni. It is not stated that either Fofana or Kondewa were present on this occasion.

<sup>49</sup> Richard Card, *Criminal Law*, 15<sup>th</sup> Ed., p. 20.02-20.03.

<sup>50</sup> [1993] 2 ALL ER, 955, p. 126.



This fact, in my opinion, does not negate the finding that Kondewa as an initiator was, in comparison with late Norman's involvement in it, principally responsible for aiding and abetting in the execution of the crime for which they are indicted in Count 8. We say this because it was initiations and immunisations which were encouraged by both Accused whose action in concert with the late 1<sup>st</sup> Accused, very largely contributed in aiding and abetting in the execution of those crimes.

77. TF-EW<sup>51</sup> testified that as the war effort intensified in 1998, Child Protection Agencies started to receive reports of children being initiated into the CDF and actually joining the older fighters in battle. This practice was given special attention by Mr. Olara Otunnu during his visit to Sierra Leone in July 1998 when President Kabbah and the Deputy Minister of Defence, the deceased 1<sup>st</sup> Accused, agreed in an open meeting, to halt all recruitment of children into the CDF.

78. In Exhibit 100, paragraph 5, the Expert Witness had this to say:

“From speaking to those children, I learned that the CDF recruitment was determined by community ties. Initial reports from Child Protection Officers who also spoke to these children mostly in the Southern Province of Bo, reported children's involvement with the CDF being initially linked to the preparation to battle. Boys as young as 7 years old danced in front of advancing CDF warriors as they went to battle.”

79. In paragraph 54 the Report says:

“In 1999, I observed the establishment of the Avondo Society which included initiations of children. The Society was headed by Allieu Kondewa.”

80. In the light of the foregoing analysis, I am left in no doubt when I draw, as I now do, the inference from the enumerated proven facts, to consider as proven the fact that Moinina Fofana, under Article 6(1) of the Statute, is criminally responsible for offences charged under Count 8 of the Indictment for aiding and abetting in the execution of the crime of using children under the age of 15 years to participate actively in hostilities as refined in Article 4(c) of the Statute with particular reference to the demobilised 300 child soldiers all of who were under the age of 15 years.

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<sup>51</sup> Transcript of 16 June 2005, TF2-EW2, pp. 19-25 (CS).

## PRESIDENT KABBAH'S ROLE IN THE CONFLICT

81. As has been briefly mentioned in the introduction of The Chamber Judgement, persistent references and allusions were made by the Defence Team in the course of the proceedings that have preceded this Judgement, to President Kabbah and his alleged involvement in the conflict on the side of the CDF.

82. In this regard, and again as mentioned in passing in the introduction of this Judgement, the Chamber recalls that the three Accused Persons, all along in the course of these proceedings, raised a veiled Defence that all they did and stand charged for was as a result of their struggle to restore to power, President Kabbah's democratically elected government that had been ousted in a *coup d'Etat* by the Armed Forces Revolutionary Council (AFRC) on the 25<sup>th</sup> of May 1997.

83. In view of the fact that the exigencies of justice require that a defence whether directly or indirectly raised by an accused in a criminal matter, needs to be examined, I will proceed to determine, whether the President's alleged role, viewed in the light of his status and that of his government-in-exile, constitutes a legal defence that is available to the Accused Persons.

84. In the light of the evidence adduced I have no doubt in my mind that President Kabbah occupied and played a central role in this conflict because it was his overthrown Government that was waiting in the wings to be restored after the bitter wrangling and struggle that preceded it and continued with greater intensity, after the Kabbah Government was overthrown.

## SOME DETAILS ABOUT STRATEGIC EVENTS

85. In February/March 1997, the then Vice President, Albert Joe Demby, organised two meetings to address military dissatisfaction over rice distributions because while officers were receiving only one bag for every two officers the senior officers were each receiving about 50 bags. A plan to reduce the rice rations provoked discontent and unrest in the Army.<sup>52</sup>

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<sup>52</sup> Transcript of 8<sup>th</sup> February 2006, Peter Penfold, pp. 7-9.

86. In a meeting between President Kabbah, the Vice President Demby and the Army Officers, the late Accused Norman accused two army officials, Hassan Conteh and Col Marx Kanga of planning a coup; an accusation which they denied.<sup>53</sup>

87. Peter Penfold the then British High Commissioner to Sierra Leone, the American Ambassador John Hirsh and the UN Special Representative, Ambassador Berhanu Dinka, in a meeting with President Kabbah, warned him of a possible *coup* against his government. He told them that he had already heard about that coup and that he would be talking to the Military.<sup>54</sup>

88. Meantime, late Norman, in April 1997, had seen President Kabbah and handed over to him the strategic keys, in a bag with working parts of dangerous weapons for safe keeping.

89. Like the Ambassadors who preceded him, Norman told President Kabbah that there was an imminent plot to overthrow him but that the *coup d'Etat* may not be deadly or destructive without those parts of the weapons. On the 5<sup>th</sup> of May 1997, President Kabbah told Norman that he returned the contents of the bag to the Chief of Defence Staff and the Army Chief, late Brigadier Hassan Conteh and late Max Kanga. Norman then told President Kabbah that the *coup d'Etat* against his government could not be averted.

90. After the *coup d'Etat* of the 25<sup>th</sup> of May 1997, President Kabbah went into exile in Guinea. His government-in-exile was still recognised and from Conakry, he encouraged late Norman and his Kamajor collaborators like the Accused, Moinina Fofana and Allieu Kondewa and other CDF personnel who were engaged in this struggle to restore him to power.

91. He bought a satellite phone for Norman's use to report to him regularly on the progress of the war. He continued to provide logistics support to the Kamajors and their leaders. Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa who were involved in the delegation from Bonthe, went to Freetown to see President Kabbah amongst others to complain about lootings and killings by Kamajors. The President sent 100 bags of rice to the Kamajors in Bonthe Town.<sup>55</sup>

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<sup>53</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 22-23; Transcript of 24 January 2006, Norman, pp. 80-83.

<sup>54</sup> Transcript of 8 February 2006, Peter Penfold, pp. 9-13.

<sup>55</sup> Transcript of 21 November 2004, JF2-071, pp. 82-83.

92. In view of the international recognition accorded to his Government, President Kabbah made it possible for the Economic Community of West African States through ECOMOG to provide military assistance to the CDF to enable it attain the objective of restoring his ousted Government to power. Indeed, ECOMOG fought alongside the CDF Kamajor forces against the combined forces of the RUF and of the AFRC as the war raged inside the country for control of areas occupied by enemy forces.

93. It is also on record, that Lady Patricia Kabbah the President's wife gave the sum of \$10,000US to Hon. Momoh Pujoh to be conveyed to late Norman for use as part of logistical support to the fighters particularly the amphibious Cassilla battalion in Bonthe. She said that she was very proud of them. She even promised them that she was communicating by a letter and that she would give further offers.<sup>56</sup> Lady Kabbah was particularly very concerned about that part of Sierra Leone she came from and she was always asking about Bonthe, about Borhoi, her birth Village.<sup>57</sup>

94. Defence Witness, Osman Vandi, testified that a meeting which President Kabbah held in Bo, he thanked the Kamajors for dislodging the junta and restoring him as President and that he promised the Kamajors more rice which he later did.<sup>58</sup>

95. In a second meeting held in Bo and at which prominent dignitaries were in attendance, President Kabbah told the Kamajors he would return and give the all medals. He left two sample medals at the Hall.<sup>59</sup>

96. Late Norman testified that in October 1998, President Kabbah assigned Norman and the Vice-President to Kenema to assist ECOMOG to finally put an end to rebel activities in the entire Eastern province. Following this assignment, Norman spent almost 1.5 months in Kenema<sup>60</sup> to fulfil that Presidential assignment.

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<sup>56</sup> Transcript of 30 January 2006, Norman, pp. 10-12.

<sup>57</sup> Transcript of 30 January 2006, Norman, pp. 10-12.

<sup>58</sup> Transcript of 17 February 2006, Osman Vandi, pp. 99-101.

<sup>59</sup> Transcript of 17 February 2006, Osman Vandi, pp. 99-101.

<sup>60</sup> Transcript of 2 February 2006, Samuel Hinga Norman, pp. 70-71

97. In fact, the President gave instructions for the strength of the Kamajors to be increased in numbers so that they can, fighting alongside the ECOMOG forces, achieve the objective of defeating the rebels and restoring him to power.<sup>61</sup>

98. It is in evidence that President Kabbah was the one who appointed late Norman as the National Coordinator of the CDF and that he, the President, further created the National coordination Council (NCC),<sup>62</sup> of the CDF in order to improve on the performances and the welfare of the Kamajors.

99. On the issue of child soldiers, records show that the President was involved in the effort to demobilise child combatants and assurances were give to the SRSG, Mr Olara Otunni that this was going to be done.<sup>63</sup>

#### NO REBUTTAL EVIDENCE WAS ADDUCED BY THE PROSECUTION

100. The Chamber notes that no evidence was proffered by the Prosecution in rebuttal of all the facts which detailed President Kabbah's role in the conflict. In the Chambers perspective, the testimony to this effect on all the facts so testified to by these Dignitaries who I find transparently credible and reliable, is credit worthy and particularly so because the acts and reactions so attributed to him, reflect his concern and appreciation to the Kamajors who, supported by ECOMOG, were leading the crusade to restore him to power.

101. One of the key defences which the Accused Persons put across was that given to the content of what the President did and the support and logistics he supplied to the Kamajors during the conflict, he also bore the greatest responsibility for the crimes that were committed and for which they stand indicted. This indeed was the gravamen of the subpoena proceedings introduced against President Kabbah because the Accused Persons, through this process, wanted

<sup>61</sup> Transcript of 2 February 2006, Norman, pp. 44-45, See Exhibit 123.

<sup>62</sup> Transcript of 25 January 2006, Samuel Hinga Norman, pp.25-27; Transcript of 10 February 2006, Joe Demby, pp.17-18; Transcript of 8 February 2006, Peter Penfold, pp. 27-28.

See Exhibit 120 the letter from the Presidency creating the NCC, defining its composition and functions.

<sup>63</sup> Transcript of 7 June 2005, TF2-218, pp. 17-19 (CS).

to compel him, after he had refused to come and testify voluntarily at their request, so as to testify in their favour and on their responsibility during the conflict.<sup>64</sup>

102. I have no hesitation in rejecting this assertion in its totality because the President was never in the war front with the Kamajors nor is any evidence proffered by the Defence to show that he approved of or ordered the commission of the crimes for which they stand indicted or that from his Conakry base in exile, he gave instructions for those crimes to be committed. Furthermore, it has not been demonstrated by the Accused Persons that President Kabbah had effective command and control over the Kamajors who have been associated with the commission of the offences charged and for which the Accused are being held criminally responsible either under Article 6(1) or 6(3) of the Statute. In the light of the above, I have no reservations in rejecting this allegation and veiled defence for want of merit and substance.

103. The other defence raised by the Accused in a veiled manner, is that the alleged offences for which they stand indicted were committed in the course of their struggle and engagement to restore to power, the democratically elected Government of President Kabbah which had been overthrown in a *coup d'Etat* by the AFRC on the 25<sup>th</sup> of May 1997.

104. It is my finding that this veiled defence which has persistently and constantly been raised by the 3 Accused Persons, stands on a very strong foundation in that the CDF and their Kamajor fighting forces had as their principal objective, the restoration to power, of the democratically elected Government of President Kabbah. They pursued this objective with determination, with vigour and with enormous supreme sacrifices. The President himself, through his actions and appreciative material gestures to the Kamajors, certainly recognised and rightfully so, this meritorious sacrifice on the part of the Accused Persons. In fact, one of them, the 3<sup>rd</sup> Accused, Allieu Kondewa, who was a force to reckon with and an influence to count on in the Bonthe area, while addressing a crowd in Talia when receiving the Father Garrick Bonthe Peace delegation to him, Kondewa, told them that he was not going to give all areas under his control to a military government, meaning the AFRC who had seized power through the *coup d'Etat*, but to the democratically elected Government of President Ahmed Tejan Kabbah.<sup>65</sup>

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<sup>64</sup> Father Garrick, Transcript of 10 November 2004, pp. 21-22.

<sup>65</sup> Transcript of 6 February 2006, Samuel Hinga Norman, p. 26.

105. The genuineness of this defence is further demonstrated and buttressed by the admissions made by the then Prosecutor of the Special Court, Mr Desmond de Silva, on the 8<sup>th</sup> of May 2005, that:

1. There is no dispute or challenge by the Prosecution that the CDF and the Kamajors fought for the restoration of democracy;
2. There is no dispute that HE President Kabbah, was very grateful to the CDF and the Kamajors for what they did for the restoration of democracy;
3. There is no dispute nor is there a challenge that the Kamajor fighters received aid from ECOMOG. What may be in dispute is the period, but in general terms there is no dispute about the fact that indeed the Kamajors in the CDF received aid from a number of sources;
4. There is no dispute about the way in which the National Coordinating Committee came to be formed.

106. The Chamber however, at this stage, must address its mind to the validity and legality of this acceptable and very plausible defence that in effect, is admitted and accepted as founded by the Prosecution, against the background of the crimes for which the Accused Persons stand indicted.

107. It is my view however, that for this defence to be sustained, the crimes alleged should be shown to have been committed for the sole purpose of restoring to power, as the Accused Persons claim, the democratically elected Government of President Kabbah which, one must admit, was ousted illegally and unconstitutionally. In making the legal findings on the criminal responsibility of the two Accused Persons for the crimes charged, I will like to factor into the analysis, the principle of attacks perpetrated by the Kamajors against legitimate military targets for which the Accused should not be held criminally responsible on the reasoning and understanding, that a *de facto* army of the State cannot be held liable for seeking to defend constitutionality and National institutions which is what the Sierra Leonean Armed Forces are, under Section 165 of the Constitution, vested to do. In this regard Section 165(2) of the constitution provides as follows:

“The principal function of the Armed Forces shall be to guard and secure the Republic of Sierra Leone and preserve the safety and territorial

integrity of the State, to participate in its development to safeguard the peoples achievements, and to protect this constitution.'

108. This of course implies ensuring and protecting the President of the Republic and the stability of the Institutions of the State.

109. If the Kamajors and the CDF, indeed, the Accused Persons, had limited their operations to these legitimate objectives and ensured that they achieved them in a legally acceptable manner, it would be difficult if not impossible, to hold them liable even for what may be characterised as collateral damage in the course of their carrying out this legitimate mission.

110. What must be said here is that if the Chamber has held some of their conduct culpable, it is because of the exaggerations and abuses and also because the crimes for which they have been held criminally responsible, had absolutely nothing to do with pursuing the legitimate objectives which is conceded by the Prosecution. In making this observation I am referring here to repeated offences of looting which were very prevalent and also of enlisting or using children under the age of 15 years to participate actively in hostilities.

111. I do also, in this regard, like to highlight war crimes and crimes against humanity such as horrendous instances of mass killings and virtual slaughtering of civilians, most of them innocent, but maliciously and arbitrarily labelled as collaborators and who unarmed were placed under Kamajor arrest or surveillance and at the material time were not even participating in hostilities. This is coupled with acts of horrifying brutalities, like beheading victims and parading openly and in festivity, with the severed head, or cutting open the stomach of an unfortunate victim, and using the entrails as barriers and check points; exactions and acts of terror which had no connection, indeed, no link whatsoever with the legitimate purpose for which, it is admitted, they were defending and fighting for.

112. It is my opinion that these reprehensible criminal acts, when viewed and weighed in terms of a retaliation or punishment for the victims' alleged but unproven support for the rebels on the one hand, are totally unjustifiable even if a far fetched justifiable legal shield of self defence in any form were pleaded.



113. In making these observations, I would like to observe that HE President Kabbah is not an Indictee of the Special Court. Even if it were conceded however, that he, President Kabbah, as is alleged against them, also bears the greatest responsibility for the crimes for which they stand indicted on the grounds that they were acting in his favour and in his interests as their superior in hierarchy and under his command and control, I am of the opinion that this does not absolve them from individual or collective responsibility for the criminal acts which they committed outside the scope of what is legitimate and acceptable in the process of defending and protecting the legitimacy of President Kabbah and his state institutions. This in my considered opinion destroys any pleas of justification for committing the crimes on which their prosecution is based, nor does it, again in my considered opinion, constitute a valid defence that should absolve them from a finding guilty if the evidence adduced so warrants.

114. In this regard the Chamber would like to refer to the provisions of Article 6(4) of the Statute which states and very clearly too:

“The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.”

115. The Chamber accordingly, therefore, dismisses these veiled defences that were persistently raised by the Accused in the course of these proceedings.

#### THE CRIMINALITY OF SOME ACTS OF THE ACCUSED PERSONS

116. In paragraph 4 of the Indictment which is the principal accusatory instrument that details the crimes that the Accused is alleged to have committed, and I quote:

‘At all times relevant to this indictment, a state of armed conflict existed in Sierra Leone for purposes of this indictment the organised armed factions involved in this conflict included the Civil Defence Forces (CDF) fighting against the combined forces of the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC).

117. Paragraph 6 of the Indictment states that:

“the CDF was an organised armed force comprising various tribally based traditional hunters who were known as Kamajors”.

118. Paragraph 7 of the Indictment states:

“that the RUF was founded about 1988 or 1989 in Libya and began organised armed operations in Sierra Leone in or about March 1991. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected Government of Sierra Leone via a *coup d’Etat* on 25 May 1997. Soldiers of the Sierra Leone Army comprised the majority of the AFRC membership. Shortly after the AFRC seized power, the RUF joined with the AFRC.”

119. Clearly therefore, and in the light of the statements of facts as revealed and confirmed in the Indictment, the armed conflict was between the CDF , mainly the Kamajors on one side, fighting against the combined and allied forces of the RUF and of the AFRC.

120. Paragraph 18 of the Indictment alleges:

“In the position referred to in the aforementioned paragraphs, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, individually or in concert exercised authority, command and control over all subordinate members of the CDF.”

and further in paragraph 19 of the Indictment the allegation is that:

“The plan, purpose or design of Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa and subordinate members of the CDF was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included gaining complete control over the population of Sierra Leone and the complete elimination of the RUF/AFRC, its supporters, sympathisers and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone. Each Accused acted individually and in concert with subordinates to carry out the said plan, purpose or design.”

121. I have examined with interest and having regard to all the circumstances of this case, the foundation of the allegations contained in paragraph 19 of the Indictment to wit: ‘...to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone...’

122. I understand from this general allegation that the Accused Persons were in fact fighting, not necessarily to restore the democratically elected Government of President Kabbah, but in fact,

like the AFRC had done, to also, after defeating the AFRC, take over power as well<sup>66</sup> and rule for 3 years before inviting President Kabbah back to power.

123. It is my observation that this evidence which featured vaguely and rather timidly in the case as presented by the Prosecution, was wholly rebutted by the evidence of the late Accused Norman himself, Vice President Demby, High Commissioner Penfold and very precisely in a military sense, by Lt. General David Richards who had this to say in his testimony:

“If Sam Hinga Norman had wanted to overthrow the Government it would have been easy for him to do so in 1999-2000.”<sup>67</sup>

124. Lt General Richards noted that at no stage did Sam Hinga Norman say anything or make any actions that suggested he was anything less than completely loyal to the President.<sup>68</sup> Over this period, Sam Hinga Norman had the military power to take over the Government. General Richards adds that although he did not control all forces loyal to the Government, Sam Hinga Norman had sufficient power and influence to have taken over the Government.<sup>69</sup>

125. Putting this testimony in the context of the evidence on the record, I consider Lt Gen David Richards as credible a witness as his testimony before the Chamber.

126. It is on record that the 3<sup>rd</sup> Accused who was a force to reckon with in Bonthe, made a pronouncement that he was not handing over his Kamajor occupied territory to any military but only to the democratically elected Government of President Kabbah.

127. Late Norman himself manifested loyalty to the President as borne out by his confronting those members of the Sierra Leone Armed Forces for planning a *coup*, a fact they refused. He also handed to President Kabbah some keys to key military equipment so as to frustrate the *coup* plot by late Brigadier Hassan Conteh and late Max Kanga. Rather, President Kabbah handed over the kit to these military people who not long thereafter overthrew him.<sup>70</sup>

<sup>66</sup> Transcript of TF2-014; TF2-017, TF2-079.

<sup>67</sup> Transcript of 21 February 2006, David Richards, p. 31, lines, 21-23, pp. 36, 103 and 105.

<sup>68</sup> Transcript of 21 February 2006, David Richards, pp. 34-36

<sup>69</sup> Transcript of 21 February 2006, David Richards, p. 105.

<sup>70</sup> Transcript of 24 January 2006, Norman, pp. 80-83; Transcript of 8 February 2006, Peter Penfold, pp. 9-13; Transcript of 10 February 2006, Albert Joe Demby, pp. 22-23.

128. From the totality of the evidence as has been presented, this allegation by the Prosecution, in the Indictment is baseless because I do not find the witnesses credible, the allegations not having been supported by any substantial facts which negate the fact that Norman, Fofana, and Kodewa were, at all material times, and as Lt General David Richards has stated, loyal to the President.

129. If anything at all, the evidence which is, to all intent and purposes, credible, is that Norman did all within his means to avert the *coup d'Etat* by the Army Officers who he personally confronted. Moreover, he could not be said to have been planning a *coup d'Etat* and at the same time putting the President on guard against it and handing over to him, in order to forestall same, key and strategic instruments of the armoury for safe keeping instead of fomenting the *coup* himself.

130. In the light of the above analysis, I find that the Indictment in this regard against the Accused Persons is not only ridiculous but lacks any credible foundation. I am of the opinion that the AFRC *coup d'Etat* and the calamitous events that followed may have been averted if His Excellency President Kabbah was more alert, more vigilant and more pre-emptive after all the alerts and alarms were sounded and the alleged facts which turned out to be true, brought directly to his knowledge.

131. I accordingly dismiss these allegations in paragraph 19 as for want of any foundation or justification. The Defendant's demonstrated loyal conduct only comes in to demonstrate and confirm the manifest falsity of those allegations.

#### CONCLUSION ON COUNT 8

132. In conclusion and as I have already indicated, it is my finding that the evidence adduced has proved beyond reasonable doubt that Moinina Fofana and Allieu Kondewa are each individually criminally responsible for aiding and abetting in the execution of a crime of using 300 children all under the age of 15 years, to participate actively in hostilities as defined in Article 4(c) of the Statute.

133. I accordingly find each of them guilty of that offence as alleged in Count 8 of the Indictment and convict them accordingly.

134. The sentence to be inflicted on them for this offence will be pronounced after the sentencing hearing which will take place on a date to be fixed by a Scheduling Order soon after the Chamber rises at the close of this session.

Done in Freetown, Sierra Leone, this 2<sup>nd</sup> day of August, 2007.



Hon. Justice Benjamin Mutanga Itoe  
Presiding Judge

[Seal of the Special Court for Sierra Leone]



ATTACHMENT TO ANNEX A

780.)

SCSL-04-14-T  
(21024-21037)

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**SPECIAL COURT FOR SIERRA LEONE**

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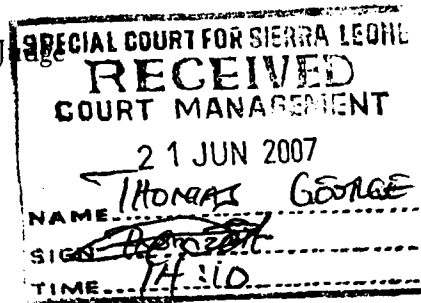
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**TRIAL CHAMBER I**

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

Registrar: Herman von Hebel, Acting Registrar

Date: 22<sup>nd</sup> of June 2007



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

**Public Document**

**ORDER ON NEW APPLICATION FOR THE APPOINTMENT OF CO-COUNSEL FOR THE TAYLOR DEFENCE TEAM**

Office of the Prosecutor:

Stephen Rapp  
James C. Johnson  
Joseph Kamara

Court Appointed Counsel for Moinina Fofana:

Victor Koppe  
Arrow Bockarie  
Michiel Pestman  
Steven Powles

Court Appointed Counsel for Allieu Kondewa:

Charles Margai  
Yada Williams  
Ansu Lansana  
Susan Wright

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

**SEIZED** of a Memorandum and its appendices to Trial Chamber I from Vincent Nmehielle, Principal Defender, dated the 1<sup>st</sup> of June 2007, entitled “Notice of Intention to Appoint Mr. Steven Powles, Court Appointed Counsel for Moinina Fofana as Co-Counsel to Charles Taylor” (“Memo”), in which the Principal Defender submits a fresh application requesting that the Chamber approve Mr. Powles’ appointment as Co-Counsel for the Taylor Defence Team;

**MINDFUL** of Article 14(C) of the Directive on Assignment of Counsel (“Directive”), which provides that:

No Counsel shall be assigned to more than one Suspect or Accused unless the concerned Suspects or Accused have received independent legal advice and have waived their right to be represented by separate Counsel. Any application by Counsel to be assigned to more than one Suspect or Accused must be made, through the Principal Defender, to the Presiding Judge of the appropriate Chamber.

**MINDFUL** of this Chamber’s Order Regarding the Appointment of Co-Counsel for the Taylor Defence Team filed on the 28<sup>th</sup> of May 2007 (“Order”), in which the Chamber denied an application from the Principal Defender to approve the appointment of Mr. Powles as Co-Counsel to the Taylor Defence Team on the basis that the waiver signed by Mr. Fofana on the 16<sup>th</sup> of May 2007 was not an unconditional waiver of his right to be represented by separate counsel, and that there was therefore no compliance with Article 14(C) of the Directive;

**NOTING** that the Memo contains a new waiver from Mr. Fofana, signed on the 31<sup>st</sup> of May 2007, stating that:

I, Moinina Fofana, accused before the Special Court of Sierra Leone, hereby give my unequivocal consent for my assigned counsel, Mr. Steven Powles, to act in proceedings before the Special Court of Sierra Leone on behalf of the accused Mr. Charles Taylor.<sup>1</sup>

I give this consent on the understanding that, should there be an appeal (against either conviction/sentence or acquittal) in my case, and in the event that I would like Mr. Steven Powles

<sup>1</sup> Emphasis in original.

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to continue representing me, Mr. Steven Powles will do his utmost to fulfil his professional obligations to me.<sup>2</sup>

CONSIDERING that the Chamber is of the view that this waiver, still being conditional on a certain eventuality, does not constitute a proper waiver of Mr. Fofana's right to be represented by separate counsel;

CONSIDERING that the Chamber is therefore of the opinion that there still has not been compliance with the requirements as envisaged in Article 14(C) of the Directive;

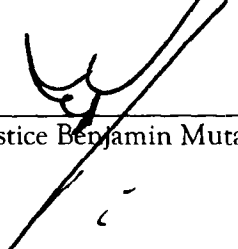
MINDFUL of Article 17 of the Statute of the Special Court for Sierra Leone and Rules 54 and 26bis of the Rules of Procedure and Evidence;

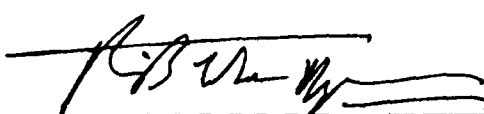
THE TRIAL CHAMBER

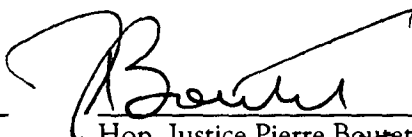
DENIES the application.

