

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

TRIAL CHAMBER II

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

Interim Registrar: Mr. Lovemore Munlo

Date filed: 27 January 2006

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

Case No. SCSL – 2004 – 16 – T

**PUBLIC VERSION OF THE PROSECUTION RESPONSE TO DEFENCE
MOTIONS FOR JUDGMENT OF ACQUITTAL PURSUANT TO RULE 98**

Office of the Prosecutor

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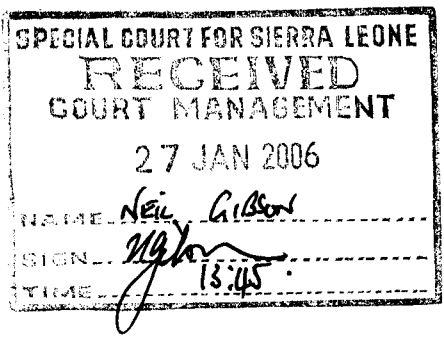
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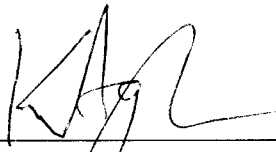
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1. The Prosecution hereby files a public version of the Prosecution Response to Defence Motions for Judgment of Acquittal pursuant to Rule 98 with redactions as necessary to protect the identity of the witnesses.

Done in Freetown this 27th day of January 2006.

For the Prosecution,

A handwritten signature in black ink, appearing to be 'KAG', written over a horizontal line.

Karim Agha
Senior Trial Counsel

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

TRIAL CHAMBER II

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

Interim Registrar: Mr. Lovemore Munlo

Date filed: 23 January 2006

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

Case No. SCSL – 2004 – 16 – T

**PROSECUTION RESPONSE TO
DEFENCE MOTIONS FOR JUDGEMENT OF ACQUITTAL PURSUANT TO RULE 98**

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Table of Contents

1. Introduction	4
2. Response to the Joint Defence Motion	6
2.1. THE STANDARD UNDER RULE 98 (PARAGRAPHS 3-6)	6
2.2. THE “GREATEST RESPONSIBILITY” REQUIREMENT (PARAGRAPHS 7-20).....	8
2.3. MODES OF LIABILITY (PARAGRAPHS 21-40)	9
<i>Individual criminal responsibility—Committing</i>	9
<i>Individual criminal responsibility—Aiding and abetting</i>	10
<i>Individual criminal responsibility—Planning and ordering</i>	11
<i>Individual criminal responsibility—Joint criminal enterprise</i>	13
<i>Conclusion</i>	28
<i>Superior responsibility</i>	29
2.4. ELEMENT OF CRIMES (PARAGRAPHS 41-88)	34
A. Article 2 of the Statute: Crimes against Humanity.....	34
B. Count 1: Terrorizing the Civilian Population	37
C. Count 2: Collective Punishments	39
D. Count 3: Extermination.....	40
E. Counts 4 and 5: Murder and Violence to Life	41
F. Count 6: Rape	41
G. Count 7-8: Sexual Slavery, Any Other Form of Sexual Violence, Other Inhumane Acts	42
H. Count 9: Outrages upon Personal Dignity.....	43
I. Counts 10 and 11: Physical Violence (Mutilation) and Other Inhumane Acts.....	43
J. Count 12: Conscripting or Enlisting Children	43
K. Count 13: Abductions and Forced Labour (Enslavement).....	44
L. Count 14: Looting and Burning (Pillage).....	45
3. BRIMA Response	48
3.1 COUNTS 1 AND 2: ACTS OF TERRORISM AND COLLECTIVE PUNISHMENTS	48
3.2 COUNTS 3 TO 5: UNLAWFUL KILLINGS	48
3.3 COUNTS 6 TO 9: SEXUAL VIOLENCE.....	57
3.4 COUNTS 10 AND 11: PHYSICAL VIOLENCE	61
3.5 COUNT 12: USE OF CHILD SOLDIERS.....	63
3.6 COUNT 13: ABDUCTIONS AND FORCED LABOUR.....	66
3.7 COUNT 14: LOOTING AND BURNING	67
4. KAMARA Response	71
4.1 COUNTS 1 AND 2: ACTS OF TERRORISM AND COLLECTIVE PUNISHMENTS	71
4.2 COUNTS 3, 4 AND 5: UNLAWFUL KILLINGS	72
4.3 COUNTS 6, 7, 8 AND 9: SEXUAL VIOLENCE	76
4.4 COUNTS 10 AND 11: PHYSICAL VIOLENCE	81
4.5 COUNT 12: USE OF CHILD SOLDIERS	84

4.6	COUNTS 13: ABDUCTIONS AND FORCED LABOUR	84
4.7	COUNTS 14: LOOTING AND BURNING	85
5.	KANU Response.....	87
5.1	GREATEST RESPONSIBILITY	87
5.2	COUNT 1: ACTS OF TERRORISM	87
5.3	COUNT 2: COLLECTIVE PUNISHMENTS.....	87
5.4	COUNT 3: EXTERMINATION	88
5.5	COUNTS 4 AND 5: MURDER AND VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS, IN PARTICULAR MURDER	88
5.6	COUNT 6: RAPE.....	93
5.7	COUNT 7: SEXUAL SLAVERY AND ANY OTHER FORM OF SEXUAL VIOLENCE.....	97
5.8	COUNTS 8 AND 9: OTHER INHUMANE ACTS AND OUTRAGES ON PERSONAL DIGNITY.....	99
5.9	COUNTS 10 AND 11: VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL- BEING OF PERSONS, IN PARTICULAR MUTILATION AND OTHER INHUMANE ACTS	100
5.10	COUNT 12: USE OF CHILD SOLDIERS.....	103
5.11	COUNT 13: ABDUCTIONS AND FORCED LABOUR.....	104
5.12	COUNT 14: LOOTING AND BURNING	108
6.	Conclusion	111
	Annex A.....	113
	Annex B.....	114
	Index of Authorities	117

1. Introduction

1. The Prosecution files this consolidated response to:
 - the document entitled “Joint Defence Motion Defence Motion for Judgement of Acquittal under Rule 98” (“**Joint Defence Motion**”), filed on behalf of all three Accused on 13 December 2005;¹
 - the document entitled “Brima – Motion for Acquittal Pursuant to Rule 98” (“**Brima Motion**”),² filed on behalf of the First Accused (“**Brima**”) on 12 December 2005;
 - the document entitled “Defence Motion for Judgment of Acquittal of the Second Accused – Brima Bazy Kamara” (“**Kamara Motion**”),³ filed on behalf of the Second Accused (“**Kamara**”) on 12 December 2005; and
 - the document entitled “Kanu – Factual Part Defence Motion for Judgement of Acquittal under Rule 98” (“**Kanu Motion**”),⁴ filed on behalf of the Third Accused (“**Kanu**”) on 13 December 2005.
2. Each of these documents, which are referred to below collectively as the “**Defence Motions**”, is responded to in turn, in Parts 2, 3, 4 and 5, respectively.
3. As a preliminary matter, the Prosecution notes that a Rule 98 Motion does not place any burden on the Prosecution to establish that the evidence meets the Rule 98 standard in respect of all aspects of the Prosecution case. If the position were otherwise, this would be inconsistent with the purpose of Rule 98, as it would require the Prosecution and the Trial Chamber to undertake a comprehensive analysis of all of the evidence in relation to

¹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-445, “Joint Legal Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 November 2005, (“**Joint Defence Motion**”).

² *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-442, “Brima – Motion for Acquittal Pursuant to Rule 98”, 12 December 2005 (“**Brima Motion**”).

³ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-443, “Defence Motion for Judgment of Acquittal of the Second Accused – Brima Bazy Kamara”, 12 December 2005 (“**Kamara Motion**”).

⁴ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-444, “Kanu – Factual Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005 (“**Kanu Motion**”).

all aspects of the case at the half-time stage. It is at the *end* of the trial that the Trial Chamber will be called upon to evaluate carefully all of the evidence as a whole, and to determine in respect of each Accused and in respect of each count whether guilt has been established beyond a reasonable doubt. Where there is any doubt as to the sufficiency of the evidence at the Rule 98 stage, the trial should proceed, and the question should be resolved by the Trial Chamber at the end of the trial.⁵

4. Thus, Rule 98 places a burden on the Defence to identify the specific matters in respect of which it says that the evidence does not meet the Rule 98 standard. The Prosecution is then only called upon in its response to the Defence Rule 98 motion to address those specific matters raised by the Defence. The burden lies on the Defence to show that there is a clear basis for its Motion.
5. Accordingly, this response does not purport to be an exhaustive analysis of the evidence in this case. To the extent that certain matters have not been raised by the Defence Motions, it must be taken that no Rule 98 issue arises. If the Trial Chamber should *proprio motu* question the sufficiency of evidence in relation to a particular count, the Prosecution respectfully requests that it be afforded its right to respond.⁶
6. For the reasons given below, the Prosecution submits that each of the Accused has failed to establish that the requirements under Rule 98 for the entry of a judgment of acquittal have been met in relation to any of the counts in the Indictment, or in relation to any of the Accused and that the motions should be dismissed.
7. The Prosecution does accept that it has not led evidence with respect to all geographic

⁵ As has been said by a Trial Chamber of the ICTY: "It is worth noting the extent and frequency to which Rule 98 *bis* has come to be relied on in proceedings before the Tribunal, and the prevailing tendency for Rule 98 *bis* motions to involve much delay, lengthy submissions, and therefore an extensive analysis of evidentiary issues in decisions. This is in contrast to the position typically found in common law jurisdictions from which the procedure is derived. While Rule 98 *bis* is a safeguard, the object and proper operation of the Rule should not be lost sight of. Its essential function is to bring an end to only those proceedings in respect of a charge for which there is no evidence on which a Chamber could convict, rather than to terminate prematurely cases where the evidence is weak." *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, "Decision on Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence," 27 September 2004, ("**Hadžihasanović Rule 98bis Decision**"), para. 20.

⁶ See *Prosecutor v. Jelisić*, IT-95-10, "Judgement", 5 July 2001, ("**Jelisić Appeal Judgement**"), para. 27, where the Appeals Chamber held, *inter alia*, "[t]he fact that a Trial Chamber has a right to decide *proprio motu* entitles it to make a decision whether or not invited to do so by a party; but the fact that it can do so does not relieve it of the normal duty of a judicial body first to hear a party whose rights can be affected by the decision to be made. Failure to hear a party against whom the Trial Chamber is provisionally inclined is not consistent with the requirement to hold a fair trial."

locations pleaded at the sub-District level in the Indictment.⁷ However, the Prosecution submits that it is not necessary to do so to prove each particular count. Where a single count in the Indictment charges an Accused with criminal responsibility in respect of more than one incident, the Trial Chamber is not required to make a determination of whether there is sufficient evidence to sustain a conviction for each separate paragraph of, or location in the Indictment.

2. Response to the Joint Defence Motion

2.1. THE STANDARD UNDER RULE 98 (PARAGRAPHS 3-6)

8. Rule 98 of the Rules, as amended on 14 May 2005, provides:

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

In its amended form, the Rule is almost identical to Rule 98*bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), as amended on 8 December 2004, which reads:

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

9. This amended rule did not alter the jurisprudential standard of review to be applied to applications under Rule 98*bis* as previously developed in the case law of the ICTY.⁸ Paragraph 4 of the Joint Defence Motion quotes the test applied by the ICTY Appeals Chamber in *Prosecutor v. Jelisić*, and it is submitted that this is a correct statement of the standard to be applied under Rule 98 of the Rules of the Special Court. Under this standard, the question at the Rule 98 stage is not whether the accused *should* be convicted, but rather, whether a reasonable trier of fact *could* arrive at a conviction beyond reasonable doubt.⁹ Or put differently, a Trial Chamber should only uphold a Rule

⁷ The details of specific geographic locations for which no evidence has been led in relation to particular counts are set out in table form at **Annex A**.

⁸ *Prosecutor v. Oric*, IT-03-68-T, Oral Rule 98 Decision, Trial Chamber, 8 June 2005, p. 8983-4.

⁹ *Jelisić* Appeal Judgement, para. 37.

98 motion if it is “entitled to conclude that no reasonable trier of fact could find the evidence sufficient to sustain a conviction beyond reasonable doubt.”¹⁰ As footnote 3 of the Joint Defence Motion concedes, this standard has been applied in various other decisions of the ICTY.¹¹ It has also been applied by the ICTR.¹² More importantly, the same standard was applied by Trial Chamber I of the Special Court in the *Norman* Decision,¹³ in which the Trial Chamber said that under Rule 98, what it must determine is “whether there is patently no evidence in respect of any of [the counts in the indictment] upon which a reasonable tribunal of fact could convict the Accused.” The Trial Chamber set out the reasons for this at some length in its decision.

10. Thus, at the Rule 98 stage, “... the object of the inquiry ... is not to make determinations of fact having weighed the credibility and reliability of the evidence; ... *the Chamber should not be drawn into fine assessments of credibility or reliability.*”¹⁴ The proof beyond reasonable doubt standard “can and should only be addressed at a later stage of proceedings.”¹⁵ At the Rule 98 stage, the Trial Chamber refrains from making evaluations of conflicting evidence. It thus also refrains from considering evidence which might be favourable to the accused.¹⁶
11. Where a single count in the Indictment charges an Accused with criminal responsibility in respect of more than one incident, the Trial Chamber is, contrary to the Defence assertions,¹⁷ not necessarily required to make a determination of whether there is sufficient evidence to sustain a conviction for each separate paragraph of the Indictment.¹⁸

¹⁰ *Ibid*, para. 56.

¹¹ See e.g. *Prosecutor v. Strugar*, IT-01-42-T, “Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98bis”, 21 June 2004, para. 11: “The issue is often shortly stated as NOT being whether, on the evidence as it stands the accused *should* be convicted, but whether the accused *could* be convicted”.

¹² *Prosecutor v. Kamuhanda*, ICTR-99-54A-T, “Decision on Kamuhanda’s Motion for Partial Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence,” 20 August 2002, paras 19 and 25; *Prosecutor v. Semanza*, ICTR-97-20-T, “Decision on the Defence Motion for a Judgement of Acquittal [...]”, 27 September 2001, para.14.

¹³ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-473, “Decision on Motions for Judgment of Acquittal pursuant to Rule 98”, 21 October 2005, (“**Norman Rule 98 Decision**”), especially paras 45, 50.

¹⁴ *Prosecutor v. Bagosora*, ICTR-98-41-T, “Decision on Motions for Judgement of Acquittal”, 2 February 2005, (“**Bagosora Rule 98 Decision**”), para. 6 (emphasis added).

¹⁵ *Norman Rule 98 Decision*, para. 36.

¹⁶ *Hadžihasanović Rule 98bis Decision*, para. 18.

¹⁷ Joint Defence Motion, paras. 44-45.

¹⁸ Provided that there is evidence which could sustain a conviction for a particular *count*, the trial on that count as a whole can proceed, even if the evidence in relation to one or more paragraphs of the Indictment or one or more modes of liability might not necessarily rise to the standard of Rule 98: *Bagosora Rule 98 Decision*, paras 8-9.

2.2. THE “GREATEST RESPONSIBILITY” REQUIREMENT (PARAGRAPHS 7-20)

12. Article 1 of the Statute provides that the Special Court has competence with respect to “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”. The Joint Defence Motion appears to argue that the Prosecution is required to prove that the “greatest responsibility” requirement is met in relation to each Accused at the Rule 98 stage.¹⁹
13. The Joint Defence Motion refers to a decision of Trial Chamber I in the CDF case concerning the effect of these words.²⁰ In that Decision, Trial Chamber I held that the question “whether or not in actuality the Accused is one of the persons who bears the greatest responsibility for the alleged violations of international humanitarian law...is an evidentiary matter to be determined at the trial stage”.²¹ This must be taken to mean that the full extent of an accused’s liability, if any, can only be determined after all the evidence has been heard, while the jurisdictional issue must necessarily be determined on the basis of the Indictment and accompanying material. Even at the conclusion of a trial, the Court may be unable to determine precisely the ranking of an accused in terms of bearing the greatest responsibility against a pool of persons who could arguably qualify. It certainly cannot make such a determination at the Rule 98 stage.
14. The Prosecution does not concede that the words “persons who bear the greatest responsibility” impose a jurisdictional requirement, in the sense that they deprive a Trial Chamber of jurisdiction to convict an accused unless it has been established that the accused is one of the persons who bears the greatest responsibility. This is a matter that has yet to be determined by the Appeals Chamber of the Special Court. However, in any event, there is nothing in that Decision to suggest that the question whether a person is one who “bears the greatest responsibility” is a question that must be determined at the

However, it is noted that Trial Chambers of the ICTY have indicated that they *may* enter judgements of acquittal in relation to specific incidents or modes of liability where the evidence on that particular incident or mode of liability does not reach the Rule 98 standard: see e.g. *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, “Judgement on Motions for Acquittal Pursuant to Rule 98bis”, 5 April 2004, para. 16.

¹⁹ Joint Defence Motion, para. 10.

²⁰ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT-26, “Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana”, 3 March 2004 (referred to in paras 8(2) and 14 of the Joint Defence Motion).

²¹ *Ibid*, para. 44.

Rule 98 stage. In the CDF case itself, Trial Chamber I did not even address the “greatest responsibility” issue in its Decision on the motions under Rule 98, even though two of the Accused (Moinina Fofana and Samuel Hinga Norman) included a “greatest responsibility” argument in their Rule 98 motions. In other words, the practice of Trial Chamber I is a precedent for the proposition that the “greatest responsibility” requirement is an issue that is *not* addressed at the Rule 98 stage.

15. In any event, the Prosecution submits that on the evidence presently before the Trial Chamber, a reasonable trier of fact could find that each of the Accused in this case is amongst those bearing the greatest responsibility for serious violations of international humanitarian law in Sierra Leone since 30 November 1996.²² Paragraph 19 of the Joint Defence Motion refers to certain evidence that, according to the Defence, is “exculpatory for the three Accused with respect to the threshold of ‘greatest responsibility’”. The Prosecution submits that it is not evident how this is so. The Joint Defence Motion refers to evidence which, it says, shows that the Government of Sierra Leone was also using child soldiers. The Defence appears to be suggesting that the Accused in this case cannot bear the greatest responsibility for the recruitment and use of child soldiers if others were also committing the same crime. This argument is difficult to understand. It is not disputed that crimes were committed by members of the various different factions and forces during the armed conflict in Sierra Leone. All of the Accused in all three cases presently on trial before the Special Court are charged with the use of child soldiers.²³ There is no reason why they cannot all be amongst those bearing the greatest responsibility for crimes committed in Sierra Leone.

2.3. MODES OF LIABILITY (PARAGRAPHS 21-40)

Individual criminal responsibility—Committing

16. Paragraphs 23 and 24 of the Joint Defence Motion, making reference to paragraph 126 of the *Blaškić* Appeal Judgement, argue that to establish the *mens rea* for crimes against humanity, it must be proven that the Accused had knowledge that there was an attack

²² See the test under Rule 98 above.

²³ AFRC Indictment, Count 12; RUF Indictment, Count 12; CDF Indictment, Count 8.

against the civilian population, as well as knowledge that their acts formed part of this attack.

17. In the *Blaškić* Appeal Judgement, the Appeals Chamber of the ICTY held that the *mens rea* applicable to crimes against humanity requires knowledge on the part of the accused that there is an attack on the civilian population, as well as knowledge that his act is part thereof.²⁴
18. The Prosecution submits that there is evidence on the basis of which a reasonable trier of fact could conclude that all three Accused had both knowledge that there was an attack on the civilian population, as well as knowledge that their acts were part thereof (see paragraphs 73-78 below).

Individual criminal responsibility—Aiding and abetting

19. Paragraph 25 of the Joint Defence Motion argues that “[t]he *actus reus* of aiding and abetting requires that the accused intend to contribute to the commission of the offence”. This is incorrect. First, the intent of the accused is relevant to the *mens rea*, rather than the *actus reus*. Secondly, the *mens rea* of aiding and abetting does **not** require that the accused **intend** to contribute to the commission of the offence (in the sense that the accused must share the *mens rea* of the crime). For the *mens rea* of aiding and abetting, it is sufficient to establish that the accused was aware that his or her acts assisted in the commission of a crime by the principal offender. It is not necessary that the aider and abettor has knowledge of the precise crime that was intended or that was actually committed, as long as he or she was aware that one of a number of crimes would probably be committed, including the one actually perpetrated.²⁵
20. In order to prove that an accused aided or abetted a crime, it must be demonstrated that the accused carried out an act that consisted of practical assistance, encouragement or

²⁴ *Prosecutor v Blaškić*, IT-95-14-A, “Judgement”, 29 July 2004, (“*Blaškić Appeal Judgement*”), para. 124. The Chamber affirmed, citing earlier case law, (1) that the motives of the accused for taking part in the attack are irrelevant and a crime against humanity may be committed for purely personal reasons, (2) that the accused need not share the purpose or goal behind the attack, and (3) that it is irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim.

²⁵ *Blaškić Appeal Judgement*, paras. 49-50; see also *Prosecutor v. Tadić*, IT-94-1-A, “Judgement”, 15 July 1999, (“*Tadić Appeal Judgement*”), para. 229 (iv); *Prosecutor v. Vasiljević*, IT-98-32-A, “Judgement”, 25 February 2004, (“*Vasiljević Appeal Judgement*”), para. 102 (ii).

moral support to the principal, before during or after the act of the principal.²⁶ The acts of the principal offender must be established.²⁷ The act of assistance must have a substantial effect on the commission of the crime by the principal offender but need not have caused the principal's act.²⁸ The required *mens rea* is knowledge in the sense of awareness that the acts of the accused assisted in the perpetration of the crime.²⁹

21. Paragraph 26 of the Joint Defence Motion argues that mere presence at the scene of a crime is not of itself conclusive of aiding and abetting, unless it is shown to have a significant legitimizing effect on the principal.³⁰ While this statement is true, it is equally true that presence at the scene of the crime is also not a prerequisite for aiding and abetting—an act of aiding and abetting may be removed both in time and place from the actual commission of the offence.³¹ Furthermore, in this case the Prosecution submits that the evidence tendered extends well beyond mere presence, and, in any event, the presence of a superior at the scene of a crime can be perceived as an important *indicium* of encouragement or support.³²

Individual criminal responsibility—Planning and ordering

22. Paragraphs 27 and 28 of the Joint Defence Motion contain the Defence's view on aspects of the elements of "planning" and "ordering", but do not themselves challenge any of the counts in the Indictment. The Joint Defence Motion does not specifically address instigating as a separate mode of liability.
23. The Joint Defence Motion refers to a statement of a Trial Chamber of the ICTY in the *Brđanin* case, that "[r]esponsibility for 'planning' a crime [requires that it be] ... demonstrated that the Accused was substantially involved at the preparatory stage of that

²⁶ *Tadić* Appeal Judgement, para. 229; *Prosecutor v. Aleksovski*, IT-95-14/1-A, "Judgement," 24 March 2000, ("**Aleksovski Appeal Judgement**"), paras 163-164.

²⁷ *Prosecutor v. Brđanin*, IT-99-36-T, "Judgement", 1 September 2004, ("**Brđanin Trial Judgement**"), para. 271.

²⁸ *Ibid.*

²⁹ *Vasiljević* Appeal Judgement, para. 102.

³⁰ *Prosecutor v. Kunarac*, IT-96-23&23/1, "Judgement", 22 February 2001, ("**Kunarac Trial Judgement**"), para. 393.

³¹ *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-T, "Judgement", 16 November 1998, ("**Čelebići Trial Judgement**"), para. 327 (expressly approved of by the Appeals Chamber on appeal, subject "to the observation that the acts of assistance, encouragement or support must have a substantial effect on the perpetration of the crime": *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, "Judgement", ("**Čelebići Appeal Judgement**"), 20 February 2001, para. 352 (and see also para. 364).

³² *Brđanin* Trial Judgement, para. 271.

crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance.”³³ The Prosecution submits that this statement of the ICTY Trial Chamber, which has never been considered by the Appeals Chamber, was made in the context of a case where the accused did not physically perpetrate any of the crimes established, and may be seen as a conservative definition of planning. The Trial Chamber in *Brđanin* went on to say that this “knowledge requirement should not, however, be understood to mean that the Accused would have to be intimate with every detail of the acts committed by the physical perpetrators.”³⁴ The Prosecution submits that to be guilty of planning or indeed instigating or ordering a crime, it is not necessary to show that the accused planned, instigated or ordered the specific crime, or each of the specific crimes, alleged in the indictment. For instance, it must be evident that a person who plans an attack against the civilian population of a village in which civilians are to be severely mistreated and terrorized may be guilty of “planning” crimes such as rape and pillage that are committed in the course of the attack, even if the plan itself did not specify the precise forms of mistreatment that were to be inflicted on the population. By analogy with the requirements of “ordering” (as to which, see the next paragraph), it is submitted that a person who plans an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that plan, has the requisite *mens rea* for establishing liability under Article 6(1) pursuant to planning. Furthermore, circumstantial evidence may provide sufficient proof of the existence of a plan.³⁵

24. Referring to the *Blaškić* Appeals Judgement, the Defence submits that in order to be held liable for ordering crimes, the *mens rea* must be one in which the accused had “an awareness of a higher likelihood of risk and a volitional element must [be] incorporated in the legal standard.”³⁶ This is said to be important given the evidence of Colonel Iron that the possibility of violations occurring during military operations is always present.³⁷ The *Blaškić* Appeals Judgment holds that “a person who orders an act or omission with

³³ Joint Defence Motion, para. 27.

³⁴ *Brđanin* Trial Judgment, para. 357.

³⁵ *Prosecutor v Blaškić*, IT-95-14, “Judgement”, 3 March 2000, (“*Blaškić Trial Judgement*”), para. 279.

³⁶ Joint Defence Motion, para. 28.

³⁷ Witness TF1-301.

the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under Article 7(1) pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime.” The Prosecution does not dispute this definition of the *mens rea*,³⁸ but contrary to the Defence assertion, the Prosecution submits that the evidence establishes a volitional element and a direct link between the relevant orders and the commission of crimes, as well as a pattern of conduct from which the requisite direct intent may be inferred.

Individual criminal responsibility—Joint criminal enterprise

25. International jurisprudence has established that persons who contribute to the perpetration of crimes in execution of a common criminal purpose may be subject to criminal liability as a form of “commission” pursuant to Article 6(1) of the Statute.³⁹
26. There are three recognized forms of joint criminal enterprise.⁴⁰ The first category or ‘basic form’ describes cases where all participants, acting pursuant to a common purpose, share the same criminal intent. The second category, a variant of the first, is also a basic form, and applies where the accused has personal knowledge of a concerted system of ill-treatment, as well as the intent to further this concerted system of ill-treatment.⁴¹ This second category is frequently used to describe concentration camp cases, but can apply in other cases characterized by the existence of an organized system set in place to achieve a common criminal purpose.⁴² In such cases, it is necessary to prove that the accused had personal knowledge of the system and the intent to further the system; it is less important to prove that there was a more or less formal agreement between all the participants than to prove their involvement in the system.⁴³ On a proper analysis, the first and second categories may be regarded not as separate ‘categories’ of joint criminal enterprise

³⁸ See *Brđanin* Trial Judgement, para. 270, where the perpetrator “must also have been aware of the substantial likelihood that the crime committed would be the consequence of the execution or implementation of the order.”

³⁹ *Tadić* Appeal Judgement, para. 190; *Vasiljević* Appeal Judgement”, para. 95; *Prosecutor v. Milutinović et al.*, IT-99-37-AR72, “Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction—Joint Criminal Enterprise”, Appeals Chamber, 21 May 2003, para. 20.

⁴⁰ *Tadić* Appeal Judgment, paras 195-226; *Vasiljević* Appeals Judgment, paras 96-99.

⁴¹ *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, “Judgement”, 17 September 2003, (“*Krnojelac* Appeal Judgement”), para. 32.

⁴² *Ibid.*, para. 89.

⁴³ *Ibid.*, para. 96.

liability, but merely as two different ways in which an accused can participate in a joint criminal enterprise under the ‘basic form’ of liability.⁴⁴ The third category or ‘extended form’ describes cases where all participants share the intention to carry out a common design and where the physical perpetrator commits a crime which falls outside the scope of the original design but which is nevertheless a natural and foreseeable consequence of that design.⁴⁵

27. The Joint Defence Motion argues that the Indictment is not clear in delineating the category of joint criminal enterprise alleged.⁴⁶ The Prosecution submits that the Indictment is clear in alleging all three categories of joint criminal enterprise. It is specifically stated in the Indictment that the crimes “alleged in this indictment, including unlawful killings, abductions (...) were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.”⁴⁷ Accordingly, the three Accused are specifically alleged to have acted pursuant to a basic (*within*) or alternatively extended (*foreseeable*) joint criminal enterprise with respect to the acts charged.⁴⁸
28. The following elements establish the existence of a joint criminal enterprise:⁴⁹
- a. A plurality of persons;
 - b. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime listed in the Statute; and
 - c. The participation of the accused in the execution of the common plan.
 - d. Shared intent to commit a crime in furtherance of the common plan; or

⁴⁴ See *Prosecutor v. Stakić*, IT-97-24-T, “Judgement,” 31 July 2003, (“**Stakić Trial Judgement**”), para. 435 (“A person may *participate* in a joint criminal enterprise *in various ways*: (i) by personally committing the agreed crime as a principal offender; (ii) by assisting or encouraging the principal offender in committing the agreed crime as a co-perpetrator who shares the intent of the joint criminal enterprise; (iii) *by acting in furtherance of a particular system in which the crime is committed by reason of the accused’s position of authority or function and with knowledge of the nature of that system and intent to further it*” (emphasis added).

⁴⁵ *Vasiljević Appeals Judgment*, para. 99.

⁴⁶ Joint Defence Motion, para. 29.

⁴⁷ Indictment, para. 34.

⁴⁸ See further *Prosecutor v. Krnojelac*, IT-97-25, “Judgement”, 15 March 2002, (“**Krnojelac Trial Judgement**”), para. 84, where the Prosecution only alleged that the Accused acted ‘in concert’ with others and the Trial Chamber subsequently interpreted the “words ‘in concert with’ to connote acting pursuant to a basic joint criminal enterprise.”

⁴⁹ *Prosecutor v. Kvočka*, IT-98-30/1-T, “Judgement”, 2 November 2001, (“**Kvočka Trial Judgement**”), para. 266; See also *Tadić Appeal Judgment*, para. 227.

- e. Where the crime charged was a natural and foreseeable consequence of the execution of the enterprise, participation in the enterprise with the awareness that such a crime was a possible consequence of its execution.⁵⁰
29. The Defence relies on a statement from the *Brđanin* Trial Judgment, to the effect that an agreement between two persons to commit a crime requires a mutual understanding or arrangement which may not be deduced simply from the fact that the acts and conduct of an accused facilitated or contributed to the commission of a crime by another person or assisted in the formation of that person's intent.⁵¹ The Prosecution submits that there is no need for the Prosecution to establish that the common plan, design or purpose of the joint criminal enterprise was expressly or formally agreed between the various members of the joint criminal enterprise. The participants in the joint criminal enterprise must have a common state of mind, but their understanding or arrangement need not have been reached at any time before the crime is committed, and may in some cases only be formed as the crime is being committed. Furthermore, the understanding or arrangement may be an unspoken one. Additionally, the existence of such a common plan, design or purpose may be established by circumstantial evidence, and may be inferred from all the circumstances.⁵² In particular, the common plan, understanding or agreement may be inferred merely "from the fact that a plurality of persons acts in unison to put the plan into effect or from other circumstances."⁵³ For instance, it has been said that "[w]here the act of one accused contributes to the purpose of the other, and both acted simultaneously, in the same place and within full view of each other, over a prolonged period of time, the argument that there was no common purpose is plainly unsustainable."⁵⁴ Furthermore, as noted above, in the case of the second category of joint criminal enterprise, the emphasis is on the accused's knowledge of the system and intent to further that system, rather than on proving the existence of an agreement between the various members of the joint criminal enterprise.

