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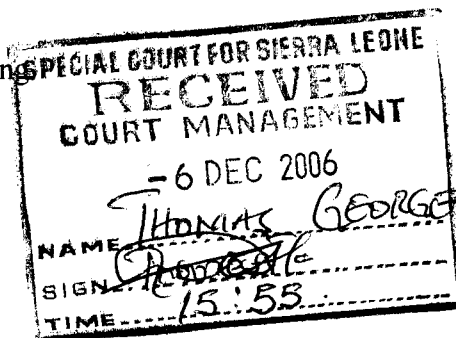
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

Before: Hon. Justice Richard Lussick, Presiding
Hon. Justice Teresa Doherty
Hon. Justice Julia Sebutinde

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 6 December 2006



THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-T

PUBLIC

PROSECUTION FINAL TRIAL BRIEF

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I. INTRODUCTION: ARMED FORCES REVOLUTIONARY COUNCIL

BACKGROUND TO THE ESTABLISHMENT OF THE AFRC GOVERNMENT IN MAY 1997

1. On 23 March 1991 the Revolutionary United Front (RUF), led by Corporal Foday Sankoh, invaded Sierra Leone along its Eastern borders. The main aim of the RUF was to replace the All People's Congress (APC) Government under President Momoh, which the RUF perceived as being corrupt and neglecting the best interests of its citizens.
2. The RUF concentrated its hostilities on the eastern part of Sierra Leone, including the districts of Kailahun, Pujehun, Kono and Kenema (especially as Kono and Kenema were rich sources of diamonds that enabled the RUF to fund its movement).
3. This invasion by the RUF was resisted by the Republic of Sierra Leone Armed Forces (RSLAF). In 1992 the APC Government was removed by a junior officers' coup led by Captain Valentine Strasser, which established the National Provisional Ruling Council (NPRC).
4. Active hostilities between the RUF and RSLAF continued until the NPRC Government handed over power to the Sierra Leone Peoples Party Government (SLPP) led by President Ahmed Tejan Kabbah following elections in 1996.
5. Active hostilities between the RUF and RSLAF continued until 25 May 1997, when the SLPP Government was overthrown by an 'other ranks' coup of serving members of the RSLAF. The SLPP Government was forced into exile in Guinea.
6. It is significant that during the conflict between the RSLAF and the RUF from March 1991, despite the change in government, the RSLAF could not be defeated by the RUF.
7. It is the case of the Prosecution that all of the Accused were a part of the 'other ranks' members of the RSLAF who plotted and carried out the coup that removed the Kabbah Government, and that the First and Second Accused along with Sgt. Abu Sankoh were the leaders of the coup.
8. On the overthrow of the Kabbah Government, Major Johnny Paul Koroma was released from Pademba Road Prison and was made chairman of what became known as the Armed

Forces Revolutionary Council (AFRC). One of Johnny Paul Koroma's first steps was to invite the former enemies of the RSLAF – the RUF – to join them in government. This invitation was accepted by Foday Sankoh, the imprisoned leader of the RUF at that time, who subsequently ordered his RUF troops to join hands with the new AFRC regime.

9. As a reward for their role in overthrowing the Kabbah Government, all three Accused along with the other 14 persons who carried out the coup were made members of the Supreme Council of the AFRC Government, which was the most important legislative body in Sierra Leone.
10. The Supreme Council consisted of some of the most senior Sierra Leonean Army officers, the 17 coup plotters and the senior leadership of the RUF. All the coup plotters were known as 'honourables', with this position superseding rank and giving them power, influence and command over more senior officers in the SLA.
11. The First and Second Accused were also made Principal Liaison Officers (PLOs) in the AFRC Government, which the Prosecution submits placed them in the Sierra Leone Army (SLA) component of the AFRC hierarchy under only Johnny Paul Koroma and SAJ Musa. SAJ Musa was a former Vice Chairman of the former NPRC Government who had been recalled by the AFRC Government to help them establish legitimacy.
12. The most senior leadership of the SLA and RUF made up the AFRC Government, which through its Supreme Council worked together in taking any actions necessary in order to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas which were its main source of income. This included gaining and exercising control over the population of Sierra Leone in order to prevent or minimise resistance to their geographic control and use members of the civilian population to provide support to them.
13. Through these actions the AFRC Supreme Council fashioned policies that led to crimes which were either within their contemplation or were a reasonable foreseeable consequences of their policies.
14. For example, in order to exploit the diamond resources forced labour was used in both Kenema and Kono. Furthermore, in order to consolidate their geographical control over

Sierra Leone anyone who opposed the AFRC Government – such as Paramount chiefs, Civil Defence Forces (CDF) or supporters of the deposed SLPP Government – was eliminated.