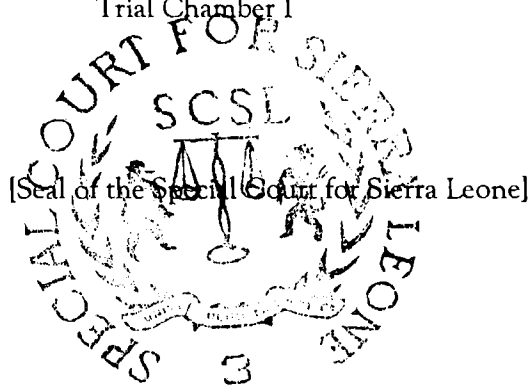
Justice Benjamin Mutanga Itoe entirely agrees with this Decision but has issued a Dissenting Opinion only on the issue of the exclusion of the name of the deceased First Accused, Samuel Hinga Norman from the cover page of this Decision.

Done at Freetown, Sierra Leone, this 22<sup>nd</sup> day of June 2007.

  
\_\_\_\_\_  
Hon. Justice Benjamin Mutanga Itoe

  
\_\_\_\_\_  
Hon. Justice Bankole Thompson  
Presiding Judge  
Trial Chamber I

  
\_\_\_\_\_  
Hon. Justice Pierre Boutet



<sup>2</sup> Memo, Annex III.  
Case No. SCSL-04-14-T



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1. I would like to indicate here before I proceed any further, that I am totally in agreement with and fully endorse the conclusion and Decision of the Trial Chamber on the substantive issue relating to the waiver that Mr. Moinina Fofana, the Second Accused, is alleged to have given to Mr. Steven Powles so as to make the latter's designation as Co-Counsel for the Charles Taylor Defence Team, possible.

2. Let me state here however, that our unanimity on this substantive issue was not built on, nor did it concern the issue of deleting Late Norman's name from the cover sheet of that decision. Indeed, it could not have been and was not the case because this issue was neither canvassed by the Parties nor did we deliberate on it in the course of examining the substantive Moinina Fofana / Powles waiver issue during which the question of deleting the Late Norman's name did not arise at all.

3. My decision to take this dissenting position on an issue such as this would appear, and indeed, on the face of it, appears trivial. Should it even be characterised as a dissenting opinion in its empirical sense? I ask this question because the decision I am in disagreement with is not reduced to writing, nor was it arrived at in the usual conventional and traditional manner. In fact, there are issues and standards of procedural and legal tidiness in it which, to my mind, were not respected in the process of arriving at this Majority Decision.

4. In the decision that we were all about to unanimously sign, but for my detection of the omission of the name of the First Accused, the Late Samuel Hinga Norman on the cover page, for which I took an objection, My Learned Brothers and Colleagues, on the contrary, took the view that his name should, because of his death, be deleted. The logical and legal consequences and effects of this Majority stand is that the deceased's name should not and will no longer feature on the records of the Chamber, particularly on the cover sheets of our decisions and other processes relating to what has hitherto been, and is still being popularly referred to as the 'Hinga Norman Case'.

5. This mention on the cover sheet, we all know, is consecrated principally to clearly feature and identify the Parties to the case on the record and on the decision. The argument My Learned Colleagues confronted me with verbally is that we could rightfully delete his name because his death has had the effect of terminating the proceedings against him. In response, I took, and still take the

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view, that this is not only procedurally improper but also amounts to interfering with the judicial and historical records as well as it violates the due process principles that govern judicial proceedings.

### JUSTIFICATION FOR THIS ARGUMENT

6. In this regard and to buttress this argument, it is my view that a decision to delete the name of an Accused Person from the records cannot, in circumstances such as those in this case, be taken by the Chamber exclusively on its own motion. It is my considered opinion that to so act, the Chamber must be seized of an application to this effect by either the Prosecution or by the Defence Team of the Accused Person concerned, and that a decision on it can only be taken by the Chamber after hearing or considering the submissions of the Parties.

7. The reason for taking this stand, I would like to indicate, is that decisions of this nature are potentially appealable and only on proper records which in this case, do not exist on this issue, particularly so because there are, to my mind, exceptional circumstances that surround it and that an irreparable prejudice might be occasioned to an aggrieved party should an application for leave, if any, is made in this regard under the provision of Rule 73(B) of the Rules of Procedure and Evidence, be refused.

8. In our unanimous decision dated the 21<sup>st</sup> of May 2007, on the Registrar's Application seeking a directive on what action he had to take following the First Accused Norman's death, we unanimously held that "*the trial proceedings against the Accused Samuel Hinga Norman are hereby terminated by reason of his death.*"<sup>1</sup> We did not go further to order that his name should no longer appear in Chamber records or in the Court's documented processes.

9. My Honourable and Learned Colleagues however, took the view that we can, from now henceforth, merely on the strength of this unanimous decision and without more, proceed, as they have already done in their Majority Decision as opposed to mine, to delete the name of the deceased, the First Accused Samuel Hinga Norman, from the cover sheet of this decision and certainly, from other processes that are yet to be published by the Chamber in relation to this case, and to conserve only the names of the two surviving co-Accused, Moinina Fofana and Allieu Kondewa, respectively the Second and the Third Accused.



10. I very respectfully and with all due deference, do not share their reasoning in this regard and am accordingly constrained, in the circumstances, to enter this Dissenting Opinion against what really is a unilaterally conceived and unwritten Chamber Majority Decision which, it should be noted, has been arrived at, off the records, and without calling for a hearing or considering submissions from the Parties on this particular issue before taking this very far reaching stand that they have adopted.

**BACKGROUND OF THE CHAMBER'S UNANIMOUS DECISION OF  
THE 21<sup>ST</sup> OF MAY 2007**

11. The First Accused, Samuel Hinga Norman, died on the 22<sup>nd</sup> of February 2007. After this sad event, there were no initiatives taken by any of the Parties before the Chamber to address issues relating to the direction the case should take. We did not as a Chamber either, want to proceed to pre-emptively issue a directive on it without having been seized of the issues related thereto by any of the Parties to this case.

12. It was in the course of this protracted period of uncertainty and expectation that the Registrar of the Court finally, on the 6<sup>th</sup> of March 2007, pursuant to the provisions of Rule 33(B) of the Rules, filed an application, according to him, "*for this Chamber to take any measures that it may deem appropriate in relation to Mr Norman's demise.*"<sup>2</sup>

13. Rather than act only on the Registrar's submissions which did not address the core issues that were of concern to us, the Chamber, on the 7<sup>th</sup> of March 2007, with a view to hearing all the Parties to this case on the crucial issues involved, made an Order for Extended Filing to the said Parties, in which we called on them, *inter alia*, to make their submissions since this was, as we indicated in that Order, and I quote:

"in the interests of justice that submissions or any other initiatives by the Prosecution and each of the Defence Teams are necessary in order to contribute to a resolution of the legal and factual issues and or consequences that have arisen or are likely to arise in the judicial determination of the case

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<sup>1</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL04-14-T, Decision on Registrar's Submission of Evidence of Death of Accused Samuel Hinga Norman and Consequential Issues, 21 May 2007, Order No. 1, p. 8 ["Norman Decision"].

<sup>2</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL04-14-T, Registrar's Submissions Pursuant to Rule 33(B) Relating to the Death of Mr. Sam Hinga Norman, 6 March 2007, para 5.

14. In the submissions that were filed following this Extended Filing Order, the Defence Team of the First Accused Samuel Hinga Norman, now deceased, argued and canvassed that “a verdict should be delivered in respect of him one way or another without any special consideration for his having passed away.”<sup>4</sup> They submitted and urged this Chamber to hold that “it would be in the interests of justice to deliver a free and unfettered verdict or judgement for all the three accused persons including Norman as soon as possible”.<sup>5</sup> They base this argument and submission on the fact that the deceased Accused had after all, “stood his full trial.”<sup>6</sup> It should be noted in this regard, that in the course of the trial of these three Accused Persons, the Late Accused testified on his own behalf as a witness and only died after the closure of the defence case and while waiting for the substantive judgement which is yet to be delivered.

15. In their further submissions filed on the 29<sup>th</sup> of March 2007, the Defence Team for the Second Accused, Moinina Fofana, submitted that “it has no objection to the delivery of a judgement with respect to the First Accused provided that such delivery does not negatively impact upon Mr Fofana’s right to be tried without undue delay.”<sup>7</sup>

16. The submissions by the Defence Team of the Third Accused filed on the 16<sup>th</sup> of March 2007, were silent on this issue.

17. In their submissions filed on the 16<sup>th</sup> of March 2007, the Prosecution submitted that it is “not asking the Trial Chamber to issue a verdict against Norman but to make findings of fact with respect to all the evidence adduced before the Trial Chamber to the extent it is necessary to do so in order to issue verdicts against the two remaining Accused.”<sup>8</sup> In conclusion, the Prosecution submitted that “it would be very difficult if not impossible, to separate evidence in this joint trial and ask the Trial Chamber to issue findings of fact with

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<sup>3</sup> Prosecutor v. Norman, Fofana and Kondewa, SCSL04-14-T, Order for Extended Filing, 7 March 2007, p. 2.

<sup>4</sup> Prosecutor v. Norman, Fofana and Kondewa, SCSL04-14-T, Norman Defence Team Submissions on his Death, 22 March 2007, para 28.

<sup>5</sup> Ibid., para 29.

<sup>6</sup> Ibid.

<sup>7</sup> Prosecutor v. Norman, Fofana and Kondewa, SCSL04-14-T, Further Fofana Submissions on the Death of the First Accused, 29 March 2007, para 1.

<sup>8</sup> Prosecutor v. Norman, Fofana and Kondewa, SCSL04-14-T, Prosecution Submissions Pursuant to Order for Extended Filing, 16 March 2007, para 27.

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respect to the elements of the crime, the crime bases and modes of liability with respect to Norman, without issuing a final verdict on either his guilt or innocence.”<sup>9</sup>

18. These, in a nutshell, are the submissions that were made before us and to which we addressed our minds and considered before we unanimously arrived at the decision under reference.

19. In our examination of the submissions of the Parties and in arriving at that unanimous decision, the issue of deleting Late Norman’s name from the records, least still, from the Indictment, was never considered because it was neither canvassed by the Prosecution or by any of the Defence Teams in their submissions, nor was it a subject matter on which the decision was articulated or based. It in fact did not constitute one of the findings or directives made by the Chamber in the unanimous decision. Indeed, this issue has only been raised *ex improviso* at this stage by this Chamber with an informal Majority Decision taken by analogy on the strength of our unanimous decision of the 21<sup>st</sup> of May 2007.

#### DELIBERATION

20. One of the cardinal benchmarks in law which underlies judicial traditions and practices is that a Court makes decisions and articulates them only on those issues which it is seized of and which have been canvassed by the Parties before it in their submissions.

21. It is of course conceded that a Court of law, in the exercise of its inherent jurisdiction, may make a decision on either substantive, tangential or collateral issues raised on its own motion. In this regard however, it is trite law that this can only be done on condition that the Parties have been afforded the opportunity of being heard on those issues raised by the Court of its own motion, particularly where the said issues really do impact, or have the potential of impacting negatively on the legal rights of the Parties or on the dictates of ensuring the integrity of the proceedings or of procedural tidiness. A departure from this universally and legally accepted principle, in my opinion, not only amounts to a violation of the legal rights of either or all the Parties to the case, but also, to an abuse of the judicial process.



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<sup>9</sup> *Ibid.*, para 28.

22. On the issue relating to deleting or in seeking to delete the name of Samuel Hinga Norman from the records of the Chamber and of the Court on the grounds of his death, it is necessary to point out, as I have indicated earlier, that this Chamber was not seized of such a request by any of the Parties, nor did we call on them to make submissions on this issue as we did in our Order for Extended Filing of the 7<sup>th</sup> of March 2007, following the Registrar's application of the 6<sup>th</sup> of March 2007. In fact, not even the Prosecution made an application to this effect under the provisions of Rule 51(C) of the Rules of Procedure and Evidence as it did with the indictment, not only against the Late Accused, Foday Saybana Sankoh<sup>10</sup> but also that against the Late Accused, Sam Bockarie<sup>11</sup>.

23. The Defence Team of the deceased First Accused did not raise the issue of the withdrawal either, after his death. We now know, from their submissions, what the Norman Defence Team's opinion is following our Order for Extended Filing. It is in fact calling for a clear finding and verdict of guilt or of innocence in respect of him, notwithstanding his death. As a Chamber, we have unanimously rejected and overruled this submission and option. We stand by it and only leave ourselves open to the exercise by the Appeals Chamber, of its prerogatives in this regard should this eventuality arise.

**MAJORITY DECISION TO DELETE NORMAN'S NAME  
NOT REDUCED TO WRITING**

24. A feature that is particular to this case is that the Majority Decision which has triggered my dissent is not written. It is a short-circuited conceptually conceived decision that has neither been judicially crafted nor motivated in the traditional manner for the records and for scrutiny, as well as for the purpose of eventually putting it into effect. If, as I now understand, it was to be conceived, understood, or was to be treated as a decision that can logically flow or be inferred from our 21<sup>st</sup> May 2007 unanimous decision, as My Learned Brothers now inform me, it could only have been consequential to that decision, and therefore, ought to have been reduced into writing for our signature in the form of a Consequential Order to that unanimous Decision.



<sup>10</sup> *Prosecutor v. Foday Saybana Sankoh*, SCSL03-02-I, Prosecution Request for Appearance before the Trial Chamber to Withdraw the Indictment, Pursuant to Rule 51(B), 14 November 2003.

<sup>11</sup> *Prosecutor v. Sam Bockarie*, SCSL03-04-I, Prosecution Request for Appearance before the Trial Chamber to Withdraw the Indictment, Pursuant to Rule 51(B), 14 November 2003.



25. There is no such Order in the Chamber or in Court records. The decision is only made by inference from our unanimous decision of the 21<sup>st</sup> of May 2007, where we held the “*the trial proceedings against Accused Samuel Hinga Norman are terminated by reason of his death.*” We ended there. We did not go further to order that the indictment against him, like we did with those of Late Sankoh<sup>12</sup> and Late Bockarie<sup>13</sup> on the initiative and application of the Prosecution, be withdrawn. This is because it was for the Prosecution to initiate this course of action like they did in the Sankoh and Bockarie cases. In this one, it did not. Not even in the entirety of its submissions following our Order for Extended Filing, did the Prosecution canvass or suggest this course of action.

26. The legal situation that is a reality therefore, is that this deleted Norman’s name still remains intact in the Indictment as there is neither an application nor is there an order issued to this effect as yet by the Chamber. Why then should this same Chamber without more, proceed to delete his name from the Cover Sheet that has given rise to this dissent?

#### THE NAME OF SAMUEL HINGA NORMAN ON THE RECORDS

27. As a matter of law therefore, the name of Samuel Hinga Norman, even though he is no more, should continue to feature in the indictment with his former co-Accused Persons and by analogy, in the Records of the Chamber and in those of Court Management right up to the stage of our Judgement. This, I humbly consider, is the logical and legal solution to this issue because his name in any event, will, following our Decision of the 21<sup>st</sup> May 2007, continue to feature largely and quite predominantly in one episode or the other in whatever decisions that will be taken by this Chamber.

28. This course of action, as I have indicated, is even more imperative in the light of Our findings in paragraphs 20 and 21 and of Our Order No. 3 of Our unanimous decision dated the 21<sup>st</sup> of May 2007, which read as follows:

“Paragraph 20. As already noted, the entirety of the trial proceedings against the three Accused were completed before the death of the Accused Norman. The trial proceedings were conducted in full respect of the right to a fair trial of each of the Accused.

Paragraph 21. On the issue of the legal effect of the death of Norman on the case against the other two Accused, the Chamber finds that it is neither

<sup>12</sup> *Prosecutor v. Foday Saybana Sankoh*, SCSL-03-02-I, Withdrawal of Indictment, 8 December 2003.

<sup>13</sup> *Prosecutor v. Sam Bockarie*, SCSL-03-04-I, Withdrawal of Indictment, 8 December 2003.

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possible nor desirable to separate the evidence presented at the trial against the Accused Norman from the entire evidentiary record.

Order No. 3. The Judgement of the Chamber in relation to the two remaining Accused persons will be based on the evidence that was adduced on the record by all the Parties up to when the entire case for the Defence was closed,"<sup>14</sup>

29. In the light of these findings and within the context of our Order No. 3, the name of the First Accused, Samuel Hinga Norman, even though deceased, is, and still remains, for purposes of our evidential, factual and legal analysis and findings *vis-a-vis* his surviving Co-Accused Persons, excepting of course a finding of his guilt or of his innocence, a permanent feature that cannot be easily nor should it be deleted from any processes related to this case.

30. In fact, a deletion of the name of the deceased First Accused, Samuel Hinga Norman, from the cover page of documents relating to a case in which he is the undisputed legend, occasions a disconnect in terms of the traditional appellation of this case in the Records of the Court which are supposed to be kept intact. Furthermore, it eclipses the real judicial history and jurisprudence we have created and continue to create in this case which will certainly have to take its rightful place, featuring the Parties with all their names, in the archival policy and programming of the records of the Special Court.

31. As was and would widely have been expected, given the trend and tone of their submissions, the Defence Team of the deceased, First Accused, on the 24<sup>th</sup> of May 2007, which was the third and last day when they were supposed to file their application for leave to appeal, filed a Motion for extension of time within which to file an application for leave to appeal against our unanimous decision of the 21<sup>st</sup> of May 2007, which, as I had mentioned earlier, could eventually be forwarded to the Appeals Chamber for a further and final determination of this issue.<sup>15</sup>

**OUR UNANIMOUS DECISION OF THE 21<sup>ST</sup> OF MAY, 2007 IS NOT YET FINAL**

32. In view of the fact that our unanimous decision has so far, not hit the bar of finality because of the pending status of this still-unresolved and intriguing Motion by the Defence Team for extension of time, it could, and should be concluded in law, that the Majority unwritten Decision on

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<sup>14</sup> Norman Decision, paras 20, 21, Order No. 3.



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this issue cannot, and should not, in addition to the preceding arguments, stand in view of the apparent and obvious prematurity in making that unwritten Order to delete the Late Accused Person's name from the cover sheet of the said decision and a *fortiori*, from the records of the Court on the grounds of his death.

33. I would like to reiterate here, that the deletion of a deceased Accused Person's name from the records is, and remains a judicial act that should be preceded by a judicial process. Even if, as I have already mentioned, it is conceded that a Tribunal, in the exercise of its inherent jurisdiction, can, of its own motion, take such a decision, it is my opinion that this one is taken illegally because it cannot stand the legal test on which the Court's jurisdiction in this regard can lawfully be invoked.

34. I say this because this particular silently taken and mute decision by my Distinguished Colleagues is, in my opinion, in violation of the basic principles of due process which require that the parties to a case should be heard on the issue or issues at stake before a decision is taken on it and that such a decision should be reduced to writing for the attention of the Parties and for the records of the process before it is enforced.

### CONCLUSION

35. In this regard, I would like to observe that a purported legal Order of such judicial magnitude and importance such as this one, that is made by a Tribunal on a mere inference and off the records, clearly lacks any legal validity, is null and void, and consequently, unenforceable because it is made in violation of the best judicial and Court Management processes and practices. In fact, making it effective would amount to executing a legally mute extra judicial decision that has neither been regularly taken nor does it exist on any Chamber or Court record.

36. It is accordingly my view and opinion, in light of the foregoing analysis, that this decision to delete Late Samuel Hinga Norman's name from the records should be disregarded and set aside. In fact, in order to remain in harmony with our current practices and the records kept by Court Management, the name of Samuel Hinga Norman, even though he is now deceased, should continue to feature on the cover page of Our Chamber processes, decisions and in Court records because his

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<sup>15</sup> Norman, unlike Milosevic (*Prosecutor v. Milosevic*, IT-02-54) was only one of 3 Accused persons on the same Indictment who died after the Defence case had closed and before Judgement was delivered.

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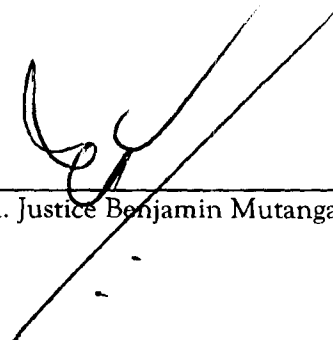
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current status as a deceased Accused will of course be acknowledged and commented on in the Judgement that will be rendered by this Chamber in due course in the case concerning the two surviving Co-Accused Persons in this matter.

37. I accordingly so decide in the light of the above, and ORDER AS FOLLOWS:

1. THAT THE NAME OF THE DECEASED FIRST ACCUSED, SAMUEL HINGA NORMAN, BE REINSERTED IN THE SAME POSITION THAT IT HAS ALWAYS OCCUPIED WITH THE OTHER ACCUSED PERSONS ON THE COVER SHEET OF OUR DECISIONS BEFORE IT WAS DELETED IN EXECUTION OF THE UNWRITTEN MAJORITY DECISION.
  
2. THAT THIS ORDER BE CARRIED OUT.

Done at Freetown this 22<sup>nd</sup> day of June, 2007

  
\_\_\_\_\_  
Hon. Justice Benjamin Mutanga Itoe



[Seal of the Special Court for Sierra Leone]

**ANNEX B: SEPARATE AND CONCURRING OPINION OF JUSTICE  
BOUTET**

1. The Chamber has chosen to consider whether President Kabbah's alleged role forms the basis of a possible independent defence available to the Accused. In my opinion, President Kabbah's role in the conflict should not have received the degree of prominence it did in the Judgement, as it is very much a collateral matter. It is my view that a Trial Judgement should instead focus on what is the central issue in the trial – the liability of Fofana and Kondewa.

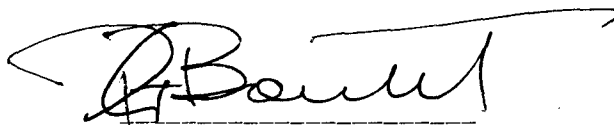
2. In my view, the only relevance of the role of President Kabbah and the fact that Fofana and Kondewa acted with the aim of restoring democracy and ensuring the return of the Kabbah government is in assessing the liability of the Accused with respect to the specific Counts with which they have been charged. The Chamber has considered these issues in that context. The Chamber found, for example, that the attacks were directed against rebels with the aim of restoring democracy, and thus that the civilian population was not the primary target of these attacks. It therefore dismissed the Counts of Crimes against Humanity (Counts 1 and 3).

3. The role of Kabbah was also not raised by either Fofana or Kondewa in their final submissions as an independent defence. Rather, President Kabbah's role in the conflict and the fact that the acts of Fofana and Kondewa were done with the aim of restoring democracy and ensuring the return of the Kabbah government was used by Counsel for the Accused only to demonstrate that certain elements of the crimes as pleaded had not been proven beyond reasonable doubt.

4. Insofar as the Chamber has chosen to consider the alleged role of President Kabbah as forming part of several possible independent defences, however, I concur with my learned brother, Hon. Justice Benjamin Mutanga Itoe, in dismissing them. However, I do not subscribe to all of the facts as they are presented in this section in support of his conclusion, nor do I subscribe to his reasoning in reaching such a conclusion.

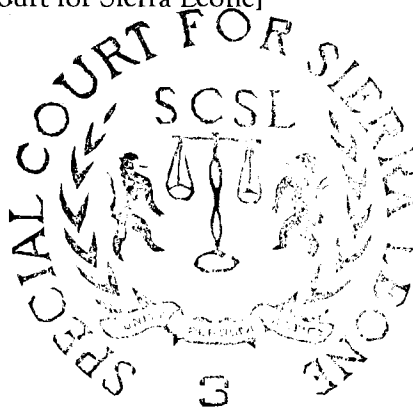


Done in Freetown, Sierra Leone, this 2<sup>nd</sup> day of August 2007.



Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]



ANNEX C - SEPARATE CONCURRING AND PARTIALLY DISSENTING OPINION  
OF HON. JUSTICE BANKOLE THOMPSON FILED PURSUANT TO ARTICLE 18  
OF THE STATUTE

PART ONE: KEY ISSUES OF DISAGREEMENT

I. Introduction

1. Two judicial philosophies have inspired the Partially Dissenting Part of this Opinion from the Main Judgement in this case. The first relates to the awesome responsibility assigned to judges of international criminal tribunals, when adjudicating on cases involving crimes against humanity and war crimes, of reconciling the principle of due regard for the conscience of the international community and the principle of legality. Choice along that borderline is in every respect difficult, given the powerful nature of human passion and its pressures on the quintessential values of the judicial culture, namely, impartiality, objectivity and dispassionateness as enshrined in the judicial oath. The second is the perceptive observation of the Appeals Chamber in the *Tadić Case* where it stated authoritatively that:

“It is important to note that two judges, both acting reasonably, can come to different conclusions on the basis of the same evidence.”<sup>1</sup>

2. With that acknowledgement of the Herculean task confronting the international adjudicating bodies, I deem it judicially important in the discharge of such a responsibility in this case to begin this Opinion with an articulation of the complexity of the task of the Trial Chamber, as I view it, justifying the judicial course I have taken of dissenting from the Main Judgement on Counts 2, 4, 5, and 7 in respect of the Accused Moinina Fofana and Counts 4, 5, 7 and 8 in respect of the Accused Allieu Knodewa, before proceeding to explain the reasons in support of it. As I perceive it, the present case confronts this Court with the complex and delicate task of determining where legitimate collective action, whether, in the context of conventional or unconventional warfare, in defence of one's state, country, town, community or village against forces that have usurped the legal and democratic order ends and where criminality begins. Or put concisely, where legitimate collective defensive action in an armed conflict ends and where joint criminal enterprise begins. This is a boundary line which, in law, is imperceptibly unclear

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<sup>1</sup> *Prosecutor v. Tadić*, IT-94-IA, Judgement (AC), 15 July 1999 [*Tadić Appeal Judgement*], para 64.



and difficult to define. It must inevitably depend upon the particular facts and circumstances of each case, and not determinable by any golden measuring rod.

## II. Disagreement with Main Judgement: First Key Issue

3. For an avoidance of doubt, I should at the outset disclose that my disagreement with the Main Judgement focuses on two key aspects of the ultimate question of the guilt or innocence of the Accused persons on the charges as laid in the Indictment in so far as the Counts in respect of which they have been found guilty are concerned. The first relates to a small segment of the findings of fact in respect of alleged ritual killings or cannibalism carried out by Kamajors but not specifically charged in a count or counts, and of the permissibility of the initiation process. Generally, I dissent strongly from the findings of fact on these issues to the extent to which they have tended to becloud the real issues in controversy between the Prosecution and the Defence thereby assuming a major rather than a collateral importance. Specifically, I also dissent from any findings of fact in relation to the initiation process to the extent to which they might have appeared to serve as a basis for the tribunal to pronounce on the permissibility or legality of initiation either as a cultural imperative for membership of the Kamajor society or as a prerequisite for military training for combat purposes in the context of the said society.