⁵⁰ *Brđanin* Trial Judgment, para. 265; see also *Tadić* Appeal Judgment, para. 228.

⁵¹ Joint Defence Motion, para. 33.

⁵² *Prosecutor v. Blagoje Simić*, IT-95-9-T, "Judgement", 17 October 2003, para. 158; *Prosecutor v. Mitar Vasiljević*, IT-98-32-T, "Judgement", 29 November 2002, para. 66; *Krnojelac* Trial Judgment, para. 80, footnote 236; *Prosecutor v. Anto Furundžija*, IT-95-17/1-A, "Judgement", (*"Furundžija Appeals Judgment"*), 21 July 2000, para. 119; *Krnojelac* Appeal Judgment, paras. 81, 96.

⁵³ *Tadić* Appeal Judgment, para. 227; *Krnojelac* Trial Judgment, para. 80.

⁵⁴ *Furundžija Appeals Judgment*, para. 120.

30. The Joint Defence Motion asserts that with respect to the third category, the Prosecution has failed to satisfy the test articulated in the *Brđanin Trial Judgement* that “the Accused entered into an agreement with a person to commit a particular crime...and that this same person physically committed another crime, which was a natural and foreseeable consequence of the execution of the crime agreed upon.”⁵⁵ The Prosecution submits that this statement is not an exhaustive definition of liability under the extended form of joint criminal enterprise. In the case of a large scale joint criminal enterprise (and in cases of serious violations of international criminal law, this is often the case), there may be a large number of members of the joint criminal enterprise, which may continue over a long period of time. Over a period of time, the membership of the joint criminal enterprise may change, with new members joining, and some persons ceasing to be members. As indicated above, for a person to become a member of a joint criminal enterprise, it is not necessary for the person to physically enter into an express agreement with every other member of the joint criminal enterprise. What is necessary is that the person must have a common state of mind with other members of the joint criminal enterprise, which may be an unspoken one, and which may be inferred from all the circumstances. Thus, under the extended form of joint criminal enterprise, it is not necessary that the accused and the physical perpetrator physically “entered into an agreement” to commit a particular crime. What must be demonstrated is only that the accused and the physical perpetrator were both members of the joint criminal enterprise, and that the commission of the crime was a natural and foreseeable consequence of the effecting of that common purpose.
31. The Defence asserts that there is no evidence that a joint criminal enterprise existed and/or that any of the three Accused participated therein.⁵⁶ It is further asserted that the Prosecution has failed to establish (1) that the Accused voluntarily participated in one of the aspects of the common plan, (2) that the Accused intended the criminal result, even if not physically perpetrating the crime, and (3) that the Accused shared the same criminal intent as all other participants in the joint criminal enterprise.⁵⁷

⁵⁵ *Brđanin Trial Judgment*, para. 344 (not para. 347 as cited in the Joint Defence Motion).

⁵⁶ Joint Defence Motion, para. 29.

⁵⁷ Joint Defence Motion, para. 31.

32. The Prosecution submits that on the evidence presented, it would be open to a reasonable trier of fact to conclude beyond a reasonable doubt that the crimes charged in the Indictment cannot possibly have been isolated, unrelated crimes, but that they must have been committed as part of a joint criminal enterprise. This conclusion would be based on the commonality of the perpetrators of the crime (in some cases the crimes were committed by members of the RUF, in some cases by members of the AFRC forces, and in some cases by members of both acting together), the commonality in the way that the crimes were committed (involving amputations, rapes, burning of houses and killing of civilians), the commonality in the purpose for which the crimes were committed (to terrorise the local population into supporting the political faction of the group committing the crimes with a view to enable that faction to regain and exercise control over the territory of Sierra Leone and to punish collectively those civilians and villages which did not support the objective of the faction), the fact that the crimes were committed over such a wide geographic area and over such a significant period of time, the fact that the AFRC and the RUF governed Sierra Leone together between May 1997 and February 1998, the fact that the AFRC and RUF—after being ousted from power in February 1998—continued to fight against the forces of the ‘Kabbah Government’ with the aim of regaining control of the country, and the fact that members of the AFRC and RUF remained in communication and undertook operations consistent with their mutual aims. Furthermore, the Prosecution submits that on the evidence presented of the direct involvement of the Accused in certain of the crimes charged in the Indictment, it would be open to a reasonable trier of fact to conclude that the Accused cannot have participated in these crimes on an isolated, unrelated basis, but that the only reasonable inference is that the Accused must have been members of the joint criminal enterprise. These factors are considered in further detail below.

a. Plurality of Persons

33. There is no requirement that the plurality of persons be organized in a military, political or administrative structure⁵⁸ and membership in the enterprise may be fluid so long as the common aim remains constant. The Indictment alleges that the AFRC, including Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, and the RUF, including

⁵⁸ *Vasiljević Appeals Judgment*, para. 100.

Issa Hassan Sesay, Morris Kallon and Augustine Gbao participated in a joint criminal enterprise. The key players in the enterprise during the relevant time frame included those named in the Indictment as well as other members of the AFRC and RUF, who shared the common design throughout despite shifts in the emphasis on participation in criminal acts by the two groupings. It is not alleged that every member of AFRC or its forces, or every member of the RUF, was necessarily a member of the joint criminal enterprise. The Prosecution submits that sufficient evidence of the involvement of a plurality of persons from the AFRC and RUF groupings has been provided.

b. Common Plan

34. The Prosecution submits that there is evidence of a common plan, design or purpose which amounted to, or involved, the commission of crimes listed in the Statute, namely, between the three Accused, other AFRC members and RUF members to use any means necessary to gain and exercise political power and control over the territory of Sierra Leone, as pleaded in the Indictment. The plan, design or purpose amounted to an organized system and included the terrorizing and collective punishment of the civilian population through killings, serious physical and mental injury, sexual violence, forced conscription of children, enslavement and pillage, to meet the objectives of preventing or minimizing resistance to their geographical control of the country and of using the population to provide support to the parties to the plan. The existence of the plan may be inferred from all the evidence of a widespread and consistent pattern of crimes committed in all the geographical locations in which the AFRC and RUF forces operated. The only means to consolidate and retain control of the population was to terrorize civilians into submission and punish those who failed to cooperate. This common plan, design or purpose was shared by members of the AFRC and RUF, including the three Accused in this case, alternatively, they had knowledge of the system and actively participated in its functioning.
35. The Accused were involved in the creation of the Supreme Council, which acted as both a legislative and executive body. The Accused named themselves "Honourables".⁵⁹ All of the Accused were members of the Supreme Council and, in particular, the First and

⁵⁹ TF1-334, TF1-019, TF1-301; see also Exhibit P69, "Minutes dated 23 January 1998 of meeting of AFRC Supreme Council held on 9 December 1997."

Second Accused were given special positions as Public Liaison Officers.⁶⁰ As such, they were responsible for several ministries within the AFRC government from 25 May 1997 to February 1998. During that time all three Accused attended regular Supreme Council meetings along with high level members of the RUF at which issues concerning the governance of the country were discussed, including but not limited to diamond mining, use of civilians for mining, and the extensive looting and pillaging being carried out by both soldiers of the AFRC and rebels of the RUF.⁶¹ The Supreme Council carried out the day to day functions of government, including the issuing of Decrees and Proclamations.⁶² There were ministerial positions⁶³ and military commanders.⁶⁴ The Sierra Leonean Army was under the control of the Supreme Council and had soldiers stationed in Makeni, Kenema, Bo and, later, Kailahun, Daru and Tongo.⁶⁵ The Supreme Council was the most senior body of the AFRC government and oversaw law and decision-making in Sierra Leone.⁶⁶

36. The evidence demonstrates that the three Accused and other members of the AFRC worked together with or alongside members of the RUF in order to achieve their shared objectives. For instance the evidence shows that the three Accused were participants in the coup d'état which deposed the elected government of Tejan Kabbah on May 25, 1997. Subsequently, the Accused along with other members of the coup d'état, established the AFRC.⁶⁷ The members of the coup placed a former Sierra Leone Army ("SLA") officer, Johnny Paul Koroma, in charge of the new administration. The RUF were invited to join in sharing the political power almost immediately. The invitation was accepted and together the two groups set about securing their control and power. Foday Sankoh, who was detained in Nigeria, was invited by Johnny Paul Koroma to be the Vice-Chairman of the AFRC. Sankoh, in the presence of Gibril Massaquoi, allowed Johnny Paul Koroma to make an audiotape in which Sankoh ordered his RUF fighters to

⁶⁰ TF1-334, TF1-184, TF1-167, TF1-114. See also Exhibit P.5.2, AFRC Decree setting out the duties of PLOs, and Exhibit P6 giving the names of AFRC Council Secretariat members, including the names of the three Accused.

⁶¹ TF1-334, TF1-046.

⁶² See Exhibits P4, P5.1, P5.2, P5.3, P6, P7, P8, P9 and P10.

⁶³ Witness TF1-334, TT 17 May 2005, pp. 16-17.

⁶⁴ Witness TF1-334, TT 17 May 2005, pp. 18-22.

⁶⁵ Witness TF1-334, TT 17 June 2005, p. 53

⁶⁶ Gibril Massaquoi, TT 11 October 2005, p. 104 and 7 October 2005, p. 72.

⁶⁷ See Exhibit P37, Security Council Resolution 1132, concerning Sierra Leone and the AFRC, 8 October 1997.

take command from Johnny Paul Koroma and stated further that the AFRC and RUF should work together as brothers and be known as the People's Army.⁶⁸

37. The evidence shows, for example, that the spokesman of the RUF, Eldred Collins, underscored the joining of the two groups and of the affiliated individuals in a public broadcast. He articulated the purpose of the joint enterprise by explaining the aims and objectives of the Junta Government in working together to defend the motherland of Sierra Leone.⁶⁹
38. In February 1998, ECOMOG forces drove the Junta out of Freetown. The subsequent loss of political power gave new impetus to use any means necessary to (re)gain and exercise political power and control over the territory of Sierra Leone. During the 3 days spent regrouping at Masiaka, Johnny Paul Koroma was interviewed on the BBC by Robin White and declared 'Operation Pay Yourself'. From that day looting by both AFRC and RUF members commenced.⁷⁰ The group then moved to Makeni. There Johnny Paul Koroma addressed combined RUF and AFRC troops and stated that the troop was headed for Kono which must be made a Junta stronghold.⁷¹ On the way to Kono the troop passed through Sewafe village. Johnny Paul Koroma ordered that the village should be burned because it was a suspected Kamajor stronghold.
39. A combined AFRC and RUF force captured Koidu Town in Kono in early March 1998. The need for reinforcements to maintain Koidu Town as a Junta stronghold was communicated by Johnny Paul Koroma to other senior RUF and AFRC commanders in Makeni, including Issa Sesay, Morris Kallon and the Third Accused, during the operation to bring Johnny Paul Koroma to Kailahun, and was again discussed by the commanders at a meeting in Koidu Town.⁷² When he came to Kono, Johnny Paul Koroma stated that it was necessary to secure Kono to get the attention of the international community and to obtain diamonds to support the movement. He further stated that it must become a civilian no-go area as the civilians had betrayed the Junta. He ordered that civilians not ready to join the movement should be executed and all houses burned so that no civilian

⁶⁸ Witness TF1-334, TT 16 May 2005, pp. 44-45; Gibril Massaquoi, TT 7 October 2005, pp. 46-48.

⁶⁹ Witness TF1-334, TT 16 May 2005, p. 54.

⁷⁰ Witness TF1-334, TT 17 May 2005, pp. 72-74.

⁷¹ Witness TF1-334, TT 17 May 2005, p. 87.

⁷² Witness TF1-334, TT 17 May 2005, pp. 112-113.

could settle near the troops.⁷³ Issa Sesay reinforced this order.⁷⁴ That very day civilians were pushed from Koidu and the burning of the town commenced.⁷⁵ Civilians were also pushed from other Kono towns, such as Tombudu and Yomandu.⁷⁶ Some civilians were captured, especially strong men, young women and children aged 8 to 12. The men were used to carry food and wood. The women were used to cook and for sexual purposes. Some men and women were given military training along with the children. The latter were trained to be members of Small Boy Units (“SBU”) and were particularly responsible in Kono for carrying out amputations on civilians.⁷⁷

40. A hierarchical and organized Junta military structure defended the Kono territory. There were military supervisors,⁷⁸ battalion commanders, artillery commanders,⁷⁹ and a director of operations,⁸⁰ an operations commander,⁸¹ the chief of command - the Second Accused⁸² - and a Sierra Leone Army Brigade.⁸³ Various battalions comprising both AFRC and RUF men were assigned to the villages of Kono, including Jabgwema Fiana,⁸⁴ Tombudu,⁸⁵ Bumpe,⁸⁶ Sewafe,⁸⁷ Yengema,⁸⁸ Woama⁸⁹ and Yomandu.⁹⁰
41. During the months that the combined forces were in Kono, other AFRC and RUF forces occupied other parts of Sierra Leone. There is evidence of ongoing communications and co-operation between the forces. For example, Mosquito in Kailahun supplied arms to the

⁷³ Witness TF1-334, TT 18 May 2005, pp. 3-6.

⁷⁴ Witness TF1-334, TT 18 May 2005, p. 3.

⁷⁵ Witness TF1-334, TT 18 May 2005, p. 9.

⁷⁶ Witness TF1-334, TT 20 May 2005, p. 4.

⁷⁷ Witness TF1-334, TT 20 May 2005, pp. 5-7.

⁷⁸ Colonel Idrissa Kamara aka Leatherboot; Colonel Abdul Sesay; Colonel Adams; Colonel Momoh Derty and Colonel Ibrahim Bioh Sesay. See Witness TF1-334, TT 19 May 2005, p. 28.

⁷⁹ Colonel Isaac Mongor (RUF) and Lieutenant Lagah (AFRC). See Witness TF1-334, TT 19 May 2005, p. 36-37.

⁸⁰ RUF Rambo. See Witness TF1-334, TT 19 May 2005, p. 34.

⁸¹ Papah Hassan Bangura. See Witness TF1-334, TT 19 May 2005, p. 28 and TT 17 May 2005, p. 108.

⁸² Witness TF1-334, TT 19 May 2005, p. 28.

⁸³ See witness TF1-334, TT 19 May 2005, p. 37.

⁸⁴ Under the command of Captain Junior. See Witness TF1-334, TT 19 May 2005, pp. 17-21.

⁸⁵ Under the command of Colonel Mohamed Savage aka Mr Die. The Deputy was Staff Alhaji. See Witness TF1-334, TT 19 May 2005, p. 21-23.

⁸⁶ Under the command of Lieutenant Kallay. See Witness TF1-334, TT 19 May 2005, pp. 23-24.

⁸⁷ Under the command of Lieutenant Mosquito (AFRC). See Witness TF1-334, TT 19 May 2005, pp. 24-25.

⁸⁸ Under the command of Lieutenant Tito. See Witness TF1-334, TT 19 May 2005, pp. 25-26.

⁸⁹ Under the command of Lieutenant Abubakar Kamara. See Witness TF1-334, TT 19 May 2005, p. 26.

⁹⁰ Under the command of Lieutenant Colonel Komba Gbundema (RUF). See Witness TF1-334, TT 19 May 2005, p. 32-34.

- troops, including those serving under the command of the Second Accused in Kono.⁹¹ There were also radio communications between the two groups.⁹²
42. The three Accused and their AFRC troops moved from Kono to Koinadugu District - first to Mansofinia,⁹³ and then to Mongor Bendugu, where SAJ Musa and his men were stationed.⁹⁴ There was a brigade administration including the First Accused as the Chief in Command,⁹⁵ the Second Accused as the Deputy Chief in Command,⁹⁶ the Third Accused as the Chief of Staff,⁹⁷ an operation commander,⁹⁸ company commanders,⁹⁹ military supervisors,¹⁰⁰ an adjutant,¹⁰¹ a brigade administrator,¹⁰² an intelligence officer,¹⁰³ a political advisor¹⁰⁴ and task force commander.¹⁰⁵
43. The three Accused were ordered to establish a base in the Bombali District. Along with their troops they left Koinadugu in the Spring/Summer of 1998 and settled in Rosos (Bombali District). Radio communications occurred between the First Accused in Rosos and other senior AFRC and RUF commanders including SAJ Musa, Issa Sesay, Morris Kallon and Brigadier Mani.¹⁰⁶ There was also a communication with Mosquito, in which Mosquito reiterated the position that the RUF and AFRC were brothers.¹⁰⁷
44. The Junta troops based at Rosos moved to Major Eddie Town (later called Colonel Eddie Town) after a jet raid and suspected enemy movement at Batkanu.¹⁰⁸ On arrival at Major Eddie Town, the habit of securing the area by distributing companies to surrounding

⁹¹ Witness TF1-334, TT 20 May 2005, pp. 44-50.

⁹² Witness TF1-334, TT 18 May 2005, pp. 27-28.

⁹³ Witness TF1-334, TT 20 May 2005, pp. 57-83.

⁹⁴ Witness TF1-334, TT 20 May 2005, p. 84.

⁹⁵ Witness TF1-334, TT 20 May 2005, p. 88.

⁹⁶ Witness TF1-334, TT 20 May 2005, p. 89.

⁹⁷ Witness TF1-334, TT 20 May 2005, p. 92.

⁹⁸ Witness TF1-334, TT 20 May 2005, p. 101.

⁹⁹ Captain Tito, Captain Foday Marah aka Bulldoze, Captain Arthur and George Johnson aka Junior Lion. See Witness TF1-334, TT 20 May 2005, pp. 103-107.

¹⁰⁰ Including the Third Accused as acting military supervisor for Company A. See Witness TF1-334, TT 23 May 2005, p. 26-27.

¹⁰¹ Captain Charles. See Witness TF1-334, TT 23 May 2005, p. 27.

¹⁰² Major FAT Sesay. See Witness TF1-334, TT 23 May 2005, p. 32.

¹⁰³ Captain Sammy. See Witness TF1-334, TT 23 May 2005, p. 34.

¹⁰⁴ Coachy Borno. See Witness TF1-334, TT 23 May 2005, p. 38.

¹⁰⁵ Captain Osman Sesay aka Changabulanga. See Witness TF1-334, TT 23 May 2005, p. 36.

¹⁰⁶ Witness TF1-334, TT 24 May 2005, pp. 33-41.

¹⁰⁷ Witness TF1-334, TT 24 May 2005, p. 56.

¹⁰⁸ Witness TF1-334, TT 24 May 2005, pp. 71-72.

villages¹⁰⁹ was repeated. The military hierarchy was again reorganized following the arrival of Colonel 05 and his men¹¹⁰ and again following the arrival of SAJ Musa.¹¹¹ Military operations to secure arms and ammunitions were conducted, to Kukuna¹¹² and Mange Bureh.¹¹³ There were also radio communications between the First Accused in Major Eddie Town and senior RUF commanders, including Mosquito¹¹⁴ and Issa Sesay and Morris Kallon.¹¹⁵

45. The Junta troops left Major Eddie Town in December 1998 en route to Freetown.¹¹⁶ On or about 22 December 1998 SAJ Musa, the then leader of the AFRC, was killed. He was immediately succeeded as Commander in Chief by the First Accused who elevated the Second Accused to Deputy Commander in Chief and the Third Accused to Chief of Staff. The symbolic and strategic importance of controlling Freetown to the joint enterprise is evident from the orders given by the First Accused in Allen Town on 5 January 1999. The First Accused stated that the key positions of State House and the ordinance at Murray Town, where military hardware was kept, were to be captured to secure control of the city. Freetown was to be burnt to prove that the troop had entered the city because the SLPP Government had denied the presence of Junta troops in many parts of the country. Any person opposing the AFRC was a collaborator and any collaborator captured was to be executed. Pademba Road prison was to be opened to release imprisoned soldiers for reinforcement.¹¹⁷ On 6 January 1999, the three Accused led the invasion of Freetown.
46. That the attack on Freetown was supported by the RUF is shown by the evidence of radio communications between the parties and statements made on international media. When the troop was at Mamamah, Mosquito announced on BBC radio that troops under his

¹⁰⁹ Witness TF1-334, TT 24 May 2005, pp. 87-89.

¹¹⁰ Witness TF1-334, TT 25 May 2005, pp. 40-48.

¹¹¹ Witness TF1-334, TT 25 May 2005, pp. 55-56; TT 13 June 2005, pp. 3-26.

¹¹² Witness TF1-334, TT 25 May 2005, pp. 51-52.

¹¹³ Witness TF1-334, TT 25 May 2005, pp. 52-53.

¹¹⁴ Witness TF1-334, TT 13 June 2005, pp. 46-48.

¹¹⁵ Witness TF1-334, TT 13 June 2005, pp. 28-29. See also witness TF1-184, TT 29 September 2005, pp. 28-29, who states that the SLAs, RUF and STF at Mongor Bendugu all wore the same uniform and were all working towards the same goal.

¹¹⁶ Witness TF1-334, TT 13 June 2005, p. 38.

¹¹⁷ Witness TF1-334, TT 13 June 2005, pp. 100-103.

command were moving towards Freetown.¹¹⁸ When the troop was in the jungle near York, Mosquito told the First Accused that he would send reinforcements.¹¹⁹ When the troop was in Hastings the First Accused spoke first with Issa Sesay, who said that he had captured Kono and was travelling towards Freetown, and then to Superman who stated that he was moving towards Makeni and would send reinforcements.¹²⁰

47. The radio communications and media statements continued while the Junta troops were in Freetown. On 6 January 1999 Mosquito made an announcement on Radio France International that troops commanded by the First Accused had captured Freetown and the State House and would defend their position.¹²¹ A number of RUF troops were able to break through into Freetown and reinforce the AFRC. The communications between the two groups continued during the occupation of Freetown. During the retreat from Freetown, RUF troops attacked ECOMOG forces in an effort to assist and cover the retreating AFRC forces. Mosquito had also told the First Accused to start burning down Freetown during their retreat.¹²² The First Accused ordered such burning to be carried out. Shortly after the AFRC retreat the AFRC and RUF leadership met, planned and organized a second joint effort to invade and capture Freetown. This invasion was rebuffed by ECOMOG forces.¹²³
48. The actions of the troops in defending the control of Freetown further demonstrate the use of any means necessary to control the country, including minimizing resistance to that control and using the population to support it. Civilians who supported ECOMOG, or were perceived to do so, were killed and their houses burnt. Civilians had their arms amputated and were told to “go to Kabbah”. Women were captured and used to satisfy the sexual demands of the Junta troops at State House.
49. As the troop was forced to retreat from Freetown, the manifestation of these objectives intensified. In the effort to support the troops, hundreds of civilians were captured and forced to carry looted goods and arms and ammunitions for the troop and perform

¹¹⁸ Witness TF1-334, TT 13 June 2005, pp. 46-47.

¹¹⁹ Witness TF1-334, TT 13 June 2005, pp. 88-89.

¹²⁰ Witness TF1-334, TT 13 June 2005, pp. 91-92.

¹²¹ Witness TF1-334, TT 14 June 2005, p. 20.

¹²² Witness TF1-167, TT 16 September 2005, pp. 40-41.

¹²³ Witness TF1-167, TT 15 September 2005, pp. 59-61.

domestic work.¹²⁴ Throughout Port Loko District the pattern of making areas “fearful” was repeated on the order of the Second Accused.¹²⁵ Civilians were attacked as the troop attempted to obtain arms and ammunition from Malian ECOMOG troops in Port Loko Town, including amputating both hands of a young girl and sending her with a note to the Malian troops.¹²⁶

c. Participation of the Accused in the Common Plan

50. Participation in a joint criminal enterprise may involve direct commission of the agreed crime or take the form of assistance in, or contribution to, the execution of the common plan. Presence at the scene of the crime is not required. “Provided the agreed crime is committed by one of the participants in the joint criminal enterprise, all the participants are equally guilty of the crime regardless of the role each played in its commission.”¹²⁷
51. The Prosecution submits that there is evidence of the direct commission of crimes charged in the Indictment by each Accused in furtherance of the joint criminal enterprise. This evidence includes the following:
- a. The First Accused convened a meeting following the defeat of the RUF and AFRC in Tombodu and Koidu. He stated that the troops would return to Freetown and not spare any civilian or any town attacked; they should kill or amputate any civilian and burn towns; women were to satisfy sexual desire, as it was ‘Operation Spare No Soul’.¹²⁸
 - b. Immediately following the Intervention the First Accused at Tombodu ordered AFRC fighters to abduct civilians.¹²⁹ He also ordered his subordinate Savage to kill civilians and burn the town. Savage executed the order.¹³⁰
 - c. In Kono, the Second Accused participated in and directed his troops to kill civilians and burn homes during the attack of Koidu Town.
 - d. The First Accused gave an order to the AFRC troops that the Village of Karina must be burned down and the people in it killed as it was the home town of

¹²⁴ Witness TF1-334, TT 14 June 2005, p. 114-116; Witness TF1-024, TT 7 March 2005, pp. 52-53.

¹²⁵ Witness TF1-167, TT 16 September 2005, p. 65.

¹²⁶ Witness TF1-167, TT 16 September 2005, pp. 74-78.

¹²⁷ *Krnojelac* Trial Judgment, para. 82.

¹²⁸ Witness TF1-033, TT 11 July 2005, pp. 13-14; TT 12 July 2005, pp. 34-38 and 56.

¹²⁹ Witness TF1-033, TT 11 July 2005, pp. 9-10 and 142.

¹³⁰ Witness TF1-033, TT 11 July 2005, p. 11.

President Kabbah. He stated that Karina should be the number one point of demonstration of the Junta forces, especially by his own brigade. The Second and Third Accused were present when the order was given and made no objections to said orders and made no effort to restrain the troops despite their status.¹³¹ The AFRC troops attacked Karina, killing civilians and burning buildings.¹³² In Karina the Second Accused set fire to a house containing civilians.¹³³

- e. The First Accused ordered an attack on Gbendembu to obtain arms and ammunitions and kill civilians. Civilians were forced to carry arms and ammunition on the attack.¹³⁴
- f. At Sumbuya the Third Accused ordered soldiers to go and “jah-jah”, meaning to loot.¹³⁵
- g. The First Accused chaired a meeting to discuss the invasion of Freetown. The Third Accused, in the presence of the First and Second Accused, reiterated orders that civilians who supported ECOMOG were to be killed and police stations burnt down.¹³⁶
- h. In Freetown in January 1999 the Third Accused distributed petrol to the AFRC troops following an order from the First Accused that buildings were to be burned. The buildings were burned with the active participation of the Third Accused.¹³⁷
- i. As the AFRC troops retreated from the State House in Freetown in 1999, the First Accused gave an order “to do a lot of killing and burning on Fourah Bay Road” as a result of a report by the Second Accused that civilians on Fourah Bay Road had killed a soldier. The order was carried out.¹³⁸
- j. At Upgun the Third Accused ordered amputations to start and individually amputated the arms of 2 civilians as a demonstration of “short sleeve”

¹³¹ Witness TF1-167, TT 15 September 2005, p. 54.

¹³² Witness TF1-184, TT 27 September 2005, p. 37; Witness TF1-334, TT 23 May 2005, pp. 57-58.

¹³³ Witness TF1-167, TT 15 September 2005, pp. 55-56; Witness TF1-334, TT 23 May 2005, pp. 66-67.

¹³⁴ Witness TF1-033, TT 11 July 2005, p. 105-6.

¹³⁵ Witness TF1-282, TT 13 April 2004, p. 21.

¹³⁶ Witness TF1-167, TT 16 September 2005, pp. 16-17.

¹³⁷ Witness TF1-184, TT 27 September 2005, p. 65; TT 29 September 2005, pp. 70-73.

¹³⁸ Witness TF1-167, TT 16 September 2005, p. 43.

- amputation. His subordinates then amputated ten more civilians in his presence.¹³⁹
- k. At the Kissy Mental Home the Third Accused ordered soldiers in the eastern part of Freetown to amputate up to 200 civilians and send them to Ferry Junction. The order was given in the presence of the First and Second Accused. Soldiers returned from the eastern part of Freetown with many amputated arms and machetes covered in blood.¹⁴⁰ Also at the Kissy Mental Home in 1999 the First Accused ordered the AFRC soldiers to burn structures and kill civilians as punishment for “jubilating” with the ECOMOG forces. He further ordered Changabulanga and others to amputate people in the low cost area. Reports were made to the First Accused once the orders were carried out.¹⁴¹ Further, the Second Accused ordered that the vehicles used in Freetown be burned.¹⁴² The Third Accused set vehicles ablaze at Kissy Mental Home.¹⁴³ The Second Accused also ordered 5 vehicles to be burned near the Kissy Police Station.¹⁴⁴
- l. In Waterloo during the retreat from Freetown the Second Accused ordered the houses on the highway to be set on fire.¹⁴⁵ Near Waterloo the Third Accused ordered a soldier to bury alive a child that was crying. When the child was buried the Third Accused told the child’s mother to laugh.¹⁴⁶ Also near Waterloo the Third Accused ordered a captive civilian to be beaten after she lit a cooking fire that produced smoke.¹⁴⁷
- m. At Newton the First Accused gave an order that every commander with a small child should give them basic military training.¹⁴⁸
- n. In Mamamah, the Second Accused gave an order to make the terrain more ‘fearful’ to slow the movement of the ECOMOG troops. Cyborg carried out the order, killing civilians with a machete and displaying them on the main

¹³⁹ Witness TF1-334, TT 14 June 2005, pp. 68-70.

¹⁴⁰ Witness TF1-167, TT 16 September 2005, pp. 53-54.

¹⁴¹ Witness TF1-334, TT 14 June 2006, pp 84-87.

¹⁴² Witness TF1-046, TT 10 October 2005, pp. 24-25.

¹⁴³ Witness TF1-094, TT 13 July 2005, p. 44.

¹⁴⁴ Witness TF1-046, TT 11 October 2005, pp. 122.

¹⁴⁵ Witness TF1-334, TT 15 June 2005, pp. 11-12.

¹⁴⁶ Witness TF1-085, TT 7 April 2005, p. 23.

¹⁴⁷ Witness TF1-085, TT 7 April 2005, p. 28.

¹⁴⁸ Witness TF1-334, TT 15 June 2005, p. 15.

highway.¹⁴⁹ [REDACTED]¹⁵⁰ Also in Mamamah the Second Accused ordered a house containing civilians to be burnt. When a teenage boy attempted to escape the fire, the Second Accused fired on the ground in front of the boy to force him back into the house.¹⁵¹

d. Shared Intent

52. The Prosecution submits that the shared intent to commit crimes in furtherance of the common plan may be inferred from the evidence of systematic attacks against civilians in an effort to gain or regain control of the political and economic power of Sierra Leone and the participation of the Accused in those attacks as set out above.
53. The Prosecution submits that it would be open to a reasonable trier of fact to conclude on the basis of the evidence as a whole that the only reasonable inference is that the three Accused all shared the intent to perpetrate the crimes charged in the Indictment.

e. Crimes as a Natural and Foreseeable Consequence

54. Alternatively, based upon the evidence that the Accused possessed the intention to participate in and further the criminal purpose, the commission of crimes that were not agreed upon was foreseeable, and the Accused willingly took the risk that such crimes could be committed.

Conclusion

55. As an alternative to being criminally liable as a participant (co-perpetrator) in a joint criminal enterprise, a person may be criminally liable as an aider and abettor to the participants. A primary difference between the two forms of liability is that a co-perpetrator must share the intent of the common purpose, while the aider and abettor need not. To be an aider and abettor, it is sufficient that an accused merely knows that his or her acts or omissions assist the commission of the crime.¹⁵² In the context of a crime committed by several co-perpetrators in a joint criminal enterprise, the aider and abettor is always an accessory to these co-perpetrators, although the co-perpetrators may not

¹⁴⁹ Witness TF1-167, TT 16 September 2005, p. 65; Witness TF1-334, TT 14 June 2005, pp. 66-67.

¹⁵⁰ Witness TF1-023, TT 10 March 2005, pp. 36-37. See also Witness TF1-334, TT 15 June 2005, pp. 20-21 who states that the Second Accused ordered men to “decorate” Mamamah Town and to display executed civilians at Mamamah Junction.

¹⁵¹ Witness TF1-167, TT 16 September 2005, pp. 65-66; Witness TF1-334, TT 15 June 2005, p. 15.

¹⁵² *Vasiljević* Appeal Judgement, para. 102.

even know of the aider and abettor's contribution.¹⁵³ Where this occurs, the accused will be criminally responsible for aiding and abetting all of the crimes that were committed in the course of that joint criminal enterprise.¹⁵⁴

Superior responsibility

(i) Introduction

56. Paragraphs 35 to 40 of the Joint Defence Motion argue that there is no evidence of superior responsibility by virtue of Article 6(3), on the basis that the Prosecution has failed to show 'effective control' of the three Accused, and in particular, on the basis that the evidence does not show that "Mr. Kanu was ever in operational command, such that he had effective control over "all" the troops who committed the alleged crimes."¹⁵⁵

(ii) Requirements for superior responsibility

57. The Prosecution does not dispute the elements establishing superior responsibility as set out by the Defence.¹⁵⁶

58. The existence of a superior-subordinate relationship is characterized by a direct or indirect,¹⁵⁷ formal or informal hierarchical relationship, whether by virtue of a *de jure* or *de facto* position of authority, between the superior and subordinate in which the former has "effective control" over the latter.¹⁵⁸ "Effective control is defined as the material ability to prevent or punish the commission of the offence."¹⁵⁹ As noted by the Defence, substantial influence over subordinates which does not meet the threshold of effective control will not lead to criminal liability.¹⁶⁰ It was stated in the *Halilovic* case that the "test of effective control implies that more than one superior may be held responsible for his failure to prevent or punish the same crime committed by a subordinate."¹⁶¹

59. To establish the *mens rea*, it must be established that the superior had either actual

¹⁵³ Ibid.

¹⁵⁴ Ibid. "In the context of a crime committed by several co-perpetrators in a joint criminal enterprise, the aider and abettor is always an accessory to these co-perpetrators, although the co-perpetrators may not even know of the aider and abettor's contribution."

¹⁵⁵ Joint Defence Response, para. 39.

¹⁵⁶ Joint Defence Motion, section 4.3.1.

¹⁵⁷ *Čelebići* Appeal Judgement, para. 252.

¹⁵⁸ *Čelebići* Trial Judgement, para. 378.

¹⁵⁹ *Brđanin* Trial Judgement, para. 276.

¹⁶⁰ *Prosecutor v Halilovic*, IT-01-48-T, Judgement, 16 November 2005, ("*Halilovic Trial Judgement*"), para. 59.

¹⁶¹ Ibid, para. 62.

knowledge, established through direct or circumstantial evidence, that his subordinates were about to commit or had committed crimes, or constructive knowledge in the sense of information that would put the superior on notice of the present and real risk of such crimes and alert him to the need for additional investigation into whether the crimes were about to be committed or had been committed by his subordinates.¹⁶²

60. The measures required of the superior to prevent the crimes or punish the perpetrators are limited to those within his material possibility in the circumstances.¹⁶³ The duty includes at least an obligation to investigate the crimes and to report them to the competent authorities, if the superior does not have the power to sanction himself, and may include measures which are beyond his formal powers if their undertaking is materially possible.¹⁶⁴

(iii) Evidence of effective control

61. The evidence taken as a whole demonstrates that each of the three Accused exercised effective control over their subordinates. In this context the Prosecution disagrees with the statement that the evidence of Colonel Iron fails to establish effective control and notes that it relies upon all of the evidence to establish superior responsibility. From May 1997 all three Accused were members of the Supreme Council and used the term "Honourable". These titles were used throughout the period relevant to the indictment, not just during the period of the Junta government. Even captured civilians knew the Accused as "big" men or commanders.¹⁶⁵ Contrary to the submission in the Brima Motion, the titles were not merely honorific as they denoted real power. Many of the witnesses speak of the "high command" or the "brigade administration"¹⁶⁶ which was responsible for all operations and issued military orders.¹⁶⁷ The evidence has been remarkably consistent as to the positions and power of the three Accused within this high

¹⁶² *Čelebići* Appeal Judgement, paras 223, 241; *Brdanin* Trial Judgement, para. 278.

¹⁶³ *Čelebići* Trial Judgement, para. 395; *Stakić* Trial Judgement, para. 461.

¹⁶⁴ *Stakić* Trial Judgement, para. 461.

¹⁶⁵ See for example [REDACTED]

[REDACTED] witness TF1-158, TT 26 July 2005, pp. 32, 66 and 91, where he states that the leaders he saw first in Bonoya included Gullit and Santingie Kanu – a short man, gallant, fair in complexion; and TF1-024, TT 7 March 2005, pp. 45, who heard rebels calling Gullit "Honourable Gullit" at State House in January 1999.

¹⁶⁶ Witness TF1-334, TT 20 May 2005, p. 90.

¹⁶⁷ Witness TF1-167, TT, 15 September 2005, p. 60.

command. It is immaterial that other commanders may have, in specific locations during specific times, been more senior in the Junta hierarchy.

62. On the basis of the evidence, it would be open to a reasonable trier of fact to conclude the following: the three Accused were in command and control of several hundred AFRC troops that committed atrocities from Koinadugu District¹⁶⁸ to Bombali District¹⁶⁹ in the late spring and summer of 1998. The three Accused set up and controlled the eventual base of the AFRC in Bombali District.¹⁷⁰ [REDACTED]

[REDACTED]¹⁷¹ The three Accused planned, coordinated and led attacks on villages and civilian populations from Camp Rosos in the Bombali District through to Waterloo and Benguema in the Western Area. At Benguema, SAJ Musa was killed and Alex Tamba Brima became the unquestioned commander of the AFRC soldiers. Along with the Second and Third Accused, and while in radio communication with Sam Bockarie (Mosquito) of the RUF, Alex Tamba Brima planned and coordinated the final attack on Freetown which began on 6 January 1999.

63. The First Accused held the power to promote and demote AFRC troops.¹⁷² He reorganized the troops in Mansofinia,¹⁷³ Rosos¹⁷⁴ and Colonel Eddie Town.¹⁷⁵ This was a power also exercised by the Second Accused in Kono. Importantly, the subordinates recognized the authority of the Accused and accepted the various changes made to hierarchy and power. The superior-subordinate relationship is also demonstrated by the compliance of the subordinates in attending meetings, and muster parades.
64. As noted above, all three Accused issued orders to their subordinates. Importantly, those orders, be they for military or criminal actions, were obeyed.¹⁷⁶ At the conclusion of operations, the subordinates reported back to their superiors. In Kono the Second Accused gave an order to attack ECOMOG forces and burn houses in the Masingbi Road

¹⁶⁸ TF1-310, TF1-209, TF1-133, TF1-147, TF1-094.

¹⁶⁹ TF1-180, TF1-055, TF1-269, TF1-058.

¹⁷⁰ TF1-184, TF1-334, TF1-158, TF1-153, TF1-184, TF1-167, TF1-301.

¹⁷¹ TF1-334, TF1-023.

¹⁷² Witness TF1-184, TT 29 September 2005, pp. 30-31; Witness TF1-167, TT 19 September 2005, p. 83.

¹⁷³ Witness TF1-334, TT 20 May 2005, p. 88.

¹⁷⁴ Witness TF1-167, TT 15 September 2005, p. 67.

¹⁷⁵ Witness TF1-334, TT 24 May 2005, p. 87.

¹⁷⁶ Witness TF1-334, TT 16 June 2005, pp. 16 and 66.

area. By the time the Junta troops had withdrawn Koidu Town was completely burned down.¹⁷⁷ At the Kissy Mental Home in Freetown the Third Accused ordered soldiers to amputate up to 200 civilians and sent them to Ferry Junction. The soldiers returned with many amputated arms and machetes covered in blood.¹⁷⁸ In Freetown the Third Accused distributed petrol and said no man should be without kerosene, petrol or a machete. The Parliament and CID police station were then burnt.¹⁷⁹

(iv) The Accused had “reason to know” of the crimes

65. The evidence demonstrates both actual and constructive knowledge on the part of all three accused for the crimes alleged in the Indictment as illustrated by the following examples.
66. First, the intention of the Junta to resort to criminal actions to achieve its object was broadly disseminated through the international media. The declaration on the BBC of ‘Operation Pay Yourself’ by Johnny Paul Koroma in Masiaka immediately following the Intervention, as well as its instant implementation,¹⁸⁰ was the first broadcast which trumpeted criminal intention relative to the political and military fortunes of the Junta. The announcement of this Operation arguably put all AFRC and RUF troops (as well as the rest of the world) on notice that illegality would not only be tolerated, it would be promoted. The same point can be made with respect to the declaration of ‘Operation Spare No Soul’¹⁸¹ and the declaration by Mosquito in January 1999 that Freetown would burn.¹⁸² The evidence demonstrates that all three Accused were aware that the international community was observing the events in Sierra Leone.¹⁸³
67. Secondly, all three Accused were present when orders for criminal actions or operations to further the joint plan were issued. For example, as stated previously, the Second and

¹⁷⁷ Witness TF1-334, TT 20 May 2005, pp. 7-8.

¹⁷⁸ Witness TF1-167, TT 16 September 2005, pp. 53-55.

¹⁷⁹ Witness TF1-184, TT 27 September 2005, p. 65 and 30 September 2005, pp. 73-76.

¹⁸⁰ Witness TF1-334, TT 17 May 2005, pp. 72-74.

¹⁸¹ Witness TF1-334, TT 25 May 2005, pp. 105-106.

¹⁸² Witness TF1-334, TT 14 June 2005, p. 48.

¹⁸³ For example, the First Accused stated in the presence of the Second and Third Accused that that attack on Karina should be a demonstration that would make the international community concerned – witness TF1-334, TT 23 May 2005, pp. 57-59 and also during the retreat from Freetown the First Accused said at the time the Junta troops lost control of Eastern Police that the troops should start to abduct civilians to draw the attention of the international community – Witness TF1-334, TT 14 June 2005, pp. 62-63.

Third Accused were present when the First Accused gave orders for the destruction of Karina and the invasion of Freetown.

68. Thirdly, reports were made to the three Accused following operations. For example, following the attack on Mange Bureh, the operational commander of the mission, Abdul Sesay, reported to the First Accused that 70 civilians had been killed, the town partially burnt and also presented Guinean and Nigerian prisoners. The First Accused commended Abdul Sesay for his job.¹⁸⁴ Colonel 05 reported to the First Accused following the operation at Kukuna.¹⁸⁵
69. Fourthly, the Accused were often present when crimes were committed. The simplest example of this is the presence of the three Accused during the attacks on Karina and Freetown. Equally so is the presence of, at times, thousands of captured civilians – men, women and children – with the Accused and their troops in the various jungle camps and in Freetown from February 1998 onwards.¹⁸⁶ As noted above, there is also evidence of the presence of and participation by the Accused in the attacks on the civilian populations of Bumbuna, Kamagbengbe, Mandaha, Gbendembu and Foroh Loko. It is inconceivable that the Accused could be present in a village amongst the noise and flame of these attacks where shelters and buildings were burned, people shot, amputated and captured and women raped, and yet remain ignorant of the actions of their subordinates.
70. Fifthly, the Accused observed the aftermath of criminal actions. From Rosos the First Accused sent a mission to Mateboi. Upon his return, Adama Cut Hand was wearing a necklace made with human hands, carried other amputated arms and handed the head of the village chief to the First Accused in the presence of the Second Accused.¹⁸⁷
71. Sixthly, the Prosecution submits that with respect to the requisite *mens rea*, inferences may be drawn that if the Accused had knowledge that a subordinate had committed a crime and that they were either praised for it or not punished for it, it was likely that that subordinate and others would commit similar crimes in the future. Similarly, permissible inferences can be drawn that the Accused had knowledge that crimes were being

¹⁸⁴ Witness TF1-033, TT 11 July 2005, pp. 36-38.

¹⁸⁵ Witness TF1-167, TT 20 September 2005, pp. 46-47.

¹⁸⁶ Witness TF1-033, TT 11 July 2005, pp. 100-101.

¹⁸⁷ Witness TF1-167, TT 15 September 2005, pp. 61-63.

committed wherever AFRC and RUF troops were based, given the desire for a Junta stronghold in the jungle between February 1998 and January 1999, the desire to control the diamond fields and the evidence of communication between senior commanders, in various parts of the country. For example, there were joint operations between the RUF and the AFRC in Kono which included the burning of Tombodu, Yengema, Bumpe, Jagbwema Fiama and Yomandu,¹⁸⁸ and also Koidu Town in the presence of the First and Second Accused, Papa Hassan Bangura, Foday Kallay, Eldred Collins and Morris Kallon.¹⁸⁹

(iv) The Accused failed to take steps to prevent or punish the crimes

72. The evidence demonstrates clearly that all three Accused failed to use their power to prevent or punish the crimes committed by their subordinates. Illustrations of the implied or express approval of the three Accused as to crimes committed by their subordinates are given above.

2.4. ELEMENT OF CRIMES (PARAGRAPHS 41-88)

A. Article 2 of the Statute: Crimes against Humanity

73. The Joint Defence Motion asserts, without elaboration, that the Prosecution has failed to prove two of the general elements of crimes against humanity: namely that the attack was widespread or systematic and that the act in question was committed as part of the attack.¹⁹⁰ The Prosecution submits that the précis of evidence given above and the specific issues canvassed below are such that a reasonable trier of fact could conclude that these elements have been established with respect to the crimes against humanity alleged in the Indictment (counts 3, 4, 7, 8, 11 and 13).
74. An attack may consist of a combination of the enumerated crimes¹⁹¹ and is not limited to the use of armed force.¹⁹² When establishing the existence of an attack, it is not relevant that the other side in a conflict also committed atrocities against its opponent's civilian

¹⁸⁸ Witness TF1-334, TT 20 May 2005, pp. 8-31.

¹⁸⁹ Witness TF1-334, TT 20 May 2005, pp. 9-10.

¹⁹⁰ Joint Defence Motion, paras 46-47.

¹⁹¹ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, "Judgment", 21 May 1999 ("**Kayishema Trial Judgment**"), para. 122; "An attack may be non-violent in nature", *Prosecutor v. Akayesu*, ICTR-96-4-T, "Judgment", 2 September 1998, ("**Akayesu Trial Judgement**"), para. 581.

¹⁹² *Vasiljević Trial Judgement*, paras 29-30.

population.¹⁹³ Although the act need not be committed at the same time and place as the attack or share all the features of the attack, it must, by its characteristics, aims, nature, or consequence objectively form part of it.¹⁹⁴ The attack may be either widespread or systematic, but need not be both.¹⁹⁵ “Widespread” may be defined as a “massive, frequent, large scale action, carried out collectively with considerable seriousness” and directed against multiple victims.¹⁹⁶ “Systematic” consists of organized action pursuant to a preconceived plan or policy, following a regular pattern, but there is no requirement that this policy be adopted formally as the policy of a state.¹⁹⁷

75. The *mens rea* element is satisfied if the perpetrator has knowledge of the general context in which his acts occur and of the nexus between his action and that context¹⁹⁸ in addition to the requisite *mens rea* for the underlying offence or offences of which he is charged.¹⁹⁹
76. The Prosecution submits that the evidence demonstrates that the AFRC operations included, *inter alia*, widespread acts of murder,²⁰⁰ rape,²⁰¹ sexual slavery, any other forms of sexual violence and other inhumane acts²⁰² and abductions and forced labour²⁰³ that can reasonably be described as massive, frequent and large scale actions carried out collectively with considerable seriousness. While it is only necessary to prove that the crimes were systematic *or* widespread, the Prosecution contends that their widespread nature has been established in the body of the entire evidence with respect to all the major crime base locations, namely, Bo, Kenema, Kono, Kailahun, Koinadugu, Bombali, Port

¹⁹³ *Prosecutor v. Kunarac*, IT-96-23&23/1-A, “Judgment”, 12 June 2002 (“*Kunarac Appeal Judgment*”), paras 87-88.

¹⁹⁴ *Prosecutor v. Semanza*, ICTR-97-20-T, “Judgment and Sentence”, 15 May 2003 (“*Semanza Judgment and Sentence*”), para. 326.

¹⁹⁵ *Akayesu Trial Judgment*, para. 579, with reference to footnote 144: “The attack must contain one of the alternate conditions of being widespread or systematic, not both, as in the French text of the Statute. Customary international law requires only that the attack be either widespread or systematic.” See also *Kayishema Trial Judgment*, para. 123.

¹⁹⁶ *Akayesu Trial Judgment*, para. 580; *Kunarac Trial Judgment*, para. 431.

¹⁹⁷ *Akayesu Judgment*, para. 580; *Prosecutor v. Tadić*, IT-94-1-T, “Opinion and Judgment”, 7 May 1997, (“*Tadić Trial Judgment*”), para. 648; *Kunarac Trial Judgment*, para 429.

¹⁹⁸ *Blaškić Trial Judgment*, para. 247.

¹⁹⁹ *Kunarac Appeal Judgment*, para. 102; *Vasiljević Trial Judgment*, para. 37.

²⁰⁰ TF1-256, TF1-055, TF1-253, TF1-216, TF1-253, TF1-209, TF1-180, TF1-053, TF1-023, TF1-053, TF1-113, TF1-054, TF1-098, TF1-094, TF1-122, TF1-084, TF1-085, TF1-320, TF1-083, TF1-021, TF1-179, TF1-156, TF1-083, TF1-157, TF1-004, TF1-153, TF1-217, TF1-062, [REDACTED] TF1-046, TF1-206, TF1-045, TF1-167, TF1-199.

²⁰¹ TF1-282, TF1-256, [REDACTED], TF1-269, TF1-253, TF1-209, TF1-023, TF1-085, TF1-083, TF1-267, TF1-076, TF1-019, TF1-153, TF1-217, [REDACTED], TF1-045, TF1-206.

²⁰² TF1-282, TF1-023, TF1-085, TF1-083, Zainab Bangura.

²⁰³ TF1-282, TF1-256, TF1-334, [REDACTED] TF1-147, TF1-216, TF1-209, TF1-180, TF1-023, TF1-180, TF1-113, TF1-094, TF1-334, TF1-122, TF1-334, TF1-085, TF1-157, TF1-076, TF1-227, TF1-133, TF1-045, TF1-062, [REDACTED] TF1-167.

Loko and Freetown and the Western Area.²⁰⁴ The evidence also demonstrates that these crimes followed a regular pattern and were committed pursuant to a preconceived plan. It is improbable that the acts of violence were random or their regular occurrence accidental.

77. There is evidence of a remarkably consistent nature as to these crimes against humanity in all locations in which the Junta troops operated. Attacks on the population occurred in waves as the troops moved and their political and military fortunes waxed and waned. For example, evidence of civilians being locked in houses and burnt alive was given in relation to many locations: Karina,²⁰⁵ Tombodu²⁰⁶ and Manarma.²⁰⁷ The amputations are a singularly macabre signature of the violence perpetrated against the civilian population of Sierra Leone which, given its scale, cannot be explained by coincidence.

[REDACTED]

²⁰⁹ If this were not pattern enough, witness after witness gave evidence of civilians who had suffered amputated limbs being told to "go to Kabbah" for new hands,²¹⁰ demonstrating the unity of purpose for which amputations were carried out. Further, the evidence of women and girls being given as wives to commanders and the evidence of the enslavement of civilians to perform work and mine diamonds for the junta in all relevant Districts bears striking similarity.

78. The Prosecution submits that evidence has been presented to demonstrate that the three Accused had knowledge of the general context in which their acts occurred and of the

²⁰⁴ See NGO Report, Exhibit P57, "No Peace without Justice, Sierra Leone Conflict Mapping Program", 9 March 2004.

²⁰⁵ Witness TF1-334, TT 23 May 2005, pp. 65-67.

²⁰⁶ Witness TF1-334, TT 20 May 2005, pp. 11-15

²⁰⁷ Witness TF1-167, TT 16 September 2005, pp. 65-66.

²⁰⁸ Witness TF1-272, TT 4 July 2005, p. 46.

²⁰⁹ Witness TF1-272, TT 4 July 2005, pp. 58-59.

²¹⁰ [REDACTED] Witness TF1-098, TT 5 April 2005, p. 39; Witness TF1-278, TT 6 April 2005, p. 7; Witness TF1-083, TT 8 April 2005, p. 66; Witness TF1-216, TT 27 June 2005, p. 93; Witness TF1-217, TT 17 October 2005, p. 26; Witness TF1-198, TT 28 June 2005, p. 15; Witness TF1-206, TT 28 June 2005, p. 104; Witness TF1-179, TT 27 July 2005, p. 41.

nexus between those acts and the context.²¹¹ There is evidence that the First Accused knew about killings in Karina, as he himself gave orders for the burning of houses and killing of civilians.²¹² [REDACTED]

[REDACTED]²¹³ The evidence indicates that the three Accused set up and controlled the eventual base of the AFRC, in Bombali District (Camp Rosos). As they planned, coordinated and led attacks on villages and civilian populations from Koinadugu to Karina to Camp Rosos in the Bombali District through to Waterloo and Benguema in the Western Area and ultimately to Freetown, it is submitted that they indeed knew or were aware of the general context in which these crimes took place.

B. Count 1: Terrorizing the Civilian Population

79. Trial Chamber I has held that the crime of terrorism comprises the constitutive elements of Article 3 Common to the Geneva Conventions as well as the following specific elements:
- i. Acts or threats of violence directed against protected persons or their property.
 - ii. The offender wilfully made protected persons or their property the object of those acts and threats of violence.
 - iii. The acts or threats of violence were committed with the primary purpose of spreading terror among protected persons.²¹⁴
80. The Joint Defence Motion argues that the Prosecution has failed to submit evidence of the last two of these elements.²¹⁵ This submission should be rejected.
81. The scope of the offence of terrorizing the civilian population is broad. It encompasses both threats and acts of violence. There is no requirement to prove a causal connection between the unlawful acts of violence and the production of terror, as actual infliction of terror is not a constitutive legal element of the crime.²¹⁶ Terror connotes extreme fear.²¹⁷

²¹¹ TF1-033, pp. 13-15, 11 July 2005.

²¹² TF1-156, p. 53-54, 15 September 2005.

²¹³ TF1-023, p. 36, 10 March 2005.

²¹⁴ *Norman* Rule 98 Decision, para. 112.

²¹⁵ Joint Defence Motion, para. 51.

²¹⁶ *Prosecutor v Galić*, IT-98-29-T, "Judgement", 5 December 2003, ("*Galić Trial Judgement*"), para. 134.

82. The “primary purpose” of the unlawful acts is established by showing that the accused accepted the likelihood that terror would result from those acts, or that he was aware of the possibility that terror would result, and also that terror was the specifically intended result.²¹⁸
83. The presented evidence shows how members of the AFRC used any means necessary, including terrorizing of the civilian population through murders, serious physical and mental injuries, and pillaging, to meet the objective of gaining and exercising control over the population of Sierra Leone. The Prosecution has presented many witnesses who described how they suffered at the hands of the AFRC and the evidence indicates the widespread nature of the attacks. Witness TF1-216 described how soldiers made civilians carry their loads to Tombodu. The Witness travelled in front of a large group of Soldiers with 7 other civilians at gun point.²¹⁹ Witness TF1-098 testified to inhumane acts when he said that his left hand was chopped off.²²⁰ He told the Court that seven men in his village had their hands amputated. After AFRC soldiers chopped off his hand, they said let them go to ‘Pa Kabbah’, let him give their hands.²²¹ Witness TF1-085 saw people being mutilated.²²² Witness TF1-167 bore witness to orders given by Ibrahim Bazy Kamara for soldiers to make the terrain “more fearful” to slow the movement of the ECOMOG troops, i.e. kill civilians and display them on the main highway. Those orders were carried out by ‘Cyborg’ with a machete.²²³
84. The Prosecution submits that the evidence shows the primary purpose of spreading terror amongst protected persons, who were not involved in any hostilities. Other acts and threats of violence can be found in various Operations, i.e. ‘Operation No Living Thing’²²⁴, ‘Operation Pay Yourself’²²⁵, ‘Operation Spare No Soul’²²⁶, all of which were

²¹⁷ *Galić* Trial Judgment, para. 137.

²¹⁸ *Galić* Trial Judgment, para. 134. See also Additional Protocol II to the Geneva Convention 12 August 1949, Article 13.

²¹⁹ Witness TF1-216, TT 27 June 2005, pp. 89-91.

²²⁰ Witness TF1-098, TT 5 April 2005, p. 41.

²²¹ *Ibid.*, p. 42.

²²² Witness TF1-085, TT 7 April 2005, p. 28.

²²³ Witness TF1-167, TT 16 September 2005, p. 65.

²²⁴ Witness TF1-046, TT 11 October 2005, pp. 58-59.

²²⁵ Witness TF1-334, TT 17 May 2005, p. 73, where the witness said that Johnny Paul Koroma declared ‘Operation Pay Yourself’, because he did not have anything to give the soldiers and that was why he declared that Operation. From that day looting by both the RUF and SLA started. (see p. 74, 17 May 2005); The declaration of ‘Operation

carried out by the AFRC and RUF. All of the said Operations were, in order to enforce their purpose of terror, made public.

C. Count 2: Collective Punishments

85. Trial Chamber I has held that the crime of Collective Punishments under Article 3(b) of the Statute of the Special Court comprises the constitutive elements of Common Article 3 as well as the following specific elements:
- i. A punishment imposed upon protected persons for acts that they have not committed.
 - ii. The intent, on the part of the offender, to punish the protected persons or group of protected persons for acts which form the subject of the punishment.²²⁷
86. Paragraph 41 of the Indictment specifically pleads that the crimes charged as counts 3 to 14 inclusive were committed as part of a campaign to terrorize the civilian population and to punish the civilian population for allegedly supporting the elected government of President Kabbah and factions aligned with that government or for failing to provide sufficient support to the AFRC/RUF. Thus the evidence relied upon by the Prosecution to substantiate counts 1 and 2 variously relates to some or all of the remaining counts on the Indictment. Accordingly, issues as to time frame and geographic location are answered by the specificity of paragraphs 42 to 79 inclusive.
87. Contrary to the Defence assertions,²²⁸ the Prosecution submits that there is sufficient evidence of collective punishments, including evidence of superior responsibility for the crime. For example, Witness TF1-334 portrayed an incident when they moved towards Kamagbengbe. On the way some civilians tried to run away. They were captured and taken to the First Accused. He had said at Mansofinia that civilians who attempted to run away would be shot on sight. The First Accused gave the order and a company commander, Col. Tito, shot them.²²⁹ The same witness testified that the First Accused

Pay Yourself[®] at Masiaka was made by Johnny Paul Koroma over the international media, BBC (see p. 84, 16 June 2005).

²²⁶ Witness TF1-046, TT 11 October 2005, p. 58, stated that Operation Spare No Soul was announced by Eldred Collins of the RUF on BBC radio.

²²⁷ *Norman* Rule 98 Decision, para. 118.

²²⁸ Joint Defence Motion, paras 54-55.

²²⁹ Witness TF1-334, TT 23 May 2005, p. 55.

considered Karina a strategic point, as there were Mandingos and it was the home town of President Ahmad Tejan Kabbah.²³⁰ The First Accused ordered, as has been discussed above, the destruction of the village to send a message to those who support the government of President Kabbah and the ECOMOG troops.²³¹ The Second and Third Accused were present at this meeting in Kamagbengbe.

D. Count 3: Extermination

88. The Joint Defence Motion argues that the Prosecution has provided no evidence of the elements of extermination as set out by the ICTY Appeals Chamber in *Krstić*.²³²
89. The Prosecution submits that there is evidence that the three Accused are criminally responsible for acts of extermination committed as part of a widespread and systematic attack against a civilian population. TF1-334 testified that the First Accused considered Karina a strategic point, as there were Mandingos and it was the home town of President Ahmad Tejan Kabbah.²³³ Witness TF1-033 testified that about 250 civilians were killed in Karina.²³⁴ The same Witness told the Court of another incident which took place in Tombodu. The First Accused gave ‘Savage’ orders to kill civilians and burn the town. The orders were carried out and hundreds of civilians were killed. Amongst others, the Third Accused was present.²³⁵ Other incidents of mass killings of civilians include the attacks of Kukuna and Madina, where 50 civilians were killed²³⁶, Mange Bureh, where 40 civilians were killed,²³⁷ and Lunsar Town.²³⁸
90. The Prosecution agrees that the elements of murder can overlap the elements of extermination, if the act took place as part of a mass killing of members of a civilian population. However, not every murder amounts to extermination. The Prosecution submits that there is evidence of both murders and acts of extermination in this case

²³⁰ Ibid, p. 57, see also Witness TF1-033, TT 11 July 2005, p. 18, where the witness said that “Gullit and henchmen alleged that Karina was birthplace of Kabbah.”

²³¹ Ibid, pp. 58-59.

²³² Joint Defence Motion, para. 58; *Prosecutor v Krstić*, IT-98-33, “Judgement”, 2 August 2001, (“*Krstić Trial Judgement*”), para. 503.

²³³ Witness TF1-334, TT 23 May 2005, p. 57

²³⁴ Witness TF1-033, TT 12 July 2005, pp. 80-4.

²³⁵ Ibid, TT 11 July 2005, pp. 11-2

²³⁶ Ibid, pp. 39-40.

²³⁷ Ibid, pp. 42-43, where all commanders, plus O-Five were present.

²³⁸ Ibid, pp. 45-46.

which have been charged cumulatively.

E. Counts 4 and 5: Murder and Violence to Life

91. The Prosecution submits that the requisite elements of murder as a crime against humanity and as a violation of Common Article 3 are uncontroversial. Evidence with regard to the disputed elements²³⁹ of a widespread and systematic attack and the requisite knowledge has already been presented.

F. Count 6: Rape

92. The Defence submits that the Prosecution has failed to show that the acts were widespread or systematic, against a civilian population, and that they were based on certain discriminatory grounds.²⁴⁰

93. The Prosecution submits that the Defence incorrectly bases its definition of ‘rape’ on ICTR jurisprudence. Unlike the ICTY and SCSL Statute, the provision of the ICTR Statute dealing with crimes against humanity (Article 3) expressly requires that the widespread or systematic attack against a civilian population be “on national, political, ethnic, racial or religious grounds.”²⁴¹ Since this is not a requirement in the ICTY or SCSL, it is the Prosecution’s submission that it is not an element of crimes against humanity under the Statute of the Special Court.

94. The Prosecution relies on the evidence set out in paragraphs 76-77 above as to the widespread and systematic nature of the attack.

²³⁹ Joint Defence Motion, para. 61.

²⁴⁰ Joint Defence Motion, para. 67.

²⁴¹ See ICTR Statute, Article 3 – crimes against humanity, where the Tribunal “shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.” See also *Krstić* Trial Judgement, para. 499, with respect to extermination that “[t]he victims need not share national, ethnical, racial or religious characteristics. In accordance with the *Tadić* Appeals Judgement, the Trial Chamber is of the view that it is *unnecessary* (emphasis added) that the victims were discriminated against for political, social or religious grounds, to establish the crime of extermination.”