## III. Disagreement with Main Judgement: Second Key Issue

4. The second aspect of the case in respect of which I record this partial dissent from the Majority Judgement is, I must emphasize, an issue of much substantiality in the sphere of criminal adjudication. It is an issue that goes to the very core of the principle of legality, which we judges have come to regard as a key aspect of the criminal law as a social control mechanism, nationally or internationally. It is the question of the entitlement of a person charged with a crime to certain recognised defences in law and the obligation of a court to consider whether such defence or defences are sustainable having regard to the facts and circumstances of the case. Embedded in the jurisprudence of municipal law systems it is an emanation of the doctrine of fundamental fairness that underlies the criminal adjudication process. In other words, it has long been established in national criminal laws that an accused is entitled to have the benefit of the consideration of any defence that may arise upon the evidence even though not raised by him or





her.<sup>2</sup> It is, at this juncture, that I feel compelled to make a judicial detour from the path along which my distinguished learned colleagues and I have travelled in this matter.

5. It is noteworthy that in the sphere of international criminal justice, the acknowledgment of recognised defences to international criminal liability is still evolutionary. One learned author put the issue in context in these terms:<sup>3</sup>

“Defences at first played only a marginal role in the practice of international and national courts. At the start, the greatest challenge for practical international criminal law consisted in finding a legal basis for individual criminal liability under international law. Thus no grounds for excluding criminal responsibility were provided for in the Nuremberg Charter; in consequence, the lawyers for defendants who found themselves in the sights of international criminal justice took aim, at first, primarily at the international community’s authority to punish and the legitimacy of international justice as such.”

Continuing, he observed:<sup>4</sup>

“Only as the principle of individual criminal responsibility took firmer root in international law did various grounds for excluding criminal responsibility move to the centre of defence efforts. As early as the Nuremberg successor trials, but especially in the trials before the Yugoslavia and Rwanda Tribunals, defences played a greater role. The establishment of conditions for excluding criminal responsibility, however, remained up to the Courts.....”

6. As a matter of principle, international criminal tribunals should not resile from their sacred responsibility, in dispensing even-handed justice, of acknowledging and applying recognised defences to criminal liability in municipal law systems. To this effect, I can do no better than adopt the observation of one learned author on Article 21 of the Rome Statute that:

“In developing the international criminal law relating to defences, it is essential that the Court be permitted to draw on principles of criminal law

<sup>2</sup> See the English case, *R v. Hopper* (1915) 2KB241; See also *R v. Palmer* (1971) AC 814 at 823, where Lord Morris authoritatively stated:

“It is always the duty of the judge to leave to the jury any issue (whether raised by the defence or not) which on the evidence in the case is an issue fit to be left to them.”

<sup>3</sup> Gerhard Werle, *Principles of International Criminal Law*, (The Hague: T.M.C. Asser Press, 2005) p. 138.

<sup>4</sup> *Ibid.*

derived from national legal systems.....which therefore enhances the Court's ability to fill *lacunae* in the international criminal law."<sup>5</sup>

7. In municipal criminal law, it is a fundamental rule of law that even where the Prosecution has proved that a person charged with a crime did the proscribed act with the requisite mental state, he can still be excused from criminal liability by reason of the proof of certain defences recognised by the law. The application of a different rule in the international criminal law domain would give rise to the spectre of crimes against humanity and war crimes being essentially crimes of strict liability or absolute prohibition, giving the criminal judicial process a profile reminiscent of the discredited English Court of Star Chamber. In my considered opinion, the case for the recognition of legal defences to crimes against humanity and war crimes rests solidly on "the principle of procedural fairness, this fairness being part of international due process."<sup>6</sup> On this issue, therefore, my disagreement with the Main Judgement is both profound and fundamental. It does not fully address this issue. I address the said issue extensively in Part Eight of this Opinion.

## PART TWO: CHALLENGES TO FORM OF INDICTMENT

### (A) CHALLENGES RAISED BY SECOND ACCUSED

#### I. Introduction

8. In this part of the Opinion, I address the preliminary issues raised by the Defence, on behalf of the Accused Moinina Fofana, as challenges to the form of the Indictment and also a grave irregularity as to the form of the Indictment arising out of the formulation of paragraph 28 of the said Indictment, though not raised by the Defence. The challenges raised on behalf of the Accused Moinina Fofana relate to the manner of the pleading of his alleged liability under Article 6(1) of the Statute as to individual criminal liability and joint criminal enterprise and under Article 6(3) as to command responsibility. It is a three-pronged attack on the form of the Indictment, to wit: (i) that the Prosecution should have pleaded the different heads of liability under Article 6(1) separately; (ii) that the Prosecution should have pleaded the identities of victims and co-

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<sup>5</sup> Margaret McAuliffe de Guzman, "Commentary on the Rome Statute", in Otto Triffterer, ed., as cited in Geert-Jan G.J. Knoops, *Defenses in Contemporary International Criminal Law*, (New York: Transnational Publishers Inc, 2001) p. 31.

<sup>6</sup> Knoops, *ibid*, p. 268



perpetrators; (iii) and that the Prosecution should have pleaded his participation in the joint criminal enterprise with greater specificity.

## II. Applicable Law and Analysis

9. With respect to these challenges, let me say that I do subscribe unreservedly to both the exposition of the applicable law and the judicial analysis of the Trial Chamber's reasoning in its previous decisions and as embodied in the Main Judgement.

## III. Conclusion

10. I likewise concur with the Conclusion reached in the Main Judgement on the three-pronged challenge to the form of the Indictment brought by Defence for the Accused Moinina Fofana, namely, that the alleged forms of liability of the said Accused under Articles 6(1) and 6(3) of the Statute are pleaded in the Indictment with the requisite degree of specificity. I, accordingly, find the challenges to be devoid of merit.

### (B) GRAVE DEFECT NOT RAISED PRELIMINARILY OR DURING CLOSING ARGUMENTS

#### I. Introduction

11. Let me now, *suo motu*, address here what, as I perceive it, is a grave irregularity in the form of the Indictment. It relates specifically to the formulation of paragraph 28. Paragraph 28 of the Indictment alleges as follows:

“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.

By their acts or omissions in relation to these events, SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA, pursuant to Article 6.1 and, or alternatively, by Article 6.3 of the Statute, are individually criminally responsible for the crimes alleged below.”

## II. Legal Analysis

12. Paragraph 28 appears under Counts 6-7 which specifically charge the Accused with the offences of terrorizing the population and collective punishments respectively. As a matter of law, I opine that the legal effect of charging the Accused with the separate and distinct offences of terrorizing the population and collective punishments in separate and distinct counts is to notify the Accused with specificity and precision of the charges against them. This is the basic rule governing specificity as to the form of an indictment.<sup>7</sup>

13. Consistent with the foregoing consideration, it is clearly impermissible to charge an accused person in a general, vague and uncertain manner. The authorities make it clear that where within the count system of charging, allegations are framed in such a way as to create multiplicity, vagueness and uncertainty, the particular count or counts are accordingly defective.<sup>8</sup> A close examination of paragraph 28 discloses a multiplicity of allegations in the particulars of the alleged offences of terrorizing the civilian population and collective punishments. The paragraph charges, by a process of incorporation, the Accused in both Counts 6 and 7 with five additional offences, to wit: (i) Murder, a Crime Against Humanity; (ii) violence to life, health and physical or mental well-being of persons, in particular murder, as a War Crime; (iii) inhumane acts as a Crime Against Humanity; (iv) Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, as a War Crime; and (v) Pillage, as a War Crime.

14. Evidently, each of the said additional offences is given two new proscriptive aggravating dimensions, to wit, that each of the said crimes was allegedly committed "as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations", and "to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces", thus making them brand new species of criminality. The difficulty here is that of incorporating in a Particulars of Offence paragraph, references to Counts 1-5 which are separate and distinct offences separately charged.

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<sup>7</sup> See Rodney Dixon, et al (eds.), *Archbold International Criminal Courts, Practice Procedure and Evidence*, (London: Sweet & Maxwell, 2002) para 6.53.

<sup>8</sup> See an illuminating article on the subject by Professor Glanville Williams entitled, "The Count System and the Duplicity Rule", (1966) *Crim.L.R.*, pp. 255-265, (under whom I was privileged to study Criminal Law at the University of Cambridge).



15. Based on the above analysis, the foregoing five additional crimes are, each, separate and distinct offences from the two specific and distinct offences embodied in the Statement of Offences Section of Counts 6 and 7. This is the reason for charging them separately in Counts 1 - 5. In effect, the Indictment in either of Counts 6 and 7 has charged each Accused with six different offences. It clearly proliferates the issues for trial. This is a textbook example of an infringement of the rule governing the form of an indictment technically known as the rule against duplicity, multiplicity, or uncertainty. The problem is compounded by charging these additional crimes not in separate additional counts, each in its own separate Statement of Offence Section of the Indictment, but in the Particulars of Offence Section to the existing Counts 6 and 7. I opine that this is an unorthodox and convoluted way of laying charges in an indictment. It creates nothing short of a penumbra of uncertainty as to what specific charge or charges the Accused are called upon to answer and defend in respect of Counts 6 and 7. Even where cumulative charging is permissible, it must still not offend the rule against duplicity, multiplicity and uncertainty. In a landmark decision of the Sierra Leone Court of Appeal<sup>9</sup>, applying leading English case-law authorities on duplicity, multiplicity and uncertainty as defects in the form of an indictment, it was authoritatively stated that:

“The general rule is that for each separate count there should be only one act set out which constitutes the offence. If two or three offences are set out in the same count, separated by the disjunctive ‘or’ and the conviction should be quashed.”<sup>10</sup>

16. Based on the foregoing analysis and applying the authorities cited, I come irresistibly to the conclusion that Counts 6 - 7 of the Indictment by incorporating the offences charged separately in Counts 1 - 5 in the said Counts 6 - 7 offend the rule against duplicity, multiplicity and uncertainty, and I so hold. As stated earlier, it should suffice for the purposes of my dissent that these observations are strictly *obiter*. Hence, I do not propose to take the analysis beyond this limited judicial focus.

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<sup>9</sup> *Lansana and Eleven Others v. Regina*, ALR SL. 186 (1970-1971), [Sierra Leone].

<sup>10</sup> *Ibid.*

*RS*

**PART THREE: BACKGROUND TO CONFLICT AND POLITICAL CONTEXT****I. Introduction**

17. This Part of the Opinion relates to the Background to the Armed Conflict and Political Context in Sierra Leone.

**II. Context**

18. I endorse fully the narration contained in the Main Judgement on this aspect of the case.

**PART FOUR: APPLICABLE LAW****I. Introduction**

19. In this Part of the Opinion, I address three key aspects of the applicable law, *to wit*, jurisdiction, the law governing the crimes charged and the law governing the forms of liability charged, indicating my concurrences with, or divergences from, the Main Judgement.

**II. Jurisdiction**

20. Beginning with jurisdiction, I subscribe wholly to and support the exposition of the law on the subject as found in the Main Judgement.

**III. Law Governing Crimes Charged**

21. On the subject of the law governing the crimes charged, there are no judicial differences between the exposition of the diverse facets of the law in the Main Judgement and my judicial appreciation of them.

**IV. Law Governing the Forms of Liability Generally**

22. As regards the law governing the three forms of liability charged, I diverge only from the Main Judgement on some controversial aspects of joint criminal enterprise as a form of international criminal liability. I now proceed to address these issues.



## V. Joint Criminal Enterprise: The Unsettled State of the Law

23. As a preliminary matter, I do agree with the exposition of the law in the Main Judgement as to the juridical existence of joint criminal enterprise as a mode of liability “firmly established in customary international law” at the time of the alleged commission of the crimes laid in the Indictment. I also unreservedly subscribe to the view of the law expounded in the aforesaid Judgement that Article 6(1) of the Statute of the Special Court for Sierra Leone implicitly or impliedly provides for or incorporates the notion of joint criminal enterprise, as a mode of liability, and that it derives its juridical origins from customary international law.

24. However, I do not support the rather uncritical adoption of the existing jurisprudence on the subject, given the lack of judicial consensus on the scope of the doctrine and the unsettled state of the law.<sup>11</sup> Commenting on the judicial perils of applying incoherent, disparate and unsettled principles of law, I did observe elsewhere that:

“It cannot be asserted with any degree of accuracy that there is, as at yet, at the level of international criminal adjudication, a settled and authoritative *corpus* of jurisprudence applicable in granting amendments to indictments. To seek to apply whatever disparate, incoherent and inconclusive general principles that exist in the form of an evolving jurisprudence *without constructive* adaptation is a logical mistake that may well make us, as judges, victims of the *fallacy of slippery precedents*.”<sup>12</sup>

25. By parity of reasoning, these are of some of the dangers of applying the existing law on joint criminal enterprise. The law, in its present state, is riddled with technicalities. Shorn of its technicalities, the existing law is that a person charged with the commission of a crime may be held liable for all crimes committed pursuant to the existence of a common plan or design which falls

<sup>11</sup> To the same effect is this observation, to wit:

“After ten years of the *ad hoc* Tribunals, joint criminal enterprise still remains one of the most contentious issues in their jurisprudential life and its contours have fluctuated a great deal over the years.”

See Guenael Mettraux, *International Crimes and the Ad hoc Tribunals*, (New York: Oxford University Press, 2005) pp. 287-288.

<sup>12</sup> See Dissenting Opinion of Hon. Justice Bankole Thompson in *Prosecutor v. Brima, Kanu and Kamara*, SCSL03-16-T, Motion for Leave to Amend Indictment Against Accused Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, 6 May 2004, paras 5-7.

within the proscriptive ambit of the statute if the accused participates in conjunction with others in the execution of the common design.

26. In its technical sense, the law is that a joint criminal enterprise is a mode of committing a crime by an accused person, acting jointly or in concert with others. The accused is liable as a co-perpetrator, each co-accused being criminally responsible for the alleged crime. A co-accused is not exonerated merely by reason of not having physically committed the crime. There are three distinct categories of this mode of liability, namely: (i) the "basic" form which requires an intent to perpetrate a certain crime, such intent being shared by all co-accused; (ii) the "systemic" form, the essence of which is personal knowledge of the system of ill-treatment as well as an intent to further the said system; and (iii) the "extended" form, which involves liability for participating in acts outside the criminal design as long as such acts are a natural and foreseeable consequence of the effecting of that common purpose.<sup>13</sup>

27. Judicially, I reckon it is not difficult to fathom that the present trifurcated nature of the doctrine of joint criminal enterprise as expounded in the jurisprudence is a judicial creation. It is, I again reckon, not difficult to discover that the rationale behind the third category of the doctrine is to create some form of implied criminal liability, under customary international law or treaty law, in respect of persons accused of crimes against humanity and war crimes where direct or circumstantial evidence of their participation in the alleged crimes may be lacking. One can also comprehend, in my considered judgement, that categories two and three seem to have grown out of the crimogenic, juridical and socio-cultural peculiarities of genocide as one major proscriptive conduct targeted by the indictments before the ICTY and the ICTR. Hence the need for judicial circumspection and vigilance in applying these two categories of this mode of liability to crimes that are emanations of a different crimogenic, juridical and socio-cultural settings.

28. I opine that the law, as presently formulated, is incomprehensively opaque on three main grounds. First, it is unclear as to how expansive the scope of liability envisaged by category three

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<sup>13</sup> See *Prosecutor v. Kmojelac*, IT-97-25-T, Judgement (TC), 15 March 2002, para 80; *Tadić* Appeal Judgement, paras 195-226; *Prosecutor v. Vasilejević*, IT-98-32-A, Judgement (AC), 25 February 2004, paras 97-98; *Prosecutor v. Brđanin and Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend (TC), 26 June 2001, paras 24-27; *Prosecutor v. Mulutinović et al*, IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction: Joint Criminal Enterprises (TC), 21 May 2003, para 25, *Prosecutor v. Kvočka*, IT-98-30-IT, Judgement (TC), 2 November 2001, paras 309 and 311.





should be. Second, there is also lack of clarity as to how foreseeability in the context of the aforesaid category three should judicially be interpreted or construed. Third, the authorities are unclear as what principles are applicable in determining the impact of the said category three on existing two key due process guarantees for an accused person, namely, that a person charged with criminal wrongdoing can only be punished for his individual choice to engage in the alleged criminal wrongdoing, and that the attribution of criminal responsibility to a person charged with violation of the criminal law can only be predicated upon his own individual conduct.<sup>14</sup>

29. Equally problematic is the judicial tendency to equate the *mode of liability* with the *criminal conduct* itself. In my respectful opinion, this is anomalous. Likewise flawed is the disposition to describe the joint criminal enterprise as comprising an *actus reus* and a *mens rea*. In my considered view, the *mode of liability* cannot simultaneously constitute the proscribed conduct itself.

30. Furthermore, the existing jurisprudence depicts joint criminal enterprise and conspiracy as dichotomous. It is trite law that the proscriptive objective of complicity and conspiracy is that of penalising multiple or collective criminality. Hence, their doctrinal affinity with joint criminal enterprise as forms of accomplice liability.<sup>15</sup> To assert that the doctrine of joint criminal enterprise is not a form of accomplice liability perpetuates a judicial myth. It is trite knowledge that the rationale behind conspiracy is to criminalise the agreement as the prohibited act and nip it in the bud before it is consummated, whereas the rationale behind the joint criminal enterprise is to criminalise the objective of the design which is the prohibited act, rendering it punishable on consummation.

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<sup>14</sup> It is instructive to note that this rubric of joint criminal enterprise form of liability is acutely controversial because many national law systems do not, in the field of criminal law, recognize the liability of alleged offenders in a common plan for crimes falling outside the scope of the alleged common criminal design. For example, Germany, Netherlands, and Switzerland make no provision for this type of liability in their criminal codes. Under English and Canadian criminal laws, the doctrine does not penalise persons charged with a crime purportedly committed in pursuance of a joint criminal enterprise for crimes outside the scope of the common criminal design on the grounds of foreseeability. Why it has come to acquire such primacy in international criminal law seems rather intriguing and perilous.

<sup>15</sup> See an illuminating article on the subject by Allison Marstan Danner and Jenny S. Martinez entitled "Guilty Associations: Joint Criminal Enterprise, Command Responsibility and the Development of International Criminal Law" in *California Law Review* [2005] pp. 77-169; See also Smith, K.J.M., *A Modern Treatise on the Law of Criminal Complicity*, (Oxford: Clarendon Press, 1991), for the view that the "common purpose doctrine known to English law, on which the doctrine of joint criminal enterprise is based, is used exclusively for acts that fall outside the main purpose of the agreement between co-conspirators".

31. To apply the existing principles in their present state without further legal clarity, precision and logical consistency is to compound the conceptual pitfalls and doctrinal uncertainties of the existing law governing this form of criminal liability.

## PART FIVE: EVIDENTIARY PRINCIPLES

### I. Introduction

32. In this Part of the Opinion I articulate, with much specificity, the principles of law that should guide an adjudicating body trying persons accused of crimes falling within the proscriptive ambit of international criminal law and that in fact guided the Trial Chamber throughout in evaluating the massive evidence presented by both the Prosecution and the Defence in this case. I do emphasize that these principles are deducible from the evolving jurisprudence, both case-law and textual authorities. Though I do subscribe to the general exposition of the said principles in the Main Judgement, I do feel judicially compelled to elaborate on them here so as to reinforce my concurrence with the factual findings and the legal findings in the Main Judgement in respect of the Counts on which 'not guilty' verdicts have been entered. It is of significance that the Chamber considers these principles to be of paramount importance in assessing the credibility of both testimonial and documentary evidence presented at the trial and in determining the ultimate question of the guilt or innocence of the Accused.

### II. Evidentiary Principles: General Aspects

33. It is trite law that evidence, in legal terms, refers to "all legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation." As a preliminary point, it is noteworthy, given both the fact-intensive nature and legally complex features of this case, that nearly every category or type of evidence as a means of proving or disproving the facts in issue and the facts relevant to those in issue was implicated in this trial.

34. The first general applicable principle here is that the Special Court for Sierra Leone is mandated by its Statute to assess and evaluate evidence in cases brought before it in conformity with the doctrines and rules enunciated in the said Statute and Rules of Procedure and Evidence ("Rules"). To this end, the aforementioned Statute provides that::

“1. The Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda obtaining at the time of the establishment of the Special Court shall be applicable *mutatis mutandis* to the conduct of the legal proceedings before the Special Court.

2. The judges of the Special Court as a whole may amend the Rules of Procedure and Evidence or adopt additional rules where applicable Rules do not, or do not adequately, provide for a specific situation. In so doing, they may be guided, as appropriate, by the Criminal Procedure Act, 1965, of Sierra Leone.”<sup>16</sup>

35. Consistent with the foregoing observation, the first principle of which the Chamber took cognisance is the principle of the non-binding effect of national rules of evidence within the sphere of international criminal adjudication. In short, the Chamber attached no strict precedential value to them, primarily adhering to Rule 89 of the Court’s Rules of Procedure and Evidence which states that:

(A) The rules of evidence set forth in this section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.<sup>17</sup>

36. The Chamber was also mindful that where no guidance is provided by the stipulated sources, it is under a duty to evaluate the evidence in a way that “will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law.” We were also pre-eminently aware throughout, that it is our duty to evaluate the evidence before us, primarily in the light of the presumption of innocence and the principle of reasonable doubt, which requires the resolution of a reasonable doubt in favour of the Accused, and secondly, having regard to general evidentiary principles of fairness.

37. The Chamber took cognisance of the fact that a criminal trial involves the ultimate adjudication or resolution of two key issues. The first is that the crimes charged in the Indictment

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<sup>16</sup> Statute of the Special Court for Sierra Leone, 2002 [Statute].

<sup>17</sup> Rule 89 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone as amended on 27<sup>th</sup> May 2004.

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were indeed committed, as alleged. The second is the attribution of criminal responsibility to the accused for the commission of those crimes. In effect, there must be a nexus between the said crimes and the conduct of the accused. Where there is no such nexus, the crime has not been proven.

### III. Evidentiary Principles<sup>18</sup>: The Presumption of Innocence

38. Recognising that the starting point in the process of criminal adjudication is the entitlement of the accused to a presumption of innocence as embodied in Article 17(3) of the Statute, the Chamber was mindful throughout that it is the duty of the Prosecution to establish the guilt of each of the Accused persons, the implication being that the Prosecution is obliged, in law, to prove all the facts and circumstances material and necessary to constitute the crimes charged and the criminal responsibility of each Accused person. We were equally mindful of the principle that the persuasive burden of proving the case against the Accused rests on the Prosecution throughout the entire trial; it does not shift, and that the standard required is that of proof beyond reasonable doubt and not any lower standard, fully realising this to be the cardinal principle of criminal liability that runs throughout the web of the criminal law. To this effect is the explicit provision of Article 17(3) of the Court's Statute to wit:

“The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.”<sup>19</sup>

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<sup>18</sup> For this detailed analytical approach to evidentiary principles, I sought guidance from and adopted with necessary modifications, the version of the said principles in *Prosecutor v. Radoslav Brđanin*, IT-99-36-T, Judgement (TC), 1 September 2004, para 20-36.

<sup>19</sup> Article 17(3). The universality of this presumption is now firmly established. It is entrenched in national criminal law systems (regardless of their legal tradition) regional human rights adjudicatory schemes and the international criminal law system. Under English common law, it was put succinctly by Viscount Sankey, L.C. in the celebrated case of *Woolmington v. D.P.P.* (1935) All England Law Reprint, p. 1 [England], where he declared:

“Throughout the web of English Criminal Law one golden thread is always to be seen, that it is the duty of the Prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject to any statutory exception...”

The presumption is recognized in French law, German law, and American law and by reason of the common law juridical legacy under Sierra Leone law. Likewise the African Charter on Human and Peoples' Rights, the European Convention on Human Rights, and the Universal Declaration of Human Rights enshrine the doctrine in clear and express language.

#### IV. Evidentiary Principles: Application

39. Consistent with the foregoing fundamental principles of criminal liability, the Chamber approached the resolution of the key issues in this trial from a dual perspective, namely, whether the ultimate result of the totality of the evidence, and the application of the relevant principles of law, thereto, is weighty and convincing enough to establish beyond reasonable doubt the facts, circumstances, intentions and purposes alleged in the Indictment and, ultimately the guilt of each Accused for the crimes as charged in the Indictment. In this regard, the Chamber kept in clear focus the Prosecution's three theories of liability: (i) individual criminal liability;<sup>20</sup> (ii) liability pursuant to a joint criminal enterprise;<sup>21</sup> and (iii) liability pursuant to the doctrine of command responsibility.<sup>22</sup>

40. In determining whether the Prosecution: (i) has discharged the burden of proving the case against each Accused; and (ii) has fulfilled the requisite standard of proof, namely, beyond reasonable doubt establishing the guilt of each Accused, as regards each particular Count as laid in the Indictment; the Chamber paid due regard to the existence or otherwise of any reasonable explanation of the evidence adduced before the Trial Chamber other than the guilt of each Accused,<sup>23</sup> mindful of the legal doctrine that any ambiguity that creates a reasonable doubt in the evidence must be resolved to the advantage and benefit of the Accused. To this end, We relied, persuasively, on the statement of the Appeals Chamber of the ICTY in the case of *Prosecutor v. Delalic, et al*, acknowledging that "if there is another conclusion which is also reasonably open from the evidence, and which is as consistent with the innocence of an Accused as with his or her guilt, he or she must be acquitted."<sup>24</sup> In such an eventuality, the Chamber acknowledged that the reasonable conclusion to come to is that the charges against the accused have not been established beyond reasonable doubt.

41. Consistent with first principles in the sphere of the criminal law, We also applied the principle that where the Defence has failed to challenge certain factual allegations, as laid in an Indictment, this does not imply that an adjudicating tribunal must assume or presume the

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<sup>20</sup> Statute, Article 6(1).

<sup>21</sup> *Ibid.*

<sup>22</sup> Statute, Article 6(3).

<sup>23</sup> See *Prosecutor v. Delalic, et al*, IT-96-21-A, Judgement (AC), 20 February 2001, para 458.

<sup>24</sup> *Ibid.* para 458.



allegations as proven. Any such implication, We realised, would be inconsistent with the cardinal principle that for each individual fact alleged the onus of proof rests squarely on the Prosecution. Pre-eminently, the Chamber took cognisance of the fact that the Statute of the Special Court guarantees to every person charged with a crime or crimes falling within the jurisdiction of the Court the right not to incriminate himself. To this effect is Article 17(4)(g) of the said Statute which states that:

“In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality? Not to be compelled to testify against himself or herself or to confess guilt.”<sup>25</sup>

42. Guided by this statutory provision, and recalling that in the course of this trial the two Accused persons now before the Court did not give any evidence or make statements but chose to remain silent, consistent with the law as established, the Chamber drew no adverse inferences from their decision not to testify. In essence, We, in conformity with general principles of law recognised by civilised nations, paid proper regard to the due process rights of the Accused, acknowledging that their decision to remain silent did not amount to guilt or an admission of guilt.