G. Count 7-8: Sexual Slavery, Any Other Form of Sexual Violence, Other Inhumane Acts

95. The Joint Defence Motion argues that the Prosecution has failed to lead evidence as to the general elements for crimes against humanity.²⁴² Furthermore, the Defence argues that “the Prosecution has not introduced evidence of the phenomenon of ‘forced marriage’ other than the expert testimony of Ms. Zainab Bangura which testimony lacks empirical value.”²⁴³
96. The Prosecution notes that the weight of the evidence of Ms. Bangura is a matter to be considered at the end of the trial rather than as part of a Rule 98 Motion. Further, the Prosecution has led a considerable amount of evidence of forced marriage.²⁴⁴ The Prosecution submits that there is evidence to show that: in addition to the regularly described forms of sexual and gender specific violence frequently suffered by women in conflict situations, Sierra Leonean women were forced into marriages and thus were involuntarily converted into becoming what has commonly been referred to as “bush wives”. This familiar and repeated phenomenon of the Sierra Leone conflict resulted in the use of women as conjugal partners by the combatants. These women, in addition to providing sexual gratification to combatants, particularly the commanders, were forced to perform domestic chores such as cooking and laundering as well as other forms of forced labour. Many of the women victimized by this practice bore children fathered by these commanders who thereafter failed to take any form of responsibility for the resultant offspring; neither paternal nor financial.²⁴⁵
97. Witness TF1-282 described how a rebel soldier took her as his wife. When the soldier asked the witness to marry him she said yes because she believed saying no would lead to

²⁴² Joint Defence Motion, para. 73.

²⁴³ Joint Defence Motion, para. 71.

²⁴⁴ Generally see [REDACTED] Witness TF1-334, TT 20 May 2005, p. 5 and TT 24 May 2005, p. 30; Witness TF1-282, TT 13 April 2005, pp. 14-23; Witness TF1-209, TT 7 July 2005, pp. 38-39; Witness TF1-094, TT 13 July 2005, p. 29; Witness TF1-133, TT 7 July 2005, pp. 91-92 and pp. 97-100; Witness TF1-023, TT 9 March 2005, pp. 45-47; Witness TF1-085, TT 7 April 2005, pp. 17-21.

²⁴⁵ See Exhibit P53, Human Rights Watch, “We’ll kill you if you cry, Sexual Violence in the Sierra Leone Conflict”, Vol. 15, No. 1(A), January 2003.

her being killed.²⁴⁶ Another witness, TF1-023 gave evidence that when “I was handed over they said I should be his [Rambo] wife. The rebel did not ask my consent. The commander accepted me as his wife. He did not ask my consent. I accept because there was no option because they had the say. There was no marriage ceremony. That is what they used to do. They would force people into forced marriage, marriage that is not legal.”²⁴⁷

98. The Prosecution relies on the evidence set out in paragraph 76-78 above as to the widespread and systematic nature of the attack and the awareness of the Accused of the factual circumstances establishing the conduct’s gravity.

H. Count 9: Outrages upon Personal Dignity

99. The Joint Defence Motion makes no submission as to the evidence led with respect to the elements of the crime of outrages against personal dignity.

I. Counts 10 and 11: Physical Violence (Mutilation) and Other Inhumane Acts

100. The Joint Defence Motion argues that the Prosecution has not introduced evidence as to all the elements with respect to all Districts pleaded in the Indictment.²⁴⁸ The Prosecution submits that there is evidence relating to all Districts, but accepts that there is no evidence with respect to the following villages: Konkoba (Koinadugu District) and Lohondi, Malam and Mamaka (Bombali District).
101. With respect to the charge of Other Inhumane Acts, the Prosecution relies on the evidence set out in paragraph 76-78 above as to the widespread and systematic nature of the attack and the awareness of the Accused of the factual circumstances establishing the conduct’s gravity.

J. Count 12: Conscripting or Enlisting Children

102. The Joint Defence Motion makes no submission as to the sufficiency of the evidence on this Count. However, to the extent that the Joint Defence Motion articulates its specific elements (i) as requiring proof that the conscription or enlistment must be to “the national

²⁴⁶ Witness TF1-282, TT 14 April 2005, p. 38-39.

²⁴⁷ Witness TF1-023, TT 09 March 2005, p. 45.

²⁴⁸ Joint Defence Motion, para. 76.

armed forces”, and (iv) as requiring an association with an “international armed conflict”, the Prosecution submits that this is an incorrect formulation. The Defence appears to take the wording from Article 8(2)(b)(xxvi) of the ICC’s Elements of Crimes.²⁴⁹ In fact, Article 8(2)(e)(vii) of the ICC’s Elements of Crimes provides the more fitting guide.

103. The Prosecution submits that the elements of enlisting or using child soldiers are as follows: (a) the accused conscripted or enlisted one or more persons in an armed force or group or used one or more persons to participate actively in hostilities, (b) such person or persons were under the age of 15 years and (c) that the accused knew or should have known that such person or persons were under the age of 15 years.

K. Count 13: Abductions and Forced Labour (Enslavement)

104. In addition to the general elements of crimes against humanity, to establish enslavement the Prosecution must prove that the accused exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
105. The Joint Defence Motion argues that the Prosecution has failed to prove any element of this charge and that, in particular, the Prosecution has failed to demonstrate any indicia of enslavement such as control of someone’s movement, control of the physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.
106. The Prosecution submits that these indicia form a consistent pattern in the evidence. The evidence demonstrates that civilians were routinely abducted to carry looted goods, perform domestic work, go on food-finding missions, mine diamonds and participate in military training. They did so under threat of physical harm or death and often at gun point. Civilians who attempted escape were punished or killed. This pattern is such that it demonstrates the widespread and systematic nature of this crime and is evidence from which the knowledge and complicity of the three Accused may be inferred.

²⁴⁹ ICC-ASP/1/3, 9 September 2002.

L. Count 14: Looting and Burning (Pillage)

107. The Defence, citing the elements of the crime of pillage as set out in the ICC's Elements of Crimes relating to international armed conflicts,²⁵⁰ submits that burning as such does not fulfill the elements of pillage.²⁵¹
108. Pillage under Article 3 of the Statute is derived from Article 4(2)(g) of Additional Protocol II to the Geneva Conventions. While Article 3 of the Statute is phrased in non-exhaustive terms, Common Article 3 and Additional Protocol II do not contain additional provisions relating to damage to property beyond Article 16 of Additional Protocol II prohibiting acts of hostility against cultural objects and places of worship.
109. The ICTY in particular has emphasized the importance of international humanitarian law protecting property rights in times of armed conflict. As stated in the *Čelebići* case, "international law today imposes strict limitations on the measures which a party to an armed conflict may lawfully take in relation to the private and public property of an opposing party."²⁵² It is the Prosecution's position that destroying property by burning, as part of a series of acts involving ruthless plundering to remove anything of value followed by the total removal of the value of the buildings themselves, falls within the concept of "willful and unlawful appropriation of property."²⁵³ The Prosecution submits that 'appropriation' does not exclude the act of burning; before third party property can be burnt it must be appropriated in the sense that the owner is no longer in control of his property. Moreover, the violent nature of pillage reflects the broader range of appropriation of property, including property appropriated for the mere purpose of depriving the owner of that property.
110. The burning of civilian dwellings not justified by military necessity is recognized as a well established violation of the laws and customs of war and therefore as being of a seriousness which raises it above the level of an offence under national law. ICTY jurisprudence uses the terminology of "plunder of private property" as opposed to pillage and has a separate and distinct crime of "wanton destruction of cities, towns or villages,

²⁵⁰ Ibid, pp. 138-9.

²⁵¹ Joint Defence Motion, paras 83-84.

²⁵² *Čelebići* Trial Judgment, para. 587.

²⁵³ *Prosecutor v Naletilic and Martinovic*, IT-98-34-T, "Judgment", 31 March 2003, para. 612.

or devastation not justified by military necessity.” The ICTY Statute divides the concept of unlawful appropriation of property into several categories, all under the heading “violations of the laws or customs of war.” The SCSL Statute, like the ICTR Statute, adopted narrower language for the section on war crimes. This crucial distinction in the construction of the ICTY and SCSL Statutes means that indictments under the two different statutes will vary as to what falls within the definition of plunder and pillage respectively. Therefore, it should be presumed that the most serious offences against property applicable to armed conflicts fall within the ambit of the Statute.

111. The Prosecution disagrees with the Defence with respect to the scope of Article 5. The offence under Sierra Leonean law refers only to “wanton destruction of property under the Malicious Damage Act” and does not cover “war crimes”. Accordingly, where the acts in question amount to “war crimes”, Article 3 of the Statute, as *lex specialis*, prevails over the general law of wanton destruction of property.
112. The inclusion of burning under ‘Pillage’ also corresponds with the jurisprudence of the Special Court, in that Trial Chamber I did not, by Defence motion or *proprio motu*, raise another definition of ‘Pillage’.²⁵⁴
113. Alternatively, if the Trial Chamber should find that burning has been incorrectly pleaded as pillage, the Prosecution submits that the Trial Chamber has the power to reclassify the offence. The Indictment expressly charges the Accused with burning, the evidence has been presented, and the witnesses have been cross-examined on this issue. The Defence would therefore suffer no prejudice from a re-classification at this stage.²⁵⁵
114. It was stated in the *Kupreskic* case that a “requirement relating to the efficient discharge of the Tribunal’s functions in the interest of justice warrants the conclusion that any possible errors of the Prosecution should not stultify criminal proceedings whenever a case nevertheless appears to have been made by the Prosecution and its possible flaws in the formulation of the charge are not such as to impair or curtail the rights of the

²⁵⁴ *Norman* Rule 98 Decision, para. 102.

²⁵⁵ According to the principle *iura novit curia*, on the basis of its own knowledge of the law the Trial Chamber may decide whether the Accused are guilty under Article 5 of the Statute as this legal interpretation would not entail any prejudice to the Accused (the charges and facts of looting and burning remain the same.)

Defence.”²⁵⁶ Where a Trial Chamber wishes to depart from the classification of the offence suggested by the Prosecutor, there is no requirement for an amendment of the indictment where the replacement charge is of a less serious offence or the *lex generalis*, as would be the case for a charge under Article 5 of the Statute.²⁵⁷

115. It should be noted that the particulars pleaded with respect to Count 14 include both burning and looting and therefore the argument raised in the Joint Defence Motion, even if successful, is not a full answer to the Prosecution evidence. Moreover, burning is included within the acts charged as terrorizing the civilian population under Count 1 and collective punishments under Count 2.

²⁵⁶ *Prosecutor v. Kupreskic*, IT-95-16, “Judgement”, 14 January 2000, para. 741.

²⁵⁷ *Ibid*, paras 742-748.

3. BRIMA Response

3.1 COUNTS 1 AND 2: ACTS OF TERRORISM AND COLLECTIVE PUNISHMENTS

116. The Brima Motion makes no specific assertion as to insufficiency of evidence with respect to either Count 1 or 2.²⁵⁸ The Prosecution submits that Paragraph 41 of the Indictment specifically pleads that the crimes charged as counts 3 to 14 inclusive were committed as part of a campaign to terrorize the civilian population and to punish the civilian population for supporting the elected government of President Kabbah and factions aligned with that government or for failing to provide sufficient support to the AFRC/RUF. Thus the evidence relied upon by the Prosecution to substantiate Counts 1 and 2 variously relates to the remaining Counts on the Indictment, 3 through to 14, and the evidence adduced therein.
117. The Prosecution submits that based on the evidence showing the clear criminal responsibility of the First Accused for Counts 3 to 14 inclusive, which also serves as a basis for the *actus reus* and *mens rea* for Counts 1 and 2, a reasonable trier of fact could reach the conclusion that there is sufficient evidence to convict the First Accused in respect of Counts 1 and 2.

3.2 COUNTS 3 TO 5: UNLAWFUL KILLINGS

118. The Prosecution accepts that no evidence of unlawful killings has been led with respect to the following villages: Telu, Sembehun, Mamoma (Bo District); Foindu, Wollifeh, Biaya (Kono District); Heremakono, Kumalu, Katombo, Kamadugu (Koinadugu District); Mafabu (Bombali District) and Tendakum (Port Loko District). The Prosecution submits that sufficient evidence has been led in relation to all other locations pleaded so that a reasonable trier of fact could find the First Accused guilty of Counts 3-5.

Bo District

119. The Brima Motion argues that that there was no evidence of an AFRC attack in Tikonko or Gerihun and, specifically, that witness TF1-004 stated under cross-examination that the soldiers in Tikonko were RUF. The Brima Motion further argues that the evidence of

²⁵⁸ Brima Motion, paras. 16-19.

witness TF1-053 as to Gerihun is “littered with contradictions” between his *viva voce* evidence and his previous statements, such that the witness is unreliable and that the evidence of witness TF1-054 as to Gerihun does not demonstrate that the persons in Gerihun – Boisy Palmer and AF Kamara – took orders from the First Accused. The Brima Motion also argues that Sam Bockarie was a law unto himself and he took no orders from the AFRC. This, it is argued, rendered the First Accused incapable of preventing the unlawful killings or punishing the perpetrators in Bo District.

120. The Prosecution has led evidence of unlawful killings in both Tikonko and Gerihun. In June 1997, about 200 armed soldiers invaded Tikonko. The civilians believed it was to kill the Kamajors in Bumpe and Tikonoko.²⁵⁹ Five civilians were shot at Tikonko Junction.²⁶⁰ More civilians were killed in Tikonko, including women and children. One of the women killed had her belly slit open. One of the men killed had skin removed from his forehead.²⁶¹ Twenty civilian corpses were buried in the town. Also in June 1997, delegates from Freetown, including Mike Lamin, who was a member of the AFRC Supreme Council, had arrived in Gerihun to speak with the Village Chiefs and Kamajors of Gerihun about uniting with the AFRC. Lamin’s proposal was rejected.²⁶² Junta soldiers then entered a hotel in Bo Town looking for Chief Demby and Kamajors.²⁶³ They were told that he was in Gerihun.²⁶⁴ On 26 June 1997 uniformed and armed soldiers entered Gerihun. Some of the men entered the house of Paramount Chief Demby and killed him and others.²⁶⁵
121. The Prosecution submits that the time frame of the unlawful killings in Bo is critical. The evidence demonstrates that these events took place in June 1997 – about one month after the coup that installed the AFRC government. The First Accused was a high ranking member of the AFRC and the Supreme Council. As noted above, the Supreme Council made decisions affecting the country²⁶⁶ and the First Accused was actively involved.

²⁵⁹ Witness TF1-004, TT 23 June 2005, p. 12.

²⁶⁰ Witness TF1-004, TT 23 June 2005, p. 13.

²⁶¹ Witness TF1-004, TT 23 June 2005, pp. 19-26.

²⁶² Witness TF1-054, TT 19 April 2005, pp. 87-88.

²⁶³ Witness TF1-054, TT 19 April 2005, pp. 81-84.

²⁶⁴ Witness TF1-054, TT 19 April 2005, pp. 86-88.

²⁶⁵ Witness TF1-053, TT 18 April 2005, pp. 105-111; witness TF1-054, TT 19 April 2005, pp. 91-94.

²⁶⁶ See para. 35 above.

The Prosecution submits that the evidence is clear that the RUF and AFRC were working together during the Junta period.²⁶⁷ This is evidenced in Bo District by the involvement of both RUF (Mike Lamin) and AFRC (Boisy Palmer and A. F. Kamara) personnel.²⁶⁸ The evidence is also clear that those responsible for the attack on Gerihun reported directly to the Supreme Council.²⁶⁹ Accordingly, there is evidence upon which the First Accused could be convicted for the unlawful killings in this District. To the extent that the Brima Motion relies upon evidence of witnesses TF1-334, TF1-167 and TF1-045 as to the alleged superiority of Mosquito over the First Accused, that evidence relates to a period well after the ECOMOG Intervention and is time and location specific. Finally, the alleged unreliability of witness TF1-053 is not a matter to be considered at the Rule 98 stage.

Kenema District

122. The Brima Motion argues that Sam Bockarie was in complete control of Kenema; that he was responsible for the deaths of BS Massaquoi and others in Kenema and for crimes committed in Tongo. This, it is put, absolves the First Accused from liability with respect to Kenema District.
123. While Sam Bockarie apparently exercised some control over the Eastern territories, the Prosecution denies that he was in complete control of Kenema. Furthermore, he had been ordered by Foday Sankoh to take commands from Johnny Paul Koroma during the time period relevant to this Count in the Indictment.²⁷⁰ Once again the Prosecution notes the time frame of the unlawful killings alleged in Kenema: 25 May 1997 to 19 February 1998, being the period of the AFRC government. The evidence clearly demonstrates that at the time of the crimes alleged, the rebel presence in Kenema was a combination of RUF and AFRC troops. The First Accused was in Tongo and was introduced as a high

²⁶⁷ Exhibit P61, Revolutionary United Front's Apology to the Nation, delivered on SLBS, 18 June 1997; Exhibits P6 and P7, Government Notices No. 215 (P.N. No. 3 of 1997) of 3 September 1997 published in Sierra Leone's gazettes nos. 52 and 54, showing the structure of the Supreme Council during the Junta period, incorporating a mix of AFRC and RUF commanders.

²⁶⁸ TF1-054, TT 19 April 2005, pp. 92-93.

²⁶⁹ TF1-334, TT 17 May 2005, pp. 2-8. Mike Lamin was a member of the Supreme Council and a delegate of this body to the meeting in Bo.

²⁷⁰ Gibril Massaquoi, TT 7 October 2005, pp.46-48.

ranking member of the AFRC government in charge of the mining.²⁷¹

124. One week after the May 1997 coup, an AFRC/RUF secretariat was established in Kenema Town and remained there until February 1998.²⁷² Eddie Kanneh was Secretary of State East for the AFRC. Sam Bockarie (aka Mosquito) was also present.²⁷³ In December 1997 troops in Kenema launched 'Operation No Living Thing' on Kenema Town, in which people were accused of being Kamajors and arrested.²⁷⁴ One man was killed and his intestines stretched across the road.²⁷⁵ In February 1998, 7 civilians, including B. S. Massaquoi and Andrew Quee were arrested and accused of being Kamajor supporters. They were tortured and killed.²⁷⁶
125. At the time of the coup, the Kamajors were in control of Tongo Field.²⁷⁷ On or about August 1997, Junta soldiers entered Tongo.²⁷⁸ The soldiers told the civilians that they had overthrown the government and had now come to Tongo. The soldiers proceeded to loot property and kill civilians who resisted.²⁷⁹ Mosquito, who was only briefly in Tongo, called a meeting of civilians in Tongo and addressed them on behalf of the Supreme Council. He stated that the AFRC Government had been established in Freetown and was now in Tongo. He said he was the Vice Chairman and the RUF had been called to join the government.²⁸⁰ Mining continued under AFRC/RUF control.²⁸¹ Men of both factions were present in Tongo²⁸² including the First Accused.²⁸³ Civilians who disobeyed orders or stole diamonds were shot and killed.²⁸⁴

Kono District

126. The Brima Motion argues that responsibility for unlawful killings in Tombodu lies exclusively with Mohamed Savage, an outlaw who took orders from no one, that

²⁷¹ Witness TF1-045, TT 19 July 2005, p. 39.

²⁷² Witness TF1-122, TT 24 June 2005, pp. 5-7.

²⁷³ Witness TF1-122, TT 24 June 2005, pp. 7-8.

²⁷⁴ Witness TF1-122, TT 24 June 2005, pp. 32-33.

²⁷⁵ Witness TF1-122, TT 24 June 2005, pp. 33-34.

²⁷⁶ Witness TF1-122, TT 24 June 2005, pp. 35-49.

²⁷⁷ Witness TF1-062, TT 27 June 2005, p. 6.

²⁷⁸ Witness TF1-062, TT 27 June 2005, pp. 8-9.

²⁷⁹ Witness TF1-062, TT 27 June 2005, pp. 11-12.

²⁸⁰ Witness TF1-062, TT 27 June 2005, pp. 14-16.

²⁸¹ Witness TF1-062, TT 27 June 2005, pp. 20-21.

²⁸² Witness TF1-045, TT 19 July 2005, pp. 38-43.

²⁸³ Witness TF1-045, TT 19 July 2005, pp. 44-47, 76 and 79-81.

²⁸⁴ Witness TF1-062, TT 27 June 2005, pp. 33-37.

'Operation No Living Thing' was a philosophy of the RUF, not of the AFRC or the First Accused, that during the atrocities in Kono the First Accused had been arrested and detained by Mosquito in Kailahun, that the instruction concerning the movement from Kono came by way of an order by SAJ Musa and that there is no evidence of command and control by the First Accused in Kono. The Brima Motion further argues that the Prosecution has failed to prove a number of specific factual matters.²⁸⁵ The Brima Motion argues that there is no evidence with respect to unlawful killings in Foindu, Willifeh, Mortema and Biaya.

127. The Prosecution accepts that there is no evidence with respect to unlawful killings at Foindu, Willifeh and Biaya, however, the Indictment is pleaded using non-exhaustive language and there is evidence of unlawful killings in Kono in places not specifically pleaded. These include Yardu Sandu,²⁸⁶ Gbiama,²⁸⁷ Wordu,²⁸⁸ Koidu Buma,²⁸⁹ Koidu Geiya,²⁹⁰ Bomboafuidu,²⁹¹ Penduma²⁹² and Paema²⁹³ in addition to Tombodu²⁹⁴ and Koidu Town.²⁹⁵ With respect to Mortema, Witness TF1-114 gave evidence that between Makeni and Koidu the troops engaged in fighting there. The First Accused was present.²⁹⁶ Although it is impossible to calculate the exact number of victims, the evidence demonstrates that hundreds of civilians were killed.
128. The evidence demonstrates clearly that Kono was planned to be a Junta stronghold immediately following the ECOMOG Intervention in February 1998. This was first stated in Masiaka and repeated in Koidu Town as discussed above. The First Accused was in

²⁸⁵ Brima Motion, para. 46.

²⁸⁶ Witness TF1-019, TT 30 June 2005.

²⁸⁷ Witness TF1-072, TT 1 July 2005.

²⁸⁸ Witness TF1-072, TT 1 July 2005.

²⁸⁹ Witness TF1-334, TT 20 May 2005, p. 23.

²⁹⁰ Witness TF1-334, TT 20 May 2005, pp. 24-26.

²⁹¹ Witness TF1-206, 28-29 June 2005.

²⁹² Witness TF1-217, 17 October 2005.

²⁹³ Witness TF1-216, 27 June 2005.

²⁹⁴ Generally see Witness TF1-072, TT 1 July 2005; TF1-033, TT 11-12 July 2005; TF1-167, TT 15-21 September 2005; TF1-198, TT 28 June 2005; TF1-334, TT 16 May -22 June 2005; TF1-076, TT 27 June 2005; and TF1-216, TT 27 June 2005.

²⁹⁵ Generally see Witness TF1-334, TT 20 May 2005, pp. 29-30; Witness TF1-206, TT 28 June 2005, p. 82; Witness TF1-217, TT 17 October 2005; Witness TF1-153, TT 22-23 September 2005; [REDACTED]; Witness TF1-167, TT 15-21 September 2005; Witness TF1-114, TT 14-18 July 2005; Witness TF1-198, TT 28 June 2005; Witness TF1-301, TT 12-14 October 2005; and Witness TF1-019, TT 30 June 2005.

²⁹⁶ Witness TF1-114, TT 14 July 2005, pp. 124-125.

Kono at the time of the Intervention.²⁹⁷ While in Tombodu he gave an order to Savage to kill civilians and burn the town, as well as to abduct civilians.²⁹⁸

129. The Brima Motion asserts a lack of evidence connecting 'Operation No Living Thing' to the Kono District, the AFRC and the First Accused. There is, however, evidence that soldiers in Wordu²⁹⁹ and Paema³⁰⁰ told civilians that they were on an operation: 'Operation No Living Thing' and also that the First Accused told fighters and abductees in Yaya that there was to be an 'Operation Spare No Soul'.³⁰¹ The Prosecution submits that the evidence recited above demonstrates that the First Accused had knowledge of the unlawful killings committed by his subordinates.

Kailahun District

130. The Brima Motion argues that Kailahun District was under RUF control, particularly that of Mosquito, that the First Accused and Johnny Paul Koroma were arrested by Mosquito and therefore there can be no nexus between the First Accused and the unlawful killings which occurred in Kailahun District.
131. The approximately 67 civilians killed in Kailahun Town were accused of being Kamajors. The soldiers doing the shooting were both RUF and AFRC.³⁰²
132. Accordingly, the Prosecution submits that there is sufficient evidence for a reasonable trier of fact to conclude that the unlawful killings in Kailahun District were committed in furtherance of the joint criminal enterprise.

Koinadugu District

133. The Brima Motion argues that as Koinadugu District was under the control of SAJ Musa, an AFRC member to whom the First Accused was subordinate, the First Accused cannot be held responsible for the unlawful killings in that District. The Brima Motion further argues that as the evidence of witness TF1-310 cannot ascribe the faction to which armed men belonged, it cannot be established that the First Accused exercised command and control over the men.

²⁹⁷ Witness TF1-334, TT 17 May 2005, p. 71.

²⁹⁸ Witness TF1-033, TT 11 July 2005, pp. 10-11, 143-151.

²⁹⁹ Witness TF1-198, TT 28 June 2005, p. 7.

³⁰⁰ Witness TF1-216, TT 27 June 2005, p. 80.

³⁰¹ Witness TF1-022, TT 11 July 2005, pp. 13-14 and TT 12 July 2005, pp. 34-38.

³⁰² Witness TF1-113, TT 18 July 2005, pp. 87-90 and 115-116.

134. The Prosecution accepts that no evidence has been led with respect to the villages Heremakono, Kumalu, Katombo and Kamadugu. There is evidence of unlawful killings in villages not specifically pleaded such as Bamukura,³⁰³ Yemadugu,³⁰⁴ and Yiffin³⁰⁵ as well as in Kurubonla,³⁰⁶ Koinadugu,³⁰⁷ Fadugu,³⁰⁸ Kumala,³⁰⁹ and Kabala.³¹⁰
135. The evidence demonstrates that the unlawful activities in Koinadugu District were carried out by Junta troops.³¹¹ [REDACTED]
[REDACTED]³¹² Killings and amputations of civilians by Junta troops were reported during that period,³¹³ especially during the attack on Kabala.³¹⁴ It is clear the troops were under the First Accused's command when atrocities against the civilian population were committed.³¹⁵
136. Accordingly, the Prosecution submits that there is sufficient evidence to satisfy a reasonable trier of fact of the responsibility of the First Accused for unlawful killings in Koinadugu District.

Bombali District

137. The Brima Motion argues that the evidence of the Prosecution witnesses with respect to Bombali District is contradictory and the evidence of the insider witnesses TF1-167 and TF1-334 both contradictory and self-serving. The Brima Motion further argues that the identification of the First Accused as Gullit by witness TF1-157 is open to question because it is based on hearsay.

³⁰³ Witness TF1-094, TT 13 July 2005.

³⁰⁴ Witness TF1-094, TT 13 July 2005.

³⁰⁵ Witness TF1-310, TT 5 July 2005.

³⁰⁶ Witness TF1-184, TT 26-30 September 2005; Witness TF1-167, TT 15-21 September 2005.

³⁰⁷ Witness TF1-094, TT 13-14 July 2005; Witness TF1-209, TT 7 July 2005; Witness TF1-167, TT 15-21 September 2005; and Witness TF1-184, TT 26-30 September 2005.

³⁰⁸ Witness TF1-199, TT 6 October 2005, pp. 77-80.

³⁰⁹ Witness TF1-133, TT 7 July 2005.

³¹⁰ Witness TF1-209, TT 7 July 2005; Witness TF1-147, TT 13 July 2005; Witness TF1-199, TT 6 October 2005, pp. 86-88; Witness TF1-184, TT 26-30 September 2005; Witness TF1-180, TT 8 July 2005; Witness TF1-094, TT 13-14 July 2005; and Witness TF1-158, TT 26 July 2005.

³¹¹ Witness TF1-184, TT 29 September 2005, p. 28; Witness TF1-334, TT 25 May 2005, pp. 7-10; Witness TF1-199, TT 6 October 2005, pp. 81-85.

³¹² Witness TF1-310, TT 5 July 2005, pp. 69-71.

³¹³ Witness TF1-153, TT 22 September 2005, pp. 47-51; Exhibit P57, "No Peace without Justice Report", 10 March 2004, pp. 147-175.

³¹⁴ Witness TF1-199, TT 6 October 2005, pp. 86-88; Witness TF1-153, 22 September 2005, pp. 47-51.

³¹⁵ Witness TF1-334, TT 20 May 2005, p. 87.

138. The Prosecution accepts that there is no evidence with respect to the village Mafabu. However, with respect to the remaining locations specifically pleaded, namely Bornoya,³¹⁶ Karina,³¹⁷ Mateboi³¹⁸ and Pendembu,³¹⁹ and also other Bombali locations such as Rosos,³²⁰ the Prosecution submits that the evidence of the guilt of the First Accused for the unlawful killings is overwhelming. In this respect any alleged inconsistency between witnesses TF1-167 and TF1-334 is a matter of weight to be decided at the end of the trial and not in the consideration of a Rule 98 motion. It is to be noted that the alleged inconsistency and self-serving nature of the evidence of these witnesses has not been specified.
139. Further, if it is implicit in the reference in the Brima Motion to only one witness who identifies the First Accused as Gullit that there is no other evidence of his jungle name in Bombali District (or generally), that reference is misleading. Numerous witnesses not only identify the First Accused as Gullit and as being present in Bombali, but also as being in overall command of the troops in that location, and as ordering and participating in the unlawful killings.³²¹
140. At the time of the attacks in Bombali District, the First Accused was the Chief of Command of the AFRC troops.³²² Orders given by the First Accused included the execution of a captured soldier in Bumbuna,³²³ the execution of civilians attempting escape in Kamagbengbe,³²⁴ the execution of civilians in Karina,³²⁵ the execution of two captured Gbethis in Mandaha,³²⁶ the execution of two police officers in Foroh Loko,³²⁷

³¹⁶ Generally see witness TF1-033, TT 11-12 July 2005; Witness TF1-156, TT 26 September 2005.

³¹⁷ Generally see witness TF1-184, TT 26-30 September 2005; Witness TF1-167, TT 15-21 September 2005; Witness TF1-033, TT 11-12 July 2005; Witness TF1-058, TT 14 July 2005; Witness TF1-055, TT 12 July 2005; Witness TF1-199, TT 6 October 2005; Witness TF1-334, TT 16 May-22 June 2005; Witness TF1-157, TT 22-25 July and 26 September 2005; and Witness TF1-158, TT 26 July 2005.

³¹⁸ Generally see Witness TF1-334, TT 16 May-22 June 2005; and Witness TF1-157, TT 22-25 July and 26 September 2005.

³¹⁹ Generally see Witness TF1-045, TT 19-22 July 2005; Witness TF1-167, TT 15-21 September 2005, Witness TF1-033, TT 11-12 July 2005; and Witness TF1-334, TT 16 May-22 June 2005.

³²⁰ Witness TF1-334, TT 16 May-22 June 2005; Witness TF1-167, TT 15-21 September 2005; Witness TF1-157, TT 22-25 July and 26 September 2005; and Witness TF1-158, TT 26 July 2005.

³²¹ As to general evidence, see Witness TF1-334, 16 May-22 June 2005; Witness TF1-167, TT 15-21 September 2005; and John Petrie, TT 5-6 October 2005.

³²² Witness TF1-334, TT 20 May 2005, pp. 88-101.

³²³ Witness TF1-334, TT 23 May 2005, p. 52.

³²⁴ Witness TF1-334, TT 23 May 2005, pp. 54-55.

³²⁵ Witness TF1-334, TT 23 May 2005, pp. 57-58.

³²⁶ Witness TF1-334, TT 23 May 2005, pp. 77-79.

and a general order to execute civilians in the villages surrounding Camp Rosos.³²⁸ In Karina, the First Accused participated in the shooting of civilians in the mosque.³²⁹

141. The Prosecution submits that a reasonable trier of fact could conclude that the evidence is such that the First Accused could be convicted for the unlawful killings in Bombali District.

Freetown and the Western Area

142. The only submission made by the Brima Motion concerns the shooting at the Rogballah Mosque as described by witness TF1-021, in which it is alleged that the soldiers responsible were RUF and People's Army and therefore the First Accused cannot be held responsible for the unlawful killings in Freetown and the Western Area.
143. The Prosecution submits that it is not necessary to rehearse the evidence against the First Accused with respect to the killings in Freetown and the Western Area. It is well established and unchallenged by the Defence that the First Accused was in command of the troops that invaded Freetown. In Allen Town on 5 January 1999, the First Accused gave an order to his commanders that civilians who supported ECOMOG were collaborators and were to be executed. There is evidence of the First Accused killing civilians and captured soldiers at State House; of his presence when his subordinates were killing about 30 civilians who refused to join the rebels;³³⁰ and also there is evidence that the First Accused ordered the killing of civilians for "jubilating" with ECOMOG.³³¹ To the extent that the Brima Motion refers to the incident at Rogbalan Mosque, there is evidence that the First Accused ordered the killing of persons taking shelter in mosques.³³²
144. The Prosecution submits that on the basis of the evidence, a brief outline of which has been presented above, a reasonable trier of fact could find the First Accused liable for Counts 3-5 in Freetown and the Western Area.

³²⁷ Witness TF1-334, TT 23 May 2005, pp. 85-86.

³²⁸ Witness TF1-334, TT 23 May 2005, p. 104.

³²⁹ Witness TF1-334, TT 23 May 2005, pp. 68-69.

³³⁰ Witness TF1-024, TT 7 March 2005, pp. 47-48.

³³¹ Witness TF1-334, TT 14 June 2005, pp. 83-85.

³³² Witness TF1-334, TT 14 June 2005, pp. 87-89.

Port Loko District

145. The Brima Motion does not make any submission with respect to killings in Port Loko District. Accordingly the Prosecution assumes that the First Accused accepts that there is sufficient evidence against him in relation to Counts 3 to 5 in that District.

3.3 COUNTS 6 TO 9: SEXUAL VIOLENCE

146. To the extent that issue is taken with respect to specific locations pleaded in the Indictment, the Prosecution accepts that no evidence of sexual violence has been led with respect to the following villages: Tomendeh, Fokoiya, Superman Camp/Kissi Town Camp, Kissi Town or Tombodu (Kono District); Heremakono (Koinadugu District); or Mandaha (Bombali District). The Prosecution submits that sufficient evidence has been led in relation to all other locations pleaded so that a reasonable trier of fact could find the First Accused guilty of Counts 6 to 9.

147. [REDACTED]

Kono District

148. The Brima Motion argues that two witnesses, TF1-076 and TF1-206, are unable to identify the perpetrators of sexual violence as belonging to either the AFRC or RUF and therefore the First Accused cannot be held criminally responsible. The Brima Motion further argues that the Prosecution has failed to demonstrate that sexual violence in Kono was widespread and that there is no evidence of sexual violence at Cyborg Pit as put in

³³³ Witness TF1-081, TT 4 July 2005, p. 29.
³³⁴ Witness TF1-081, TT 4 July 2005, pp. 10-11.
³³⁵ Witness TF1-081, TT 4 July 2005, p. 17 and Exhibit P25.

the Supplemental Pre-Trial Brief. The Prosecution notes that there is evidence of sexual violence at Foendor (or Foendu),³³⁶ Yardu Sandu,³³⁷ Koidu,³³⁸ and Wenedu (spelled Wondedu in the Indictment).³³⁹

149. The Prosecution submits that it bears no burden to prove that the sexual violence for which the First Accused is criminally responsible was widespread within Kono District, or that each particularly pleaded village with respect to the District has been proven. It is sufficient that there is evidence that the sexual violence formed part of a widespread and systematic attack against a civilian population.
150. The Prosecution further submits that evidence of sexual violence given by witnesses unable to name which group the perpetrators belonged to can still be incriminating of the First Accused in circumstances where there is other evidence which shows the presence of Junta troops in that particular location.
151. The evidence of sexual violence in Kono is part of a pattern that was repeated throughout Sierra Leone wherever Junta forces were present. The evidence is of rape by soldiers during attacks on villages, rape being part of the *modus operandi* of such attacks.³⁴⁰ For example, during an attack on Bomboafuidu seven civilian men were forced to rape seven civilian women while the rebels watched and laughed.³⁴¹
152. Young women were forced to become the wives of commanders³⁴² including under the threat of death to third persons;³⁴³ and other women captives were forced to have sexual intercourse with Junta soldiers.³⁴⁴ There is evidence that the First Accused told fighters that young girls and women are to satisfy sexual desire.³⁴⁵
153. It is clear that Tombodu was at the time alleged in the indictment under the control of the AFRC. The commander in charge was Colonel Savage, an SLA who had under his

³³⁶ Witness TF1-076, TT 27 June 2005.

³³⁷ Witness TF1-019, TT 30 June 2005, pp. 89-94.

³³⁸ Witness TF1-334; Witness TF1-153; Witness TF1-217; Witness TF1-033 and Witness TF1-198.

³³⁹ Witness TF1-217.

³⁴⁰ Witness TF1-076, TT 27 June 2005, pp. 103-106; Witness TF1-019, TT 30 June 2005, pp. 89-94; Witness TF1-198, TT 28 June 2005, pp. 11-12.

³⁴¹ Witness TF1-206, TT 28 June 2005, pp. 94-98.

³⁴² Witness TF1-334, TT 20 May 2005, p. 5.

³⁴³ Witness TF1-217, TT 17 October 2005, p. 11.

³⁴⁴ Witness TF1-334, TT 20 May 2005, pp. 6-7.

³⁴⁵ Witness TF1-033, TT 11 July 2005, pp. 13-14.

command both SLA and RUF members and who reported to both the Second Accused and RUF Superman. In fact, at the time alleged in the indictment there is strong evidence to suggest that AFRC battalions were dispatched to different villages in Kono, all under the command of the Second Accused, until the arrival of the First Accused in the region.³⁴⁶

154. The Prosecution does not attempt to identify specifically the attacker of Witness TF1-076, but submits that the attacker was a member of the Junta under the command of both AFRC and RUF commanders. The same is true for Witness TF1-206. The Prosecution also refers to the evidence set out in paragraphs 296 and 297 below.
155. Consequently, the Prosecution submits that there is sufficient evidence for a reasonable trier of fact to conclude that the First Accused is guilty of the Counts charged in respect to Kono.³⁴⁷

Koinadugu District

156. The Brima Motion argues that the evidence of Witness TF1-209 is of perpetrators under the authority of SAJ Musa and Superman and as the First Accused was not present and was subordinate to SAJ Musa, he cannot be held liable, as he could not have prevented sexual violence in Koinadugu District. The Brima Motion further argues that the evidence of Witness TF1-133 relates to the group of Brigadier Mani, that there is no evidence that the First Accused and Mani met post February 1998, or that the First Accused could not have prevented the sexual violence.
157. The evidence of sexual violence forms a pattern and is integral to the manner of AFRC attacks upon civilians. For example, Witness TF1-209 and other women and children were raped by armed men.³⁴⁸ This witness was pregnant at the time of the rape and was told that she was lucky because they had slit the bellies of pregnant women to see the gender of the baby.³⁴⁹ While there is evidence that the perpetrators were under the control of SAJ Musa and Superman, the First Accused was in Koinadugu at the relevant

³⁴⁶ Witness TF1-334, TT 27 May 2005, 72 and TT 17 June 2005, 49, TT 19 May 2005, p. 37.

³⁴⁷ Witness TF1-334, TT 20 May 2005, p. 6.

³⁴⁸ Witness TF1-209, TT 7 July 2005, pp. 31-36. See also witness TF1-094, TT 13 July 2005, pp. 26-29; witness TF1-199, TT 6 October 2005, pp. 78-80 and 89; witness TF1-133, TT 7 July 2005, pp. 84-86.

³⁴⁹ Witness TF1-209, TT 7 July 2005, pp. 34-35. See also pp. 40-41.

time and held a command position.³⁵⁰ There is also evidence that in Yiffin, orders of the First Accused were carried out and that rapes occurred.³⁵¹

158. There is also the evidence of captive women being forced to be the wives of the Junta soldiers.³⁵² A “wife” would be required to have sex with her “husband” but no one else: he was her sole owner.³⁵³ Commanders and stronger soldiers had wives, but the lower level soldiers did not as they had to go to the war front.³⁵⁴

Bombali District

159. The only submission made in the Brima Motion is that the evidence of witness TF1-334, who said he saw soldiers raping women, has little detail and does not detail the presence of any commander, whether they failed to stop it or what they did to order it.
160. The evidence again is of rape forming an integral part of the *modus operandi* of attacks on civilians and of captured women being subjected to sexual slavery and forced marriage. Soldiers raped women in Bonoya and Karina as part of the attacks.³⁵⁵ One witness estimates that 200 women were raped in the two villages.³⁵⁶ Hundreds of women were captured during the attack on Karina. They were stripped naked on the order of the First Accused³⁵⁷ and many of them were handed to the Third Accused following the attack.³⁵⁸ Armed soldiers raped women as part of ‘Operation Fearful the Area’ while based at Rosos. For example, witness TF1-269 was raped 5 times by armed men before being told that no civilians should go to Rosos.³⁵⁹ Witness TF1-267 was gang raped by 4 rebels, her daughter by 2 rebels, in the bush near Rosos before being told whosoever wanted his life should not stay there.³⁶⁰

³⁵⁰ Witness TF1-334, TT 20 May 2005, p. 88.

³⁵¹ Witness TF1-033, TT 11 July 2005, pp. 15-17.

³⁵² Witness TF1-209, TT 7 July 2005, pp. 38-39; witness TF1-094, TT 13 July 2005, p. 29; witness TF1-133, TT 7 July 2005, pp. 91-92 and pp. 97-100.

³⁵³ Witness TF1-133, TT 7 July 2005, p. 100.

³⁵⁴ Witness TF1-133, TT 7 July 2005, pp. 100-101.

³⁵⁵ Witness TF1-334, TT 23 May 2005, p. 71.

³⁵⁶ Witness TF1-033, TT 11 July 2005, p. 19.

³⁵⁷ Witness TF1-033, TT 11 July 2005, p. 19.

³⁵⁸ Witness TF1-334, TT 23 May 2005, p. 73.

³⁵⁹ Witness TF1-269, TT 14 July 2005, pp. 41-49.

³⁶⁰ Witness TF1-267, TT 27 July 2005, pp. 5-9.

Kailahun District / Freetown and the Western Area / Port Loko District

161. The Brima Motion makes no submission with respect to these crime bases. Accordingly the Prosecution assumes that the First Accused accepts the sufficiency of evidence with respect to them.

3.4 COUNTS 10 AND 11: PHYSICAL VIOLENCE

Kono District

162. The Brima Motion argues that the evidence of Witness TF1-072 confirms the superiority of Savage in Tombodu; that the evidence of TF1-074 cannot be relied upon as it is not clear whether he was captured by the RUF or AFRC; that the type of violence described by Witness TF1-198 does not fall within the description pleaded in paragraph 59 of the Indictment and she was, in any event, abducted by the RUF; and that Witness TF1-206 could not tell which faction of the Junta carried out amputations in Kono.
163. The Prosecution submits that the evidence of amputation and the carving of “AFRC” and “RUF” into the bodies of civilians is part of a consistent pattern of criminal behaviour engaged in by Junta troops throughout the territory of Sierra Leone.³⁶¹
164. The evidence establishes that the two factions were working together to make Kono District a Junta stronghold, as ordered by Johnny Paul Koroma. This is no better demonstrated than by the evidence of witness TF1-074. Whatever inconsistencies might be pointed to in his oral evidence as to which faction the rebels he encountered belonged, the carving of the 7 letters AFRC and RUF into his chest is incontrovertible and is evidence of the joint criminal enterprise between the two factions.³⁶² Witness TF1-074 also gave evidence of the marking of other boys after they were accused of telling ECOMOG the location of the Junta troops.³⁶³
165. The evidence demonstrates that the amputation of limbs was carried out on a broad scale to punish the civilians for their betrayal of the Junta to ECOMOG or for supporting President Kabbah. For example, witness TF1-072 and 13 other civilians had limbs

³⁶¹ See for example witness TF1-085, TT 7 April 2005, p. 43.

³⁶² Witness TF1-074, TT 5 July 2005, pp. 17-20, Exhibit P27.

³⁶³ Witness TF1-074, TT 5 July 2005, p. 16.

amputated in Tombodu.³⁶⁴ The husband of Witness TF1-198 had a limb amputated after being accused of voting for President Kabbah.³⁶⁵ Both hands of Witness TF1-216 and the hands of 4 others were amputated on the order of Staff Alhaji to bring a message to President Kabbah. Following the amputations the witness was told that Kabbah had a container with a hand for him.³⁶⁶ Amputations were also part of the *modus operandi* of attacks on civilian villages. For example, the rebels who attacked Bomboafuidu, amputated the hands of 14 civilians and killed one man who attempted to resist amputation. Following the amputations the civilians were told to go to President Kabbah for new hands.³⁶⁷

166. To the extent that the Brima Motion argues that beatings have not been specifically pleaded in paragraph 59 of the Indictment, the Prosecution submits that the Indictment has been drafted using non-exhaustive language.³⁶⁸
167. The First Accused was in charge of the mining in Kono for the AFRC during the Junta government.³⁶⁹ Evidence shows that AFRC forced civilians to work in the mines and they were severely beaten or tortured if they refused.³⁷⁰ The Prosecution submits that the evidence shows that the First Accused directly participated, ordered, knew and/or should have known that all the above abuses were taking place. There is sufficient evidence on the basis of which a reasonable trier of fact could find the First Accused guilty.

Kenema District

168. The Brima Motion asserts that Mosquito was in total control of Kenema and that although a member of the Supreme Council during the AFRC government, he exercised control to the exclusion of all others as soon as he returned to Kenema. It is therefore argued that the First Accused cannot be held responsible for any offences in Kenema District.
169. The Prosecution submits that the evidence does not support the assertion of the Brima

³⁶⁴ Witness TF1-072, TT 1 July 2005, p. 15.

³⁶⁵ Witness TF1-198, TT 28 June 2005, p. 15.

³⁶⁶ Witness TF1-216, TT 27 June 2005, pp. 92-94.

³⁶⁷ Witness TF1-206, TT 28 June 2005, pp. 98-104. This witness describes meeting other Kono amputees in Connaught Hospital at TT 28 June 2005, pp. 107-109.

³⁶⁸ See the final sentence of para. 58 of the Indictment.

³⁶⁹ TF1-334, TF1-167, TF1-045.

³⁷⁰ TF1-045, TT 19 July 2005, p. 55.

Motion that immediately following the intervention, Mosquito exercised exclusive control over the Eastern Province. A number of the incidents of physical violence towards civilians relate to the period of the AFRC government. In June 1997 a civilian, Bonnie Wailer, was detained and assaulted before being killed, along with 2 others.³⁷¹ The allegations of physical violence relating to Kenema are further demonstrated by the physical treatment of a number of civilians who were arrested for allegedly betraying the Junta. B.S. Massaquoi – the Kenema Town Council Chairman, Brima Kpaka – a prominent Kenema businessman, Andrew Quee and 4 others were arrested in February 1998.³⁷² They were alleged to be Kamajor supporters.³⁷³ They were detained in the AFRC Secretariat and bore bruises on their faces and hands. They were transferred to the Kenema CID for an investigation, which found no evidence that they supported the Kamajors and recommended their immediate release. They were released, rearrested by the police then transferred to the Junta brigade headquarters. AFRC soldiers beat and kicked B.S. Massaquoi.³⁷⁴ As noted above, (paragraph 124) these civilians were later killed.

Koinadugu District / Bombali District / Freetown and the Western Area / Port Loko District

170. The Brima Motion makes no submission with respect to the above named Districts. The Prosecution assumes that the First Accused accepts the sufficiency of evidence with respect to these Districts.

3.5 COUNT 12: USE OF CHILD SOLDIERS

171. The Brima Motion argues that:

- (i) Witness TF1-199, a former child soldier, was under the command of Brigadier Mani;
- (ii) Brigadier Mani was senior in rank and position to the First Accused and that there is no evidence of contact between Brigadier Mani and the First Accused;

³⁷¹ Witness TF1-122, TT 24 June 2005, pp. 18-23.

³⁷² Witness TF1-122, TT 24 June 2005, p. 35.

³⁷³ Witness TF1-122, TT 24 June 2005, p. 37.

³⁷⁴ Witness TF1-122, TT 24 June 2005, pp. 36-45.

- (iii) The description of Gullit given by Witness TF1-157 does not fit the First Accused and that of Witness TF1-158 is vague;
 - (iv) There is no evidence that the First Accused knew or should have known about the presence of child soldiers, their abduction, training or use;
 - (v) Although Witness TF1-334 stated that the First Accused gave an order that abducted children should be distributed, neither he nor Witness TF1-167 gave evidence of an order to abduct children in Karina;
 - (vi) There is no evidence that the First Accused ordered the training of children at Rosos.
172. The presence and authority of the First Accused in Bonoya, Karina and Rosos during the commission of the crimes committed involving children is well established by witnesses other than TF1-157 and TF1-158.³⁷⁵ There is sufficient evidence of the First Accused giving orders to others and having knowledge about the use of children, as detailed below.
173. First, there is the obvious presence of small children wherever the Junta troops were based. There were children at Rosos,³⁷⁶ Benguema,³⁷⁷ Colonel Eddie Town³⁷⁸ and Newton.³⁷⁹ The evidence shows that children as young as 8 or 9 were abducted and taken with the troops. Children were abducted from Karina,³⁸⁰ Bonoya,³⁸¹ Robat Mess,³⁸² Madina Loko³⁸³ and Fadugu.³⁸⁴ It is submitted that no adult could mistake a child of 8, 9, 10 or 11 as being a teenager of 15 years or more. Accordingly, there is evidence that the First Accused knew or should have known that children under the age of 15 were being used as soldiers or for forced labor.

³⁷⁵ See witness TF1-167, TT 15 September 2005, p. 65.

³⁷⁶ Witness TF1-094, TT 13 July 2005, p. 38

³⁷⁷ Witness TF1-227, TT 11 April 2005, pp. 16-23.

³⁷⁸ Witness TF1-153, TT 22 September 2005, p. 83.

³⁷⁹ Witness TF1-334, TT 15 June 2005, p. 15.

³⁸⁰ Witness TF1-334, TT 23 May 2005, p. 73.

³⁸¹ Witness TF1-158, TT 26 July 2005, pp. 35-36; TF1-157, TT 22 July 2005, pp. 62-65; [REDACTED]

[REDACTED] See also witness TF1-167 who states that children were abducted on the way to Karina, TT 15 September 2005, pp. 63-64.

³⁸² Witness TF1-157, TT 22 July 2005, pp. 106-107.

³⁸³ Witness TF1-199, TT 6 October 2005, pp. 71-73.

³⁸⁴ Witness TF1-199, TT 6 October 2005, pp. 77-80.

174. Second, the children were organized into Small Boy Units. The SBUs often had particular roles, such as performing amputations in Tombodu³⁸⁵ or guarding captive civilians, such as those captured in Freetown.³⁸⁶ SBUs aged between 10 and 14 at Benguema were used to flog civilians who had committed “crimes”.³⁸⁷ Armed children as young as 12 and 13 were used to guard civilians forced to mine diamonds in Cyborg Pit.³⁸⁸ They also participated in attacks, such as in Bomboafuidu.³⁸⁹ In Gberibana (Port Loko District) there were children among the 500-600 fighters.³⁹⁰
175. Third, the SBUs were trained in camps in which the First Accused was present. This occurred in Kono³⁹¹ and later in Rosos. At Rosos the boys were aged about 10-12 and the girls about 15. They were taught tactics, weaponry, the dismantling and assembly of guns, how to parade and how to muster.³⁹² Muster parades were held in front of the First Accused. The small boys were distributed to company commanders on the order of the First Accused.³⁹³
176. The giving of drugs including cocaine to SBUs evinces a design by Junta commanders to reduce fear in children during attacks.³⁹⁴ For example, witness TF1-180 gave evidence that he was given cocaine and brown-brown and told that it would make him “audacious” while fighting.³⁹⁵
177. Fourth, the First Accused gave orders to and about the SBUs. Immediately following the attack on Karina the First Accused ordered that the children abducted be distributed to various commanders.³⁹⁶ In Makeni the First Accused ordered the small boys to go on a food finding mission. They were ordered to bring back other small boys and did so.³⁹⁷

³⁸⁵ Witness TF1-334, TT 20 May 2005, p. 6.

³⁸⁶ Witness TF1-023, TT 9 March 2005, p. 36.

³⁸⁷ Witness TF1-227, TT 11 April 2005, pp. 16-23.

³⁸⁸ Witness TF1-062, TT 27 June 2005, p. 34.

³⁸⁹ Witness TF1-206, TT 28 June 2005, p. 105.

³⁹⁰ Witness TF1-167, TT 16 September 2005, p. 72.

³⁹¹ Witness TF1-334, TT 20 May 2005, p. 6.

³⁹² Witness TF1-334 TT 24 May 2005, pp. 23-31; witness TF1-158, TT 26 July 2005, pp. 39-40.

³⁹³ Witness TF1-334 TT 24 May 2005, pp. 30-31

³⁹⁴ Witness TF1-199, TT 6 October 2005, pp. 91-92. See also witness TF1-157, TT 25 July 2005, pp. 5-6.

³⁹⁵ Witness TF1-180, TT 8 July 2005, p. 10.

³⁹⁶ Witness TF1-334, TT 23 May 2005, pp. 73-74.

³⁹⁷ Witness TF1-180, TT 8 July 2005, pp. 14, 30 and 39.

There were over 80 small boys.³⁹⁸ The First Accused then ordered about 150 small boys to go to Kabala to fight and gave them guns.³⁹⁹ In Rosos the First Accused gave witness TF1-167 command of the 4th battalion and about 13 SBUs.⁴⁰⁰

178.



3.6 COUNT 13: ABDUCTIONS AND FORCED LABOUR

Kenema District

179. The Brima Motion argues that the Prosecution has failed to adduce evidence of abductions and forced mining in Kenema and, particularly, that the evidence of Witness TF1-045 does not give a description of forced labour in the mining fields. The Brima Motion further argues that witness TF1-122 gives evidence of Issa Sesay, a high ranking RUF commander, going to Tongo, but the evidence of what transpired there is hearsay.
180. The Prosecution submits that it is relevant that this paragraph relates to the period of the AFRC Government. About 300-500 people mined under AFRC control in 1997.⁴⁰⁴ The indicia of enslavement were present whenever a “government work day” was announced. Far from lacking description, the evidence of witness TF1-045 as to the capture at gunpoint, undressing and lining up of civilians at the mining area and the beating and serious torture of civilians refusing to mine⁴⁰⁵ is echoed in the evidence of Witness TF1-062. While the evidence of Witness TF1-122 as to civilians reporting that able bodied men were captured and forced to mine diamonds at Tongo Field is hearsay, it is also

³⁹⁸ Witness TF1-180, TT 8 July 2005, p. 14.

³⁹⁹ Witness TF1-180, TT 8 July 2005, pp. 15-16.

⁴⁰⁰ Witness TF1-167, TT 15 September 2005, p. 67.

⁴⁰¹ Witness TF1-296, 4 October 2005, pp. 85-92.

⁴⁰² Witness TF1-296, 4 October 2005, p. 94 and TT 5 October 2005, p. 53.

⁴⁰³ Witness TF1-296, 4 October 2005, pp. 100-101; Exhibit P33.

⁴⁰⁴ Witness TF1-045, TT 19 July 2005, p. 47.

⁴⁰⁵ Witness TF1-045, TT 19 July 2005, pp. 49-55.

relevant, admissible and corroborates the direct evidence of both Witness TF1-045 and TF1-062.

181. One of the workmen of Witness TF1-062 was beaten when he refused to work. Another civilian who refused to place a bag of gravel in a certain area was shot. On these days no food or equipment was provided and groups of about 20 armed guards from the AFRC were assigned to every group of 100 civilians. Diamonds found on government workdays were handed to the AFRC/RUF commanders and any civilian suspected of stealing diamonds was flogged or killed.⁴⁰⁶ The diamonds were weighed at the AFRC secretariat and given to Eddie Kanneh.⁴⁰⁷ Kanneh, Secretary of State East in the AFRC Government reported to the Supreme Council of which the First Accused played a prominent role.⁴⁰⁸

Kono District / Koinadugu District / Bombali District / Kailahun District / Freetown and the Western Area / Port Loko District

182. The Brima Motion makes no submission with respect to these crime bases. Accordingly the Prosecution assumes that the First Accused accepts the sufficiency of evidence in relation thereto.

3.7 COUNT 14: LOOTING AND BURNING

183. The only particular submission made by the Brima Motion, other than an assertion of a general insufficiency of evidence, is that the eastern province of Sierra Leone was under the control of Mosquito. It is the evidence of Witnesses TF1-122 and TF1-045 that there was looting and burning by rebels on the retreat from Kenema. It is further said that Witness TF1-045 stated that ‘Operation Pay Yourself’ was an operation launched by Mosquito and one of which he had command and control.
184. The Prosecution states that it has not led evidence with respect to the following villages: Telu, Sembehun and Mamboma (Bo District); Heremakono and Kamadugu (Koinadugu District) Foindu (Kono District) and Pademba Road (Freetown). However the Prosecution submits that the evidence with respect to the Count is sufficient such that a reasonable trier of fact could find the First Accused guilty.

⁴⁰⁶ Witness TF1-062, TT 27 June 2005, pp. 27-37.

⁴⁰⁷ Witness TF1-045, TT 19 July 2005, pp. 54-55.

⁴⁰⁸ Witness TF1-334, TT 17 May 2005, pp. 16-17; witness TF1-114, TT 14 July 2005, p. 127.

185. The Prosecution notes that neither Kenema District nor Kailahun District has been pleaded as part of Count 14. Further, the unchallenged evidence is that ‘Operation Pay Yourself’ was first declared by Johnny Paul Koroma in Masiaka immediately following the Intervention when Robin White interviewed him on the BBC. Looting by both RUF and AFRC soldiers commenced that day.⁴⁰⁹ There was looting between Masiaka and Makeni. Lunsar was looted.⁴¹⁰ The evidence of Witness TF1-045 is that when the radio reported that ECOMOG had evicted the AFRC from Freetown, Mosquito said it was ‘Operation Pay Yourself’. Kenema was looted and captured civilians were put in looted vehicles and driven to Daru.⁴¹¹
186. The Prosecution submits that this evidence is not inconsistent. Indeed the Prosecution relies upon the repetition of ‘Operation Pay Yourself’ in various parts of Sierra Leone as evidence supporting Count 13. Johnny Paul Koroma’s announcement and subsequent orders for the Operation is evidence from which the knowledge of the First Accused that Junta troops engaged in looting can be inferred. Equally, it is submitted that it was reasonably foreseeable that looting would be carried out by Junta soldiers in the jungle.
187. The Prosecution refers to its legal submissions in respect of the First Accused’s participation in a joint criminal enterprise as is set out in paragraphs 25-55 above and submits that on this basis a reasonable trier of fact could convict the First Accused for crimes committed in the Eastern Districts in respect of Count 14 of the Indictment. The First Accused also incurs responsibility by virtue of his position as a commander pursuant to Article 6(3) of the Statute.

Bo District

188. The Prosecution reiterates that the attacks on Bo occurred during the time of the AFRC government. The attack on Tikonko was motivated by the presence of Kamajors in the town. The soldiers sang that the people of Tikonko would know them that day.⁴¹² During the attack houses in the village were burnt.⁴¹³

⁴⁰⁹ Witness TF1-334, TT 17 May 2005, pp. 73-74.

⁴¹⁰ Witness TF1-334, TT 17 May 2005, pp. 80-81.

⁴¹¹ Witness TF1-045, TT 19 July 2005, pp. 82-83 and 21 July 2005, p. 37.

⁴¹² Witness TF1-004, TT 23 June 2005, p. 16.

⁴¹³ Witness TF1-004, TT 23 June 2005, p. 28.

Koinadugu District

189. The evidence establishes that the burning of houses and the taking of property was part of the *modus operandi* of attacks on civilians, which also included killings, abductions, sexual violence and amputations. This occurred in many villages including Fadugu,⁴¹⁴ Kabala,⁴¹⁵ Yiffin⁴¹⁶ and Kumala.⁴¹⁷ Property was also looted from civilians. For example, rebels who had captured Witness TF1-209 near Kabala took the rice and groundnut belonging to her.⁴¹⁸

Kono District

190. Tombodu was burned on the direct order of the First Accused.⁴¹⁹ On the way to Kono Johnny Paul Koroma ordered the burning of Sewafe Village as it was a suspected Kamajor stronghold.⁴²⁰ Johnny Paul Koroma also said that the houses surrounding the Junta base in Koidu Town should be burned so that no civilian could settle there.⁴²¹

191. When the Junta troops left Kono following the ECOMOG jet raids on Masingbi Road Koidu Town was burned under the supervision of the Second Accused.⁴²² The First Accused was also present. The First and Second Accused and others participated in the burning.⁴²³ Other villages where the Junta troops had been stationed including Tombodu, Yengema, Bumpe, Jagbwema Fiama, Yomandu and Kayima were burned as well.⁴²⁴

192. The evidence also demonstrates that burning of houses and the taking of property was part of the *modus operandi* of attacks on civilians. For example, during the attack on Yardu Sandu (spelt as Yardu Sando in the Indictment) by AFRC soldiers nearly 100 houses were burned.⁴²⁵ Other villages were burned including Wendedu.⁴²⁶ A number of the soldiers that attacked Paema used the phrase “Operation Pay Yourself” and stated that

⁴¹⁴ Witness TF1-199, TT 6 October 2005, pp. 77-80

⁴¹⁵ Witness TF1-199, TT 6 October 2005, pp. 86-88

⁴¹⁶ Witness TF1-133, TT 7 July 2005, p. 82.

⁴¹⁷ Witness TF1-133, TT 7 July 2005, p. 81.

⁴¹⁸ Witness TF1-209, TT 7 July 2005, p. 36.

⁴¹⁹ Witness TF1-033, TT 11 July 2005, p. 11.

⁴²⁰ Witness TF1-334, TT 17 May 2005, p. 98.

⁴²¹ Witness TF1-334, TT 18 May 2005, p. 9.

⁴²² Witness TF1-334, TT 19 May 2005, pp. 10-11.

⁴²³ Witness TF1-334, TT 20 May 2005, pp. 9-11.

⁴²⁴ Witness TF1-334, TT 20 May 2005, pp. 8-31.

⁴²⁵ Witness TF1-019, TT 30 June 2005, pp. 89-94.

⁴²⁶ Witness TF1-217, 17 October 2005, pp. 12-13.

as the civilians had voted for Kabbah their property would be taken away.⁴²⁷

Bombali District

193. In Rosos, the First Accused declared 'Operation Clear the Area' in which he ordered that surrounding villages should be burned.⁴²⁸
194. Prior to the attack on Karina, part of the order given by the First Accused was that the town should be burned.⁴²⁹ The First Accused was present during the attack when the houses were set on fire. Looting also took place in Karina. For example, soldiers first asked for money and then took the wrist watch and cigarettes belonging to Witness TF1-058.⁴³⁰

Freetown and the Western Area

195. [REDACTED]⁴³¹ The following limited examples illustrate the point. Even prior to reaching Freetown the First Accused stated that all police stations should be burned and Freetown should be burned to prove that the troops had entered.⁴³² Eastern Police Station⁴³³ and the CID were burned.⁴³⁴ The evidence demonstrates that there was a communication between the First Accused from State House and Mosquito in which Mosquito told the First Accused that the important areas should start to burn.⁴³⁵ This was followed by an announcement on the BBC by Mosquito that strategic positions in Freetown would be burned.⁴³⁶ The First Accused then ordered the Director of Operations to come with petrol.⁴³⁷ The First Accused participated in the burning at Fourah Bay.⁴³⁸
196. There is also evidence of looting in Wellington,⁴³⁹ Kissy,⁴⁴⁰ and Thunderhill.⁴⁴¹

⁴²⁷ Witness TF1-216, TT 27 June 2005, pp. 79-80.