43. Again, in conformity with the law, in evaluating the evidence of the witnesses that testified *viva voce*, the Chamber, consistent with established jurisprudence, took into account of these factors: (a) their knowledge of the facts to which they testified; (b) their demeanour; (c) conduct; and (d) character to the extent possible.<sup>26</sup> As regards all the witnesses in this case, We also considered the probability, consistency and related features of their testimonies and the totality of the circumstances of the case.<sup>27</sup> The Chamber further recognised the complexity of the issue of the credibility of witnesses for an adjudicating forum. Hence, relying on established jurisprudence, We proceeded to assess the credibility of witnesses on the basis of: (i) their knowledge of the facts in respect of which they testified; (ii) their disinterestedness (especially in the case of those characterised as “insider witnesses”); (iii) their integrity; (iv) their veracity; and (v) their motivation

<sup>25</sup> Statute.

<sup>26</sup> See *Brđanin*, *supra* note 15.

<sup>27</sup> *Ibid.*

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to speak the truth consistent with their oath.<sup>28</sup> Equally important for the evaluation of evidence as to its probative value were these factors: (i) internal consistency and detail; (ii) strength under cross-examination; (iii) consistency against prior statements of the witness; (iv) credibility vis-à-vis other witness accounts or other evidence submitted in the case, to wit, corroboration; and (v) possible motives of the witness.<sup>29</sup>

44. The Chamber duly advised itself that evidence about facts which took place ten or more years prior to testifying may well involve inherent uncertainties due to the imperfections and vagaries of human perception and recollection.<sup>30</sup> Hence, We were mindful that the lack of particularity or specificity in respect of certain matters or events cannot, in general, justify the inference that the testimony in question is of minimal probative value or that it is worthless.<sup>31</sup>

45. In addition, the Chamber paid due regard to the principle of orality. This principle gives primacy to the evidence given orally by witnesses in Court as against statements made out-of-court on occasions prior to the testimony at trial. In effect, non-testimonial evidence should not be accorded primacy over testimonial evidence. We, accordingly, placed much reliance on a Decision of this Chamber entitled *Decision on Disclosure of Witness Statements and Cross-Examination*<sup>32</sup>, where it was emphasized that:

“The Special Court adheres to the principle of orality, whereby witnesses shall, in principle, be heard directly by the Court.”<sup>33</sup>

46. Furthermore, We were guided by the principle that the extent of any material inconsistency between the oral testimony of a witness at a trial and his or her non-testimonial statement given prior to trial, if such a portion or portions thereof were admitted in evidence, must be factored into the evaluation equation, so as to determine what weight, if any, to be attached to the particular testimony. By parity of reasoning, We acknowledged that an inconsistency need not be fatal in that it depends on the circumstances, and may be explained by

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<sup>28</sup> *Ibid.*

<sup>29</sup> See Judge Richard May and Marieke Wierda, *International Criminal Evidence*, (New York: Transnational Publishers, Inc., 2002) p. 167, [May and Wierda, *International Criminal Evidence*].

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Prosecutor v. Norman, Fofana, Kondewa*, SCSL04-14-PT, (TC), 16 July 2004.

<sup>33</sup> *Ibid.* para 25.

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such factors as: (i) the fallibilities of human recollection; and (ii) the nature, scope and methodology of questioning of witnesses during interviews by the party calling them.<sup>34</sup>

47. Another basic principle that We applied is that the testimony of a single witness on a material fact does not require corroboration.<sup>35</sup> By this observation as to the law, We do not imply that a tribunal must not view the evidence of witnesses in the context of trials of such magnitude and complexity with caution, especially the testimonies of those characterised as “insider witnesses”, (accomplices). In this regard, as already alluded to, the Chamber was supremely mindful of the need to treat the testimonies of such witnesses with utmost circumspection realising that though they may have offered to testify out of a conviction of public-spiritedness yet they invariably are witnesses with self-serving interest or motivations.

48. In addition, as to the admissibility of hearsay testimony, the Chamber followed the operative principle in the sphere of international criminal adjudication, namely, that hearsay evidence is admissible and not *per se* inadmissible. We clearly kept in mind that where such evidence is admitted to prove the truth of its contents, a tribunal ought to be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, and that both its context and the circumstances under which it arose should be considered.<sup>36</sup> In this regard, We adhered to the principle that the absence of the opportunity to cross-examine the maker of a hearsay statement or whether it was “first-hand” or more removed are factors to be taken into account when considering the probative value of the evidence. Consistent with the Statute, the Rules of Procedure and Evidence and established international criminal jurisprudence, We acknowledged that the fact that evidence is hearsay in character does not necessarily deprive it of probative value, holding that the weight or probative value to be attached to such evidence will

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<sup>34</sup> See May and Wierda, *International Criminal Evidence*, para 6:09 at page 167.

<sup>35</sup> See *Prosecutor v Aleksovski*, IT-95-25-T, Judgement (TC), 24 March 2000, para 62.

<sup>36</sup> For this approach, see May and Wierde, *International Criminal Evidence*, *supra* note at p. 117, where it is stated as follows:

“At an early stage in the history of the modern tribunals, hearsay was held to be admissible. Thus, the Trial Chamber in *Tadić* decided to admit hearsay evidence. The Chamber commented that the international tribunal was an amalgam of civil and common law features and did not strictly follow either jurisdiction. Judge Stephen pointed out that the relevant evidence is not affected by the fact that it is hearsay and such evidence is not necessarily without probative value.”





usually be less than that attributed to that given by a witness under oath who has been subjected to cross-examination, depending on the totality of the circumstances.<sup>37</sup>

49. With respect to documentary evidence, the Trial Chamber did, on several occasions throughout this trial, admit documentary evidence. In this regard, as in the case of other kinds of evidence, the Chamber adopted the flexible approach now established by the existing jurisprudence of “extensive admissibility of evidence, leaving questions of credibility or authenticity” to be “determined according to the weight given to each of the materials by the Chamber at the appropriate time.”<sup>38</sup> When admitting documentary evidence during the course of this trial, We repeatedly indicated that despite the flexibility of the Chamber’s approach to the admissibility issue, the reliability of such documentary evidence was not thereby automatically established and that it would be one of the factors to be considered during the evaluation of probative value of the totality of the evidence in the case.

50. When admitting direct evidence of a witness testifying to events, incidents and episodes he actually witnessed, the Chamber was guided by the doctrine that where the witness is testifying truthfully, direct evidence of a fact in issue or, of a fact actually perceived by a witness, is the most reliable form of proof, that is to say, the best evidence.

51. Throughout the trial the evidence adduced was largely circumstantial. Circumstantial evidence is evidence of circumstances surrounding an event, episode, incident, from which a fact at issue may be reasonably inferred.<sup>39</sup> The Chamber’s approach to circumstantial evidence was that though the individual ingredients of circumstantial evidence may, in a particular case, be insufficient to establish a fact, yet taken conjunctively and cumulatively their effect may be revealing and sometimes decisive.<sup>40</sup> We also clearly reminded ourselves, as a matter of law, that where the Prosecution’s case is substantially based on circumstantial evidence the evidence must be

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<sup>37</sup> See *Prosecutor v. Blaškić*, IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability (TC), para 12.

<sup>38</sup> See May and Wierda, *supra* note 21.

<sup>39</sup> See Colin Tapper (ed.) *Cross and Tapper on Evidence*, (London: Butterworths, 1995) p. 22.

<sup>40</sup> Exall (1866) Vol. 4 F&F922 at 929 [England], is one English case-law authority for this proposition: “Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion, but the whole taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of.”

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such as to satisfy the tribunal that the facts proved are not only consistent with the guilt of the accused, but also such as to be inconsistent with any other reasonable conclusion.<sup>41</sup>

52. The Chamber also admitted expert evidence at the trial, guided by recognised and established principles in this area of the law. As to (a) the admissibility:<sup>42</sup> (i) that the subject matter of the proposed expert testimony is a proper topic for expert evidence and not a matter within the knowledge and experience of the court; (ii) that where the subject matter is a proper one for expert evidence, it must be relevant in the sense of assisting the court to determine an issue in dispute; (iii) that the expert must possess the necessary qualifications and credentials in the professed field of expertise; (iv) that the reasoning or methodology underlying the testimony must be valid and properly applicable to the facts in issue; and (v) that the expert must be independent.<sup>43</sup>

53. As to (b) the weight or probative value of the expert testimony, the Chamber took guidance from these principles: (i) that the expert must not determine the ultimate issue, that is, draw inferences or conclusions as to the guilt or innocence of the accused; (ii) that the expert must not usurp the function of the Court in assessing the credibility or truthfulness of a witness; (iii) that the expert's role is to express opinion or opinions on findings of fact but not to make those findings of fact; (iv) that the Court is not bound to accept the evidence of an expert; (v) that the criteria for evaluating the probative value of expert testimony includes mainly: (a) the professional competence of the expert; (b) the methodologies or reasoning underlying the expert evidence; (c)

<sup>41</sup> See *Mogroy v. Director of Public Prosecutions*, (1973), 1 A11 ER. 503, [England].

<sup>42</sup> See May and Wierda, *International Criminal Evidence*, pp. 199-200.

<sup>43</sup> These principles are based, with certain modifications, on the principles operative within national law systems. In this regard, it is noteworthy that the recent jurisprudence of Canada on the subject of expert evidence bears striking resemblance to the approach adopted by international criminal tribunals. The new "principled approach" to hearsay allows such evidence to be admitted if it is both necessary and reliable, for example, if the circumstances surrounding the evidence sufficiently assures the Court of its trustworthiness. Where expert evidence contains hearsay, this fact will diminish the weight to be attached to such expert evidence. By comparison, the Australian law is close to its Canadian counterpart. In Australia, it is explicitly required that when experts use hearsay information as a basis for their opinions, their reliance on such information must be reasonable. The formula is that the greater the hearsay remainder of an opinion's basis, the less reliable it will be. In the United States, the approach to expert evidence is a two-pronged one: reliability and relevance. In determining reliability, the Court must engage in a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether the reasoning can properly be applied to the facts in issue. In addition, when determining scientific reliability, the trial judge should consider: (a) whether the proffered knowledge can be or has been tested, (b) whether the theory or technique has been subjected to peer review, (c) the known or potential rate of error, and (d) whether the theory or technique has gained general acceptance in the relevant scientific discipline. See *Daubert v. Merrel Dow Pharmaceuticals Inc.* (113) S.Ct. 2786 (1993) [United States of America], a leading decision in the U.S.A.; see also the earlier case of *Frye v. United States*, 293 F. 1013 (DC.Cir.) (1923).

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the credibility of the findings made in the light of (a) and (b) and other evidence accepted by the Court.

54. The Chamber also throughout, exercised due judicial vigilance against the possibility of using inferences to fill gaps in the evidence of both Prosecution and Defence, without prejudice to the application of commonsense in drawing reasonable inferences where necessary, especially as required for the purposes of proof by circumstantial evidence.

## PART SIX: FINDINGS OF FACT

### I. Introduction

55. In this Part of the Opinion, I direct my attention to the major feature of the case, to wit, the findings of fact.

### II. Findings of Fact

56. Recalling my earlier observation as to the extremely fact-intensive nature of this case and recalling the application of the evidentiary principles set out in Part Five of this Opinion in arriving at the findings of fact, I endorse the entire findings of fact embodied in the Main Judgement, subject to what I have already stated in Part One, paragraph 3 of this Opinion in relation to the small segment of findings of fact on the issue of ritual killings and the initiation process. I also endorse fully the findings of fact as to the structure and organisation of the CDF and the Kamajors as contained in the Main Judgement.

### III. Factual Guilt

57. In this Part of the Opinion, I take the view that the facts as established by the Prosecution's evidence indeed do prove beyond reasonable doubt the factual guilt of the Accused in respect of the charges as laid in the several Counts of the Indictment. However, It is trite learning that proof of factual guilt does not entirely dispose of the ultimate question of whether either Accused is guilty or not of the offences charged. In short, in elementary legal vocabulary, proof of the *actus reus* alone is not sufficient to constitute criminal liability. Hence, in Part Six of this Opinion, I address briefly the issue of legal guilt as found in the Main Judgement and reserve for a comprehensive analysis in Part Eight, the issue of possible valid defences open to the Accused on a



reasonable interpretation of the totality of the evidence and their entitlement in accordance with the doctrine of fundamental fairness, to a consideration of the merits or otherwise of such defences.

## PART SEVEN: LEGAL FINDINGS

### I. Introduction

58. In this Part of the Opinion, while concurring with certain legal findings in the Main Judgement as a key aspect of the determination of the ultimate question of guilt or innocence, I deem it appropriate to emphasize the importance of the distinction between factual guilt and legal guilt as part of the analytical foundation of the latter segment of my dissenting stance in this case.

### II. Distinction Between Factual Guilt and Legal Guilt

59. The distinction between factual guilt and legal guilt has long been recognised in the domain of the criminal law. Findings of fact essentially point to and prove the factual guilt of the accused; findings of law are predicated upon the notion of legal guilt. Despite their importance in the liability-equation, findings of fact are not sufficient to establish legal guilt; there must be findings of law also. I reiterate therefore that findings of law entail a determination whether the law, when applied to the facts, show that the accused is both factually and legally guilty. Where he is only factually guilty, it is not sufficient as a basis for a conviction. He must also be legally guilty, a key element of which is proof of the criminal intent. It is settled law that, generally, proof of criminal intent is by circumstantial rather than by positive or direct evidence.

60. Convinced that the Trial Chamber was thus guided, and proceeded accordingly, I endorse unreservedly the legal findings in the Main Judgement on this aspect of the case in respect of Counts 1, 3, 6 and 8 as regards Accused Moinina Fofana and Counts 1, 3, and 6 as regards Accused Allieu Kondewa.

61. Moreover, for the sake of completeness, it thus seems to me that it ought to be emphasized that the Chamber adhered scrupulously to the exacting and stringent criteria meticulously crafted by the international community for determining the criminal liability of persons charged with crimes against humanity and war crimes. Besides, remaining vigilant throughout about the



obligation of the Prosecution to prove beyond reasonable doubt the charges brought, the Chamber kept in focus that to discharge this burden, the Prosecution must satisfy conjunctively two layers of requirements, namely, the *chapeaux* elements and the constitutive or specific elements of each crime. In effect, a conviction in law cannot be obtained where the Prosecution proves only the *chapeaux* elements without proving the specific elements of the crime and *vice versa*. By parity of reasoning, where the evidence in respect of any *chapeaux* or specific element does not measure up to proof, no liability attaches to an accused.

## PART EIGHT: POSSIBLE DEFENCES RAISED BY THE TOTALITY OF THE EVIDENCE

### I. Divergence from Main Judgement

62. Having agreed with the legal findings in the Main Judgement, in respect of the aforesaid Counts, one crucial issue remains for my judicial determination. It is whether, on a reasonable interpretation of the evidence, the facts and circumstances do raise, in favour of the Accused, any possible defence or defences to criminal liability whether under Article 6(1) or Article 6(3) of the Statute. This is where, as stated in Part One of this Opinion, I significantly depart from the verdict of the Main Judgement in respect of Accused Moinina Fofana on Counts 2, 4, 5 and 7 and in respect of Accused Allieu Kondewa on Counts 2, 4, 5, 7 and 8. It is, to my mind, a liability rather than a post-trial issue.

63. In this connection, I am guided by two key principles in the sphere of criminal adjudication. The first is that “to establish criminal liability the prosecution must prove that the accused or defendant did the act which is the target of the criminal law’s prohibition and that he had the requisite mental state.”<sup>44</sup> The second is that even where the prosecution has proved the *actus reus* and the *mens rea* of the offences charged, this “does not imply that criminal liability automatically attaches to the accused or defendant. His conduct may well have been, in the eyes of the law, justifiable or excusable.”<sup>45</sup> Stated slightly differently, it has been long established law , firstly, that in all criminal cases the prosecution has the burden of proof, and secondly, that even

<sup>44</sup> Bankole Thompson, *The Criminal Law of Sierra Leone*, (Maryland: University Press of America Inc., 1999) p. 259, [Thompson, *The Criminal Law of Sierra Leone*]

<sup>45</sup> *Ibid.* p. 259.

when the prosecution has proved the elements of the crime beyond reasonable doubt, the accused persons may still be exonerated from criminal liability by reason of certain defences.<sup>46</sup>

64. These fundamental principles were concisely stated by Professor Glanville Williams in these terms:

“That a person does a forbidden act, even intentionally, does not mean that he is necessarily guilty of the offence. Various defences are recognised, quite apart from the defence of absence of the requisite element or degree of fault. Among the circumstances of justification or excuse are self-defence, duress, and (in some cases) the consent of the person affected. A verdict of “not guilty” does not necessarily mean that the defendant did not do the forbidden act. It may mean that he did not have the requisite mental state or other fault element, or else had some justification or excuse.”<sup>47</sup>

65. I reiterate that it is precisely this question as to whether, on a reasonable interpretation of the totality of the evidence adduced before the tribunal, the Accused are entitled to some recognised defence or defences to criminal liability that is the anchor and bedrock of my Opinion. This is where my main judicial divergence from the Main Judgement originates and rests. In my considered judgement, a close examination and interpretation of the totality of the evidence adduced before the Court in this case, do reasonably raise certain defences to wit, necessity and the doctrine of *salus civis suprema lex est*, in favour of the Accused. And, I so find, significantly, as a preliminary issue.

66. Based on the foregoing significant preliminary finding, the proper judicial inquiry now is whether in applying the principles of law governing the said defences, there is cogent, compelling and conclusive evidence to justify a conclusion or conclusions of law that the Accused are entitled to be exonerated from criminal liability under Articles 6(1) and 6(3) in respect of the offences charged by reason of the said defence or defences. In determining this key issue, it is necessary, in this Part of the Opinion, (a) to explore the state of the law governing the said defences in both the municipal law systems and the international law system and (b) to apply the principles of law to the facts and circumstances of the case, as disclosed by the evidence adduced before the tribunal so as

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<sup>46</sup> Joel Samaha, *Criminal Law*, (Wadsworth Thomson Learning Inc., Belmont, 2001) p. 212, [Samaha, *Criminal Law*].

<sup>47</sup> *Textbook of Criminal Law*, (London: Stevens & Sons Ltd, 1978) pp. 38-39.

to determine whether these defences do, as a matter of law, avail the Accused herein in respect of the crimes as laid in the Indictment.

67. It is settled law in national criminal law jurisdictions that even where an accused person does not plead or raise a specific or special defence in answer to the charge yet, if on a reasonable interpretation of the evidence, the facts and circumstances do raise certain possible defences to the alleged crimes, it is incumbent on the adjudicating body to, at least, consider the merits or otherwise, of such a defence or defences. It matters not whether the defence is raised directly, indirectly, obliquely, or implicitly. There is absolutely no ground of principle why the same doctrine should not apply in the sphere of international criminal justice. It is pre-eminently a matter of dispensing even-handed justice.

#### (A) NECESSITY

#### II. Introduction

68. An examination of the totality of the evidence adduced before the Trial Chamber amply reveals, in my considered judgement, a claim by the Accused that the CDF and the Kamajors were fighting to restore the lawful and democratically elected Government of President Kabbah to power after the May 25, 1997 *coup* by the Armed Forces Revolutionary Council (AFRC). The records indicate that the Prosecution admitted that the Kamajors were fighting for the restoration of democracy.<sup>48</sup>

69. Based on the foregoing, it is evident that the defence of necessity is implicated in the facts of this case. Consistent with this reasoning, on a reasonable interpretation of the evidence, as a whole, I strongly opine that the defence of "necessity" is open to the Accused as an answer to the charges in the Indictment on the grounds that the preservation of democratic rule is a vital interest worth protecting at all cost in the face of rebellion, anarchy and tyranny. As I comprehend it, the position taken throughout the trial by the Accused and their witnesses is that the military efforts of the CDF and the Kamajors in the war were dictated by the overwhelming and compelling necessity of restoring the lawful and democratically elected Government of President Kabbah to power

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<sup>48</sup> See Transcript of Trial dated 8<sup>th</sup> May 2006, Statement of Desmond de Silva (now Sir Desmond), Counsel for the Prosecution, p. 2, lines 23-26.

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following the overthrow of the said Government on May 215, 1997 by the Armed Forces Revolutionary Counsel (AFRC).

70. It is not my comprehension, and there is no supporting evidence to this effect, that they were acting under the orders of President Kabbah. Logically, therefore, Article 6(4) of the Statute of the Court does not apply. As a matter of both logic and practicality, the facts and circumstances of the case, as gathered from the totality of the evidence, reasonably speak to necessity as a possible defence in the context of determining the question of the guilt or innocence of the Accused. I shall now proceed to examine the merits or otherwise of necessity as a defence to the case against the Accused. Before doing so, let me postulate that the relevant authorities (case-law and textual), ancient and modern, agree that necessity, as a principle, can provide a defence to conduct that is in violation of the law.

### III. Legal Analysis

71. Analytically, it is important to note that despite the existence of clearly-defined principles or propositions of law on the defence of necessity found in the jurisprudence of municipal law systems and international law, yet necessity, as a principle, remains acutely controversial and continues to be fraught with subtleties of legal interpretation. Writing elsewhere<sup>49</sup> on this theme, I put the issue in context in these terms:

“From the historical perspective of the English common law, the evolution of the defence of necessity bristles with conceptual and doctrinal difficulties. These controversies are still unsettled. According to Stephen (1950, 216), the defence of necessity is ‘a subject on which the law of England is so vague’ and is essentially a matter of judicial expediency. It is this kind of reasoning that crystallised into the notion today that necessity is nothing more than a dispensing power exercised by judges to remove the stigma of illegality from acts that are manifestly illegal, and that it is not a true defence to criminal liability. Hence, the characterization in Latin: *Necessitas facit licitum quod alias non est licitum*, meaning necessity makes that lawful which otherwise is not lawful. Providing some relief from this scepticism about the doctrine’s true nature is a submission of Williams (1961, 724) that necessity is recognised by English law, and particularly by the criminal law, conceding that the ‘peculiarity of necessity as a doctrine of law is the difficulty or impossibility of formulating it with any approach to precision’ (1953, 218). In so far as its application within the domain of the criminal law is concerned, necessity has always been

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<sup>49</sup> See Thompson, *The Criminal Law of Sierra Leone, supra*, pp. 267-268.



depicted as a choice between two evils, one of which involves contravening the law and the other the infliction of some serious harm on the action of another person, infringing the law always being perceived as the lesser and justifiable option."<sup>50</sup>

72. As a principle, the conceptual origins of necessity can be traced back to a practical example given by Aristotle to which the principle can properly apply. It is that of the jettisoning of cargo from a ship in distress.<sup>51</sup> According to Aristotle, "any sensible man" would do so for the safety of both himself and his crew. Hobbes summed up his view of the doctrine in these terms:

"If a man by the terrour of present death, be compelled to doe a fact against the Law, he is totally Excused; because no Law can oblige a man to abandon his own preservation. And supposing such a Law were obligatory: yet a man would reason presently thus, if I doe it not, I die presently: If I doe it, I die afterwards; therefore by doing it, there is time of life gained; nature therefore compells him to the fact."<sup>52</sup>

73. Pondering on the action of a person who sacrifices the life of another person so as to save his own life, Kant wrote:

"A penal law applying to such a situation could never have the effect intended, for the threat of an evil that is still uncertain (being condemned to death by a judge) cannot outweigh the fear of an evil that is certain (being drowned). Hence, we must judge that, although an act of self-preservation through violence is not inculpable, it still is unpunishable."<sup>53</sup>

74. In its articulation of the rationale behind necessity, as a principle, the Canadian Law Reform Commission noted thus:

"The rationale of necessity, however, is clear. Essentially it involves two factors. One is the avoidance of greater harm or the pursuit of some greater good, the other is the difficulty of compliance with the law in emergencies. From these two factors emerge two different but related principles. The first is a utilitarian principle to the effect that, within certain limits, it is justifiable in an emergency to break the letter of the law if the breaking the law will avoid a greater harm than obeying it. The second is a humanitarian principle to the effect that, again within limits, it

<sup>50</sup> *Ibid.*

<sup>51</sup> See D. Ross (trans) *Aristotle's Nichomachean Ethics, Book III*, (Oxford: Oxford World Classics, 1975) p. 49.

<sup>52</sup> *Leviathan*, (Pelican ed., 1968) p. 157.

<sup>53</sup> John Ladd (trans), *The Metaphysical Elements of Justice*, by Immanuel Kant, (Indianapolis: Bobbs-Merrill, 1965) p. 41.

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is excusable in an emergency to break the law if compliance would impose an intolerable burden on the accused.”<sup>54</sup>

75. With that historical overview of the doctrine of necessity, it needs to be emphasized that the conceptualisation of necessity in excusatory and justificatory terms is a matter of much legal subtlety and theoretical complexity. This view is reinforced by the observation that, as a defence, necessity:

“rests on a realistic assessment of human weakness, recognizing that a liberal and humane criminal law cannot hold people to the strict obedience of laws in emergency situations where normal human instincts, whether of self-preservation or of altruism, overwhelmingly impel disobedience.”<sup>55</sup>

76. This perspective of the defence is further underscored in these terms:

“The rationale of the necessity defence is not that a person, when faced with the pressure of circumstances of nature, lacks the mental element which the crime in question requires. Rather, it is this reason of public policy: the law ought to promote the achievement of higher values at the expense of lesser values, and sometimes the greater good for society will be accomplished by violating the literal language of the criminal law.”<sup>56</sup>

77. Having set out the rationale of the principle of necessity, I shall now proceed to survey the municipal law principles applicable to the defence. Firstly, the English law principles governing the defence of necessity derive their origin from what may be described as the seminal case of *R v. Dudley and Stephens*. There, Lord Coleridge, CJ, cited a key passage from the learned persons who formed the Commission for preparing the Criminal Code, as follows:

“We are certainly not prepared to suggest that necessity should in every case be a justification. We are equally unprepared to suggest that necessity should in no case be a defence; we judge it better to leave such questions to be dealt with when, if ever, they arise in practice by applying the principles of law to the circumstances of the particular case.”<sup>57</sup>

<sup>54</sup> See Working Paper 29 of the Law Reform Commission of Canada at p. 93.

<sup>55</sup> *Perka v. The Queen*, (1989) 2 SCR.234 at p. 248.

<sup>56</sup> See W.R. LaFave and A.W. Scott, *Handbook On Criminal Law*, (St. Paul: West Publishing Company, 1972) p. 382.