⁴²⁸ Witness TF1-334, TT 23 May 2005, pp. 104-105.

⁴²⁹ Witness TF1-334, TT 23 May 2005, p. 58.

⁴³⁰ Witness TF1-058, TT 14 July 2005, pp. 60-65.

⁴³¹ Generally see witness TF1-169, TT 6-7 July 2005.

⁴³² Witness TF1-334, TT 14 June 2005, pp. 49-52.

⁴³³ Witness TF1-334, TT 13 June 2005, p. 118

⁴³⁴ Witness TF1-334, TT 14 June 2005, p. 6-7.

⁴³⁵ Witness TF1-167, TT 16 September 2005, pp. 40-41.

⁴³⁶ Witness TF1-334, TT 14 June 2005, p. 48.

⁴³⁷ Witness TF1-334, TT 14 June 2005, p. 53.

⁴³⁸ Witness TF1-334, TT 14 June 2005, pp. 66-67.

⁴³⁹ Witness TF1-085, TT 6 April 2005, p. 62.

⁴⁴⁰ Witness TF1-084, TT 6 April 2005, pp. 38-39.

4. KAMARA Response

4.1 COUNTS 1 AND 2: ACTS OF TERRORISM AND COLLECTIVE PUNISHMENTS

197. The Prosecution adopts the same arguments as are set out in the Brima Response, read together with paragraphs 85 to 87 above, with respect to Counts 1 and 2.
198. The Kamara Motion claims, in relation to Counts 1 and 2, that the Prosecution has made it impossible for the Second Accused to understand the nature and cause of the specific charges brought against him because the Prosecution has relied on the same facts and evidence as the basis for criminal liability under both Article 6(1) and Article 6(3) of the Statute of the Special Court.⁴⁴² The Kamara Motion claims that this is contrary to a decision of a Trial Chamber of the ICTR in the *Kanyabashi* case.⁴⁴³
199. The *Kanyabashi* Decision relied upon by the Second Accused was a decision on a preliminary motion alleging defects in the form of the indictment. In accordance with Rule 72, such preliminary motions must be brought before the commencement of trial. A motion for judgment of acquittal under Rule 98 is not the place to raise a question as to defects in the form of the indictment. Furthermore, a decision of an international criminal court on preliminary motions alleging defects in the form of the indictment is not concerned with the standard to be applied at the Rule 98 stage. It is well-established in the case law of the ICTY that cumulative charging on the basis of the same set of facts is permissible, and in particular, that cumulative charging under both Article 6(1) and Article 6(3) is permissible.⁴⁴⁴ Where there are cumulative charges in respect of the same set of facts, it is inevitable that some of the evidence will be common to the elements of different crimes or modes of liability that have been charged. This complaint in the Kamara Motion should therefore be rejected.

⁴⁴¹ Witness TF1-083, TT 8 April 2005, p. 59.

⁴⁴² Kamara Motion, para. 12.

⁴⁴³ *Prosecutor v. Kanyabashi*, ICTR-96-15-1, “Decision on Defence Preliminary Motion for Defects in the Form of the Indictment (Rule 72(B)(ii) of the Rules of Procedure and Evidence)”, 31 May 2000, paras. 5.8-5.11.

⁴⁴⁴ See e.g. *Prosecutor v. Rajic*, IT-95-12-PT, “Decision on the Defence Motion on the Form of the Amended Indictment”, 27 April 2004, para. 12.

4.2 COUNTS 3, 4 AND 5: UNLAWFUL KILLINGS⁴⁴⁵

Bo District

200. The Kamara Motion states that the Prosecution has not led evidence that the Second Accused was in Bo at the relevant time.⁴⁴⁶ The Defence further submits that there were Kamajors in Tikonko in May/June 1997 and the attackers in Tikonko were RUF, while those in Gerihun were simply identified as “soldiers”. It is therefore said that the Prosecution has failed to demonstrate the superior responsibility of the Second Accused.⁴⁴⁷
201. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Second Accused held a leadership position in the AFRC/RUF Junta and was an integral member of the Supreme Council which at that time was governing the country. The Prosecution refers to paragraphs 119-121 above and submits that a reasonable trier of fact could find the Second Accused guilty of these crimes in Bo on the basis of the joint criminal enterprise.

Kenema District

202. The Kamara Motion states that the Prosecution has not led evidence that the Second Accused was in Kenema throughout the period relevant to the Indictment.⁴⁴⁸ The Kamara Motion argues that Sam Bockarie was in complete control of Kenema; that he was responsible for the deaths of BS Massaquoi and others in Kenema and for crimes committed in Tongo. This, it is put, absolves the Second Accused from liability with respect to Kenema District.⁴⁴⁹
203. The Prosecution refers to paragraph 123 above and submits that it has led sufficient evidence to show that during the relevant period the Second Accused held a significant position in the AFRC/RUF Junta and was an integral member of the Supreme Council which at that time was governing the country. A reasonable trier of fact could find the Second Accused guilty of these crimes in Kenema in furtherance of the joint criminal enterprise.

⁴⁴⁵ Kamara Motion, paras 13-20 and 24.

⁴⁴⁶ Kamara Motion, para. 20.3.

⁴⁴⁷ Kamara Motion, para. 20.3.

⁴⁴⁸ Kamara Motion, para. 20.6.

⁴⁴⁹ Kamara Motion, para. 20.6.

Kono District

204. The Kamara Motion states that, although the Second Accused was mentioned as being allegedly present in Kono District, a number of witnesses failed to mention the Second Accused and those that did mention him, did not give evidence of his participation in the crimes or “failed to corroborate themselves” on particular unlawful actions.
205. To the extent that the Kamara Motion argues that the witnesses directly implicating the Second Accused failed to ‘corroborate themselves’, the Prosecution submits that it is impossible for witnesses to corroborate themselves and any issue as to conflicting stories of the same incident is a matter of weight to be considered at the end of the trial.
206. The Kamara Motion further states that there is no evidence of superior responsibility.⁴⁵⁰ The Prosecution submits that the Second Accused was in charge of collecting arms and bringing them back to Superman.⁴⁵¹ Mohamed Savage was the Second Accused’s Battalion Commander in Tombodu. The Second Accused had promoted Savage from corporal to lieutenant.⁴⁵² In the presence of the Second Accused, Savage killed numerous civilians including locking 15 in a house and setting it ablaze and beheading 47 others and throwing them in a diamond pit.⁴⁵³ Savage reported to the Second Accused who exercised command over the entire area.⁴⁵⁴ A reasonable trier of fact could find the Second Accused guilty of these crimes in Kono.

Kailahun District

207. The Kamara Motion relies upon the physical absence of the Second Accused from Kailahun District at the material time and the absence of evidence of superior responsibility.⁴⁵⁵
208. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Second Accused held a significant position in the AFRC/RUF Junta and was an integral member of the Supreme Council which at that time was governing

⁴⁵⁰ Kamara Motion, para. 20.9.

⁴⁵¹ Witness TF1-167, TT 15 September 2005, p. 43.

⁴⁵² Witness TF1-334, TT 19 May 2005, pp. 21-23 and p. 50.

⁴⁵³ Witness TF1-334, TT 20 May 2005, pp. 11-15. See also Witness TF1-167, TT 15 September 2005, p. 45.

⁴⁵⁴ Witness TF1-334, TT 18 May 2005, p. 21 and TT 20 May 2005, p. 56.

⁴⁵⁵ Kamara Motion, para. 20.12.

the country and remained in a leadership and/or command position within the AFRC after the intervention. A reasonable trier of fact could find the Second Accused guilty of these crimes in Kailahun in furtherance of the joint criminal enterprise.⁴⁵⁶

Koinadugu District

209. The Kamara Motion argues that although there is evidence of the presence of the Second Accused in Kabala Town, there is insufficient evidence of his criminal responsibility.⁴⁵⁷
210. Witness TF1-334 testified that the Second Accused was present in Kabala within the time frame relevant to the Indictment.⁴⁵⁸ Killings and amputations of civilians by a mixture of AFRC/RUF troops were reported during that period,⁴⁵⁹ especially during the attack on Kabala.⁴⁶⁰ The Second Accused knew, or had reason to know that crimes were being committed in the Koinadugu District and therefore a reasonable trier of fact could find the Second Accused guilty of unlawful killings in Koinadugu.

Bombali District

211. The Kamara Motion argues that the evidence of Witnesses TF1-167 and TF1-334 is contradictory with respect to the presence of the Second Accused in Karina, that a number of witnesses fail to mention the presence of the Second Accused in the District and that those who do mention his presence fail to establish his culpability.⁴⁶¹
212. At the time of the attacks in Bombali District, the Second Accused was the Deputy Chief of Command subordinate only to the First Accused.⁴⁶²
213. The First Accused ordered the destruction of Karina and the massacre of Karina's civilian population in the presence of the Second Accused, who failed to protest or attempt to raise the illegality of such an order. In Karina, the Second Accused directly participated in an incident where girls were locked in a house and burnt to death.⁴⁶³ Witness TF1-167

⁴⁵⁶ See paragraph 131 above.

⁴⁵⁷ Kamara Motion, para. 20.15.

⁴⁵⁸ Witness TF1-334, TT 17 May 2005, p 81.

⁴⁵⁹ Witness TF1-153, TT 22 September 2005, pp. 47-51; Exhibit P57, "No Peace without Justice Report", 10 March 2004, pp. 147-175.

⁴⁶⁰ Witness TF1-199, TT 6 October 2005, pp. 86-88; Witness TF1-153, TT 22 September 2005, pp. 47-51.

⁴⁶¹ Kamara Motion, para. 20.18.

⁴⁶² Witness TF1-334, TT 20 May 2005, pp. 88-101.

⁴⁶³ Witness TF1-334, TT 23 May 2005, pp. 65-67.

testified that Cyborg, a security officer to the Second Accused, threw children from two-storey houses.⁴⁶⁴

214. The Prosecution submits that there is sufficient evidence of the Second Accused's participation in unlawful killings in Bombali District. In this respect any alleged inconsistency between witnesses TF1-167 and TF1-334 is a matter of weight to be decided at the end of the trial and not in the consideration of a Rule 98 motion.

Freetown and the Western Area

215. The Kamara Motion argues that a number of Freetown witnesses failed to indicate the presence of the Second Accused at all and those that did failed to corroborate themselves⁴⁶⁵ on the particular unlawful actions.⁴⁶⁶
216. In Allen Town, on 5 January 1999, the First Accused in the presence of the Second and Third Accused gave an order to his commanders that civilians who supported ECOMOG were collaborators and were to be executed. The Second Accused, as Deputy Commander in Chief, had the ability to give orders, as well as to prevent the carrying out of illegal orders and punish those who committed crimes. Near the Kissy Police Barracks, the Second Accused participated in the shooting of civilians.⁴⁶⁷

Port Loko District

217. The Kamara Motion once again asserts that a number of Port Loko witnesses failed to indicate the presence of the Second Accused at all and those that did failed to corroborate themselves on the particular unlawful actions.⁴⁶⁸
218. Soon after the AFRC was driven out of Freetown, the Second Accused became the overall commander of a number of troops and committed a series of violations while in the region called the West Side Jungle.⁴⁶⁹
219. For instance, the Second Accused ordered one of his security officers to 'decorate'

⁴⁶⁴ Witness TF1-167, TT 15 September 2005, pp. 56-57.

⁴⁶⁵ As noted above, the Prosecution submits that it is impossible for witnesses to corroborate themselves.

⁴⁶⁶ Kamara Motion, para. 20.21.

⁴⁶⁷ Witness TF1-334, TT 14 June 2005, p. 98.

⁴⁶⁸ Kamara Motion, para. 20.24.

⁴⁶⁹ Witness TF1-167, TT 16 September 2005, p. 64.

Mamah Town. He further ordered the execution of any civilian captured and that their bodies should be exposed at the junction. Fifteen bodies were found dead. The evidence suggests that the Second Accused congratulated his subordinate for this “well-done” work.⁴⁷⁰ [REDACTED]⁴⁷¹
 [REDACTED]
 [REDACTED]

220. The Kamara Motion states that this evidence is uncorroborated.⁴⁷³
221. The Prosecution submits that the evidence of Witness TF1-167 provides corroboration⁴⁷⁴ and such matters of weight are to be determined at the end of the trial and not in considering a Rule 98 motion. Also in Manarma, the Second Accused ordered the captured civilians to form two lines, one for women the other one for men. The women were taken inside the biggest house. They were all “axed or hacked”, then the house was set on fire. All the villagers were killed, except for three individuals. The Second Accused also forced a small boy who attempted to escape back into the house.⁴⁷⁵ Finally, the Second Accused dismissed the reports regarding the killings and amputations conducted by his security officer Cyborg.⁴⁷⁶
222. The Prosecution submits that there is sufficient evidence on the basis of which a reasonable trier of fact could conclude that the Second Accused was responsible for the unlawful killings that took place in Port Loko district.

4.3 COUNTS 6, 7, 8 AND 9: SEXUAL VIOLENCE⁴⁷⁷

Kono District

223. The Kamara Motion argues that although the Second Accused was present in Kono District, several witnesses failed to mention his presence. Those that did mention his presence fail to ‘corroborate themselves’ on the particular unlawful actions sufficient to

⁴⁷⁰ Witness TF1-334, TT 15 June 2005, pp. 20-21.

⁴⁷¹ Not Mile 38 as stated in the Kamara Motion.

⁴⁷² Witness TF1-023, TT 10 March 2005, pp. 36-37.

⁴⁷³ Kamara Motion, para. 20.24.

⁴⁷⁴ Witness TF1-167, TT 16 September 2005, pp. 64-66.

⁴⁷⁵ Witness TF1-167, TT 16 September 2005, pp. 65-66.

⁴⁷⁶ Witness TF1-167, TT 16 September 2005, pp. 78-79.

⁴⁷⁷ Kamara Motion, paras. 21-30.

prove his criminal responsibility (in particular TF1-033, TF1-167 and TF1-334).⁴⁷⁸ The Kamara Motion further states that the Prosecution did not lead evidence to show that persons under the Second Accused's command or direction took any part in the incidents as alleged.⁴⁷⁹

224. Between about mid-February 1998 and 30 April 1998, the Second Accused was a commander of AFRC/RUF forces based in the Kono District.⁴⁸⁰ Witness TF1-334 testified that the Second Accused planned and ordered operations to take place in Kono District during the months between March and May 1998⁴⁸¹. Operations included the capture of civilians by the troops and the taking of many captured women as 'wives' by the commanders in Kono.⁴⁸² The women performed basic functions like cleaning and cooking and were also forced to provide sexual gratification to the commanders⁴⁸³ and were regularly raped⁴⁸⁴.
225. It is clear from the evidence that during the time that the Second Accused acted as commander in the Kono District, criminal acts, as outlined in Counts 6-9 of the Indictment, were committed by AFRC/RUF troops entailing the responsibility of the Second Accused.

Koinadugu District

226. The Kamara Motion agrees with the Prosecution that evidence has been led showing that the Second Accused was present in Koinadugu District during the period stated in the Indictment, in particular in Kabala Town. However, the Kamara Motion argues that only Witness TF1-153 makes reference to subordinates of the Second Accused participating in sexual violence in Yiffin and that evidence of the presence of the Second Accused in Yiffin was hearsay and his command over his subordinates was contradicted by the witness himself and uncorroborated.⁴⁸⁵ The Kamara Motion also argues that there is no evidence that shows that persons under his command, or direction, took part in the other

⁴⁷⁸ Kamara Motion, para. 30.3.

⁴⁷⁹ Kamara Motion, para. 30.3.

⁴⁸⁰ Witness TF1-334, TT 16 June 2005, p 37.

⁴⁸¹ Witness TF1-334, TT 19 May 2005, p. 4 and Witness TF1-334, TT 18 May 2005, p. 23.

⁴⁸² Witness TF1-334, TT 20 May 2005, p. 5-7.

⁴⁸³ Witness TF1-334, TT 20 May 2005, p. 5-7.

⁴⁸⁴ Witness TF1-334, TT 20 May 2005, p 7; TF1-076, TT 27 June 2005, p. 106; Witness TF1-019, TT 30 June 2005, p 81; Witness TF1-133, 7 July 2005, p. 85; Witness TF1-206, 28 June 2005, pp. 95-96.

⁴⁸⁵ Kamara Motion, para. 30.6.

incidents as alleged by the Prosecution in Koinadugu District.⁴⁸⁶

227. Witness TF1-153 gave evidence that a civilian woman who had been raped made allegations of rape to the Chief in Koinadugu. The Chief told her that he would inform the Second Accused of her allegations against his men.⁴⁸⁷ The Second Accused held a position of command in Koinadugu District and did nothing in response to this allegation.
228. Witness TF1-209 gave evidence that she was raped by two members of the Junta forces in Koinadugu during the time period relevant to the Indictment and whilst the Second Accused was present in the area.⁴⁸⁸ The same witness provided evidence showing that many other civilian women and children, some as young as 9 years old were raped, and also that armed soldiers committed acts of sexual violence against them.⁴⁸⁹ Witness TF1-133 provided evidence regarding the occurrence of forced marriage, and acts of sexual slavery in Koinadugu, particularly in Krubola.⁴⁹⁰
229. The Prosecution submits that evidence has been led showing that rape and other acts of sexual violence were carried out by AFRC soldiers in Koinadugu.⁴⁹¹ The Prosecution submits that the Second Accused was part of a joint criminal enterprise with these soldiers and others, and that therefore the Second Accused is responsible for these crimes.

Bombali District

230. The Kamara Motion asserts that no witness has linked the Second Accused to sexual violence in Bombali.⁴⁹²
231. The Prosecution refers to the evidence previously discussed at paragraph 160 that establishes the widespread and systematic nature of sexual violence in Bombali District.
232. In Karina, soldiers under the Second Accused's command forcibly raped and captured female civilians.⁴⁹³ The Prosecution submits that there is sufficient evidence for a

⁴⁸⁶ Kamara Motion, para. 30.6.

⁴⁸⁷ Witness TF1-153, TT 22 September 2005, pp. 32-33.

⁴⁸⁸ Witness TF1-209, TT 7 July 2005, p. 31.

⁴⁸⁹ Witness TF1-209, TT 7 July 2005, p. 33.

⁴⁹⁰ Witness TF1-133, TT 7 July 2005, pp. 97-100.

⁴⁹¹ Witness TF1-209, TT 7 July 2005, p. 32.

⁴⁹² Kamara Motion, para. 30.9.

⁴⁹³ Witness TF1-334, TT 23 May 2005, p. 71.

reasonable trier of fact to conclude that the Second Accused is responsible for acts of sexual violence in Bombali District, during the time specified in the Indictment.

Kailahun District

233. The Kamara Motion states that Kailahun District was an RUF stronghold, that the Second Accused was not present at the material time, and that there is no evidence of his culpability.⁴⁹⁴
234. This is contrary to the evidence. Witness TF1-114, who was a military police adjutant in Buedu, received many complaints that AFRC soldiers had raped women and tried to force them into marriage. No Junta commander ever stopped the practice.⁴⁹⁵ The evidence of Zainab Bangura is also that forced marriage was practised in Kailahun.⁴⁹⁶
235. The Prosecution submits that on the evidence adduced a reasonable trier of fact could convict the Second Accused for these crimes based on his participation in a joint criminal enterprise.

Freetown and the Western Area

236. The Kamara Motion states that although the Second Accused was present in various parts of Freetown and the Western Area there is no evidence to prove that the Second Accused, who is lawfully married, had “extra-marital affairs” or engaged in any form of sexual violence and that the evidence of TF1-334 in this regard is weak and uncorroborated.⁴⁹⁷ The Kamara Motion further states that there is no evidence of superior responsibility.⁴⁹⁸
237. The Prosecution submits that any assessment of the weight of the evidence of witness TF1-334 is correctly made at the end of the trial rather than in consideration of a Rule 98 motion. The Prosecution submits that the evidence against the Second Accused is concerned with violence, not with the morality of “extra-marital affairs”. The fact that a man is legally married does not prevent him from committing acts of sexual violence on other women.
238. There is evidence of rapes being committed as part of the *modus operandi* of attacks on

⁴⁹⁴ Kamara Motion, para. 30.12.

⁴⁹⁵ Witness TF1-114, TT 14 July 2005, pp. 128-131.

⁴⁹⁶ Zainab Bangura, TT 3 and TT 4 October 2005, p. 14.

⁴⁹⁷ Kamara Motion, para. 30.15.

⁴⁹⁸ Kamara Motion, para. 30.15.

the civilian population.⁴⁹⁹ Rapes were committed at the State House⁵⁰⁰ and the Second Accused actively participated.⁵⁰¹ Evidence was also presented showing that the Second Accused and his troops took abducted girls with them on the retreat from Freetown for the purpose of sexual gratification.⁵⁰² Witness TF1-023 gave evidence that she, and other civilians were subjected to sexual violence, and forced into 'marriage' with the rebel soldiers. The evidence recalls her time spent in the Western area, particularly Waterloo, where she met 'all' the commanders.⁵⁰³ The Prosecution respectfully submits that this establishes the criminal liability of the Second Accused for this District and this Court.

Port Loko

239. The Kamara Motion states that although there is evidence of the presence of the Second Accused in various locations in Port Loko District there is insufficient evidence to substantiate the allegation of sexual offences and the evidence of TF1-334 that the Second Accused raped his cousin at Gberibana and had a school girl with him is weak, isolated, uncorroborated and tainted with ill motive.⁵⁰⁴
240. In fact, the Prosecution submits that evidence was led showing that the Second Accused, who was the commander in the Westside, raped a woman abducted from Freetown after ordering that she be beaten and locked in a rice box.⁵⁰⁵
241. The Prosecution submits again that any assessment of the weight of the evidence of witness TF1-334 is correctly made at the end of the trial rather than when considering a Rule 98 motion.
242. The Prosecution thus submits that there is sufficient evidence whereby a reasonable trier of fact could conclude that the Second Accused is guilty of these Counts in this District.

⁴⁹⁹ Witness TF1-083, TT 8 April 2005, p. 52; witness TF1-153, TT 23 September 2005, p. 9; witness TF1-334, TT 14 June 2005, p. 25 and 15 June 2005, pp. 5-6.

⁵⁰⁰ Witness TF1-024, TT 7 March 2005, p. 49.

⁵⁰¹ Witness TF1-334, TT 14 June 2005, p. 26 and 15 June 2005, p. 4.

⁵⁰² Witness TF1-334, TT 15 June 2005, pp. 3-4 and 16 June 2005, pp. 104-108.

⁵⁰³ Witness TF1-023, TT 9 March 2005, p. 48.

⁵⁰⁴ Kamara Motion, para. 30.18.

⁵⁰⁵ Witness TF1-334, TT 15 June 2005, pp. 50-56; Exhibit P21.

4.4 COUNTS 10 AND 11: PHYSICAL VIOLENCE⁵⁰⁶

Kono District

243. The Kamara Motion makes a general claim with respect to Counts 10 and 11 that there is no evidence of the criminal liability of the Second Accused. The Kamara Motion states that Superman was the overall commander of the men in Kono District and that Colonel Savage and Staff Alhaji operated independently.
244. The Prosecution does not reiterate the material upon which the liability of the Second Accused is founded with respect to all unlawful acts committed in Kono District at the material time. The Prosecution refers to its Response at paragraphs 25-55 regarding the joint criminal enterprise activities of the AFRC and RUF factions. In order to avoid repetition, the Prosecution also refers to the numerous examples it has already given to illustrate the physical violence perpetrated against the civilian population on a widespread and systematic scale, as part of the *modus operandi* of the AFRC.
245. The Prosecution relies upon this evidence that unlawful acts were committed with the knowledge of the Second Accused or in furtherance of the joint criminal enterprise. For example, Savage flogged civilians in Tombodu in the presence of the Second Accused and other senior AFRC commanders.⁵⁰⁷
246. The Prosecution therefore submits that there is sufficient evidence for a reasonable trier of fact to conclude that the Second Accused could be convicted of the above Counts.

Kenema District

247. The Kamara Motion asserts that the Second Accused cannot be held criminally responsible for the crimes of physical violence carried out by Mosquito or under his command. With regard to the Second Accused's liability as a participant in a joint criminal enterprise in order to avoid unnecessary repetition, the Prosecution by reference incorporates the relevant paragraphs (168-169) of the Brima Response relating to physical violence in Kenema. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Second Accused held a leadership position in

⁵⁰⁶ Kamara Motion, paras. 31-37.

⁵⁰⁷ Witness TF1-167, TT 15 September 2005, p. 46 and TT 19 September 2005, pp. 48-50, witness TF1-167 agreed that the First and Third Accused attempted to stop the flogging of civilians.

the AFRC/RUF Junta and was an integral member of the Supreme Council which at that time was governing the country. A reasonable trier of fact could find the Second Accused guilty of these crimes in Kenema in furtherance of the joint criminal enterprise.

Koinadugu District

248. The Kamara Motion makes general assertions as to a lack of evidence of the criminal responsibility of the Second Accused.
249. With regard to the Second Accused's liability as a participant in a joint criminal enterprise (see paragraphs 25-55 above), in order to avoid unnecessary repetition, the Prosecution notes the Second Accused's presence in Kabala Town (paragraphs 209-210) and the evidence therein concerning physical violence. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Second Accused held a leadership position in the AFRC/RUF Junta, was an integral member of the Supreme Council, and continued to hold a leadership and/or command position with the AFRC after the intervention. A reasonable trier of fact could find the Second Accused guilty of these crimes in Koinadugu in furtherance of the joint criminal enterprise and on the basis of Article 6(3) of the Statute.

Bombali District

250. The Kamara Motion makes a general assertion as to a lack of evidence of the criminal responsibility of the Second Accused.
251. The Prosecution submits that the evidence is clear that crimes of physical violence were committed in Bombali by and under the direct command of the Second Accused as part of the *modus operandi* of attacks on civilians and to punish them for their support of ECOMOG or President Kabbah.
252. In Karina⁵⁰⁸ the First Accused, in the presence of the Second Accused, ordered that the attack should shock the international community.⁵⁰⁹ As part of the attack Changabulanga, Morning Milk and Guitar Boy were responsible for the amputations of captured civilians.⁵¹⁰ Limbs were also amputated during the attacks on Mayogobo,⁵¹¹ Bornoya,⁵¹²

⁵⁰⁸ See also witness TF1-153, TT 22 September 2005, p. 76; Witness TF1-157, TT 22 July 2005, pp. 74-76.

⁵⁰⁹ Witness TF1-334, TT 23 May 2005, p. 58.

⁵¹⁰ Witness TF1-334, TT 23 May 2005, pp. 40-71.

Kamagbo⁵¹³ and Maboleh.⁵¹⁴ One witness estimated that in Karina and Bornoya over 300 civilians were amputated.⁵¹⁵ While at Rosos, the First Accused ordered that amputations should be part of the attack on Gbombamba.⁵¹⁶ The Second Accused, due to his position of superior authority, is liable for the above crimes committed by his subordinates. The Second Accused is additionally liable for the same crimes as a participant in the joint criminal enterprise.

Freetown and the Western Area

253. The Kamara Motion makes a general assertion as to a lack of evidence of the criminal responsibility of the Second Accused.
254. The Prosecution does not reiterate the basis of the liability of the Second Accused for crimes committed in Freetown and the Western Area. Given the mere allegation of lack of evidence by the Second Accused, the Prosecution refers to the Brima Response at paragraphs 143-145 to recount the Freetown evidence which demonstrates criminal liability on these Counts. In particular, the Prosecution notes that there is evidence of hundreds of civilians being amputated in Freetown during January 1999.⁵¹⁷

Port Loko District

255. The Kamara Motion makes a general assertion as to a lack of evidence of the criminal responsibility of the Second Accused.
256. In a similar manner to the amputations carried out by the Junta in other parts of Sierra Leone, those conducted in Port Loko District were done as part of the *modus operandi* of attacks on civilian villages and to punish civilians. For example, the Second Accused ordered that Mamarma should be made 'fearful'.⁵¹⁸ Civilians were amputated as part of the attack.⁵¹⁹ On the way to attack Port Loko Town to obtain arms and ammunitions from the Malians, a village was attacked and some civilians were killed and the limbs of others

⁵¹¹ Witness TF1-157, TT 22 July 2005, pp. 71-72.

⁵¹² Witness TF1-033, TT 11 July 2005, pp. 16-18; witness TF1-158, TT 26 July 2005, pp. 32-33.

⁵¹³ Witness TF1-157, TT 22 July 2005, p. 68.

⁵¹⁴ Witness TF1-157, TT 22 July 2005, pp. 78.

⁵¹⁵ Witness TF1-033, TT 11 July 2005, p. 19.

⁵¹⁶ Witness TF1-334, TT 24 May 2005, p. 10.

⁵¹⁷ Witness TF1-167, TT 16 September 2005, pp. 53-54.

⁵¹⁸ Witness TF1-023, TT 9 March 2005, p. 36; Witness TF1-167, TT 16 September 2005, p. 65.

⁵¹⁹ Witness TF1-253, TT 15 April 2005, pp. 89-91.

amputated. In particular, a young woman had both her hands amputated. Witness TF1-167 ordered the intelligence officer to write a letter to the Malians and place it around the woman's neck. The Junta troops then followed the woman all the way to Port Loko.⁵²⁰ Upon his return to the West Side Jungle, Witness TF1-167 presented the Second Accused with the captured arms and ammunition and reported the killings and amputations. The Second Accused took no action.⁵²¹ A reasonable trier of fact could convict the Second Accused on the basis of this evidence.

4.5 COUNT 12: USE OF CHILD SOLDIERS⁵²²

257. The Kamara Motion argues that there is a difficulty in proving knowledge by the Second Accused that children were under 15.⁵²³ The Kamara Motion also states that no child witness made specific reference to the Second Accused. The Kamara Motion concludes that there is no evidence of the criminal liability of the Second Accused.
258. The Prosecution submits that a reasonable trier of fact could find the Second Accused guilty of Count 12 based on the evidence previously discussed at paragraphs 171-178.

4.6 COUNTS 13: ABDUCTIONS AND FORCED LABOUR

259. The Kamara Motion generally asserts that there is insufficient evidence to prove the criminal responsibility of the Second Accused for the crime of enslavement in every district of the Indictment.⁵²⁴
260. The Prosecution submits that the evidence led displays the Junta's *modus operandi* whereby villages were attacked and civilians, once abducted, were forced to become fighters, and/or carry goods, and/or perform domestic tasks.⁵²⁵ In the Kono and Kenema

⁵²⁰ Witness TF1-167 TT 16 September 2005, pp. 75-78.

⁵²¹ Witness TF1-167 TT 16 September 2005, p. 79.

⁵²² Kamara Motion, paras. 38-42.

⁵²³ Kamara Motion, para. 41.

⁵²⁴ Kamara Motion, para. 47.

⁵²⁵ **Kono:** Witness TF1-334, TT 20 May 2005, pp. 5-7 and 34; Witness TF1-216, TT 27 June 2005, pp. 89-90; Witness TF1-072, TT 1 July 2005, p. 13; **Koinadugu:** Witness TF1-133, TT 7 July 2005, pp. 82-105; Witness TF1-199, TT 6 October 2005, pp. 69-80; Witness TF1-184, TT 29 September 2005, p. 33; **Bombali:** Witness TF1-334, TT 23 May 2005, p. 58; ⁵²⁵ Witness TF1-157, TT 22 July 2005, pp. 62-64; witness TF1-158, TT 26 July 2005, pp. 35-36; Witness TF1-157, TT 22 July 2005, pp. 68-79; Witness TF1-157, TT 22 July 2005, pp. 71-72; Witness TF1-334, TT 23 May 2005, p. 84; Witness TF1-157, TT 22 July 2005, p. 78; **Kailahun:** Witness TF1-113, TT 18 July 2005, p. 86; Zainab Bangura, TT 3 October 2005, p. 37; **Freetown and the Western Area:** Witness TF1-334, TT 14 June 2005, pp. 63-64 and 119; Witness TF1-334, TT 14 June 2005, pp. 78-79; Witness TF1-334, TT 14 June

Districts, the evidence suggests that civilians were forced to work in mines under the supervision of Junta troops.⁵²⁶

261. The Prosecution submits that the Second Accused bears criminal liability for these crimes as he was an active participant as a commander during those attacks,⁵²⁷ and/or actively participated in the joint criminal enterprise⁵²⁸ given his membership in the Supreme Council and his leadership and/or command position with the AFRC after the intervention. In some case the Second Accused perpetrated crimes directly.⁵²⁹

4.7 COUNTS 14: LOOTING AND BURNING⁵³⁰

262. The Kamara Motion simply repeats previous paragraphs of the Motion⁵³¹ in which the general assertion is made that there is insufficient evidence of the criminal liability of the Second Accused.⁵³²
263. The Prosecution refers to the relevant portion of the Brima Response at paragraphs 183 to 196 to provide evidence from which the criminal liability of the Second Accused for looting and burning may be established.⁵³³ The Prosecution submits that additional evidence was led concerning the Second Accused's liability. The Second Accused had a group called the Wild Dogs headed by his Chief Security Officer ("CSO") George Johnson (aka Junior Lion). They were "raising soldiers" and would take things of value. Witness TF1-334 saw Junior Lion report to the Second Accused saying "Papay, look at

2005, pp. 119-120; Witness TF1-023, TT 9 March 2005, pp. 31-36; Witness TF1-334, TT 14 June 2005, pp. 115-116; Witness TF1-334, TT 14 June 2005, p. 114; Witness TF1-023, TT 9 March 2005, p. 33; Witness TF1-085, TT 7 April 2005, p. 22; **Port Loko**: Witness TF1-334, TT 15 June 2005, pp. 21-23; Witness TF1-256, TT 14 April 2005, pp. 54-102; Witness TF1-320, TT 8 April 2005, p. 14; Witness TF1-085, TT 7 April 2005, pp 43-44.

⁵²⁶ **Kono**: Witness TF1-334, TT 17 May 2005, p. 52; **Kenema**: Witness TF1-334, TT 17 May 2005, pp. 53-54; Witness TF1-062, TT 27 June 2005, pp 20-22; Witness TF1-045, TT 19 July 2005, pp. 38-47 and 55; Witness TF1-334, TT 17 May 2005, p. 54; Witness TF1-062, TT 27 June 2005, pp. 27-37; Witness TF1-045, TT 19 July 2005, p. 47; Witness TF1-045, TT 19 July 2005, pp. 54-55.

⁵²⁷ **Kono**: Witness TF1-334, TT 18 May 2005, pp. 21-22; TF1-167, TT 15 September 2005, p. 38 (command and control); **Koinadugu**: Witness TF1-167, TT 15 September 2005, p. 50; **Bombali**: Witness TF1-334, TT 20 May 2005, pp. 88-101 (command and control); **Freetown and Western Area**: TF1-167, TT 16 September 2005, pp. 12-13; **Port Loko**: TF1-167, 16 September 2005, p. 64.

⁵²⁸ **Kenema and Kono**: Witness TF1-334, TT 16 May 2005, p. 75.

⁵²⁹ Witness TF1-334, TT 15 June 2005, pp. 21-23.

⁵³⁰ Kamara Motion, paras. 48-52.

⁵³¹ Kamara Motion, paras. 20, 37 and 47.

⁵³² Kamara Motion, para. 52.

⁵³³ Please see Brima response, section on looting.

what I've got.”⁵³⁴ In Rosos, the First Accused declared ‘Operation Clear the Area’ in which he ordered that surrounding villages should be burned. This was said in the presence of the Second Accused.⁵³⁵ Evidence was also led that the Second Accused and his troops completely looted Lunsar and removed a safe from a bank in Makeni.⁵³⁶

⁵³⁴ Witness TF1-334, TT 20 May 2005, pp. 33-34.

⁵³⁵ Witness TF1-334, TT 23 May 2005, pp. 104-105.

⁵³⁶ Witness TF1-334, TT 17 May 2005, pp. 80-81.

5. KANU Response

5.1 GREATEST RESPONSIBILITY

264. The Prosecution refers to paragraphs 12 to 15 above in relation to the issue of the greatest responsibility of the Third Accused.

5.2 COUNT 1: ACTS OF TERRORISM⁵³⁷

265. The Kanu Motion makes no submissions with respect to this Count. Accordingly the Prosecution assumes that the Third Accused accepts that there is sufficient evidence against him with respect to this Count.

5.3 COUNT 2: COLLECTIVE PUNISHMENTS⁵³⁸

266. In relation to Count 2 the Kanu Motion states that the Indictment does not specify areas within the country or a time frame, other than the general time frame, where and when crimes under the rubric of Count 2 were committed.⁵³⁹

267. The Prosecution adopts the same arguments as are set out in the Brima Response (paragraphs 116-117), read together with paragraphs 85 to 87 above.

268. The Kanu Motion further asserts a lack of evidence showing the criminal responsibility of the Third Accused under any mode of liability.⁵⁴⁰ Contrary to the Defence assertions, there is evidence with respect to the Third Accused, who was present when orders for collective punishments were given. Witness TF1-167 described that before entering Karina, the First Accused, in the presence of the Third Accused, ordered that the village must be burned down and people killed since it was the home town of President Kabbah.⁵⁴¹

269. The Prosecution submits that there is evidence on the basis of which a reasonable trier of fact could conclude that the Third Accused is criminally responsible pursuant to Articles 6(1) and 6(3) of the Statute for collective punishments.

⁵³⁷ See Kanu Motion, para. 2.

⁵³⁸ See Kanu Motion, para. 3-6.

⁵³⁹ Kanu Motion, para. 3.

⁵⁴⁰ Kanu Motion, paras. 4-6.

⁵⁴¹ Witness TF1-167, TT 15 September 2005. p. 53.

5.4 COUNT 3: EXTERMINATION

270. The Prosecution refers to its general submissions in paragraphs 88-90 above regarding the crime of Extermination.

5.5 COUNTS 4 AND 5: MURDER AND VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS, IN PARTICULAR MURDER⁵⁴²

Bo District

271. The Kanu Motion argues that there is no evidence that the Accused was in Bo District at the material time.⁵⁴³ The Defence further submits that this applies in particular to Tikonko, Telu, Sembehun, Gerihun and Mamboma.

272. The Prosecution accepts that no evidence of unlawful killings under Counts 4 and 5 has been led with respect to the following villages in Bo District: Telu, Sembehun, Mamoma.

273. However, the Prosecution has led evidence of unlawful killings in both Tikonko and Gerihun. The Prosecution refers to paragraphs 119-121 in the Brima Response to establish the factual evidence of the unlawful killings. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. Furthermore, the Prosecution submits that it has led sufficient evidence to show that through his leadership position in the Junta, the Third Accused participated in the joint criminal enterprise as pleaded in the Indictment.

Kenema District

274. The Kanu Motion states that there is no evidence of the presence of the Third Accused in Kenema at the time of the killings in Kenema, or of the Third Accused's responsibility for such crimes.⁵⁴⁴

275. In order to avoid unnecessary repetition, the Prosecution by reference incorporates the relevant paragraphs (122-125) of the Brima Response relating to Kenema. The Prosecution submits that it has led sufficient evidence to show that during the relevant

⁵⁴² See Kanu Motion, para. 12-30.

⁵⁴³ Kanu Motion, para. 12.

⁵⁴⁴ Kanu Motion, para. 14.

period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. Through his leadership position in the Junta, and on the basis of all the evidence the Prosecution submits that the Third Accused participated in the joint criminal enterprise as pleaded in the indictment.

Kono District

276. The Kanu Motion argues that there is no evidence with respect to Foindu, Willifeh, Mortema and Biaya.⁵⁴⁵ The Kanu Motion further states that there has been no evidence that 'several hundred civilians were unlawfully killed' in various locations in Kono District.⁵⁴⁶
277. The Prosecution accepts that no evidence of unlawful killings under Counts 4 and 5 has been led with respect to the following villages: Foindu, Wollifeh, Biaya. As regards Mortema, there is evidence that the AFRC troops engaged in fighting with the civilian population between Makeni and Koidu Town.⁵⁴⁷
278. Contrary to the Defence assertion, the Prosecution submits that unlawful killings took place all over Kono District, *inter alia*, in Yardu Sandu,⁵⁴⁸ Gbaima,⁵⁴⁹ Wordu,⁵⁵⁰ Koidu Buma,⁵⁵¹ Koidu Geiya,⁵⁵² Bomboafuidu,⁵⁵³ Penduma⁵⁵⁴ and Paema⁵⁵⁵ in addition to Tombodu⁵⁵⁶ and Koidu Town.⁵⁵⁷
279. In order to avoid unnecessary repetition, the Prosecution by reference incorporates the

⁵⁴⁵ Kanu Motion, para. 16.

⁵⁴⁶ Kanu Motion, para. 17.

⁵⁴⁷ Witness, TF1-114, TT 14 July 2005, p.124.

⁵⁴⁸ Witness TF1-019, TT 30 June 2005.

⁵⁴⁹ Witness TF1-072, TT 1 July 2005.

⁵⁵⁰ Witness TF1-072, TT 1 July 2005.

⁵⁵¹ Witness TF1-334, TT 20 May 2005, p. 23.

⁵⁵² Witness TF1-334, TT 20 May 2005, pp. 24-26.

⁵⁵³ Witness TF1-206, TT 28-29 June 2005.

⁵⁵⁴ Witness TF1-217, TT 17 October 2005.

⁵⁵⁵ Witness TF1-216, TT 27 June 2005.

⁵⁵⁶ Generally see Witnesses TF1-072, TT 1 July 2005; TF1-033, TT 11-12 July 2005; TF1-167, TT 15-21 September 2005; TF1-198, TT 28 June 2005; TF1-334, TT 16 May -22 June 2005; TF1-076, TT 27 June 2005; and TF1-216, TT 27 June 2005.

⁵⁵⁷ Generally see Witness TF1-334, TT 20 May 2005, pp. 29-30; Witness TF1-206, TT 28 June 2005, p. 82; Witnesses TF1-217, TT 17 October 2005; TF1-153, TT 22-23 September 2005; [REDACTED], TF1-167, TT 15-21 September 2005; TF1-114, TT 14-18 July 2005; TF1-198, TT 28 June 2005; TF1-301, TT 12-14 October 2005; and TF1-019, TT30 June 2005.

relevant paragraphs of the Brima Response relating to Kono (126-129). The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. The Prosecution submits that it has led sufficient evidence to show that through his leadership position in the Junta and his leadership and/or command position which he continued to hold within the AFRC after the intervention, the Third Accused participated in the joint criminal enterprise as pleaded in the Indictment. As such, the Third Accused bears criminal responsibility for the unlawful killings which were committed by members of the AFRC/RUF in the District of Kono.

Kailahun District

280. The Kanu Motion relies upon the physical absence of the Third Accused from Kailahun District at the material time and the absence of evidence of superior responsibility,⁵⁵⁸ or indeed of any acts of murder in the District.
281. In order to avoid unnecessary repetition, the Prosecution by reference incorporates the relevant paragraphs (130-132) of the Brima Response relating to Kailahun. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. When the Junta was driven out of Freetown the Third Accused continued to be a senior leadership figure within the AFRC and, pursuant to the joint criminal enterprise, furthered the plan to regain control over Sierra Leone. Given the above, the Third Accused participated in the joint criminal enterprise as pleaded in the Indictment and as such bears criminal responsibility for the unlawful killings which were committed by members of the AFRC/RUF in the District of Kailahun.

Koinadugu District

282. The Kanu Motion argues that there is no evidence of the presence of the Third Accused in Heremakono, Kumalu/Kamala, Katombo and Fadugu.⁵⁵⁹ The Defence further submits

⁵⁵⁸ Kanu Motion, paras. 16-19.

⁵⁵⁹ Kanu Motion, paras. 22-23.

that there is no evidence of the Third Accused's criminal liability.⁵⁶⁰

283. The Prosecution accepts that no evidence has been led with respect to the villages Heremakono, Kumalu, Katombo and Kamadugu.⁵⁶¹
284. In order to avoid unnecessary repetition, the Prosecution by reference incorporates the relevant paragraphs (133-136) of the Brima Response relating to Koinadugu. The Prosecution further submits that there is evidence of the Third Accused describing the slitting open of the bellies of pregnant women in Koinadugu Town.⁵⁶² The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. When the Junta was driven out of Freetown, the Third Accused continued to hold a senior leadership and or command position within the AFRC. The Prosecution submits that it has led sufficient evidence to show that through his leadership position in the Junta, and after the intervention, the Third Accused participated in the joint criminal enterprise as pleaded in the Indictment and as such bears criminal responsibility for the unlawful killings which were committed by members of the AFRC/RUF in the District of Koinadugu in furtherance of the joint criminal enterprise.

Bombali District

285. The Kanu Motion argues that there is no evidence of the presence of the Third Accused in Bonyoyo/Bornoya and Mafabu and with respect to the other locations pleaded, there is no evidence of the culpability of the Third Accused.⁵⁶³
286. The Prosecution accepts that there is no evidence with respect to the village of Mafabu.
287. The Prosecution submits that at the time of the attacks in Bombali District, the Third Accused was the Chief of Staff to whom the company commanders, the operation commander, the military supervisors and all the soldiers were subordinate.⁵⁶⁴ In Karina the Third Accused participated in an incident where girls were locked in a house and

⁵⁶⁰ Kanu Motion, para. 23.

⁵⁶¹ Witness TF1-199, TT 6 October 2005, pp. 77-80

⁵⁶² Witness TF1-209, TT 7 July 2005, p.54.

⁵⁶³ Kanu Motion, paras. 24-25.

⁵⁶⁴ Witness TF1-334, TT 20 May 2005, pp. 88-101.

burnt to death.⁵⁶⁵ Soldiers were throwing babies into a fire.⁵⁶⁶ The Third Accused was present as this attack took place and given his position in the AFRC hierarchy he had both the ability to prevent and punish such crimes. Consequently there is evidence to demonstrate the responsibility of the Third Accused pursuant to Article 6(1) and 6(3) of the Statute.

Freetown and the Western Area

288. The Kanu Motion makes no submission with respect to this crime base. Accordingly the Prosecution assumes that the Third Accused accepts the sufficiency of evidence in relation thereto.

Port Loko District

289. The Kanu Motion argues that there is no evidence that the Third Accused was present in Manarma, Tendakum or Nonkoba and that there is no other evidence of his criminal liability.

290. The Prosecution accepts that it has not lead evidence with respect to events in Tendakum. However, there is evidence of unlawful killings in Mamarma⁵⁶⁷ and Nonkoba.⁵⁶⁸

291. The Prosecution submits that there is evidence that the Third Accused was present in Sumbuya and that prior to walking to Sumbuya he had given orders to the rebels to fire.⁵⁶⁹ There is evidence that the Third Accused was present at Masiaka and was the commander of the operation against Gbinti town⁵⁷⁰ wherein orders from the First Accused to kill civilians were carried out.⁵⁷¹ Consequently there is evidence to demonstrate the responsibility of the Third Accused pursuant to Articles 6(1) and 6(3) of the Statute.

⁵⁶⁵ Witness TF1-334, TT 23 May 2005, pp 65-67. [REDACTED]

⁵⁶⁶ Witness TF1-334, TT 23 May 2005, p. 67.

⁵⁶⁷ Generally see witness TF1-320, TT 8 April 2005; 9-10 March 2005, witness TF1-253, TT 15-18 April 2005

⁵⁶⁸ Generally see witness TF1-256, TT 14-15 April 2005.

⁵⁶⁹ Witness TF1-282, TT 13 April 2005, pp. 14-15.

⁵⁷⁰ Witness TF1-334, TT 24 May 2005, p. 48.

⁵⁷¹ Witness TF1-033, TT 11 July 2005, p. 29.

5.6 COUNT 6: RAPE⁵⁷²

Kono District

292. The Kanu motion states at paragraph 31, that the Prosecution provided no evidence to indicate that rape as a crime against humanity occurred between about 14 February and 30 June 1998 at AFRC/RUF camps as stated in the Indictment in paragraph 52; specifically, ‘Superman camp’ and Kissi Town Camp, Tomendeh, Fokoiya, Wonedu, Tombodu and Kissi Town.
293. The Prosecution accepts that no evidence of sexual violence has been led with respect to the following villages: Tomendeh, Fokoiya, Superman Camp/Kissu Town Camp, Kissu Town.
294. However, the Prosecution submits that sufficient evidence has been led in relation to all other locations pleaded so that a reasonable trier of fact could find the Third Accused guilty of these Counts, highlighting specifically that evidence was led indicating that rape occurred in Tombodu during the material time.⁵⁷³
295. The Defence suggests further that no evidence was presented that ‘hundreds of women and girls were raped’ at any location in the Kono district.
296. In fact, evidence was adduced indicating that mass rape occurred in Koidu Town during February 1998.⁵⁷⁴ The Prosecution has presented evidence showing that soldiers grouped civilian women together and committed acts of rape against them.⁵⁷⁵
297. Furthermore, the Prosecution has led evidence showing that rape occurred frequently and was perpetrated by rebel soldiers in the Kono district. Specifically, during April 1998 female civilians were captured from their homes in Kumala and raped by rebel soldiers.⁵⁷⁶ The evidence presented indicates that this was common practice amongst the soldiers and as a consequence hundreds of women were in fact raped at numerous locations in Kono District at the material time.
298. The evidence of sexual violence in Kono is part of a pattern that was repeated throughout

⁵⁷² See Kanu Motion, paras. 31-46.

⁵⁷³ Witness TF1-076, TT 27 June 2005, p 105.

⁵⁷⁴ Witness TF1-217, TT 17 October 2005, pp. 4-5.

⁵⁷⁵ Witness TF1-217, TT 17 October 2005, pp. 22-23

⁵⁷⁶ Witness TF1-133, TT 7 July 2005, pp. 85-87

Sierra Leone wherever Junta forces were present as set out in the sections in this Response dealing with sexual violence. The evidence is of rape by soldiers during attacks on villages, rape being part of the *modus operandi* of such attacks, which also included the killing, abduction and amputation of civilians and the demand for food and money, looting and burning of houses.⁵⁷⁷ For example, during an attack on Bomboafuidu in which civilians were killed or their limbs amputated and goods looted, seven civilian men were forced to rape seven civilian women while the rebels watched and laughed.⁵⁷⁸

299. The Prosecution submits that the evidence in respect of Kono District, read in conjunction with the Prosecution's submissions in respect of the legal requirements necessary to establish responsibility pursuant to a joint criminal enterprise is sufficient for the purposes of Rule 98.

Koinadugu District

300. The Prosecution accepts the Defence submission that no evidence was led with respect to rape in Heremakono. However, the Prosecution submits that sufficient evidence has been led in relation to all other locations pleaded so that a reasonable trier of fact could find the Third Accused guilty of rape in Koinadugu District.⁵⁷⁹
301. The Defence submits in general that there is no evidence that the Third Accused bears any responsibility for the crime of rape as defined by Article 2(g) of the Statute in the Koinadugu District.
302. The Prosecution submits that there is evidence that the Third Accused, as Chief of Staff in Mansofinia, was responsible for the fate of the women there.⁵⁸⁰
303. The Prosecution submits that it has led sufficient evidence to show that rapes occurred in Koinadugu (see paragraphs 157-158) and furthermore that during the relevant period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. Thereafter, when the Junta was driven out of Freetown the Third Accused

⁵⁷⁷ Witness TF1-076, TT 27 June 2005, pp. 103-106; witness TF1-019, TT 30 June 2005, pp. 89-94; witness TF1-198, TT 28 June 2005, pp. 11-12.

⁵⁷⁸ Witness TF1-206, TT 28 June 2005, pp. 94-98.

⁵⁷⁹ See witness TF1-209, TT 7 July 2005, pp. 33-35; Witness TF1-153, TT 22 September 2005, p. 33 and p. 47; Witness TF1-133, TT 7 July 2005, p. 99.

⁵⁸⁰ Witness TF1-334, 16 June 2005.

continued to be a senior leadership figure within the AFRC, which pursuant to the joint criminal enterprise, continued with its plan to regain control over Sierra Leone. The Prosecution submits that as a senior leadership figure within the AFRC, the Third Accused participated in the joint criminal enterprise as pleaded in the Indictment and as such bears criminal responsibility for the rapes which were committed by members of the AFRC/RUF in the District of Koinadugu in furtherance of the joint criminal enterprise.

Bombali District

304. The Kanu motion states at paragraph 36 that no evidence was presented that rape as defined by Article 2(g) of the Statute was committed in Mandaha between about 1 May and 31 November 1998.
305. The Prosecution presented evidence showing that over two hundred incidences of rape occurred in the Bombali District throughout this time.⁵⁸¹ Furthermore, the Prosecution has led evidence to show that rapes were committed in Mandaya.⁵⁸²
306. The Defence submits in general that there is no evidence that the Third Accused bears any responsibility for the crime of rape as defined by Article 2(g) of the Statute in the Bombali District.
307. The Prosecution submits that there is evidence that the Third Accused disregarded a law that the rebels should not rape civilians in the town of Port Loko.⁵⁸³ Furthermore, there is evidence of the Third Accused's total control of all women in Rosos.⁵⁸⁴
308. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. Thereafter, when the Junta was driven out of Freetown the Third Accused continued to be a senior leadership figure within the AFRC which, pursuant to the joint criminal enterprise, continued with its plan to regain control over Sierra Leone. The Prosecution submits that the Third Accused participated in the joint criminal enterprise as pleaded in the Indictment and as such bears criminal responsibility

⁵⁸¹ Witness TF1-033, TT 11 July 2005, p. 19. Also, witness TF1-267, TT 27 July 2005, pp. 5-7.

⁵⁸² Witness TF1-033, TT 12 July 2005, pp. 4-5.

⁵⁸³ Witness TF1-085, TT 7 April 2005, pp. 40-41.

⁵⁸⁴ Witness TF1-334, TT 24 May 2005, p. 62.

for the rapes which were committed by members of the AFRC/RUF in the District of Koinadugu.

Kailahun District

309. The Defence states that the Prosecution presented no evidence of rape in Kailahun District by members of the AFRC/RUF.
310. Contrary to this argument, the Prosecution submits that in 1998, after ‘Operation Spare No Soul’ was declared by the RUF, reports of rape in Kailahun was led in evidence.⁵⁸⁵
311. Furthermore, the Kanu Motion submits that no evidence has been brought forward supporting the indicted allegation that the Accused bore superior responsibility or was involved in a joint criminal enterprise.
312. The Prosecution submits that it has led sufficient evidence to show that during the relevant period the Third Accused was a member of the Supreme Council in the AFRC/RUF Junta which made him a leadership figure within the body which at that time was governing the country. Thereafter when the Junta was driven out of Freetown the Third Accused continued to be a senior leadership figure within the AFRC which pursuant to the joint criminal enterprise continued with its plan to regain control over Sierra Leone. The Prosecution submits that as a senior leadership figure within the AFRC the Third Accused participated in the joint criminal enterprise as pleaded in the Indictment and as such bears criminal responsibility for the rapes which were committed by members of the AFRC/RUF in the District of Kailahun.

Freetown and the Western Area

313. The Kanu motion argues that the Prosecution provides no evidence throughout the whole indictment period to indicate that the Third Accused bears any form of responsibility for the crime of rape as defined by Article 2(g) of the Statute.
314. The Prosecution states that to the contrary there is evidence of rapes being committed at the State House in Freetown,⁵⁸⁶ including by the Third Accused on or around 6 January 1999.⁵⁸⁷ Furthermore, women and girls were captured by the soldiers and brought to

⁵⁸⁵ Witness TF1-045, TT 22 July 2005, pp. 22-25.

⁵⁸⁶ Witness TF1-024, TT 7 March 2005, p. 49.

⁵⁸⁷ Witness TF1-334, TT 14 June 2005, p. 26 and TT 15 June 2005, p. 4.

State House. Here they were forced to have sexual intercourse with the soldiers, the most beautiful women being kept for, amongst others, the Third Accused. The Third Accused was present and knew or had reason to know that women and children were frequently being raped.⁵⁸⁸

315. There is clear evidence that the Third Accused led soldiers from Wellington to Allen Town, Western Area. Evidence was presented stating that soldiers were seen raping women and children.⁵⁸⁹ The Prosecution submits that there is sufficient evidence for a reasonable trier of fact to convict the Third Accused for rape.

5.7 COUNT 7: SEXUAL SLAVERY AND ANY OTHER FORM OF SEXUAL VIOLENCE⁵⁹⁰

Kailahun District

316. The Defence submits that no evidence was presented that sexual slavery or any other form of sexual violence as defined by Article 2(g) of the Statute was committed in the Kailahun district by members of the AFRC/RUF at all times relevant to the Indictment.⁵⁹¹ The Defence submits in the alternative that there is no evidence that the Accused bears any form of responsibility.⁵⁹²
317. The Prosecution submits that there is evidence of sexual slavery and sexual violence and refers to the evidence of Zainab Bangura.⁵⁹³ The Prosecution refers to paragraphs 25-55 above and submits that a reasonable trier of fact could convict the Third Accused for sexual slavery and other forms of sexual violence in Kailahun District on the basis of his participation in a joint criminal enterprise.

Freetown and Western Area

318. The Kanu Motion states that no evidence was presented that ‘*hundreds* of women and girls were subjected to sexual slavery’ throughout Freetown and the Western Area.⁵⁹⁴
319. The Prosecution has provided evidence that women and girls were captured by rebel

⁵⁸⁸ *Ibid.*

⁵⁸⁹ Witness TF1-085, TT 7 April 2005, pp. 16-19.

⁵⁹⁰ See Kanu Motion, paras. 47-56.

⁵⁹¹ Kanu Motion, para. 47.

⁵⁹² Kanu Motion, para. 48.

⁵⁹³ See testimony of witness Zainab Bangura, TT 3 and 4 October 2005.

⁵⁹⁴ Kanu Motion, para. 49.

soldiers and brought to the State House.⁵⁹⁵ Here they were forced to have sexual intercourse with the soldiers.⁵⁹⁶ This was part of a campaign which legitimized the practice of depriving women of their liberty and forcing them to engage in acts of a sexual nature.

320. The Prosecution submits that sexual slavery and sexual violence were committed, relying on the evidence of Zainab Bangura.⁵⁹⁷ The Prosecution refers to paragraphs 25-55 above and submits that a reasonable trier of fact could convict the Third Accused for sexual slavery and other forms of sexual violence in Freetown and the Western Area on the basis of his participation in a joint criminal enterprise.

Other

321. The Defence submits that no evidence has been adduced throughout the Prosecution case that the Third Accused bears any form of individual criminal responsibility as set out in Article 6(1) of the Statute for the crime of sexual slavery or any other form of sexual violence as set out in Article 2(g) of the Statute with respect to Kono District, Koinadugu District, Bombali District and Port Loko District.
322. The Prosecution refutes the Defence submission in respect of the above Districts and submits that the Prosecution has led sufficient evidence in respect of all such Districts for a reasonable trier of fact to convict the Accused for the crime of sexual slavery and sexual violence pursuant to Article 6(1) and Article 6(3) of the Statute.
323. In particular, with respect to Port Loko, in 1999 the Third Accused was present in Masiaka where he held a position of high command. During this time in Masiaka, rape and other forms of sexual violence and sexual slavery were perpetrated by rebel soldiers against civilians. The rebels went to the surrounding villages raping women and selected many women to be taken as captives. Once captured, these women were deprived of their liberty and subjected to acts of sexual violence and rape.⁵⁹⁸
324. This provides evidence of the Third Accused's responsibility for those acts included in Counts 6-9 of the Indictment under Article 6(3).

⁵⁹⁵ Witness TF1-334, TT 14 June 2005, p. 26 and 15 June 2005, p. 4.

⁵⁹⁶ Witness TF1-334, TT 14 June 2005, p. 26 and 15 June 2005, p. 4.

⁵⁹⁷ See testimony of witness Zainab Bangura, TT 3 and 4 October 2005.

⁵⁹⁸ Witness TF1-085, TT 7 April 2005, p. 41.

325. Furthermore, evidence was presented to the Trial Chamber that the Third Accused expressly condemned a law formulated by another commander that the rebels should not commit acts of sexual violence against civilians in the Port Loko District at that time. The Third Accused was not only complicit in these acts, but also provided encouragement to the perpetrators thereof. It is submitted that a reasonable trier of fact could on the basis of the evidence convict the Third Accused under Article 6(1) of the Statute.

5.8 COUNTS 8 AND 9: OTHER INHUMANE ACTS AND OUTRAGES ON PERSONAL DIGNITY⁵⁹⁹

All districts mentioned in the Indictment for Counts 8 and 9

326. The Kanu Motion states that no evidence has been brought forward to support the allegation that the Third Accused bears superior responsibility or participated in a joint criminal enterprise with regard to Counts 8 and 9 of the Indictment.⁶⁰⁰

327. The Prosecution refers to its legal submissions in respect of the Third Accused's participation in a joint criminal enterprise as set out in paragraphs 25-55 above and submits that on this basis a reasonable trier of fact could convict the Third Accused in relation to all districts mentioned in the indictment under Counts 8 (Other Inhumane Acts) and 9 (Outrages upon Personal Dignity).

328. In particular, the Prosecution refers to evidence led with respect to Allen Town, Western Area. As indicated, evidence has been led to suggest that the Third Accused was in command of AFRC/RUF soldiers in the Allen Town area. Here, the evidence indicates, that civilian women were bound, beaten – often to the point of unconsciousness and raped.⁶⁰¹

Other

329. The Kanu Motion states that no evidence has been brought forward regarding the crimes of other inhumane acts as defined by Article 2(i) of the Statute, and outrages upon personal dignity as defined by Article 3(e) in the context of sexual violence at the following locations: 'Superman Camp', Kissi Town Camp, Tomendeh, Fokoiya,

⁵⁹⁹ See Kanu Motion, paras. 57-61.

⁶⁰⁰ Kanu Motion, para. 58.

⁶⁰¹ Witness TF1-085, TT 7 April 2005, p. 19.

Wonedu, Tombodu or Kissi Town (all in the Kono District), Mandaha (Bombali District) and the whole Kailahun District.

330. To the extent that issue is taken with respect to specific locations pleaded in the Indictment, the Prosecution accepts that no evidence of sexual violence has been led with respect to the following villages: Tomendeh, Fokoiya, Superman Camp/Kissi Town Camp, Kissi Town or Tombodu (Kono District); Heremakono (Koinadugu District); or Mandaha (Bombali District) However, the Prosecution submits that sexual violence is fully addressed above under Counts 6-9 and relies upon its submissions in paragraphs 146-160, 223-242 and 292-325.
331. The Kanu Motion submits that there is no evidence, with respect to Kono District, Koinadugu District, Bombali District and Kailahun District, of the criminal responsibility of the Third Accused under Articles 6(1) and 6(3) with respect to Counts 8 and 9 of the Indictment.⁶⁰²
332. Contrary to this assertion, the Prosecution submits that in Koinadugu District, Witness TF1-209 was told by the Third Accused that he had been slitting the bellies of pregnant women and that the witness, who had been raped, was lucky that her belly had not been slit.⁶⁰³ There is evidence that in Bombali the Third Accused disregarded a law that the rebels should not rape any civilians in the town⁶⁰⁴ and in Freetown the Third Accused amputated limbs and ordered others to do the same.⁶⁰⁵ In relation to the remaining districts, the Prosecution relies upon the evidence of the joint criminal enterprise set out above in paragraphs 25-55.