<sup>57</sup> (1884) 14 QBD 273 at p. 286, [England]. The facts in that case were that D and S, seamen, and the deceased, a boy aged between 17 years and 18 years, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean, and was probably more than 1000 miles from land that on the 18<sup>th</sup> day, Case No. SCSL-04-14-J

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The learned Chief Justice then went on to say:

“Now, except for the purpose of testing how far the conservation of a man’s own life is in all cases and under all circumstances, an absolute, unqualified, and permanent duty, we exclude from our consideration all the incidents of war.”

Sir James Stephen suggests:

“It is just possible to imagine cases in which the expediency of breaking the law is so overwhelmingly great that people may be justified in breaking it; but these cases cannot be defined beforehand.”<sup>58</sup>

78. According to the learned editors of *Archbold*, the test that should be satisfied for the defence of necessity to succeed is: Was what the accused did actually necessary to avoid the evil in question?<sup>59</sup>

79. The Canadian law on necessity may be summarised thus: The defence must be grounded either on excuse or justification. The act of the accused must have been done in the interest of self-preservation, characterised not by reference to its voluntariness but by its unpunishable nature. Mere negligence or involvement in criminal or immoral activity when the emergency arose will not disentitle an accused from relying upon the defence. Where sufficient evidence is placed before the court to raise the issue of necessity, the onus rests with the Prosecution to rebut the defence and prove beyond reasonable doubt that the act of the accused was voluntary. At a minimum the situation must be so imminent and the peril so pressing that normal human instincts cry out for action and make counsel of patience unreasonable.<sup>60</sup>

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when they had been 7 days without food and 5 days without water, D proposed to S that lots should be cast as to who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the 20<sup>th</sup> day D, with the assent of S killed the boy, and both of them fed on his flesh for 4 days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief, and that under these circumstances there appeared to them every probability that unless they then or very soon fed on the boy, or one of themselves, they would die of starvation. Later, they were rescued. Upon those facts, they were indicted for murder and convicted. It was held that upon the said facts, there was no proof of any such necessity justifying the killing of the boy; See also *Morgentaler v. The Queen* (1976) 1 SCR 616, [Canada].

<sup>58</sup> See Sir James Stephens, *A History of the Criminal Law of England*, (London: MacMillan, 1883) p. 109.

<sup>59</sup> P.J. Richardson et al., *Archbold, Criminal Pleading, Evidence and Practice*, (London: Sweet and Maxwell, 1997), para 17-132.

<sup>60</sup> See *Perka v. The Queen* (1984) 2 SCR 234 per Wilson J, [Canada].

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80. In the United States of America, the principle of necessity is also known as the “choice - of - evil” defence. The gist of the defence is making the right choice, namely, choosing the lesser of two evils. The defence is provided for in Section 3.02 of the *Model Penal Code* which states that:

1. Conduct that the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

- (a) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offence.<sup>61</sup>

The application of the law in the U.S. requires three steps: (i) identification of the evils; (ii) ranking of the evils; and (iii) choosing the lesser.

81. Two key principles of law emanate from the municipal case-law authorities on the subject of the defence of necessity. The first is that necessity is a defence to criminal liability. The second is that whether a defence of necessity succeeds or not will depend upon the particular facts and circumstances of each case.

82. In the international law sphere, the first reference to the defence is found in the writings of Grotius. He noted that:

“a people may sometimes be engaged in war against their will, where they cannot be justly charged with entertaining hostile intentions.”<sup>62</sup>

83. In line with the tradition of Grotius on the subject, Weiden observed that:

“...The doctrine has been approved by the early classic writers of International Law. It has supporters and adversaries - not only among German and other Continental writers, but even among English authorities. It has been recognised by the practice of most Great Powers. The doctrine, it is submitted, is not subversive, but contributory to an effective working of International Law.”<sup>63</sup>

<sup>61</sup> See Samaha, *Criminal Law*, p. 261-262. In the U.S., 21 States have enacted necessity defence statutes that have followed the *Model Penal Code* provisions.

<sup>62</sup> A.C. Campbell (trans), *On the Law of War and Peace, De Jure Belli ac Pacis*, Book III, [London: Kessinger Publishing Co., 1814] chapter 11. It is also noteworthy that in one of Euripides tragedies, there is the proverb which says that “to kill a public enemy, or an enemy in war is no murder.”

<sup>63</sup> Paul Weiden, “Necessity in International Law”, *Transactions of Grotius Society*, Vol. 24 Problems of Peace and War Papers (1938) pp. 105-132.

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84. Modern support for the recognition of the defence in international law derives from the *Gabcikovo - Nagymaros Project Case between Hungary and Slovakia*<sup>64</sup>. There, it was acknowledged by the International Court of Justice that necessity does exist as a defence under international law, but that by reason of international practice and case-law it has been strictly circumscribed. In that case, the Court clearly expressed the view that the defence of necessity was in fact recognised by customary international law and it was a ground available to States in order to evade international responsibility for wrongful acts.

85. Relying on the foregoing exposition of the law governing the defence of necessity in both municipal law and international law, the next judicial inquiry is whether the defence is legally sustainable as an answer to the charges against the Accused. In my considered view, the gist of the defence inferred from the totality of the evidence derives from the compelling and overwhelming preoccupation of the CDF and the Kamajors, to prevent the State of Sierra Leone from further destabilisation and disintegration, restore the democratically elected Government of Sierra Leone to power thereby regaining constitutional legitimacy, a fact admitted by the Prosecution

86. Predicated on this premise, I shall now proceed to consider whether the facts of the case, as gathered from the totality of the evidence, are so compelling as to justify reasonably a conclusion of law that necessity does provide an excuse for the crimes of the Accused, due regard being paid to the principle found in municipal law systems and international law that whether a defence of necessity succeeds or not will depend upon the particular facts and circumstances of each case, an issue that is not determinable beforehand.

87. In addressing this issue and based on the authorities, I postulate judicially as follows:

(1) The defence of necessity is a free-floating, residual excuse that attaches to every crime (although in some jurisdictions, not to homicide);<sup>65</sup>

(2) Where the evil sought to be avoided by the criminal act is greater than the act would cause, the actor is permitted to choose the criminal act;<sup>66</sup>

<sup>64</sup> ICJ Rep. 1997, See also *the Construction of a Wall Case (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)* ICJ Adv. Op. 9 July 2004.

<sup>65</sup> See Larry Alexander in Jules Coleman and Shapiro, Scott (eds.), *The Oxford Handbook of Jurisprudence and Philosophy of Law*, [Oxford: Oxford University Press, 2004] p. 844. Note, however, that this author views the defence in justificatory terms.

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(3) (a) What counts as a lesser evil is not legislatively specified but is left for case by case development;<sup>67</sup>

(b) The categories of what may count as a lesser evil are not fixed;

(4) The defence of necessity can avail an accused standing trial for crimes against humanity and war crimes where it is a reasonable inference from the totality of evidence adduced before the court that his non-compliance with the law was the lesser evil;

(5) The restoration of democracy to a country where there has been a violent overthrow of the lawful and democratically elected government is a supreme end or a good worth pursuing even if effected through launching military attacks to dislodge a usurping regime, where this is the only reasonable and viable option;

(6) The preservation of democratic rule in the contemporary world setting with its emphasis on a global culture that espouses freedom and human dignity as key values of modern civilisation is a vital interest of individual states and the international community in general worthy to be defended at all costs in the face of rebellion and anarchy.

88. Bearing in mind the foregoing legal exposition, I have given due consideration to the principles of law governing the defence of necessity articulated herein, and applying them to the facts and circumstances of this case, as gathered from the totality of the evidence, I have, on a reasonable interpretation of the said evidence, come irresistibly to the conclusion that the defence of necessity is clearly legally sustainable to excuse both Accused from liability in respect of the offences for which they have been found guilty. Accordingly I hold that, in the uniquely peculiar circumstances of this case, necessity succeeds as a valid defence. In effect, to plead in answer to charges of criminal conduct that took place during military encounters to suppress a rebellion against the legitimate government of a State and to restore the said democratically elected government to power is certainly not, in my judicial thinking, a fanciful defence.

89. Admittedly, cases of such bizarre factual dimensions and legal complexity do present judges with the agonising dilemma of reconciling two conflicting interests, to wit, the need for "the law to promote the achievement of higher values at the expense of lesser values", realising that

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<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

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“sometimes the greater good for society will be accomplished by violating the literal language of the criminal law”, of which the judges are themselves the assigned custodians.

90. Predicated upon these premises, there can be little doubt that in the context of the intensely conflictual situation prevailing at the material time in Sierra Leone dominated by utter chaos, fear, alarm and despondency, fighting for the restoration of democracy and constitutional legitimacy could be rightly perceived as an act of both patriotism and altruism, overwhelmingly compelling disobedience to a supranational regime of proscriptive norms.

#### IV. Significant Legal Findings

91. In the light of the foregoing considerations, I find specifically as follows:

- (i) that the emergency or peril to which the Accused as members of the Kamajor's group or CDF were responding was a real one;
- (ii) that the aforesaid emergency or peril indeed constituted an immediate threat of harm purportedly feared, to wit, fear, utter chaos, widespread violence of immense dimensions resulting from the *coup*, and intense discomfiture, locally and nationally;<sup>68</sup>
- (iii) that the response to the emergency was indeed proportionate, to wit, the use of military force to counter the overthrow of the lawful and democratically elected by military means;
- (iv) that acquiescence in the violent overthrow of the lawful government could certainly not have been a reasonable alternative open to the Kamajors or CDF at the material times;
- (v) that fighting for the restoration of the lawful and democratically elected government to power was indeed vital to the survival of the State of Sierra Leone;
- (vi) that the collective defensive response was supported by President Kabbah, the *de jure* sovereign, vested with the supreme executive authority of the Republic.

92. In sum, I cannot judicially see my way clear to holding the Accused liable for their acts as charged in the Counts of the Indictment. I hold that, on a reasonable interpretation of the evidence, as a whole, their legal guilt in respect of Counts on which they have been convicted is excusable in the eyes of the law on the grounds of the defence of necessity. I recognise that there

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<sup>68</sup> Creating an atmosphere depicting Shakespeare's portrayal of "fair is foul and foul is fair", (Macbeth, Act I, scene 1).

may be valid legal reasons for adopting a restrictive approach to the application of the defence of necessity in the context of international humanitarian law transgressions but it is equally valid that to adopt a hyper-restrictive approach may lead to injustice.

## (B) *SALUS CIVIS SUPREMA LEX EST*

### I. Introduction

93. By parity of reasoning, I find that, on a reasonable interpretation of the evidence adduced before the Chamber, another defence seems open to the Accused. It is what is compendiously referred to in Latin as *Salus civis suprema lex est*, meaning the safety of the state is the supreme law.

### II. Legal Analysis

94. This defence bears some conceptual and doctrinal affinity to the defence of necessity when applied to emergencies threatening the vital or essential interests of the State. In his celebrated writing *The Science of Right*, Kant put it in perspective in these terms:

“It is by the co-operation of these three powers - the legislative, the executive, and the judicial - that the state realizes its autonomy. This autonomy consists in its organizing, forming, and maintaining itself in accordance with the laws of freedom. In their union the welfare of the state is realized. *Salus rei publicae suprema lex*. By this is not to be understood merely the individual well-being and happiness of the citizens of the state; for as Rousseau asserts - this and may perhaps be more agreeably and more desirably attained in the state of nature, or even under a despotic government. But the welfare of the state, as its own highest good, signifies that condition in which the greatest harmony is attained between its constitution and the principles of right - a condition of the state which reason by a categorical imperative makes it obligatory upon us to strive after.”<sup>69</sup>

95. Salmond in his classical work on *Jurisprudence*<sup>70</sup> observes that:

“Of all forms of human society the greatest is the State. It has immense wealth and performs functions which in number and importance are beyond those of all other associations.”

<sup>69</sup> W. Hastie (trans), *The Science of Right*, (Germany: Eris Etext Project, 1790)

<sup>70</sup> (1937) 9<sup>th</sup> ed., (London: Sweet and Maxwell, 1937), p. 443.



96. In the celebrated case of *Venn v. The State*<sup>71</sup>, the Sierra Leone Supreme Court noted that:

“Authorities agree on certain essential attributes of a State - population, territory, a government clothed with a monopoly of force for the preservation of peace and order and having a plenitude of authority within its territory independent of external control.”

### III. Significant Legal Finding

97. Based on the foregoing legal analysis, I find that the evidence, in its totality, points irresistibly to the conclusion that the CDF and Kamajor resistance efforts were directed at the preservation of the safety of the State of Sierra Leone which, at the material time, was threatened by the forces of rebellion and anarchy.

### PART NINE: CONCLUSION

98. By any objective reckoning, it seems to me that in the cruel world of military combat, irrespective of the socio-cultural context, human actions, impelled as they are by the primordial instinct of self-survival, do fall short of the anthropomorphic conception of justice which we judges are accustomed to apply in determining the permissibility or impermissibility of such actions from the proscriptive perspective. This is particularly so when it is acknowledged that even international criminal law which seeks to punish deviant conduct of international law dimensions does recognise the reality that every “armed conflict is made up of criminal and non-criminal use of force”<sup>72</sup>, a distinction, invariably indiscernible depending on the nature and complexity of the evidence adduced by the Prosecution especially where such evidence seeks to establish and attach liability for collective criminality.

99. In this regard, let me observe that one rather disturbing feature of the Prosecution’s evidence as it unfolded was that of a veiled indication that the Prosecution’s case was based on some further extended version of the notion of joint criminal enterprise approximating to the doctrine of guilt by association, requiring attribution of culpability to the entire Kamajor society for atrocities committed by some or rogue Kamajors. It is a fact that the Kamajor society is a distinct local cultural entity, indigenous to a specific geographical area of Sierra Leone whose

<sup>71</sup> (1974-82) 1 SLBALR 172 at p. 181, [Sierra Leone].

<sup>72</sup> See Gerhard Werle, *Principles of International Criminal Law*, (The Netherlands: T.M.C. Asser Press, 2005) p. 29.

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purpose is not to engage in criminality. It is not an organisation “institutionally intent upon actions contrary to international humanitarian law.”<sup>73</sup> Guilt by association, in contemporary juristic thinking, is a “thoroughly discredited doctrine”<sup>74</sup>. It is an established principle of international criminal law that “crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”<sup>75</sup>

100. Based on the legal analyses and considerations in Part Eight, and predicated upon the totality of the evidence in this case, I reiterate and hold that it is a reasonable conclusion that the CDF and the Kamajors’ involvement in the hostilities that took place in Sierra Leone culminating in the charges in the Indictment which has been the subject of this trial was primarily dictated by these considerations of necessity:

- (i) self-preservation as citizens of the Republic whose essential interests, individually and collectively, had been gravely imperilled by the prevailing state of affairs at the time;
- (ii) preventing the further destabilisation and eventual disintegration of the State resulting from the military takeover;
- (iii) restoring the lawful and democratically elected government of President Kabbah, the *de jure* sovereign, to power;
- (iv) restoring constitutional legitimacy thereby upholding the supremacy of the Constitution of Sierra Leone and the President as its guardian;
- (v) preventing further and continuing breakdown of law and order, characteristic of “failed States”.

101. The evidence also reasonably shows that the safety of the State of Sierra Leone, as the supreme law, became for the CDF and the Kamajors the categorical imperative and paramount obligation in their military efforts to restore democracy to the country. I entertain more than serious doubts whether in the context of the uniquely peculiar facts and circumstances of this case

<sup>73</sup> Antonio Cassese, *International Criminal Law*, (Oxford: Oxford University Press, 2003) p 245.

<sup>74</sup> *Uphaus v. Wyman*, (1959) 360 US 72, 79 [United States].

<sup>75</sup> Instructively, see International Military Tribunal, Judgement, in the Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945 - October 1, 1946 (1947) 171 at p. 223.

a tribunal should hold liable persons who volunteered to take up arms and risk their lives and those of their families to prevent anarchy and tyranny from taking a firm hold in their society, their transgressions of the law notwithstanding.

102. Finally, from my judicial perspective, the issue is not one of the moral guilt of the Accused herein, reprehensible though some of the proven atrocities are from that viewpoint. Were moral guilt deemed to be co-extensive with criminal liability, then the Accused persons would clearly be criminally liable pursuant to Article 6(1) and Article 6(3) in respect of the Counts for which they have been adjudged guilty in the Main Judgement. I take it as granted that in the context of modern operative criminal justice systems, nationally and internationally, moral guilt bears no conceptual equivalence to legal guilt, a view reinforced by the express statutory mandate of the international community to pay due regard to the principle of legality rather than moral or political considerations in international criminal adjudication. Hence, the importance of this legal distinction for the purposes of this Opinion. It is true, in language reminiscent of Martin Luther King, Jr., that it is not always that “the arc of the moral universe bends toward justice”.

103. Given, therefore, the uniquely peculiar facts and circumstances of this case coupled with the legal complexities posed thereby, in the context of armed hostilities where one of the fighting groups was engaged in defensive military action to restore the lawful and democratically elected government to power, I hold that the crimes in respect of which the Accused, as members of the CDF or Kamajors, have been found guilty are, in the circumstances, excusable by reason of the defences discussed in Part Eight of this Opinion.

**PART TEN: DISPOSITION**

104. Having considered the totality of the evidence adduced before the Trial Chamber, the arguments of both the Prosecution and the Defence, the factual and legal findings as determined by the Chamber in the Main Judgement, and concurring with the findings of not guilty in favour of the Accused Moinina Fofana in respect of Counts 1, 3, 6 and 8 and in favour of the Accused Allieu Kondewa respect of Counts 1, 3 and 6 and based on the several considerations, analyses, and significant legal findings in Part Eight of this Opinion, I, Hon. Justice Bankole Thompson, one of the judges of Trial Chamber I of the Special Court for Sierra Leone, hereby decide as follows:



(1) That Second Accused, MOININA FOFANA is found NOT GUILTY and accordingly ACQUITTED on the following Counts:

COUNT 2

COUNT 4

COUNT 5

COUNT 7

(2) That Third Accused, ALIEU KONDEWA is found NOT GUILTY and accordingly ACQUITTED on the following Counts:

COUNT 2

COUNT 4

COUNT 5

COUNT 7

COUNT 8

Done in Freetown, Sierra Leone, this 2<sup>nd</sup> day of August, 2007.

Hon. Justice Bankole Thompson



21437

**ANNEX D: CONSOLIDATED INDICTMENT**

003

11

SCSL - 2004 - 14 - PT  
C11 - 21  
THE SPECIAL COURT FOR SIERRA LEONE

21438

CASE NO. SCSL - 03 - 14 - I

**THE PROSECUTOR**

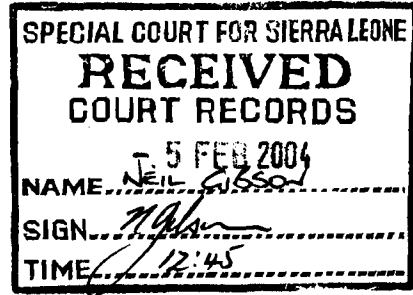
Against

**SAMUEL HINGA NORMAN**

**MOININA FOFANA**

**ALLIEU KONDEWA**

**INDICTMENT**



The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute), charges:

**SAM HINGA NORMAN**

**MOININA FOFANA**

**ALLIEU KONDEWA**

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW** in violation of Articles 2, 3 and 4 of the Statute, as set forth below:

**THE ACCUSED**

1. **SAMUEL HINGA NORMAN**, was born on 1 January 1940, in Ngolala Village, Mongeri (or Monghere), Valunia Chiefdom, Bo District, in the Southern Province of the Republic of Sierra Leone. He served in the Armed Forces of the Republic of Sierra Leone from about 1959 to 1972 rising to the rank of Captain. In 1966 he

graduated from the Mons Officer Cadet School in Aldershot, United Kingdom. He has served as the Liaison Representative and Chiefdom Spokesman, Mongeri, Valunia Chiefdom, as Regent Chief of Jaiama Bongor Chiefdom, and as Deputy Minister of Defence for Sierra Leone. He is currently serving as the Minister of the Interior for Sierra Leone.

2. **MOININA FOFANA**, is believed to have been born in 1950, in Nongoba Bullom Chiefdom, Bonthe District, in the Republic of Sierra Leone. He currently resides in the town of Gbap, Nongoba Bullom Chiefdom, Bonthe District and is the Chiefdom Speaker for the Nongoba Bullom Chiefdom.
3. **ALLIEU KONDEWA, also known as (aka) King Dr Allieu Kondewa, (aka) Dr Allieu Kondewa**, is believed to have been born in the Bo District, in the Republic of Sierra Leone. He currently resides in the Bumpah Chiefdom, Bo District, and his occupation is that of a farmer and herbalist.

#### **GENERAL ALLEGATIONS**

4. At all times relevant to this Indictment, a state of armed conflict existed in Sierra Leone. For the purposes of this Indictment the organized armed factions involved in this conflict included the Civil Defence Forces (CDF) fighting against the combined forces of the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC).
5. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
6. The CDF was an organized armed force comprising various tribally-based traditional hunters. The Kamajors were comprised mainly of persons from the Mende tribe resident in the South and East of Sierra Leone, and were the predominant group within the CDF. Other groups playing a less dominant role were the Gbethis and the Kapras, both comprising mainly of Temnes from the north; the Tamaboros,

comprising mainly of Korankos also from the north; and the Donsos, comprising mainly of Konos from the east.

7. The RUF was founded about 1988 or 1989 in Libya and began organized armed operations in Sierra Leone in or about March 1991. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army comprised the majority of the AFRC membership. Shortly after the AFRC seized power, the RUF joined with the AFRC.
8. The **ACCUSED** and all members of the CDF were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
9. All offences charged herein were committed within the territory of Sierra Leone after 30 November 1996.
10. All acts or omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
11. The words civilian or civilian population used in this indictment refer to persons who took no active part in the hostilities, or were no longer taking an active part in the hostilities.

#### **INDIVIDUAL CRIMINAL RESPONSIBILITY**

12. Paragraphs 4 through 11 are incorporated by reference.
13. At all times relevant to this Indictment, **SAMUEL HINGA NORMAN** was the National Coordinator of the CDF. As such he was the principal force in establishing, organizing, supporting, providing logistical support, and promoting the CDF. He was also the leader and Commander of the Kamajors and as such had *de jure* and *de facto* command and control over the activities and operations of the Kamajors.



14. At all times relevant to this Indictment, **MOININA FOFANA** was the National Director of War of the CDF and **ALLIEU KONDEWA** was the High Priest of the CDF. As such, together with **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA** were seen and known as the top leaders of the CDF. **MOININA FOFANA** and **ALLIEU KONDEWA** took directions from and were directly answerable to **SAMUEL HINGA NORMAN**. They took part in policy, planning and operational decisions of the CDF.
15. **MOININA FOFANA** acted as leader of the CDF in the absence of **SAMUEL HINGA NORMAN** and was regarded as the second in command. As National Director of War, he had direct responsibility for implementing policy and strategy for prosecuting the war. He liaised with field commanders, supervised and monitored operations. He gave orders to and received reports about operations from subordinate commanders, and he provided them with logistics including supply of arms and ammunition. In addition to the duties listed above at the national CDF level, **MOININA FOFANA** commanded one battalion of Kamajors.
16. **ALLIEU KONDEWA**, as High Priest had supervision and control over all initiators within the CDF and was responsible for all initiations within the CDF, including the initiation of children under the age of 15 years. Furthermore, he frequently led or directed operations and had direct command authority over units within the CDF responsible for carrying out special missions.
17. **SAMUEL HINGA NORMAN**, as National Coordinator of the CDF and Commander of the Kamajors knew and approved the recruiting, enlisting, conscription, initiation, and training of Kamajors, including children below the age of 15 years. **SAMUEL HINGA NORMAN**; **MOININA FOFANA**, as the National Director of War of the CDF; and **ALLIEU KONDEWA**, as the High Priest of the CDF, knew and approved the use of children to participate actively in hostilities.
18. In the positions referred to in the aforementioned paragraphs, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, individually or in concert, exercised authority, command and control over all subordinate members of the CDF.

19. The plan, purpose or design of **SAMUEL HINGA NORMAN, MOININA FOFANA, ALLIEU KONDEWA** and subordinate members of the CDF was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included gaining complete control over the population of Sierra Leone and the complete elimination of the RUF/AFRC, its supporters, sympathizers, and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone. Each **Accused** acted individually and in concert with subordinates, to carry out the said plan, purpose or design.
20. **SAMUEL HINGA NORMAN, MOININA FOFANA** and **ALLIEU KONDEWA**, by their acts or omissions are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this indictment, which crimes each of them planned, instigated, ordered, committed, or in whose planning, preparation or execution each **Accused** otherwise aided and abetted, or which crimes were within a common purpose, plan or design in which each **Accused** participated or were a reasonably foreseeable consequence of the common purpose, plan or design in which each **Accused** participated.
21. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **SAMUEL HINGA NORMAN, MOININA FOFANA** and **ALLIEU KONDEWA**, while holding positions of superior responsibility and exercising command and control over their subordinates, are individually criminally responsible for the crimes referred to in Articles 2, 3, and 4 of the Statute. Each **Accused** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and each **Accused** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

## CHARGES

22. Paragraphs 4 through 21 are incorporated by reference.
23. The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone – to include the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and

Bonthe. Civilians, including women and children, who were suspected to have supported, sympathized with, or simply failed to actively resist the combined RUF/AFRC forces were termed “Collaborators” and specifically targeted by the CDF. Once so identified, these “Collaborators” and any captured enemy combatants were unlawfully killed. Victims were often shot, hacked to death, or burnt to death. Other practices included human sacrifices and cannibalism.

24. These actions by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included:
- a. Between 1 November 1997 and about 1 April 1998, multiple attacks on Tongo Field and surrounding areas and towns during which Kamajors unlawfully killed or inflicted serious bodily harm and serious physical suffering on an unknown number of civilians and captured enemy combatants. Kamajors screened the civilians and those identified as “Collaborators,” along with any captured enemy combatants, were unlawfully killed.
  - b. On or about 15 February 1998 Kamajors attacked and took control of the town of Kenema. In conjunction with the attack and following the attack, both at and near Kenema and at a nearby location known as SS Camp, Kamajors continued to identify suspected “Collaborators,” unlawfully killing or inflicting serious bodily harm and serious physical suffering on an unknown number of civilians and captured enemy combatants. Kamajors also entered the police barracks in Kenema and unlawfully killed an unknown number of Sierra Leone Police Officers.
  - c. In or about January and February 1998, the Kamajors attacked and took control of the towns of Bo, Koribondo, and the surrounding areas. Thereafter, the practice of killing captured enemy combatants and suspected “Collaborators” continued and as a result, Kamajors unlawfully killed or inflicted serious bodily harm and serious physical suffering on an unknown number of civilians and enemy

combatants. Also, as part of these attacks in and around Bo and Koribondo, Kamajors unlawfully destroyed and looted an unknown number of civilian owned and occupied houses, buildings and businesses.