5.9 COUNTS 10 AND 11: VIOLENCE TO LIFE, HEALTH AND PHYSICAL OR MENTAL WELL-BEING OF PERSONS, IN PARTICULAR MUTILATION AND OTHER INHUMANE ACTS⁶⁰⁶

Kono District

333. The Kanu Motion states that there is no evidence that the Third Accused was present in Kaima/Kayima or Wonedu and, in any event, there is no evidence of his criminal

⁶⁰² Kanu Motion, para. 60.

⁶⁰³ Witness TF1-209, TT 7 July 2005, pp. 34-35.

⁶⁰⁴ Witness TF1-085, TT 7 April 2005, pp. 40-41.

⁶⁰⁵ Witness TF1-334, TT 14 June 2005, pp. 68-70.

⁶⁰⁶ See Kanu Motion, para. 62-75.

liability.⁶⁰⁷ Regarding the other locations the Defence asserts that, according to the evidence, the Third Accused was present, but not directly involved in the commission of crimes. Furthermore, the Defence argues that no evidence has been adduced by the Prosecution that the Third Accused bore any form of liability under Counts 10 and 11.⁶⁰⁸

334. Contrary to the Defence assertion, there is evidence of children being trained in Small Boys Units and used to amputate people in Kono, in particular in Tombodu. The children stayed with the various commanders.⁶⁰⁹ There is evidence that the Third Accused failed to prevent Savage from flogging civilians.⁶¹⁰
335. The Prosecution refers to its legal submissions in respect of the third Accused's participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes in the Kono District in respect of Counts 10 (Violence to Life, Health and Physical or Mental Well-being, in particular Mutilation) and 11 (Other Inhumane Acts) of the Indictment.

Kenema District

336. The Kanu Motion denies that civilians were ill-treated – if at all – in the custody of the AFRC/RUF.
337. Furthermore, the Defence argues that there is no evidence of the criminal liability of the Third Accused.⁶¹¹
338. The Prosecution refers to evidence adduced above at paragraphs 168-169 and its submissions in respect of the Third Accused's participation in a joint criminal enterprise as set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Kenema District in respect of Counts 10 and 11.

⁶⁰⁷ Kanu Motion, para. 62.

⁶⁰⁸ Kanu Motion, para. 63.

⁶⁰⁹ Witness TF1-334, TT 20 May 2005, p. 6.

⁶¹⁰ Witness TF1-167, p. 10526; TF1-033, TT 11 July 2005, pp. 11-12.

⁶¹¹ Kanu Motion, paras. 65 and 66.

Koinadugu District

339. The Kanu Motion makes general assertions as to a lack of evidence of the criminal responsibility of the Third Accused.⁶¹²
340. The Prosecution on the other hand submits that it has led evidence of ‘Acts of Violence’ in Koinadugu Town, where Witness TF1-209, after being raped, was told by Rebels that she was lucky, because they slit bellies of pregnant women to see the gender of the baby. The witness was told this by the Third Accused, ‘American’ and ‘Johnny’. The witness testified that the three of them told her they were slitting the bellies of pregnant women.⁶¹³
341. The Prosecution refers to its submissions in respect of the Third Accused’s participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Koinadugu District in respect of Counts 10 and 11.

Bombali District

342. The Kanu Motion argues that the Third Accused was not present in Lohondi, Malam and Mamaka and, although present in Karina, did not participate in crimes of physical violence.⁶¹⁴ It is also argued that there is no evidence of the superior responsibility of the Third Accused.⁶¹⁵
343. The Prosecution submits that there is evidence that the Third Accused commanded troops that moved through Karina amputating civilians.⁶¹⁶
344. The Prosecution refers to its submissions in respect of the Third Accused’s participation in a joint criminal enterprise as set out in paragraphs 25-55 above and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Bombali District in respect of Counts 10 and 11.

⁶¹² Kanu Motion, paras. 67-68.

⁶¹³ Witness TF1-209, TT 7 July 2005, pp. 34-35.

⁶¹⁴ Kanu Motion, para. 69.

⁶¹⁵ Kanu Motion, para. 70.

⁶¹⁶ Witness TF1-167, TT 15 September 2005, p. 58; see also witness TF1-334, TT 23 May 2005, p. 71; witness TF1-199, TT 6 October 2005, pp. 75-76.

Freetown and the Western Area

345. The Kanu Motion makes no submission with respect to Freetown and the Western Area. The Prosecution therefore assumes that the Third Accused accepts the sufficiency of evidence with respect thereto.

Port Loko District

346. The Kanu Motion makes a general assertion as to a lack of evidence of the criminal responsibility of the Third Accused.⁶¹⁷

347. The Prosecution submits that there is evidence that the Third Accused commanded the ‘Gbinti Operation’ and ordered an immediate attack on the town.⁶¹⁸ Witness TF1-334 stated that he wrote “55 in town” to create fear that the NPFL fighters were amongst them.⁶¹⁹

348. In addition the Prosecution submits that there is evidence that the Third Accused was present in Masiaka and that Rebels there cut two women with a blade and marked AFRC/RUF on their bodies.⁶²⁰

349. The Prosecution refers to its legal submissions in respect of the Third Accused’s participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Port Loko District in respect of Counts 10 and 11.

5.10 COUNT 12: USE OF CHILD SOLDIERS⁶²¹

350. The Kanu Motion argues that there is no evidence that the Third Accused “routinely” conscripted children and that as “routinely” is an integral part of the Indictment, the Prosecution has failed to prove this “element”. The Kanu Motion further asserts that there is a clear distinction between training and participation in active hostilities.⁶²²

351. In relation to these matters the Prosecution submits that the use of an adjective on an Indictment does not elevate it to the status of an element of the offence. Whether

⁶¹⁷ Kanu Motion, paras. 71-72.

⁶¹⁸ Witness TF1-334, TT 24 May 2005, p. 48.

⁶¹⁹ Witness TF1-334, TT 24 May 2005, p. 50.

⁶²⁰ Witness TF1-085, TT 7 April 2005, p. 43.

⁶²¹ See Kanu Motion, para. 76.

⁶²² Kanu Motion, para. 76.

conscripted were “routinely” done goes to the degree of culpability rather than the criminal liability of the Accused. Further, element (a) is disjunctive: it is proven by showing either that the accused conscripted or enlisted one or more persons in an armed force or group or used one or more persons to participate actively in hostilities.

352. The Prosecution submits that there is evidence that the Third Accused was in charge of the training of children abducted from Karina at Camp Rosos. The boys, aged 10-12, were shown how to handle and fire a weapon.⁶²³ Furthermore, there is evidence that the Third Accused had from 5 to 10 child combatants as commander at Benguema.⁶²⁴
353. The Prosecution refers to paragraphs 25-55 of its Response above with respect to the participation of the Third Accused in a joint criminal enterprise.
354. On the basis of the evidence of the Third Accused’s participation in the joint criminal enterprise and his position of superior authority, the Prosecution submits that a reasonable trier of fact could convict the Accused under Count 12 of the Indictment.

5.11 COUNT 13: ABDUCTIONS AND FORCED LABOUR⁶²⁵

Kenema District

355. The Kanu Motion asserts that there is no evidence of the criminal responsibility of the Third Accused for any crime committed in Kenema District. Furthermore, the Defence states that the Third Accused was not present in Kenema during the whole Indictment period.⁶²⁶
356. The Prosecution submits that there is evidence of abductions in Fadugu in Kenema.⁶²⁷
357. The Prosecution also refers to its legal submissions in respect of the Third Accused’s participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Kenema District in respect of Count 13 (Abductions and Forced Labour) of the Indictment.

⁶²³ Witness TF1-334, TT 24 May 2005, p. 24; TT 15 June 2005, p. 14; witness TF1-167, TT 15 September 2005, p. 64.

⁶²⁴ Witness TF1-227, TT 11 April 2005, pp. 16-23.

⁶²⁵ See Kanu Motion, paras. 77-90.

⁶²⁶ Kanu Motion, paras. 77 and 85.

⁶²⁷ Witness TF1-199, TT 6 October 2005, pp. 77-80.

Kono District

358. The Kanu Motion argues that there is no evidence of ‘domestic labour and mining’ at Tombodu⁶²⁸ and ‘enslavement’ at Tomendeh or Wonedu respectively.⁶²⁹ The Defence further submits that there is no evidence of the criminal responsibility of the Third Accused for this crime.⁶³⁰
359. The Prosecution accepts that there is no evidence with respect to Tomendeh in Kono District. With respect to Tombodu or Wonedu, Witness TF1-072 and his friend were abducted near Gbaima. They were tied up and told that if they tried to escape they would be shot. They were then forced to carry luggage to Tombodu. Along the way 2 more civilians were captured and forced to carry luggage.⁶³¹ At Tombodu one of the soldiers, Small Mosquito, referred to the civilians as “slaves”.⁶³² At Wonedu (spelled as Wonedu in the Indictment) witness TF1-217 was threatened with death if he did not allow his sister to be taken by Junta soldiers. She was put in a vehicle with 10 other young girls who were not from Wonedu and they were driven away by the Junta soldiers.⁶³³
360. The Prosecution submits that there is evidence that captured civilians, including men, women and children were forced at gunpoint to work in the mines, especially in Kono and Tongo.⁶³⁴ Civilians were also used to carry looted property.⁶³⁵ The Prosecution refers to its legal submissions in respect of the Third Accused’s participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Kono District in respect of Count 13.

Koinadugu District

361. The Kanu Motion argues that there is no evidence of enslavement in Kamadugu, Heremakono or Koinadugu Town. The Defence further submits that there is no evidence

⁶²⁸ Kanu Motion, para. 78.

⁶²⁹ Kanu Motion, para. 79.

⁶³⁰ Kanu Motion, para. 85.

⁶³¹ Witness TF1-072, TT 1 July 2005, pp. 8-11.

⁶³² Witness TF1-072, TT 1 July 2005, p. 13.

⁶³³ Witness TF1-217, TT 17 October 2005, pp. 10-11.

⁶³⁴ Witness TF1-334, TT 17 May 2005, pp. 52-53; TF1-045, TT 19 July 2005, pp. 48, 49, 51, 52.

⁶³⁵ Witness TF1-074, TT 5 July 2005, p. 13.

of the criminal responsibility of the Third Accused in Koinadugu Town.⁶³⁶

362. The Prosecution accepts that there is no evidence with respect to Kamadugu and Heremakono in Koinadugu District. In Koinadugu Town, about 100 civilians who had been abducted during the attacks on Mongo and Kabala were trained to handle weapons.⁶³⁷

363. The Prosecution refers to its submissions in respect of the Third Accused's participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Koinadugu District in respect of Count 13.

Bombali District

364. The Kanu Motion makes no submission with respect to this crime base. Accordingly the Prosecution assumes that the Third Accused accepts that there is sufficient evidence against him with respect to Bombali District.

Kailahun District

365. The Kanu Motion asserts that there is no evidence of the criminal responsibility of the Third Accused for this location.⁶³⁸

366. [REDACTED]

367. The Prosecution refers to its legal submissions in respect of the Third Accused's participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Kailahun District in respect of Count 13.

Freetown and the Western Area

368. The Prosecution accepts the Defence assertion that there is no evidence with respect to Peacock Farm but contests the general assertion that there is no evidence of superior

⁶³⁶ Kanu Motion, para. 80 and 85.

⁶³⁷ Witness TF1-184, TT 29 September 2005, p. 33.

⁶³⁸ Kanu Motion, para. 81.

⁶³⁹ Witness TF1-113, TT 18 July 2005, pp. 70, 86.

responsibility or of participation in a joint criminal enterprise in relation to the Third Accused in this location.⁶⁴⁰

369. Contrary to the Defence assertion, there is evidence that the Third Accused was in command of the Allen Town area where captured civilians carried ammunition.⁶⁴¹ Furthermore, there is evidence that the Third Accused was at Benguema as the High Commander and that he called a muster parade for captured civilians, ordering them to destroy a bridge at MacDonald. Other civilians were forced to do domestic work.⁶⁴² There is also evidence that the Third Accused was present when the First Accused ordered the abduction of civilians from Freetown. The order was carried out and the civilians carried loads and performed domestic tasks.⁶⁴³ The Third Accused was present when civilians were brought to the mental home.⁶⁴⁴
370. The Prosecution refers to its legal submissions in respect of the Third Accused's participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Freetown District in respect of Count 13 and also by virtue of his position as a commander pursuant to Article 6(3) of the Statute.

Port Loko District

371. The Kanu Motion states that there is no evidence of enslavement in this District in or around February 1999.⁶⁴⁵ Furthermore, the Defence generally asserts that there is no evidence of the criminal responsibility of the Third Accused for this crime.⁶⁴⁶
372. The Prosecution submits that there is evidence that the Third Accused ordered a group of civilians to walk to Sumbuya in Port Loko District. They walked in a line with a rebel in front of and behind each civilian.⁶⁴⁷
373. The Prosecution refers to its legal submissions in respect of the Third Accused's

⁶⁴⁰ Kanu Motion, para. 85.

⁶⁴¹ Witness TF1-085, TT 7 April 2005, pp. 17-18.

⁶⁴² Witness TF1-227, TT 11 April 2005, pp. 8-13.

⁶⁴³ Witness TF1-334, TT 14 June 2005, pp. 63-64, 120.

⁶⁴⁴ Witness TF1-334, TT 16 June 2005, p. 101.

⁶⁴⁵ Kanu Motion, para. 83.

⁶⁴⁶ Kanu Motion, para. 85.

⁶⁴⁷ Witness TF1-282, TT 13 April 2005, pp. 14-15; [REDACTED]

participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Freetown and the Western Area in respect of Count 13 and also by virtue of his position as a commander pursuant to Article 6(3) of the Statute.

All districts mentioned in the Indictment for Count 13

374. The Defence alleges that no evidence has been brought forward supporting the indicted allegation that the Third Accused had either superior authority or was involved in a joint criminal enterprise with regard to the crime of enslavement.
375. The Prosecution refutes the above allegation of the Defence and submits that based on the evidence (see paragraphs 179-181 and 260-261 above) a reasonable trier of fact could convict the accused of enslavement for all indicted districts on the basis of his participation in a joint criminal enterprise as well as on the basis of his position of superior authority pursuant to Article 6(3) of the Statute.

5.12 COUNT 14: LOOTING AND BURNING⁶⁴⁸

Bo District

376. The Prosecution agrees with the Defence that it has not led evidence with respect to the villages of Telu, Sembehun and Mamboma.
377. The Kanu Motion also asserts a lack of evidence as to the criminal liability of the Third Accused.⁶⁴⁹
378. The Prosecution refers to the evidence (see paragraph 188) and its legal submissions in respect of the Third Accused's participation in a joint criminal enterprise as is set out in paragraphs 25-55 and submits that on this basis a reasonable trier of fact could convict the Third Accused for crimes committed in Bo District in respect of count 14 (Looting and Burning) of the Indictment.

Koinadugu District

379. The Prosecution agrees with the Defence that no evidence has been led with respect to the villages of Heremakono and Kamadugu in Koinadugu District.

⁶⁴⁸ See Kanu Motion, paras. 91-98.

⁶⁴⁹ Kanu Motion, paras. 92 and 98.

380. The Kanu Motion also asserts a lack of criminal responsibility for any crimes committed in Koinadugu District.⁶⁵⁰
381. The evidence establishes that burning of houses and the taking of property were part of the *modus operandi* of attacks on civilians, which also included killing, abduction, sexual violence and amputation. This occurred in many villages including Fadugu,⁶⁵¹ Kabala,⁶⁵² Yiffin⁶⁵³ and Kumala.⁶⁵⁴ Property was also looted from civilians. For example, rebels who had captured her near Kabala took the rice and groundnut belonging to Witness TF1-209.⁶⁵⁵ There is evidence that Rebels burnt villages on the way to Bafodia⁶⁵⁶ and that Kabala town was looted and burnt.⁶⁵⁷ The Third Accused was present during most of the above attacks.⁶⁵⁸

Kono District

382. The Prosecution agrees with the Defence that there is no evidence with respect to Foindu.
383. The Kanu Motion further asserts a lack of evidence of the criminal responsibility of the Third Accused.⁶⁵⁹
384. The Prosecution submits that there is evidence that Sewafe in Kono District was burnt down in the presence of senior commanders. Koidu Town was also burnt down as were the villages of Tombodu, Yengema, Bumpe, Jagbwema Fiama and Yomandu.⁶⁶⁰ There is evidence that the Third Accused was present during the destruction of Gandorhun.⁶⁶¹

Bombali District

385. The Kanu Motion makes no submission with respect to this crime base. Accordingly the Prosecution assumes that the Third Accused accepts that there is sufficient evidence against him with respect to this crime base.

⁶⁵⁰ Kanu Motion, para. 93 and 98.

⁶⁵¹ Witness TF1-199, TT 6 October 2005, pp. 77-80.

⁶⁵² Witness TF1-199, TT 6 October 2005, pp. 86-88.

⁶⁵³ Witness TF1-133, TT 7 July 2005, p. 82.

⁶⁵⁴ Witness TF1-133, TT 7 July 2005, p. 81.

⁶⁵⁵ Witness TF1-209, TT 7 July 2005, p. 36.

⁶⁵⁶ Witness TF1-199, TT 6 October 2005, pp. 86-88.

⁶⁵⁷ Witness TF1-147, TT 13 July 2005.

⁶⁵⁸ Witness TF1-334, TT 16 May – 22 June 2005; and Witness TF1-167, TT 15-21 September 2005.

⁶⁵⁹ Kanu Motion, paras. 95 and 98.

⁶⁶⁰ Witness TF1-334, TT 17 May 2005, p. 94 and TT 19 May 2005, pp. 17-18 and p.53 – see Exhibit P14.

⁶⁶¹ Witness TF1-114, TT 11 July 2005, pp. 11-12.

Freetown and the Western Area

386. The Kanu Motion states that the Prosecution did not lead evidence of looting in Calaba Town, Fourah Bay, Upgun or Pademba Road.⁶⁶²
387. [REDACTED]
[REDACTED]⁶⁶⁴ Furthermore, there is evidence of looting in the Presidential Office and Kingtom.⁶⁶⁵
388. The Kanu Motion also asserts a lack of evidence of the criminal responsibility of the Third Accused.⁶⁶⁶
389. Contrary to the Defence assertion, there is evidence that the Third Accused participated in the burning of Calaba Town and reported back to the First Accused that this mission had been accomplished.⁶⁶⁷ There is evidence that the Third Accused ordered the “war candle” to be put on at the junction of State Avenue and Pademba Road where ECOMOG was advancing, resulting in the burning of houses down Pademba Road.⁶⁶⁸ There is evidence that the Third Accused was commander of the group sent to burn homes at Ross Road.⁶⁶⁹ Finally, there is evidence that the Third Accused directly committed acts of burning homes and property.⁶⁷⁰
390. There is also evidence of looting in Wellington,⁶⁷¹ Kissy,⁶⁷² and Thunderhill.⁶⁷³

⁶⁶² Kanu Motion, para. 97.

⁶⁶³ Witness TF1-169, TT 6 July 2005, pp. 46-47.

⁶⁶⁴ Witness TF1-334, TT 14 June 2005, pp. 66-78.

⁶⁶⁵ Witness TF1-334, TT 14 June 2005, p. 26, and p. 43.

⁶⁶⁶ Kanu Motion, paras. 97 and 98.

⁶⁶⁷ Witness TF1-334, TT 14 June 2005, p. 100.

⁶⁶⁸ Witness TF1-046, TT 10 October 2005, pp. 14-15.

⁶⁶⁹ Witness TF1-184, TT 27 September 2005, p. 75.

⁶⁷⁰ Witness TF1-167, TT 19 September 2005, p. 86.

⁶⁷¹ Witness TF1-085, TT 6 April 2005, p. 62.

⁶⁷² Witness TF1-084, TT 6 April 2005, pp. 38-39.

⁶⁷³ Witness TF1-083, TT 8 April 2005, p. 59.

6. Conclusion

391. The Prosecution submits that on the basis of all the evidence presented during its case, a representative portion of which has been set out in the above submissions, a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of the First, Second and Third Accused under all Counts of the Indictment. Rule 98 is not a vehicle through which the Defence may be permitted to move to quash all Counts in the Indictment through general allegations. The Prosecution reiterates that the Trial Chamber is not called upon to undertake a detailed consideration and evaluation of the evidence at this stage and submits that it has dispelled any doubt as to the sufficiency of the evidence with respect to all of the issues raised by the Defence. The Prosecution has delineated the manner in which the criminal liability against the three Accused is put, in general, and with respect to each District specifically pleaded in the Indictment.
392. On the basis of the evidence, a reasonable trier of fact could conclude that each Accused was a party to an orchestrated campaign extending systematically to diverse geographical crime bases. It is open to a reasonable trier of fact to conclude that each of the jointly charged Accused participated in the campaign to the full extent alleged in the Indictment. Therefore, the Prosecution submits that the Trial Chamber should leave all of the alleged modes of criminal liability open until the conclusion of the trial.
393. The villages pleaded in the Indictment in respect of which the Prosecution has not led evidence are set out in table form in Annex A for the sake of convenience. The Prosecution submits that it need not prove every particular as set out in the Indictment and that it has led evidence with respect to each Count, as set out above, sufficient so that a reasonable trier of fact could convict the three Accused in respect of each Count.
394. Accordingly, the Prosecution submits that the Defence Motions should be dismissed.

Dated this 23rd day of January 2006,

In Freetown,

Original signed _____
Christopher Staker
Deputy Prosecutor

Original signed _____
James C. Johnson
Chief of Prosecutions

Original signed _____
Karim Agha
Senior Trial Attorney

Original signed _____
Nina Jørgensen
Senior Legal Adviser

Original signed _____
James Hodes
Trial Attorney

Annex A

Villages and Locations pleaded in the Indictment in respect of which the Prosecution has led no Evidence

Count	Paragraph of the Indictment	District	Village
3-5	43	Bo	Telu Sembehun Mamboma
3-5	45	Kono	Foindu Willifeh Biaya
3-5	47	Koinadugu	Heremakono Kumalu Katombo Kamadugu
3-5	48	Bombali	Mafabu
3-5	50	Port Loko	Tendakum
6-9	52	Kono	Tomendeh Fokoiya Superman Camp Kissi-town (Kissi Town) Camp
6-9	53	Koinadugu	Heremakono
10-11	61	Koinadugu	Konkoba
10-11	62	Bombali	Lohondi Malama Mamaka
13	68	Kono	Tomendeh
13	69	Koinadugu	Kamadugu Heremakono
13	72	Freetown	Peacock Farm
13	73	Port Loko	Tendakum
14	75	Bo	Telu Sembehun Mambonma
14	76	Koinadugu	Heremakono Kamadugu
14	77	Kono	Foindu

Annex B

Glossary

<i>Akayesu</i> Trial Judgement	<i>Prosecutor v. Akayesu</i> , ICTR-96-4-T, “Judgment”, Trial Chamber, 2 September 1998
<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Aleksovski</i> , IT-95-14/1-A, “Judgement,” Appeals Chamber, 24 March 2000
<i>Bagosora</i> Rule 98 Decision	<i>Prosecutor v. Bagosora</i> , ICTR-98-41-T, “Decision on Motions for Judgement of Acquittal”, Trial Chamber, 2 February 2005
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Blaškić</i> , IT-95-14-A, “Judgement”, Appeals Chamber, 29 July 2004
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Blaškić</i> , IT-95-14, “Judgement”, Trial Chamber, 3 March 2000
<i>Brđanin</i> Trial Judgement	<i>Prosecutor v. Brđanin</i> , IT-99-36-T, “Judgement”, Trial Chamber, 1 September 2004
Brima Motion	<i>Prosecutor v. Brima, Kamara, Kanu</i> , SCSL-04-16-T-442, “Brima – Motion for Acquittal Pursuant to Rule 98”, 12 December 2005
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Delalić et al. (Čelebići case)</i> , IT-96-21-T, “Judgement”, Trial Chamber, 16 November 1998
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Delalić et al. (Čelebići case)</i> , IT-96-21-A, “Judgement”,), Appeals Chamber, 20 February 2001
Defence Motion	The Joint Defence Motion, Brima Motion, Kamara Motion and Kanu Motion, collectively
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , IT-95-17/1-A, “Judgement”, Appeals Chamber, 21 July 2000
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Galić</i> , IT-98-29-T, “Judgement”, Trial Chamber, 5 December 2003
<i>Hadžihasanović</i> Rule 98bis	<i>Prosecutor v. Hadžihasanović and Kubura</i> , IT-01-47-

Decision	T, "Decision on Motions for Acquittal Pursuant to Rule 98 <i>bis</i> of the Rules of Procedure and Evidence," Trial Chamber, 27 September 2004
<i>Halilovic</i> Trial Judgement	<i>Prosecutor v Halilovic</i> , IT-01-48-T, Judgement, Trial Chamber, 16 November 2005
ICTY	International Criminal Tribunal for the Former Yugoslavia
<i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Jelisić</i> , IT-95-10, "Judgement", Appeals Chamber, 5 July 2001
Joint Defence Motion	<i>Prosecutor v. Brima, Kamara, Kanu</i> , SCSL-04-16-T-445, "Joint Legal Part Defence Motion for Judgement of Acquittal under Rule 98", 13 November 2005
Kamara Motion	<i>Prosecutor v. Brima, Kamara, Kanu</i> , SCSL-04-16-T-443, "Defence Motion for Judgment of Acquittal of the Second Accused – Brima Bazy Kamara", 12 December 2005
Kanu Motion	<i>Prosecutor v. Brima, Kamara, Kanu</i> , SCSL-04-16-T-444, "Kanu – Factual Part Defence Motion for Judgement of Acquittal under Rule 98", 13 December 2005
<i>Kayishema</i> Trial Judgment	<i>Prosecutor v. Kayishema and Ruzindana</i> , ICTR-95-1-T, "Judgment", Trial Chamber, 21 May 1999
<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , IT-97-25-A, "Judgement", Appeals Chamber, 17 September 2003
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Krnojelac</i> , IT-97-25, "Judgement", Trial Chamber, 15 March 2002
<i>Krstić</i> Trial Judgement	<i>Prosecutor v Krstić</i> , IT-98-33, "Judgement", Trial Chamber, 2 August 2001
<i>Kunarac</i> Appeal Judgment	<i>Prosecutor v. Kunarac</i> , IT-96-23&23/1-A, "Judgment", Appeals Chamber, 12 June 2002
<i>Kunarac</i> Trial Judgement	<i>Prosecutor v. Kunarac</i> , IT-96-23&23/1, "Judgement", Trial Chamber, 22 February 2001
<i>Kvočka</i> Trial Judgement	<i>Prosecutor v. Kvočka</i> , IT-98-30/1-T, "Judgement",

	Trial Chamber, 2 November 2001
<i>Norman</i> Rule 98 Decision	<i>Prosecutor v. Norman, Fofana, Kondewa</i> , SCSL-04-14-473, "Decision on Motions for Judgment of Acquittal pursuant to Rule 98", Trial Chamber, 21 October 2005
<i>Semanza</i> Judgment and Sentence	<i>Prosecutor v. Semanza</i> , ICTR-97-20-T, "Judgment and Sentence", Trial Chamber, 15 May 2003
SBU	Small Boy Unit
<i>Stakić</i> Trial Judgement	<i>Prosecutor v. Stakić</i> , IT-97-24-T, "Judgement," Trial Chamber, 31 July 2003
<i>Tadić</i> Appeal Judgement	<i>Prosecutor v. Tadić</i> , IT-94-1-A, "Judgement", Appeals Chamber, 15 July 1999
<i>Tadić</i> Trial Judgment	<i>Prosecutor v Tadić</i> , IT-94-1-T, "Opinion and Judgment", Trial Chamber, 7 May 1997
<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Vasiljević</i> , IT-98-32-A, "Judgement", Appeals Chamber, 25 February 2004

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1. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-445, “Joint Legal Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 November 2005.
2. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-442, “Brima – Motion for Acquittal Pursuant to Rule 98”, 12 December 2005.
3. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-443, “Defence Motion for Judgment of Acquittal of the Second Accused – Brima Bazzy Kamara”, 12 December 2005.
4. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-444, “Kanu – Factual Part Defence Motion for Judgement of Acquittal under Rule 98”, 13 December 2005.
5. *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, “Decision on Motions for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence”, 27 September 2004.
<http://www.un.org/icty/hadzihas/trialc/judgement/index.htm>
6. *Prosecutor v. Jelisić*, IT-95-10, “Judgement”, 5 July 2001.
<http://www.un.org/icty/jelistic/appeal/judgement/index.htm>
7. *Prosecutor v. Oric*, IT-03-68-T, “Oral Rule 98 Decision”, Trial Chamber, 8 June 2005, p. 8983-4.
<http://www.un.org/icty/transe68/050608IT.htm>
8. *Prosecutor v. Strugar*, IT-01-42-T, “Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98*bis*”, 21 June 2004.
<http://www.un.org/icty/strugar/trialc1/judgement/index.htm>
9. *Prosecutor v. Kamuhanda*, ICTR-99-54A-T, “Decision on Kamuhanda’s Motion for Partial Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence,” 20 August 2002.
<http://65.18.216.88/ENGLISH/cases/Kamuhanda/decisions/200802.htm>
10. *Prosecutor v. Semanza*, ICTR-97-20-T, “Decision on the Defence Motion for a Judgement of Acquittal in Respect of Laurent Semanza after Quashing the Counts contained in the Third Amended Indictment (Article 98BIS of the Rules of Procedure and Evidence) and Decision on the Prosecutor’s Urgent Motion for Suspension of Time-Limit for Response to the Defence Motion for a Judgement of Acquittal”, 27 September 2001.
<http://65.18.216.88/ENGLISH/cases/Semanza/decisions/270901.htm>

11. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-473, “Decision on Motions for Judgment of Acquittal pursuant to Rule 98”, 21 October 2005.
12. *Prosecutor v. Bagosora*, ICTR-98-41-T, “Decision on Motions for Judgement of Acquittal”, 2 February 2005.
<http://65.18.216.88/ENGLISH/cases/Bagosora/decisions/020205.htm>
13. *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, “Judgement on Motions for Acquittal Pursuant to Rule 98bis,” 5 April 2004.
<http://www.un.org/icty/blagojevic/trialc/judgement/040405.htm>
14. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT-26, “Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana”, 3 March 2004.
15. *Prosecutor v. Blaškić*, IT-95-14-A, “Judgement”, 29 July 2004.
<http://www.un.org/icty/blaskic/appeal/judgement/index.htm>
16. *Prosecutor v. Tadić*, IT-94-1-A, “Judgement”, 15 July 1999.
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18. *Prosecutor v. Aleksovski*, IT-95-14/1-A, “Judgement,” 24 March 2000.
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19. *Prosecutor v. Brđanin*, IT-99-36-T, “Judgement”, 1 September 2004.
<http://www.un.org/icty/brdjanin/trialc/judgement/index.htm>
20. *Prosecutor v. Kunarac et al.*, IT-96-23&23/1, “Judgement”, 22 February 2001
<http://www.un.org/icty/kunarac/trialc2/judgement/index.htm>
21. *Prosecutor v. Delalić et al.*, IT-96-21-T, “Judgement”, 16 November 1998.
<http://www.un.org/icty/celebici/trialc2/judgement/index.htm>
22. *Prosecutor v. Delalić et al. (Čelebici case)*, IT-96-21-A, “Judgement”, 20 February 2001.
<http://www.un.org/icty/celebici/appeal/judgement/index.htm>
23. *Prosecutor v. Blaškić*, IT-95-14, “Judgement”, 3 March 2000.
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