- d. Between about October 1997 and December 1999, Kamajors attacked or conducted armed operations in the Moyamba District, to include the towns of Sembehun and Gbangbatoke. As a result of the actions Kamajors continued to identify suspected “**Collaborators**” and others suspected to be not supportive of the Kamajors and their activities. Kamajors unlawfully killed an unknown number of civilians. They unlawfully destroyed and looted civilian owned property.
- e. Between about October 1997 and December 1999, Kamajors attacked or conducted armed operations in the Bonthe District, generally in and around the towns and settlements of Talia, Tihun, Maboya, Bolloh, Bembay, and the island town of Bonthe. As a result of these actions Kamajors identified suspected “**Collaborators**” and others suspected to be not supportive of the Kamajors and their activities. They unlawfully killed an unknown number of civilians. They destroyed and looted civilian owned property.
- f. 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.

#### COUNTS 1 – 2: UNLAWFUL KILLINGS

25. Unlawful killings included the following:
  - a. between about 1 November 1997 and about 30 April 1998, at or near Tongo Field, and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
  - b. on or about 15 February 1998, at or near the District Headquarters town of Kenema and at the nearby locations of SS Camp, and Blama, Kamajors

- unlawfully killed an unknown number of civilians and captured enemy combatants;
- c. on or about 15 February 1998, at or near Kenema, Kamajors unlawfully killed an unknown number of Sierra Leone Police Officers;
  - d. in or about January and February 1998, in locations in Bo District including the District Headquarters town of Bo, Kebi Town, Koribondo, Kpeyama, Fengehun and Mongere, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
  - e. between about October 1997 and December 1999 in locations in Moyamba District, including Sembehun, Taiama, Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed an unknown number of civilians;
  - f. between about October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town, Kamajors unlawfully killed an unknown number of civilians;
  - g. between about 1 November 1997 and about 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants in road ambushes at Gumahun, Gerihun, Jembeh and the Bo-Matotoka Highway.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

**Count 1:** Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute of the Court;

In addition, or in the alternative:

**Count 2:** Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA**

**CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

**COUNTS 3 – 4: PHYSICAL VIOLENCE AND MENTAL SUFFERING**

- 26. Acts of physical violence and infliction of mental harm or suffering included the following:
  - a. between about 1 November 1997 and 30 April 1998, at various locations, including Tongo Field, Kenema Town, Blama, Kamboma and the surrounding areas, the CDF, largely Kamajors, intentionally inflicted serious bodily harm and serious physical suffering on an unknown number of civilians;
  - b. between November 1997 and December 1999, in the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas, and the Districts of Moyamba and Bonthe, the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by the actions of the CDF, largely Kamajors, including screening for “Collaborators,” unlawfully killing of suspected “Collaborators,” often in plain view of friends and relatives, illegal arrest and unlawful imprisonment of “Collaborators”, the destruction of homes and other buildings, looting and threats to unlawfully kill, destroy or loot.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN, MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

**Count 3:** Inhumane Acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute;

In addition, or in the alternative:

**Count 4:** Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of Statute.

**COUNT 5: LOOTING AND BURNING**

27. Looting and burning included, between about 1 November 1997 and about 1 April 1998, at various locations including in Kenema District, the towns of Kenema, Tongo Field and surrounding areas, in Bo District, the towns of Bo, Koribondo, and the surrounding areas, in Moyamba district, the towns of Sembehun, Gbangbatoke and surrounding areas, and in Bonthe District, the towns of Talia (Base Zero), Bonthe Town, Mabayeh, and surrounding areas, the unlawful taking and destruction by burning of civilian owned property.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3.of the Statute, are individually criminally responsible for the crime alleged below:

**Count 5: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f. of the Statute.**

**COUNTS 6 – 7: TERRORIZING THE CIVILIAN POPULATION and COLLECTIVE PUNISHMENTS**

28. 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.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

**Count 6:** Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute;

And:

**Count 7:** Collective Punishments, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.b. of the Statute.

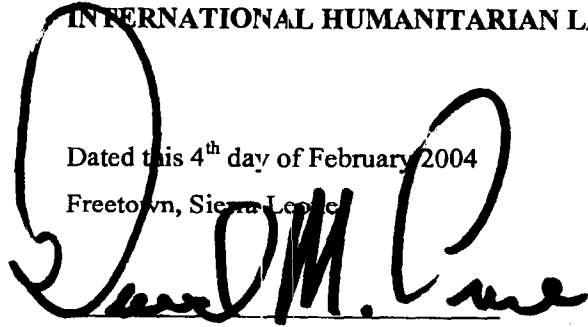
**COUNT 8: USE OF CHILD SOLDIERS**

29. At all times relevant to this Indictment, the Civil Defence Forces did, throughout the Republic of Sierra Leone, initiate or enlist children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, use them to participate actively in hostilities.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN, MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crime alleged below:

**Count 8:** Enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

Dated this 4<sup>th</sup> day of February 2004  
Freetown, Sierra Leone



David M. Crane  
The Prosecutor



## ANNEX E: JUDICIALLY NOTED FACTS

1. During the course of trial, the following facts were judicially noticed as to the truth of their contents:<sup>1</sup>

- (a) The armed conflict in Sierra Leone occurred from March 1991 until January 2002
- (b) The city of Freetown, the Western Area, and the following districts located in the country of Sierra Leone: Kenema, Bo, Bonthe and Moyamba
- (c) Sierra Leone acceded to the Geneva Conventions of 12 August 1949 and Additional Protocol II to the Geneva Conventions on 21 October 1986.
- (d) The junta was forced from power on or about 14 February 1998. President Kabbah's government returned in March 1998.
- (e) Groups commonly referred to as the RUF, AFRC, and CDF were involved in armed conflict in Sierra Leone.

2. During the course of trial, the following documents were been judicially noticed as to their existence and authenticity:<sup>2</sup>

Reports of the Secretary-general of the United Nations on the Situation in Sierra Leone

- (a) 21 November 1995 (S/1995/975)
- (b) 5 December 1997 (S/1997/958)
- (c) 5 February 1998 (S/1998/103)
- (d) 18 March 1998 (S/1998/249)
- (e) 9 June 1998 (S/1998/486)
- (f) 12 August 1998 (S/1998/750)

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<sup>1</sup> *Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Prosecution Motion for Judicial Notice and Admission of Evidence (TC), 2 June 2004, Annex I and II [Judicial Notice Decision (Trial)] In this decision, the Trial Chamber took judicial notice of several other facts that were held by the Appeals Chamber not to qualify (*Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana-Decision on Appeal against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005, p. 20 [Judicial Notice Decision (Appeal)].

<sup>2</sup> Judicial Notice Decision (Trial), Annex II.

- (g) 16 October 1998 (S/1998/960)
- (h) 16 December 1998 (S/1998/1176)
- (i) 4 March 1999 (S/1999/237)
- (j) 4 June 1999 (S/1999/645)
- (k) 30 July 1999 (S/1999/836)
- (l) 6 December 1999 (S/1999/1223)
- (m) 19 May 2000 (S/2000/455)

Other UN reports<sup>3</sup>

- (a) UNICEF Press Release, "Stop Using Child Soldiers, Sierra Leone Told," 19 June 1997. Comments on recruitment of child soldiers by the AFRC and also states that between 1992 and 1996, 4500 children were forced to fight on the RUF and governmental sides.
- (b) UNICEF Monthly Report, "Events Pertaining to Children" 31 July 1999. Refers to CDF pledge on 18 June 1999 to stop recruitment of children, "Kamajor Action Plan" signed by Hinga Norman.

UN Security Council Resolutions<sup>4</sup>

- (a) Res. 1346 (30 March 2001)
- (b) Res. 1313 (4 August 2000)
- (c) Res. 1306 (5 July 2000)
- (d) Res. 1299 (19 May 2000)
- (e) Res. 1289 (7 February 2000)
- (f) Res. 1270 (22 October 1999)
- (g) Res. 1220 (12 January 1999)
- (h) Res. 1181 (13 July 1998)

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<sup>3</sup> Judicial Notice Decision (Trial), Annex II, pp. 3-4.

<sup>4</sup> Judicial Notice Decision (Trial), Annex II, p. 4. The Appeals Chamber held that the Security Council Resolutions (documents 22-30) qualified for judicial notice once the facts contained therein are extrapolated from each of the Resolutions and recognised as incapable of reasonable dispute (Judicial Notice Decision (Appeal), pp. 20-21).

- (i) Res. 1132 (8 October 1997)

Maps, Peace Agreements, Treaties<sup>5</sup>

- (a) The Lome Peace Accord, The Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 7 July 1999.
- (b) The Abidjan Peace Accord, The Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 30 November 1996.
- (c) The Conakry Accord: ECOWAS SIX-MONTH PEACE PLAN FOR SIERRA LEONE 23 OCTOBER 1997-22 APRIL 1998, 23 October 1997.
- (d) Ceasefire Agreement Between Government and the Revolutionary United Front, 18 May 1999
- (e) Map of Sierra Leone, Scale 1:350,000 UNAMSIL Geographic Information Service, 6 May 2000.
- (f) ICRC List of States party to the Geneva Conventions and their Additional Protocols
- (g) Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1997.

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<sup>5</sup> Judicial Notice Decision (Trial), Annex II, p. 4.

## ANNEX F: PROCEDURAL HISTORY

### 1. Indictment, Arrest, Initial Appearance.

1. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa were each indicted for 8 counts relating to Crimes Against Humanity, Violations of Common Article 3 and Additional Protocol II and Other Serious Violations of International Humanitarian Law in violation of Articles 2, 3 and 4 of the Statute of the Special Court for Sierra Leone.

2. Norman was arrested on 10 March 2003 following his indictment on 3 March 2003<sup>1</sup> and the approval of the Indictment by Hon. Justice Thompson.<sup>2</sup> He had his initial appearance at the Special Court Provisional Detention Facility in Bonthe on 15, 17 and 21 March 2003 where he pleaded “not guilty” to all counts.

3. Fofana and Kondewa were both indicted on 24 June 2003<sup>3</sup> following approval of the Indictment by Hon. Justice Thompson.<sup>4</sup> Orders for transfer and provisional detention were issued for both Accused by Hon. Justice Boutet pursuant to Rule 40bis,<sup>5</sup> and on 29 May 2003, both Fofana and Kondewa were arrested. On 2 June 2003, Counsel for Kondewa filed an application which contested the validity of Kondewa’s arrest, transfer and detention under Rule 40bis (J).<sup>6</sup> The application was dismissed. The Defence was however invited to file an application under Rule 40bis (K), which it did on 11 June 2003. The Chamber dismissed this application on 21 November 2003.<sup>7</sup>

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<sup>1</sup> *Prosecutor v. Norman*, SCSL-03-08-I, Indictment, 3 March 2003 (filed on 7 March 2003).

<sup>2</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Decision Approving the Indictment and Order for Non-Disclosure (TC), 7 March 2003.

<sup>3</sup> *Prosecutor v. Fofana*, SCSL-03-11-I, Indictment, 24 June 2003; *Prosecutor v. Kondewa*, SCSL-03-12-I, Indictment, 24 June 2003.

<sup>4</sup> *Prosecutor v. Fofana*, SCSL-03-11-PT, Decision Approving the Indictment and Order for the Continued Detention of the Accused (TC), 26 June 2003, *Prosecutor v. Kondewa*, SCSL-03-12-PT, Decision Approving the Indictment and Order for the Continued Detention of the Accused (TC), 26 June 2003.

<sup>5</sup> *Prosecutor v. Fofana*, SCSL-03-11-PD, Order for Transfer and Provisional Detention Pursuant to Rule 40bis (TC), 28 May 2003; *Prosecutor v. Kondewa*, SCSL-03-12-PD, Order for Transfer and Provisional Detention Pursuant to Rule 40bis (TC), 28 May 2003 (filed 29 May 2003).

<sup>6</sup> *Prosecutor v. Kondewa*, SCSL-03-12-PD, Urgent Application for Release from Provisional Detention, 2 June 2003.

<sup>7</sup> *Prosecutor v. Kondewa*, SCSL-03-12-PT, Decision on the Urgent Defence Application for Release from Provisional Detention (TC), 21 November 2003.

4. Fofana and Kondewa had their initial appearances at Bonthe Island on 1 July 2003. Both pleaded “not guilty” to all counts.

5. On 5 February 2004, the separate indictments of the three Accused were combined to form a consolidated indictment following joinder proceedings.<sup>8</sup> A motion was filed by the Prosecution to amend the new indictment to include counts relating to sexual offences. It was dismissed on the basis of undue delay in the filing of the request.<sup>9</sup>

6. Counsel for Norman filed a motion on 21 September 2004 which requested his re-arraignment. He argued that the consolidated indictment added new charges and had a broader application.<sup>10</sup> The Chamber stayed the materially different portions of the indictment, but found re-arraignment to be unnecessary.<sup>11</sup> On appeal, the Appeals Chamber granted leave to the Prosecution to belatedly amend the consolidated indictment to include the changes. The Chamber held that Norman was not prejudiced by the amendments since he had delayed filing his motion for seven months, during which time the Prosecution had proceeded with the charges. The original indictments were marked as “not to be proceeded with”, and the issue was redirected to the Trial Chamber.<sup>12</sup> The Trial Chamber again found re-arraignment unnecessary.<sup>13</sup> Leave to appeal was denied.<sup>14</sup> Fofana and Kondewa filed similar motions. The Chamber found that the consolidated indictment added no new crimes or charges, and dismissed the motions.<sup>15</sup>

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<sup>8</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Indictment, 5 February 2004 (filed on 4 February 2004).

<sup>9</sup> *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Prosecution Request for Leave to Amend the Indictment (TC), 20 May 2004 (filed on 1 June 2004).

<sup>10</sup> *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Motion for Service and Arraignment on Second Indictment (TC), 20 September 2004 (filed on 21 September 2004).

<sup>11</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused’s Motion for Service and Arraignment on the Consolidated Indictment (TC), 29 November 2004.

<sup>12</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-A, Decision on Amendment of Consolidated Indictment (AC), 16 May 2005.

<sup>13</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Consequential Order on Amendment of the Consolidated Indictment (TC), 25 May 2005.

<sup>14</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Defence Request for Leave to Appeal against the Consequential Non-Arraignment Order of Trial Chamber I (TC), 25 July 2005.

<sup>15</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the Second Accused’s Motion for Service and Arraignment on the Consolidated Indictment (TC), 6 December 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the Third Accused’s Motion for Service and Arraignment on the Consolidated Indictment and Further Appearance (TC), 8 December 2004.

## 2. Consequential Issues of the Stayed Portions of the Consolidated Indictment

### 2.1. Witness Indexing

7. Defence for Norman filed a motion requesting that the Prosecution provide a clear listing of witnesses who had already given or were likely to give testimonies as to the respective aspects of the stayed portions of the consolidated indictment.<sup>16</sup> The motion was dismissed as the Prosecution had already disclosed their intended witnesses and evidence.<sup>17</sup>

### 2.2. Decision on the Moyamba Crime Base

8. The Prosecution proposed to call witnesses to testify about the Moyamba crime base. The Chamber considered whether, in terms of fairness to Norman and in the interests of justice, these witnesses should be called to testify as their evidence would relate to portions of the Consolidated Indictment that were stayed following the Decision of 29 November 2004. The Chamber found that no prejudice would ensue, and allowed witnesses to testify about the Moyamba crime base.<sup>18</sup> Leave to appeal was denied.<sup>19</sup>

## 3. Preliminary Motions

9. Following their arrests, both Norman and Fofana filed motions to alter their detention conditions. In both cases, the motions were denied.<sup>20</sup> Counsel for Fofana appealed this Decision. The Appeals Chamber found that, although the Trial Chamber had erred in refusing to admit

<sup>16</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Defence Request for "Stayed" Witness Indexing, 7 March 2005.

<sup>17</sup> *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Request for "Stayed" Witness Indexing (TC), 28 April 2005.

<sup>18</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Presentation of Witness Testimony at Moyamba Crime Base (TC), 28 April 2005.

<sup>19</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Request by First Accused for Leave to Appeal Against the Trial Chamber's Decision on Presentation of Witness Testimony on Moyamba Crime Base (TC), 23 May 2005 (filed on 24 May 2005).

<sup>20</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on Motion for Modification of the Conditions of Detention (TC), 26 November 2003; *Prosecutor v. Fofana*, SCSL-03-14-T, Fofana - Decision on Application for Bail Pursuant to Rule 65 (TC), 5 August 2004.

certain unsigned documents, this did not affect the result, and therefore dismissed the appeal.<sup>21</sup> A Prosecution motion to freeze the bank account of Norman was also denied.<sup>22</sup>

10. Counsel for Norman filed six motions based on challenges to the jurisdiction of the Special Court, four of which were subsequently referred to the Appeals Chamber. The first motion, relating to the lawfulness of the Court's establishment, was decided by the Appeals Chamber in tandem with similar motions filed by Counsel for Morris Kallon<sup>23</sup> and Brima Bazzy Kamara.<sup>24</sup> It held that the Special Court does not form a part of the judiciary of Sierra Leone, and thus its establishment did not violate the Constitution, that the Government of Sierra Leone had authority to enter the Agreement establishing the Special Court, and that the crimes charged existed under customary international law at the time of their alleged commission. The motions were therefore dismissed.<sup>25</sup>

11. Fofana was granted intervener status for the second and third motions, which concerned judicial independence and child recruitment. Both motions were dismissed, with the majority holding that the funding arrangements of the Court did not lead to any real likelihood of bias or lack of judicial independence<sup>26</sup> and that child recruitment was a crime under customary international law at all times relevant to the indictment.<sup>27</sup>

12. The remaining two Norman motions, concerning command responsibility and a potential Rule 15 Disqualification, were decided by the Trial Chamber. They were dismissed as groundless.

13. Counsel for Fofana filed four preliminary motions relating to the jurisdiction of the Special Court. A Decision dismissing the initial three motions dealing with the illegal delegation

<sup>21</sup> *Prosecutor v. Kondewa and Fofana*, SCSL-04-14-AR65, Fofana - Appeal against Decision Refusing Bail (AC), 11 March 2005.

<sup>22</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Norman - Decision on *Inter Partes* Motion by Prosecution to Freeze the Account of the Accused Sam Norman at Union Trust Bank (SL) Limited or at any other Bank in Sierra Leone (TC), 19 April 2004.

<sup>23</sup> *Prosecutor v. Kallon*, Case No. SCSL-03-07-PT, Preliminary Motion Based on Lack of Jurisdiction: Establishment of the Special Court Violates the Constitution of Sierra Leone, 16 June 2003.

<sup>24</sup> *Prosecutor v. Kamara*, Case No. SCSL-03-10-PT, Application by Brima Bazzy Kamara in Respect of Jurisdiction and Defects in the Indictment, 22 September 2003.

<sup>25</sup> *Prosecutor v. Kallon*, SCSL-04-15-A; *Prosecutor v. Norman*, SCSL-03-08-A; *Prosecutor v. Kamara*, SCSL-04-16-A, Decision on Constitutionality and Lack of Jurisdiction (AC), 13 March 2004.

<sup>26</sup> *Prosecutor v. Norman*, SCSL-03-08-A, Decision on Preliminary Motion based on Lack of Jurisdiction (Judicial Independence) (AC), 13 March 2004 (filed on 15 March 2004).

<sup>27</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment) (TC), 31 May 2004.

of powers and the nature of armed conflict was rendered by the Appeals Chamber on 25 May 2004.<sup>28</sup> It held that the establishment of the Special Court did not involve a transfer of jurisdiction or sovereignty by Sierra Leone and that the establishment of the Special Court was properly within the powers of the Security Council and Secretary General of the United Nations. The issues raised in the motion on the nature of armed conflict were found to have no bearing on the applicability of the Statue of the Court. The Trial Chamber dismissed the fourth motion concerning lack of personal jurisdiction on the basis that it had jurisdiction to try Fofana as one bearing the greatest responsibility for crimes committed in Sierra Leone during the relevant period.<sup>29</sup>

14. Counsel for Kondewa filed a Preliminary Motion based on defects in the indictment on 7 November 2003. The motion was denied with the exception of a rephrasing of some counts<sup>30</sup> which were then incorporated into the 5 December 2003 Bill of Particulars.<sup>31</sup> Counsel also filed two motions concerning the jurisdiction of the Special Court. The motions questioned the constitutionality of the Court's establishment and whether the amnesty provided by the Lomé Accord could be overruled. Both were dismissed because the arguments were similar to those raised in previous preliminary motions brought on behalf of other Accused, which had been dismissed.<sup>32</sup>

#### 4. Counsel/Norman Self Representation

15. After their indictment and arrest, the three Accused were assigned separate Counsel to represent them during the Pre-Trial Phase.<sup>33</sup> On 3 June 2004, Norman submitted a letter to the Principle Defender in which he indicated his wish to represent himself. Accordingly, the Chamber

<sup>28</sup> *Prosecutor v. Fofana*, SCSL-03-11-A, Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Illegal Delegation of powers by the United Nations (AC), 25 May 2004 (filed on 26 May 2004); Decision on Preliminary Motion on Lack of Jurisdiction: Nature of the Armed Conflict (AC), 25 May 2004 (filed on 26 May 2004); Decision on Preliminary Motion on Lack of Jurisdiction: Illegal Delegation of Jurisdiction by Sierra Leone (AC), 25 May 2004 (filed on 26 May 2004).

<sup>29</sup> Decision on Personal Jurisdiction, para 48.

<sup>30</sup> *Prosecutor v. Kondewa*, SCSL-03-12-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 27 November 2003.

<sup>31</sup> *Prosecutor v. Kondewa*, SCSL-03-12-PT, Bill of Particulars, 5 December 2003.

<sup>32</sup> *Prosecution v. Kondewa*, SCSL-04-14-T, Decision on Preliminary Motion on Lack of Jurisdiction: Establishment of the Special Court Violates the Constitution of Sierra Leone (TC), 25 May 2004 (filed on 27 May 2004); *Prosecutor v. Kondewa*, SCSL-03-12-T, Decision on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lomé Accord (TC), 25 May 2004.

<sup>33</sup> Counsel for Norman: James B. Jenkins-Johnson; Counsel for Fofana: Michiel Pestman; Counsel for Kondewa: James Mac Guill, later replaced by Charles Margai.



granted him qualified self representation<sup>34</sup> and assigned standby Counsel.<sup>35</sup> He was granted the use of additional resources, including a computer, to prepare his defence.<sup>36</sup>

16. On 20 September 2004, Norman informed the Chamber that he would not participate in the Trial until a determination was made on several issues he had raised. That afternoon, none of the Accused appeared in Court.<sup>37</sup> The Chamber appointed Counsel for each defendant. On 1 October 2004, the Chamber presented a written decision concerning the Accused's non-appearance.<sup>38</sup> The Chamber held that pursuant to Rule 60, trial proceedings would continue, as it would not be in the interest of justice to allow Norman's deliberate absence to interrupt the trial. Norman's right to self-representation and his allowance for additional resources were revoked.

17. On 24 May 2006, Norman was not able to attend Court due to pain in his right hip.<sup>39</sup>

##### 5. Request by the Truth and Reconciliation Commission ("TRC")

18. The TRC requested a public hearing with Norman. The request was denied by the Chamber since such a hearing could endanger victims and witnesses as well as the fair trial of the Accused.<sup>40</sup> On appeal, the TRC was allowed to communicate with Norman via written statements, but a public hearing was prohibited.<sup>41</sup>

<sup>34</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the Application of Samuel Hinga Norman for Self Representation under Article 17(4)(d) of the Statute of the Special Court (TC), 8 June 2004.

<sup>35</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order for Assignment of Standby Counsel for Sam Hinga Norman (TC), 15 June 2004 (filed on 16 June 2004); Standby Counsel: Bu-Buakei Jabbi, John Wesley Hall, Quincy Whitaker and Tim Owen Q.C. Interim Counsel: Ibrahim Yillah.

<sup>36</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Request by Norman for Additional Resources to Prepare his Defence (TC), 23 June 2004.

<sup>37</sup> Kondewa did not attend due to health problems, while Fofana agreed with Norman's position. Later, Kondewa also failed to attend Court without reason.

<sup>38</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Ruling on the Issue of Non-Appearance of the First Accused Samuel Hinga Norman, the Second Accused Moinina Fofana, and the Third Accused, Allieu Kondewa at the Trial Proceedings (TC), 1 October 2004 (filed on 4 October 2004).

<sup>39</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Report by Chief of Detention on Non Attendance in Court of Samuel Hinga Norman, 24 May 2006.

<sup>40</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on the request by the TRC of Sierra Leone to Conduct a Public Hearing with the Accused, 29 October 2003.

<sup>41</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on Appeal by the TRC for Sierra Leone and Chief Samuel Hinga Norman JP against the decision of his Lordship, Mr. Justice Bankole Thompson Delivered on 30 October 2003 to Deny the TRC's Request to Hold a Public Hearing with Chief Samuel Hinga Norman JP (AC), 28 November 2003.

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## 6. Norman Request to the TRC

19. On 7 March 2005, Counsel for Norman submitted a request for a subpoena or binding order to the TRC for its unexpurgated underlying documents.<sup>42</sup> The request was denied.<sup>43</sup>

## 7. Trial Preparation

20. On April 11 2003, the Prosecution was ordered to disclose all relevant materials to Counsel for Norman.<sup>44</sup> Similar Orders concerning disclosure to Counsel for Fofana and Kondewa followed in July.<sup>45</sup> Disclosure and other materials for trial were filed by the Prosecution on 26 April 2004.<sup>46</sup> Pre-Trial Briefs were submitted by each of the Accused and the Prosecution.<sup>47</sup> Supplementary Briefs were submitted by the Prosecution and by Counsel for Kondewa.<sup>48</sup> On 1 June 2004, a Statement of Agreed Facts was filed by the Prosecution and Defence.<sup>49</sup> Status Reports have been submitted on a regular basis since that date.

## 8. Trial Summary

21. The trial began with opening statements from the Prosecution on 3 June 2004. It ended following closing arguments from all Parties on 30 November 2006 spanning eight sessions and

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<sup>42</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Ex Parte and Confidential Motion of First Accused for Binding Order or Subpoena Duces Tecum to the Sierra Leone Truth and Reconciliation Commission for Its Unexpurgated Underlying Documents, 7 March 2005.

<sup>43</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Confidential Decision on Confidential Motion (TC), 25 July 2005.

<sup>44</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Scheduling Order (TC), 11 April 2003.

<sup>45</sup> *Prosecutor v. Fofana*, SCSL-03-11-PT, Interim Order for the Transmission of the Disclosure Materials to the Registrar (TC), 30 July 2003; *Prosecutor v. Kondewa*, SCSL-03-12-PT, Interim Order for the Transmission of the Disclosure Materials to the Registrar (TC), 30 July 2003 (filed on 31 July 2003).

<sup>46</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial (TC), 1 April 2004.

<sup>47</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 2 March 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Pre-Trial Brief of Defendant Allieu Kondewa, 22 March 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Moinina Fofana Defence Pre-Trial Brief, 28 May 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Defence Pre-Trial Brief Pursuant to the Revised Order for the Filing of Defence Pre-Trial Briefs (Under Rules 54 and 73bis) of 22<sup>nd</sup> March 2004, 31 May 2004.

<sup>48</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004, 22 April 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Allieu Kondewa-Supplemental Pre-Trial Brief Pursuant to an Order of the Trial Chamber Dated the 22<sup>nd</sup> April 2004, 18 April 2004.

<sup>49</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Status Report Regarding "Decision on Co-operation Between the Parties Dated 26 May 2004, 1 June 2004.

162 days.<sup>50</sup> The Prosecution called 75 witnesses, including three expert witnesses, and 44 witnesses testified for the Defence. The Prosecution case ended on 14 July 2005. The Defence case began for the First Accused on 20 January 2006, and closed following the case for the Third Accused on 18 October 2006.

22. Prior to each trial session, a Status Conference was held. Pre-Trial and Pre-Defence Conferences were also held prior to the start of the trial and the start of the Defence presentation respectively.

## 9. Witnesses

23. On 25 January 2005, the Chamber ordered the Prosecution to provide each Defence team and the Chamber with a list of witnesses it intended to call fourteen days in advance of their testimony and to provide the Chamber with a confidential copy of unredacted witness statements one week prior to their testimony.<sup>51</sup> The Prosecution filed accordingly.<sup>52</sup>

24. Following the Status Conference of 25 November 2005, the Chamber noted the failure of all Defence Teams to comply with an Order of 21 October 2005 to provide witness summaries for all Defence witnesses.<sup>53</sup>

### 9.1. Witness Protection

25. Several motions were granted by the Chamber to ensure the protection of witnesses.<sup>54</sup> In particular, on 9 June 2004, the Chamber granted a Prosecution motion which allowed all

<sup>50</sup> The dates for each session are as follows: First Session: 3 June 2004 to 23 June 2004, Second Session: 8 September 2004 to 31 September 2004, Third Session: 2 November 2005 to 7 December 2005, Fourth Session: 9 February 2005 to 15 March 2005, Fifth Session: 26 May 2005 to 14 July 2005, Sixth Session: 19 January 2006 to 23 February 2006, Seventh Session: 3 May 2006 to 16 June 2006, Eighth Session: 15 September 2006 to 18 October 2006. This excludes the dates of Status Conferences, Hearings on the Judgement for Acquittal and Closing Arguments.

<sup>51</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to Prosecution to Provide Order of Witnesses and Witness Statements (TC), 25 January 2005 (filed on 26 January 2005).

<sup>52</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Confidential Prosecution Order of Witnesses to be Called in the 5<sup>th</sup> Trial Session, 11 May 2005.

<sup>53</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case (TC), 28 November 2005.

<sup>54</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003; *Prosecutor v. Fofana*, SCSL-03-11-PT, Decision on Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, (TC), 16 October 2003; *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for

witnesses who had not waived their right to protection to testify with the use of special measures to prevent their identities from becoming public.<sup>55</sup>

26. On 18 November 2004, the Chamber ruled that only where a Party is able to establish on a preponderance of probabilities that a witness is no longer in need of protection will protective measures be rescinded, varied, or augmented.<sup>56</sup> Counsel for Kondewa submitted a motion for protection of Defence witnesses which was later withdrawn.<sup>57</sup>

## 9.2. Investigators and Expert Witnesses

27. On 7 December 2004, the Chamber granted a Defence request to call two investigators as witnesses to describe inconsistencies between the testimony and original statements of a prior witness.<sup>58</sup>

28. Despite objections from the Defence and in separate October and December 2004 Decisions, the Chamber permitted the Prosecution call three additional expert witnesses: a military expert, an expert on child soldiers and an expert on forensic evidence.<sup>59</sup> The Defence was invited to cross-examine each witness.<sup>60</sup>

29. On 1 March 2005, the Chamber dismissed an oral Defence motion to call as witnesses OTP Investigators who took the statements of a Prosecution witness whose testimony was in

Immediate Protective Measures for Witnesses and Victims and for Non Public Disclosure and Urgent Request for Interim Measures until Appropriate Protective Measures are in Place (TC), 10 October 2003.

<sup>55</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses (TC), 8 June 2004.

<sup>56</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Ruling on Motion for Modification of Protective Measures for Witnesses (TC), 18 November 2004.

<sup>57</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Motion by the Third Accused Allieu Kondewa for Orders of Protective Measures for Defence Witnesses (TC), 17 November 2005; *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Notice of Withdrawal of Motion by Third Accused Allieu Kondewa for Orders of Protective Measures for Defence Witnesses (TC), 5 December 2005.

<sup>58</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Ruling on Defence Oral Application to Call OTP Investigators Who Took Down in Writing Statements of Prosecution Witness TF2-021 (TC), 7 December 2004.

<sup>59</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Reasoned Written Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders of Protective Measures (TC), 23 June 2005 (filed on 21 June 2005); *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund (TC), 1 October 2004.

<sup>60</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Consequential Order to Decision on Prosecution Request for Leave to Call Additional Expert Witness (TC), 1 October 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 24 May 2005.

contention. It was dismissed on the basis that the issue was collateral and unrelated to the charges in the indictment.<sup>61</sup>

### 9.3. Recall of Witnesses

30. A confidential motion was submitted by Counsel for Kondewa to recall a witness. The Chamber granted the motion.<sup>62</sup>

### 9.4. Disclosure and Characterisation of Age of Witnesses

31. On 2 May 2005, the Prosecution complied with an Order from the Chamber to ascertain by independent means the age of TF2-080 and submitted an age assessment report.<sup>63</sup>

### 9.5. Rebuttal Witnesses

32. During the presentation of the Defence case, the Prosecution filed a motion for leave to call rebuttal witnesses.<sup>64</sup> The motion was denied in an oral Decision. A Reasoned Written Decision followed on 27 November 2006. The Chamber found that the Prosecution could have reasonably expected the Defence evidence which it wanted to rebut. The Prosecution should have called its rebuttal witness during the Prosecution case.<sup>65</sup>

## 10. Judicial Notice

33. On 2 June 2004, the Chamber issued a Decision on the Prosecution's motion for judicial notice of certain factual statements and documents and took notice of several facts.<sup>66</sup> Counsel for Fofana and Kondewa jointly requested leave to appeal, which was granted to Fofana, but not Kondewa. The Appeals Chamber delivered its Decision on 16 May 2005. It was held that while

<sup>61</sup> *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Ruling on Defence Oral Application to Call an OTP Investigator Who Took a Written Statement from Prosecution Witness TF2-022 (TC), 1 March 2005.

<sup>62</sup> *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Confidential Decision on Allieu Kondewa Motion for Recall of Prosecution Witness TF2-057 (TC), 8 March 2005.

<sup>63</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Confidential Prosecution Filing in Compliance with Order on Disclosure and Characterisation of the Age of Witness TF2-080, 2 May 2005.

<sup>64</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Prosecution Motion for Leave to Call Evidence in Rebuttal and for Immediate Protective Measures for Proposed Rebuttal Witnesses, 13 October 2006.

<sup>65</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Written Reasoned Decision on Prosecution Motion for Leave to Call Evidence in Rebuttal and for Immediate Protective Measures for Proposed Rebuttal Witness (TC), 27 November 2006.

<sup>66</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence (TC), 2 June 2004. See also Annex E: Judicially Noted Facts.

the Chamber had correctly identified the criteria for assessing whether to take judicial notice of a fact, it had erred in taking judicial notice of some of the facts.<sup>67</sup>

**11. Admissibility of Evidence**

**11.1. Evidence of Gender Crimes**

34. On 23 June 2005 the Chamber denied a Prosecution request to admit evidence of gender crimes under existing counts in the Indictment. To allow such evidence would be prejudicial, particularly since it did not relate directly to a specific charge in the Indictment.<sup>68</sup> Leave to appeal was denied.<sup>69</sup>

**11.2. Testimony of Witness TF2-218**

35. Defence for Norman filed a motion to exclude the testimony of TF2-218.<sup>70</sup> The motion was dismissed.<sup>71</sup>

36. On 8 June 2005, the Chamber made a confidential order regarding Witness TF2-218.<sup>72</sup> The order was later quashed by the Appeals Chamber.<sup>73</sup>

**12. Exhibits and Documentary Evidence**

37. On 27 October 2004, the Chamber issued an Order to the Prosecution to highlight all areas of interest on the map of Sierra Leone, and on separate maps, all areas of interest as they

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<sup>67</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal Against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence (TC), 16 May 2005 (filed on 18 May 2005). See also Annex E: Judicially Noted Facts.

<sup>68</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Reasoned Majority Decision on Prosecution Motion for Admissibility of Evidence (TC), 23 May 2005.

<sup>69</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Majority Decision on Request for Leave to Appeal Decision on Prosecution Motion for a Ruling on Admissibility of Evidence (TC), 9 December 2005.

<sup>70</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Confidential Norman Defence Motion to Exclude the Testimony of Witness TF2-218, 1 June 2005.

<sup>71</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Confidential Decision on Norman Defence Motion to Exclude Witness TF2-218 (TC), 23 June 2005.

<sup>72</sup> *Prosecution v. Norman, Fofana, Kondewa*, SCSL-04-14-T, Confidential Decision on Defence Application Regarding Witness TF2-218 (TC), 8 June 2005.

<sup>73</sup> *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-A, Decision on Prosecution Appeal Against Confidential Decision on Defence Application concerning Witness TF2-218 (AC), 26 May 2006.

related to the counts in the Indictment. Copies were to be distributed to the Defence teams and Chambers.<sup>74</sup>

38. On 14 July 2005, the Chamber issued a Decision on a Prosecution request to admit certain documents into evidence pursuant to Rules 92bis and 98(c). The motion was granted in part.<sup>75</sup>

### 13. Abuse of Process

39. On 28 April 2005, the Chamber rendered a decision on an abuse of process motion submitted by the Defence for Norman. It was held that the motion related to the jurisdiction of the Special Court, and as such, should have been filed as a preliminary motion. The Chamber also relied on the principle of *res judicata* to hold that the Defence could not raise or litigate issues on which the Chamber had rendered final decisions, except where exceptional circumstances were shown. The motion was dismissed.<sup>76</sup> Two requests for leave to appeal were denied.<sup>77</sup>

### 14. Judgement of Acquittal

40. Counsel for Norman filed a motion for Judgement of Acquittal pursuant to Rule 98 on 3 August 2005.<sup>78</sup> Counsel for Fofana and Kondewa each filed similar motions the following day.<sup>79</sup> The Prosecution Responses to the three motions for Judgement of Acquittal were submitted on 18 August 2005.<sup>80</sup> In the interests of conducting a public hearing, redacted versions of the

<sup>74</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order on Prosecution Map Exhibits (TC), 27 October 2004.

<sup>75</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(c) (TC), 14 July 2005 (filed on 15 July 2005).

<sup>76</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on First Accused's Motion on Abuse of Process (TC), 28 April 2005.

<sup>77</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Request by First Accused for Leave to Appeal Against the Trial Chamber's Decision on First Accused's Motion on Abuse of Process (TC), 24 May 2005; *Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Norman Counsel's Request for Leave to Appeal under Rule 46(H) (TC), 25 July 2005.

<sup>78</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Motion for Judgement of Acquittal for the First Accused Samuel Hinga Norman, 3 August 2005.

<sup>79</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Motion for Judgement and Acquittal, 4 August 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Motion for Judgement of Acquittal of the Third Accused Allieu Kondewa, 4 August 2005.

<sup>80</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 21 October 2005.

Prosecution Responses were later released to the public by Court Order.<sup>81</sup> On 20 September 2005, the Parties made oral submissions, and on 21 October 2005, a Decision on the Motion for Judgement of Acquittal was rendered by the Court.<sup>82</sup>

41. The Chamber determined that to enter a Decision of acquittal under Rule 98, it must find no evidence capable of supporting a conviction on one or more counts of the indictment. The legal standard set by Rule 98 limited the Court to a determination of whether the evidence *could* support a conviction, not whether it *should* support a conviction.

42. The motion was dismissed as lacking merit. However, the Court did find that there was no evidence capable of supporting convictions against the Accused in respect of the charge of Murder as a Crime Against Humanity and Murder as a Violation of Common Article 3 and Additional Protocol II in 13 specific locations. There was also no evidence to support a conviction in respect of the offence of Inhumane Acts as a Crime Against Humanity or Cruel Treatment as a Violation of Common Article 3 and Additional Protocol II in respect of Blama, or of the offence of Pillage as a Violation of Common Article 3 and Additional Protocol II in respect of Mobayeh. The Concurring Opinion of Judge Thompson endorsed the findings of the majority and elaborated upon the Chamber's approach to reliance on the jurisprudence of other international criminal tribunals and the scope of judicial discourse concerning Rule 98.

#### 15. Preparation and Presentation of the Defence Case

43. On 17 November 2005, the Defence jointly filed its Materials pursuant to a 21 October 2005 Order to that effect. The Defence also submitted that particular aspects of that Order were contrary to the presumption of innocence and made proposals in relation to those aspects.<sup>83</sup> After the Chamber issued its Consequential Order for Compliance with the Order of 21 October,

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<sup>81</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Public Version of the Prosecution Response to Motion for Judgement of Acquittal of the First Accused Samuel Hinga Norman, 27 September 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Public Version of the Prosecution Response to Fofana Motion for Judgement of Acquittal, 27 September 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Public Version of the Prosecution Response to Motion for Judgement of Acquittal of the Third Accused Allieu Kondewa, 27 September 2005.

<sup>82</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 21 October 2005.

<sup>83</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Joint Defence Materials Filed Pursuant to 21 October 2005 Order of Trial Chamber I and Request for Partial Modification Thereof, 17 November 2005.



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Defence for Fofana filed a motion for reconsideration.<sup>84</sup> The motion was dismissed on 29 November 2005.<sup>85</sup> Defence for Fofana submitted a second motion for reconsideration which was also dismissed.<sup>86</sup> Leave to Appeal was denied.<sup>87</sup>

44. Defence for all three Accused filed Materials pursuant to the Chamber's Consequential Order for Compliance with the Order of 21 October 2005 on 5 December 2005.<sup>88</sup>

45. On 6 December 2005, the Prosecution requested an Order to the Defence to disclose any written witness statements in its possession.<sup>89</sup> The Chamber denied the motion as the Prosecution had not sufficiently shown the potential for irreparable prejudice.<sup>90</sup>

46. On 9 December 2005, the Chamber issued an Order to each of the Defence teams to file an evidentiary chart indicating the testimonial and documentary evidence on which the Defence would rely.<sup>91</sup> The Chamber later ordered the Defence to produce additional materials to accompany their witness summaries.<sup>92</sup> Each of the three Accused consequently filed updated

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<sup>84</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-01-14-T, Urgent Fofana Motion for Reconsideration or, in the Alternative, for Leave to Appeal the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 29 November 2005.

<sup>85</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order on Urgent Motion for Reconsideration of the 25 November 2005 Oral Ruling and the 28 November Consequential Order of Trial Chamber I or, Alternatively, Request for Leave to Appeal Both (TC), 29 November 2005.

<sup>86</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Urgent Motion for Reconsideration of the Orders for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case (TC), 7 December 2005.

<sup>87</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Urgent Fofana Request for Leave to Appeal the 7 December Decision of Trial Chamber I (TC), 8 June 2006.

<sup>88</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Defence Witness and Exhibits List for the First Accused as Per the Consequential Order for Compliance of 28<sup>th</sup> November 2005 Concerning the Preparation and Presentation of the Defence Case, 5 December 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Materials filed Pursuant to the Consequential Order for Compliance with the Order Concerning the Preparation and Presentation of the Defence Case, 5 December 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Materials Filed by the Third Accused Allieu Kondewa Pursuant to Consequential Order for Compliance with the Order Concerning Preparation and Presentation of the Defence Case, 5 December 2005.

<sup>89</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Prosecution Request for Order to Defence Pursuant to Rule 73ter to Disclose Written Witness Statements, 6 December 2005.

<sup>90</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Order to the Defence Pursuant to Rule 173ter(B) to Disclose Written Witness Statements (TC), 21 February 2006.

<sup>91</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to the Defence for the Filing of an Evidentiary Chart (TC), 9 December 2005.

<sup>92</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Consequential Order to the Status Conference of 18 January 2006 (TC), 18 January 2006.

witness lists, witness orders and other materials.<sup>93</sup> Each of the Accused continued to file updated information until the end of May 2006.

47. Counsel for Norman submitted a request to file additional witness and exhibit lists on 1 February 2006.<sup>94</sup> The Chamber ordered that Norman should re-file his request to include details about the proposed witnesses and their proposed testimony.<sup>95</sup> After a second Order to re-file,<sup>96</sup> the Chamber granted the motion in part.<sup>97</sup> Another motion for leave to file additional exhibits was granted by the Chamber on 31 July 2006.<sup>98</sup>

48. Following the March 2006 Status Conference, the Chamber issued a Consequential Order to each of the Accused to file a list of common witnesses and summaries of their testimonies.<sup>99</sup>

49. On 3 April 2006, Counsel for Kondewa filed a statement of admissions of fact and statement of matters not in dispute.<sup>100</sup> Counsel for Fofana filed a similar admission on 25 April 2006,<sup>101</sup> parts of which were disputed by the Prosecution.<sup>102</sup> Counsel for Norman filed his admissions and statement of facts on 5 May 2006 with the Prosecution's suggested changes.<sup>103</sup>

<sup>93</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Materials Filed Pursuant to the Consequential Order to the Status Conference of 18 January 2006, 23 January 2006; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Materials for the First Accused as per Consequential Order to the Status Conference of 18 January 2006, 23 January 2006; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Materials Filed by Third Accused Allieu Kondewa Pursuant to Consequential Order to the Status Conference of 18 January 2006, 23 January 2006.

<sup>94</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Urgent Motion for Leave to File Additional Witness and Exhibit Lists, 1 February 2006.

<sup>95</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to the First Accused to Re-File Summaries of Witness Testimonies (TC), 2 March 2006.

<sup>96</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Consequential Order to the Status Conference of 22 March 2006 (TC), 24 March 2006.

<sup>97</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on First Accused's Urgent Motion for Leave to File Additional Witness and Exhibit Lists (TC), 6 April 2006.

<sup>98</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused's Motion for Leave to Add Two Exhibits to the Exhibit List (TC), 31 July 2006.

<sup>99</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Consequential Order to the Status Conference of 22 March 2006 (TC), 23 March 2006.

<sup>100</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Submissions by Counsel for the Third Accused Allieu Kondewa Pursuant to the Consequential Order to the Status Conference of the 22<sup>nd</sup> Day of March 2006, 3 April 2006.

<sup>101</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Public Fofana Admissions of Fact and Statement of Matters Not in Dispute, 25 April 2006.

<sup>102</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Prosecution Response to 'Public Fofana Admissions of Fact and Statement of Matters Not in Dispute', 1 May 2006.

<sup>103</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Admissions by the Parties and a Statement of Other Matters Which are not in Dispute, Filed by Court Appointed Counsel for the first Accused, 5 May 2006.

50. On 6 June 2006, Counsel for Norman filed a motion to defer further evidence and the closing of the Defence case until the September-December 2006 Trial Session.<sup>104</sup> The Chamber found that enough time had been allotted for Norman's Defence and denied the motion with the exception of allowing Major General Abdul One Mohammed and J.A. Carpenter to testify during the September-December 2006 Trial Session. Alternatively, Counsel for Norman could enter exhibits in lieu of the testimony of JA Carpenter.<sup>105</sup> A request for an extension of time to file a complete submission of documents pursuant to the Decision was denied.<sup>106</sup> Leave to appeal was also denied.<sup>107</sup>

51. On 8 June 2006, the Chamber dismissed motions from Kondewa and Fofana requesting leave to raise evidentiary objections during the Prosecution's cross-examination of witnesses that were not their own.<sup>108</sup>

52. On 27 June 2006 Counsel for Fofana submitted a notice of removal of several witnesses from Fofana's witness list.<sup>109</sup> In a separate motion filed on the same day, Counsel for Fofana applied to call additional witnesses.<sup>110</sup> The Chamber rendered its Decision on 17 July 2006 allowing seven of eight new witnesses.<sup>111</sup>

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<sup>104</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session, 6 June 2006.

<sup>105</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session (TC), 14 June 2006 (filed on 15 June 2006).

<sup>106</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on First Accused Urgent Motion for Extension of Time to Submit Documents Pursuant to Rule 92Bis (TC), 28 June 2006 (filed on 29 June 2006).

<sup>107</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Application by First Accused for Leave to Appeal Against The Decision on Their Motion For Extension of Time to Submit Documents Pursuant to Rule 92Bis (TC), 17 July 2006 (filed on 18 July 2006).

<sup>108</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the Third and Second Accused's Request For Leave to Raise Evidentiary Objections (TC), 8 June 2006 (filed on 9 June 2006).

<sup>109</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Additional Fofana Notice of Reduction of Witnesses, 27 June 2006 (filed on 28 June 2006).

<sup>110</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Application for Leave to Call Additional Witnesses, 27 June 2006 (filed on 28 June 2006).

<sup>111</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Fofana Application for Leave to Call Additional Witnesses (TC), 17 July 2006 (filed on 18 July 2006).

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53. Counsel for Kondewa filed a request to call additional witnesses on 29 August 2006.<sup>112</sup> The motion was granted.<sup>113</sup> A second motion to allow the addition of witness Morie Jusu Kamara to the witness list was also granted.<sup>114</sup>

54. On 24 October 2006, Counsel for Fofana filed a request pursuant to Rule 68 in which it submitted that the Prosecution had failed to disclose exculpatory evidence to the Defence. This gave rise to concerns that other important materials were also not disclosed. The motion was dismissed after the Chamber found that the material in question was not exculpatory in nature.<sup>115</sup>

## 16. Defence Witnesses

55. Following an oral motion by Counsel for Fofana, the Chamber released its Decision concerning disclosure under Sub-Rule 66(A)(iii). Counsel for Fofana had requested access to material statements and interview notes which had been given to the Prosecution by Fofana Defence Witnesses. The Chamber granted the motion, holding that Sub-Rule 66(A)(iii) was broad enough to allow the Defence access.<sup>116</sup>

### 16.1. Propriety of Contacting Defence Witnesses

56. On 11 May 2006, Counsel for each of the Accused submitted a joint request for clarification as to the propriety of the Prosecution contacting and interviewing confirmed Defence witnesses.<sup>117</sup> The Chamber held that the Prosecution has a qualified right to contact Defence witnesses but could only contact them through the Witness and Victim Section of the Special

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<sup>112</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Kondewa Application for Leave to Call Additional Witnesses, 29 August 2006.

<sup>113</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Kondewa Application for Leave to Call Additional Witnesses (TC), 20 September 2006.

<sup>114</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Kondewa Application for Leave to Call One Additional Witness (TC), 3 October 2006.

<sup>115</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Fofana Request for Full Review of Prosecution Evidence to Identify Rule 68 Material for Disclosure (TC), 6 November 2006.

<sup>116</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Application by the Second Accused Pursuant to Sub-Rule 66(A)(iii) (TC), 14 June 2006.

<sup>117</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Urgent Joint Defence Motion Regarding the Propriety of Contacting Defence Witnesses, 11 May 2006.

no errors of law or abuse of the Trial Chamber's discretion had been committed and dismissed the appeals.<sup>125</sup>

#### 16.4. Major-General Abdul One Mohammed

59. The testimony of Major-General Abdul One Mohammed was deferred to the September-December Trial Session as a result of a 17 July 2006 Order of the Chamber.<sup>126</sup> His expanded witness summary was submitted on 14 July 2006.<sup>127</sup> On 8 September 2006, Counsel for Norman notified the Chamber of Mohammed's continuing health problems and requested permission to admit documents in lieu of his oral testimony, pursuant to Rules 89(c) and 92Bis.<sup>128</sup> The motion was granted.<sup>129</sup>

#### 16.5. Daniel J Hoffman PhD.

60. Fofana filed a request to add Daniel J. Hoffman PhD, an expert in socio-cultural anthropology, as an expert witness on 16 June 2006, on the basis that he would assist the Chamber in understanding the structure and organization of the CDF.<sup>130</sup> The Chamber accepted Dr. Hoffman as an expert witness.<sup>131</sup> The Prosecution notified Counsel for Fofana of their intention to cross-examine Dr. Hoffman on 29 August 2006.<sup>132</sup>

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<sup>124</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions by the First and Second Accused for Leave to Appeal the Chambers Decision on their Motions for the Issuance of a Subpoena to the President of the Republic of Sierra Leone (TC), 28 June 2006 (filed on 29 June 2006).

<sup>125</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-A, Decision on the Interlocutory Appeals Against Trial Chambers Decision Refusing to Subpoena the President of Sierra Leone (AC), 11 September 2006 (filed on 11 September 2006).

<sup>126</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session (TC), 14 June 2006 (filed on 15 June 2006).

<sup>127</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Expanded Witness Summary of Maj-Gen. Abdul One Mohammed, 14 July 2006.

<sup>128</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, First Accused Request to Admit Certain Documents in Lieu of the Oral Testimony of Major-General Abdul-One Mohammed Pursuant to Rules 89(c) and 92bis and Request for Clarification on Procedure for Closing, 8 September 2006.

<sup>129</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Norman Request to Admit Documents in Lieu of the Testimony of Abdul-One Mohammed Pursuant to Rules 89(c) and 92bis (TC), 15 September 2006.

<sup>130</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Submission Regarding Proposed Expert Witness Daniel J. Hoffman PhD, 16 June 2006.

<sup>131</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman PhD (TC), 7 July 2006.

<sup>132</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Public Notice of Intention to Cross-Examine Defence Witness Daniel J. Hoffman, PhD, 29 August 2006.

#### 16.6. Fofana Motion Pursuant to Rule 92bis

61. In a motion filed on 27 September 2006, Counsel for Fofana requested permission to submit into evidence the statements of two witnesses unable to attend the trial in person.<sup>133</sup> The Chamber granted the motion in part, striking out inadmissible portions of the statement of one of the witnesses.<sup>134</sup>

#### 17. Final Trial Briefs

62. On 29 September 2006, the Chamber issued an Order to the Parties to file their final trial briefs no more than three weeks after the close of the Defence case.<sup>135</sup> The Chamber later granted a joint motion from the Prosecution and Defence teams to extend the deadline.<sup>136</sup> The final filings for each Accused occurred following the close of the trial. Norman's was filed on 27 November 2006, Fofana's on 24 November 2006 and Kondewa's on 8 January 2007.<sup>137</sup> The Prosecution submitted its final version of the Prosecution Final Trial Brief on 15 December 2006.<sup>138</sup>

#### 18. Death of Norman

63. Norman died on 22 February 2007 following a medical procedure in Dakar, Senegal.

64. In its Decision of 21 May 2007, the Chamber held that as a result of Norman's death, the Chamber had lost its jurisdiction *ratione personae* over the Accused Norman. The Chamber held that by virtue of the doctrine of abatement or extinguishment, there could be no further proceedings in respect of the Accused Norman. The Chamber therefore found that all proceedings against Norman were legally terminated as a result of his death. Consequently, the Chamber

<sup>133</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Request to Admit Evidence Pursuant to Rule 92bis, 27 September 2006.

<sup>134</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92bis (TC), 9 October 2006 (filed on 10 October 2006).

<sup>135</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order for Filing Final Trial Briefs and Presenting Closing Arguments (TC), 29 September 2006.

<sup>136</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Scheduling Order for Filing Final Trial Briefs and Presenting Closing Arguments (TC), 18 October 2006.

<sup>137</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Norman Final Trial Brief, 27 November 2006; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Final Trial Brief, 24 November 2006; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Final Trial Brief of Third Accused, Allieu Kondewa, Re-Filed Pursuant to Decision I dated 15<sup>th</sup> December 2006, 8 January 2007.

<sup>138</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Public Prosecution Filing, Pursuant to Order to Refile page 119, Registry page 20659 of Prosecution Final Trial Brief, dated 27<sup>th</sup> November 2006, 15 December 2006.

Court. Interviews could only be conducted after a witness had given informed consent and the witness had a right to refuse to be interviewed.<sup>118</sup>

16.2. Impermissibility of Eliciting Evidence Concerning the Second Accused During Cross-Examination of a Witness Called by the Third Accused

57. On 10 November 2006, the Chamber issued a written Decision following an oral objection made by Counsel for Fofana during the cross-examination of a witness for Kondewa. The Chamber sustained the objection stating that in the absence of notice to the Fofana of the areas to be discussed during cross-examination, questions involving Fofana were manifestly unfair to the Defence.<sup>119</sup>

16.3. Motion for Issuance of Subpoena to President Kabbah

58. On 15 December 2005, Counsel for Norman and Fofana filed motions for the issuance of a subpoena *ad testificandum* to President Ahmed Tejan Kabbah.<sup>120</sup> The Attorney General sent a written Notice to the Registrar stating that if a subpoena was issued to the President, the Attorney General intended to apply for it to be set aside.<sup>121</sup> On 19 January 2006, the Chamber granted the Attorney General leave to intervene and present oral arguments in relation to the subpoena.<sup>122</sup> The Chamber rendered its Decision on 13 June 2006. The motions were dismissed as the Applicants had failed to demonstrate how the proposed testimony would materially assist their respective cases.<sup>123</sup> Leave to appeal was granted.<sup>124</sup> In the Appeals Chamber, the majority held that

<sup>118</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Joint Defence Motion Regarding the Propriety of Contacting Defence Witnesses (TC), 20 June 2006.

<sup>119</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the Impermissibility of Eliciting Evidence Involving the Second Accused Through Cross-Examination of Witnesses Called by the Third Accused (TC), 10 November 2006.

<sup>120</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Fofana Motion for Issuance of a Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah, 15 December 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Norman Motion for Issuance of a Subpoena *ad Testificandum* to H.E. Alhaji Dr. Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, 15 December 2005 (filed on 16 December 2005).

<sup>121</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Re: Application by Motion of Moinina Fofana and Samuel Hinga Norman for Issuance of Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah, 17 January 2006 (filed on 19 January 2006).

<sup>122</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order on the Motion for Issuance of a Subpoena *Ad Testificandum* to H.E. Dr. Ahmed Tejan Kabbah, the President of the Republic of Sierra Leone and Leave to Intervene (TC), 19 January 2006 (filed on 20 January 2006).

<sup>123</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Motions on Issuance of a Subpoena to President Kabbah (TC), 13 June 2006 (filed on 14 June 2006).

determined that it would not make a final pronouncement on his guilt or innocence, though the evidence would be considered in its entirety for the remaining two Accused.<sup>139</sup> Defence for Norman sought leave for an extension of time to appeal this decision, which was denied.<sup>140</sup>

65. The majority of the Chamber removed Norman's name and those of his lawyers from the cover sheets of further Decisions.<sup>141</sup> The Hon. Justice Itoe dissented, holding that this issue had not been raised by the parties and that the Chamber could not decide it on its own motion. He held further that Norman's name should continue to feature in the name of the indictment up until the date of judgement as there had been no order nor application to remove it.<sup>142</sup>

## 19. Miscellaneous

### 19.1. Media

66. On 4 October 2004, the Chamber authorized representatives of the Press and Public Affairs office to film in the Courtroom during trial proceedings, except during closed sessions.<sup>143</sup> Other requests for filming on specific dates were authorized for NBC,<sup>144</sup> Reuters Television,<sup>145</sup> and Radio Suisse Romande Espace 2.<sup>146</sup> At different times during the trial, two photographers were

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<sup>139</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Registrar's Submission of Evidence of Death of Accused Samuel Hinga Norman and Consequential Issues (TC), 21 May 2007.

<sup>140</sup> *Prosecutor v. Kondewa and Fofana*, SCSL-04-14-T, Decision on Norman Defence Motion for Extension of Time to Seek Leave to Appeal Against Decision on Registrar's Submission of Evidence of the Death of Accused Samuel Hinga Norman and Consequential Issues (TC), 19 July 2007.

<sup>141</sup> *Prosecutor v. Kondewa and Fofana*, SCSL-04-14-T, Order on New Application for the Appointment of Co-Counsel to for the Taylor Defence Team (TC), 22 June 2007.

<sup>142</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Dissenting Opinion of Hon. Justice Benjamin Mutanga Itoe on the Majority Decision to Delete the Name of the First Accused, Samuel Hinga Norman (Now Deceased) from the Cover Sheets of Chamber Rulings, Decisions, Court Process and Records (TC), 22 June 2007.

<sup>143</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to Permit Filming in the Court Room (TC), 4 October 2004.

<sup>144</sup> *Prosecutor v. Norman, Fofana and Kondewa*, Order to Permit Filming in the Court Room, (TC), 26 November 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Corrigendum to Order to Permit Filming in the Court Room (TC), 30 November 2004.

<sup>145</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to Permit Filming in the Court Gallery (TC), 1 June 2005 (filed on 2 June 2005).

<sup>146</sup> *Prosecutor v. Hinga Norma, Fofana, Kondewa*, SCSL-04-14-T, Order to Permit Filming in the Court Gallery (TC), 1 June 2005 (filed on 2 June 2005).



authorized to take still photos of the trial proceedings with limitations based on witness protection and the fairness of the trial.<sup>147</sup>

### 19.2. Trial Monitoring

67. Following a request by international monitors operating under the auspices of the War Crimes Studies Centre of the University of California at Berkley, and national monitors operating under the auspices of the Coalition for Justice and Accountability and the International Centre for Transitional Justice, national and international monitors were permitted to observe closed sessions of the Trial Chamber.<sup>148</sup> The number of authorized persons was later increased.<sup>149</sup> A further Order was issued authorizing continued monitoring and detailing certain restrictions on the number of monitors and use of information gathered during closed sessions.<sup>150</sup>

### 19.3. Prohibition of Visits

68. On 20 January 2004, the Registrar prohibited communications and visits for Norman for a period of 14 days after a Prosecution motion demonstrated that Norman may have been prepared to call various factions to arms.<sup>151</sup>

69. As a result of several letters written by Norman being published in local newspapers, on 8 November 2004, the Registrar prohibited all visits between Norman and any other persons, with the exception of Court Appointed Counsel, for a period of four weeks.<sup>152</sup>

70. On 6 June 2005, the Registrar again prohibited communications and visits for Norman for a period of 28 days after learning that Norman was responsible for writing and sending a letter "To

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<sup>147</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to Permit Photography in Court Room (TC), 14 February 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to Permit Photography in Courtroom (TC), 25 May 2006.

<sup>148</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order on Trial Monitoring During Closed Session (TC), 27 October 2004.

<sup>149</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order on Trial Monitoring During Closed Session (TC), 5 November 2004.

<sup>150</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Further Order on Trial Monitoring during Closed Session (TC), 7 February 2006.

<sup>151</sup> *Prosecutor v. Norman*, SCSL-03-08-PT, Decision Prohibiting Communications and Visits (TC), 20 January 2004 (filed on 24 January 2004).

<sup>152</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision Prohibiting Visits (TC), 8 November 2004.

all South Easterners of Sierra Leone and all Kamajors, Family and Friends". A motion to reverse the Registrar's decision was dismissed.<sup>153</sup>

71. On 3 March 2005, the Chamber rendered a confidential decision on a confidential Defence motion on a detention issue.<sup>154</sup>

#### 19.4. Surveillance Cameras in the Detention Facility

72. On 6 April 2006, the Chamber issued a Decision allowing the installation of surveillance cameras in the visitation area of the detention facility.<sup>155</sup> A Reasoned Written Decision followed on 22 June 2006. The Chamber found that the Principal Defender lacked standing to bring the motion since the role of the Principal Defender was administrative not legal.<sup>156</sup>

#### 19.5. Right of Audience for Mr. Ianuzzi

73. Counsel for Fofana requested that the Chamber grant Mr. Ianuzzi, a legal assistant for the Fofana Defence team, a right of audience to make submissions and lead witnesses before the Chamber for the duration of the Defence case. On 27 June 2006, the Chamber dismissed the motion as not properly before the Court. The Chamber stated that it only has jurisdiction to appoint Counsel when necessary and to review decisions of the Principle Defender when they violate the rights of the Accused.<sup>157</sup>

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<sup>153</sup> *Prosecutor v. Norman*, SCSL-04-14-T, Decision on Request to Reverse the Order of the Acting Registrar Under Rule 47(A) of the Rules of Detention of 6 June 2005 (TC), 29 June 2005.

<sup>154</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Confidential Motion on Detention Issue (TC), 2 March 2005.

<sup>155</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility (TC), 6 April 2006.

<sup>156</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Written Reasons on Decision on the Principal Defender's Motion for a Review of the Registrar's Decision to Install Surveillance Cameras in the Detention Facility (TC), 22 June 2006.

<sup>157</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Application by Court Appointed Counsel for the Second Accused for Right of Audience for Mr. Ianuzzi (TC), 27 June 2006.

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## ANNEX G: TABLE OF AUTHORITIES

1. Special Court for Sierra Leone Decisions and Judgements

Full Citation	Short Name (If Applicable)
<i>Prosecutor v. Norman, Fofana and Kondewa</i>	
<i>Prosecution v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92bis (TC), 9 October 2006.	
<i>Prosecution v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Norman Request to Admit Documents in Lieu of Oral Testimony of Abdul One-Mohammed Pursuant to Rules 89(C) and 92bis (TC), 15 September 2006.	
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Motions for Judgment of Acquittal pursuant to Rule 98 (TC), 21 October 2005.	Rule 98 Decision.
<i>Prosecution v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C) (TC), 14 July 2005.	
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 21 June 2005.	Norman Decision on Additional Witnesses.
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence (TC), 24 May 2005.	Admissibility of Evidence Decision.
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Amendment of the Consolidated Indictment (AC), 16 May 2005.	
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-A, Fofana - Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005.	Appeal Decision on Judicial Notice.
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-A, Fofana - Appeal Against Decision Refusing Bail (AC), 11 March 2005.	Fofana Bail Appeal.
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on the First Accused's Motion for Service and Arraignment on the Consolidated Indictment (TC), 29 November 2004.	
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Disclosure of Witness Statements and Cross-Examination (TC), 16 July 2004.	Norman Decision on Disclosure of Witness Statements.
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (TC), 8 June 2004.	
<i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-PT, Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence (TC),	Trial Decision on Judicial Notice.

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2 June 2004.	
Prosecutor v. Norman, Fofana and Kondewa, SCSL-04-14-PT, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana (TC), 3 March 2004.	Decision on Personal Jurisdiction.
Prosecutor v. Norman, Kondewa and Fofana, SCSL-04-14-AR72(E), Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment) (AC), 31 May 2004.	Appeal Decision on Child Recruitment.
Prosecutor v. Norman, Fofana and Kondewa, SCSL-04-14-A, Decision on Preliminary Motion on Lack of Jurisdiction <i>Materiae</i> : Nature of the Armed Conflict (AC), 25 May 2004.	Appeal Decision on Nature of Armed Conflict.
Prosecutor v. Norman, Fofana and Kondewa, SCSL-2004-14-PT, Indictment, 4 February 2004.	
<b>Prosecutor v. Norman</b>	
Prosecutor v. Norman, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003.	
<b>Prosecutor v. Fofana</b>	
Prosecutor v. Fofana, SCSL-03-11-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 16 October 2003.	
<b>Prosecutor v. Kondewa</b>	
Prosecutor v. Kondewa, SCSL-03-12-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 27 November 2003.	Kondewa Decision.
Prosecutor v. Kondewa, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and urgent Request for Interim Measures until Appropriate Protective Measures are in Place (TC), 10 October 2003.	
<b>Prosecutor v. Sesay, Kallon and Gbao</b>	
Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T, Oral Decision on RUF Motions for Judgement of Acquittal Pursuant to Rule 98, 25 October 2006.	Sesay et al. Rule 98 Oral Decision.
Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T, Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination (TC), 2 August 2006.	
Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108 (TC), 15 June 2006.	
Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T, Ruling on Gbao	

Application to Exclude Evidence of Prosecution Witness Mr. Koker (TC), 23 May 2005.	
<i>Prosecutor v. Sesay, Kallon and Gbao</i> , SCSL-04-15-PT and <i>Prosecutor v. Brima, Kamara and Kanu</i> , SCSL-04-16-PT, Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-04-15-PT and SCSL-04-16-PT (TC), 11 May 2004.	
<b><i>Prosecutor v. Sesay</i></b>	
<i>Prosecutor v Sesay</i> , SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 13 October 2003.	Sesay Decision.
<i>Prosecutor v Sesay</i> , SCSL-2003-05-I, Indictment, 7 March 2003.	
<b><i>Prosecutor v. Gbao</i></b>	
<i>Prosecutor v. Gbao</i> , SCSL-03-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions And The Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case (TC), 16 May 2003.	
<b><i>Prosecutor v. Brima, Kamara and Kanu</i></b>	
<i>Prosecutor v. Brima, Kamara and Kanu</i> , SCSL-04-16-T, Judgement (TC), 20 June 2007	
<i>Prosecutor v. Brima, Kanu and Kamara</i> , SCSL-03-16-T, Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98 (TC), 31 March 2006.	<i>Brima et al.</i> Rule 98 Decision.
<i>Prosecutor v. Sesay, Kallon and Gbao</i> , SCSL-04-15-PT and <i>Prosecutor v. Brima, Kamara and Kanu</i> , SCSL-04-16-PT, Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-04-15-PT and SCSL-04-16-PT (TC), 11 May 2004, para 38.	
<i>Prosecutor v. Brima, Kamara and Kanu</i> , SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment (TC), 1 April 2004.	<i>Kamara</i> Decision on Form of Indictment.
<b><i>Prosecutor v. Kanu</i></b>	
<i>Prosecutor v Kanu</i> , SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment (TC), 19 November 2003.	<i>Kanu</i> Decision.

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2. International Criminal Tribunal for Rwanda Decisions and Judgements

Full Citation	Short Name (If Applicable)
<b><i>Prosecutor v. Akayesu</i></b>	
<i>Prosecutor v. Akayesu</i> , ICTR-96-4-A, Judgement (AC), 1 June 2001.	<i>Akayesu</i> Appeal Judgement.
<i>Prosecutor v. Akayesu</i> , ICTR-96-4-T, Judgement (TC), 2 September 1998.	<i>Akayesu</i> Trial Judgement.
<i>Prosecutor v. Akayesu</i> , ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998.	
<b><i>Prosecutor v. Bagilishema</i></b>	
<i>Prosecutor v. Bagilishema</i> , ICTR-95-1A-1, Judgement (Reasons) (AC), 3 July 2002.	<i>Bagilishema</i> Appeal Judgement.
<i>Prosecutor v. Bagilishema</i> , ICTR-95-1A-T, Judgement (TC), 7 June 2001.	<i>Bagilishema</i> Trial Judgement.
<b><i>Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva</i></b>	<i>Bagosora</i> Appeal Decision
<i>Prosecutor v. Bagosora</i> , ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber Decision (AC), 18 December 2006.	
<b><i>Prosecutor v. Gacumbitsi</i></b>	
<i>Prosecutor v. Gacumbitsi</i> , ICTR-01-64-A, Judgement (AC), 7 July 2006.	<i>Gacumbitsi</i> Appeal Judgement.
<i>Prosecutor v. Gacumbitsi</i> , ICTR-2001-64-T, Judgment (TC), 17 June 2004.	<i>Gacumbitsi</i> Trial Judgement.
<b><i>Prosecutor v. Kajelijeli</i></b>	
<i>Prosecutor v. Kajelijeli</i> , ICTR-98-44A-A, Judgement (AC), 23 May 2005.	<i>Kajelijeli</i> Appeal Judgement.
<b><i>Prosecutor v. Kamuhanda</i></b>	
<i>Prosecutor v. Kamuhanda</i> , ICTR-99-54A-A, Judgement (AC), 19 September 2005.	<i>Kamuhanda</i> Appeal Judgement.
<b><i>Prosecutor v. Karemera, Ngirumpatse and Nzirodera</i></b>	
<i>Prosecutor v. Karemera, Ngirumpatse and Nzirodera</i> , ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise (AC), 12 April 2006.	<i>Karemera</i> Appeal Decision on Joint Criminal Enterprise.
<b><i>Prosecutor v. Kayishema and Ruzindana</i></b>	
<i>Prosecutor v. Kayishema and Ruzindana</i> , ICTR-95-1-T, Judgement (TC), 21 May 1999.	<i>Kayishema and Ruzindana</i> Trial Judgement.
<b><i>Prosecutor v. Musema</i></b>	
<i>Prosecutor v. Musema</i> , ICTR-96-13-A, Judgement (AC), 16 November 2001.	<i>Musema</i> Appeal Judgement.
<i>Prosecutor v. Musema</i> , ICTR-96-13-T, Judgement and Sentence (TC), 27	<i>Musema</i> Trial Judgement.

January 2000.	
<b><i>Prosecutor v. Niyitegeka</i></b>	
<i>Prosecutor v. Niyitegeka</i> , ICTR-96-14-A, Judgement (AC), 9 July 2004.	
<b><i>Prosecutor v. Ntagerura, Bagambiki and Imanishimwe</i></b>	
<i>Prosecutor v. Ntagerura, Bagambiki and Imanishimwe</i> , ICTR-99-46-A, Judgement (AC), 7 July 2006.	
<b><i>Prosecutor v. Ntakirutimana and Ntakirutimana</i></b>	
<i>Prosecutor v. Ntakirutimana and Ntakirutimana</i> , ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004.	Ntakirutimana Appeal Judgement.
<b><i>Prosecutor v. Rutaganda</i></b>	
<i>Prosecutor v. Rutaganda</i> , ICTR-96-3-A, Judgement (AC), 26 May 2003.	Rutaganda Appeal Judgement.
<i>Prosecutor v. Rutaganda</i> , ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999.	Rutaganda Trial Judgement.
<b><i>Prosecutor v. Semanza</i></b>	
<i>Prosecutor v. Semanza</i> , ICTR-97-20-A, Judgement (AC), 20 May 2005.	Semanza Appeal Judgement.
<i>Prosecutor v. Semanza</i> , ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003.	Semanza Trial Judgement.

### 3. International Criminal Tribunal for the Former Yugoslavia Decisions and Judgements

Full Citation	Short Name (If Applicable)
<b><i>Prosecutor v. Aleksovski</i></b>	
<i>Prosecutor v. Aleksovski</i> , IT-95-14/1-T, Judgement (TC), 25 June 1999.	Aleksovski Trial Judgement.
<i>Prosecutor v. Aleksovski</i> , IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999.	Aleksovski Decision on Hearsay Evidence.
<b><i>Prosecutor v. Babic</i></b>	
<i>Prosecutor v. Babic</i> , IT-03-72-A, Judgement on Sentencing Appeal (AC), 18 July 2005.	Babic Judgement on Sentencing Appeal.
<b><i>Prosecutor v. Blagojevic</i></b>	
<i>Prosecutor v. Blagojevic</i> , IT-02-60-T, Judgement (TC), 17 January 2005.	Blagojevic Trial Judgement.
<b><i>Prosecutor v. Blaskic</i></b>	
<i>Prosecutor v. Blaskic</i> , Case No. IT-95-14-A, Judgement (AC), 29 July 2004.	Blaskic Appeal Judgement.
<i>Prosecutor v. Blaskic</i> , IT-95-14-T, Judgement (TC), 3 March 2000.	Blaskic Trial Judgement.

<b><i>Prosecutor v. Brdjanin</i></b>	
<i>Prosecutor v. Brdjanin</i> , IT-99-36-A, Judgement (AC), 3 April 2007.	<i>Brdjanin Appeal Judgement.</i>
<i>Prosecutor v. Brdjanin</i> , IT-99-36-T, Judgement (TC), 1 September 2004.	<i>Brdjanin Trial Judgement.</i>
<i>Prosecutor v. Brdjanin and Talic</i> , IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend (TC), 26 June 2001.	
<b><i>Prosecutor v. Delalic, Mucic, Delic and Landzo</i></b>	
<i>Prosecutor v. Delalic, Mucic, Delic and Landzo</i> , Judgement, IT-96-21-A, Judgement (AC), 20 February 2001.	<i>Celebici Appeal Judgement.</i>
<i>Prosecutor v. Delalic, Mucic, Delic and Landzo</i> , Judgement, IT-96-21-T, Judgement (TC), 16 November 1998.	<i>Celebici Trial Judgement.</i>
<b><i>Prosecutor v. Furundzija</i></b>	
<i>Prosecutor v. Furundzija</i> , IT-95-14/1-A, Judgement (AC), 21 July 2000.	<i>Furundzija Appeal Judgement.</i>
<i>Prosecutor v. Furundzija</i> , IT-95-17/1-T, Judgement (TC), 10 December 1998.	<i>Furundzija Trial Judgement.</i>
<b><i>Prosecutor v. Galic</i></b>	
<i>Prosecutor v. Galic</i> , IT-98-29-A, Judgement (AC), 30 November 2006.	<i>Galic Appeal Judgement.</i>
<i>Prosecutor v. Galic</i> , IT-98-29-T, Judgment (TC), 5 December 2003.	<i>Galic Trial Judgement.</i>
<i>Prosecutor v. Galic</i> , IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps (TC), 3 July 2002.	
<b><i>Prosecutor v. Hadzihasanovic and Kubura</i></b>	
<i>Prosecutor v. Hadzihasanovic and Kubura</i> , IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, 11 March 2005.	
<i>Prosecutor v. Hadzihasanovic, Alagic and Kubura</i> , IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), 16 July 2003.	<i>Hadzihasanovic et al. Appeal Decision on Command Responsibility.</i>
<b><i>Prosecutor v. Halilovic</i></b>	
<i>Prosecutor v. Halilovic</i> , IT-01-48-T, Judgement (TC), 16 November 2005, para 32 and footnoted references.	<i>Halilovic Trial Judgement.</i>
<b><i>Prosecutor v. Jelusic</i></b>	
<i>Prosecutor v. Jelusic</i> , IT-95-10-A, Judgment (AC), 5 July 2001.	<i>Jelusic Appeal Judgement.</i>
<i>Prosecutor v. Jelusic</i> , IT-95-10-T, Judgement (TC), 14 December 1999.	<i>Jelusic Trial Judgement.</i>
<b><i>Prosecutor v. Kordic and Cerkez</i></b>	
<i>Prosecutor v. Kordic and Cerkez</i> , IT-95-14/2-A, Judgement (AC), 17 December 2004.	<i>Kordic and Cerkez Appeal Judgement.</i>



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<i>Prosecutor v. Kordic and Cerkez</i> , IT-95-14/2-T, Judgement (TC), 26 February 2001.	<i>Kordic and Cerkez Trial Judgement.</i>
<b><i>Prosecutor v. Krajisnik</i></b>	
<i>Prosecutor v. Krajisnik</i> , IT-00-39-T, Judgement (TC), 27 September 2006.	<i>Krajisnik Trial Judgement.</i>
<b><i>Prosecutor v. Krnojelac</i></b>	
<i>Prosecutor v. Krnojelac</i> , IT-97-25-A, Judgement (AC), 17 September 2003.	<i>Krnojelac Appeal Judgement.</i>
<i>Prosecutor v. Krnojelac</i> , IT-97-25-T, Judgement (TC), 15 March 2002.	<i>Krnojelac Trial Judgement.</i>
<b><i>Prosecutor v. Krstic</i></b>	
<i>Prosecutor v. Krstic</i> , IT-98-33-A, Judgement (AC), 19 April 2004.	<i>Krstic Appeal Judgement.</i>
<i>Prosecutor v. Krstic</i> , IT-98-33-T, Judgement (TC), 2 August 2001.	<i>Krstic Trial Judgement.</i>
<b><i>Prosecutor v. Kunarac, Kovac and Vukovic</i></b>	
<i>Prosecutor v. Kunarac, Kovac and Vukovic</i> , IT-96-23 & 23/1-A, Judgement (AC), 12 June 2002.	<i>Kunarac et al. Appeal Judgement.</i>
<i>Prosecutor v. Kunarac, Kovac and Vukovic</i> , IT-96-23 & 23/1-A, Judgement (TC), 22 February 2001.	<i>Kunarac et al. Trial Judgement.</i>
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<b><i>Prosecutor v. Limaj, Bala and Musliu</i></b>	
<i>Prosecutor v. Limaj, Bala and Musliu</i> , IT-03-66-T, Judgement (TC), 30 November 2005.	<i>Limaj et al. Trial Judgement.</i>
<b><i>Prosecutor v. Martić</i></b>	

<i>Prosecutor v. Martić</i> , IT-95-11-R61, Decision (TC), 8 March 1996.	
<b><i>Prosecutor v. Milutinović, Sainović and Ojdanić</i></b>	
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<i>The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991), art. 48(4), Part II.</i>	Sierra Leone Constitution.
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## ANNEX H: TABLE OF ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
AK-47	Avtomat Kalashnikova 1947
CDF	Civil Defence Forces
CO	Commanding Officer
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
ERECOM	Eastern Region Defence Committee
GPMG	General Purpose Machine Gun
G3	Gewehr 3
ICTR	International Criminal Court for Rwanda
ICTY	International Criminal Court for the former Yugoslavia
NCC	National Coordinating Committee
NDMC Headquarters	National Diamond Mining Corporation headquarters in Tongo
OAU	Organisation of African Unity
OC	Officer Constable
Rebels	AFRC and RUF forces
Ronkos	cotton cloths with talismans
RPG	Rocket propelled grenade
RUF	Revolutionary United Front
Rules	Rules of Procedure and Evidence
SCSL	Special Court for Sierra Leone
SLA	Sierra Leone Army
SS Camp	Special Security Camp
SSD	State Security Division
UNDP	United Nations Development Programme