THE OVERTHROW OF THE AFRC GOVERNMENT BY ECOMOG AROUND 14 FEBRUARY 1998

15. On around 13/14 February 1998, after nearly nine months in government, the AFRC was driven out of power following a military intervention by ECOMOG.
16. It is the case of the Prosecution that once the AFRC Government was driven out of Freetown the SLA and RUF components continued to work together in order to recapture Freetown once they had reorganised themselves in the East of the Country. Accordingly, a joint SLA and RUF attack retook Kono, which was one of the key diamond mining areas in Sierra Leone.
17. It is the case of the Prosecution that once the AFRC Government was driven out of power after the intervention the AFRC hierarchical structure remained intact as the AFRC evolved into a purely military organisation.
18. As such, the chain of command within the newly evolved AFRC military organisation was: Johnny Paul Koroma; SAJ Musa; the PLO 1, 2 and 3; followed by the honourables. This chain of command was reflected in 'bush ranks', whereby all of the Accused rose to at least the rank of brigadier.
19. After the joint SLA/RUF force had recaptured Kono, the Second Accused was the senior most SLA commander on the ground. There he worked with Superman who was the senior most RUF Commander on the ground. Each group, whilst working together, had their own commanders and separate chains of command. Whilst in Kono numerous crimes were committed by the SLA/RUF against the civilian population, most notably at Tombodu Town.
20. Around the end of April/beginning of May 1998, the First Accused came from Kailahun to Kono with the blessing of the RUF leadership with logistics for the SLA/RUF forces based in Kono. Upon his arrival in Kono, being the most senior member of the former AFRC

Government, the First Accused took over command of the SLA faction whereupon the Second Accused became his deputy.

21. Around mid-May 1998 the SLA faction in Kono under the First and Second Accused withdrew to Mansofinia and reported to SAJ Musa in the Koinadugu district. SAJ Musa was the most senior SLA Commander on the ground, as Johnny Paul Koroma had been placed under house arrest by the RUF in Kailahun.
22. SAJ Musa ordered the First and Second Accused to find a base in the north of the country and gave them the Third Accused and additional troops for this purpose. At Mansofinia the First Accused organised his brigade structure. By this time he was the commander, the Second Accused was his deputy and the Third Accused was his Chief of Staff.
23. As the three Accused headed north to find a base camp the troops under their command attacked various civilian villages where they committed numerous atrocities against the civilian population of those villages. A prime example of this occurred at Karina, which was the hometown of former President Kabbah. During these attacks the First Accused was in command, the Second Accused was his deputy and the Third Accused held a senior command position as Chief of Staff.
24. Whilst the troop commanded by the three Accused was travelling to the north of Sierra Leone to find a base camp RUF Superman was working with SAJ Musa along the Koinadugu axis, where numerous crimes were committed against the civilian population. SAJ Musa and the Accused kept in radio contact throughout this period until the First Accused lost his radio microphone. Thereafter, he could only listen to radio communications and not make any himself.
25. The three Accused set up a base in the north at Camp Rosos, where their troop remained for about three months. They subsequently moved to another nearby base known as Colonel Eddie Town. SAJ Musa later joined the Accused at Colonel Eddie Town after an in-fight with the RUF in Koinadugu.

THE ATTACK ON FREETOWN

26. It is the case of the Prosecution that SAJ Musa left Colonel Eddie Town around the end of November 1998 with the SLA faction. At this time, the First Accused was his second in command, the Second Accused was his third in command and the Third Accused was his Chief of Staff.
27. Following his split with SAJ Musa at Koinadugu, SAJ Musa had banned communications with the RUF. However, the First Accused and other members of the SLA faction under SAJ Musa secretly kept in touch with the RUF leadership.
28. On the death of SAJ Musa at Benguema around the 22 December 1998, the First Accused assumed command of the SLA faction. The Second Accused became his second in command whilst the Third Accused became his third in command.
29. On assuming command, the First Accused immediately contacted the RUF leadership and sought their support for a proposed joint attack on Freetown. However, as this support was slow in coming the First Accused was compelled to attack Freetown without the assistance of the RUF.
30. The SLA faction attacked and captured Freetown on 6 January 1999, where they were able to hold out for about three weeks. During this three week period the Accused were in contact with the RUF leadership, apprising them of the situation on the ground and waiting for promised ammunition and reinforcements.
31. It is the case of the Prosecution that the objective was for the RUF to join the SLA in Freetown and re-establish the Junta Government. However, as the RUF reinforcements did not arrive in time ECOMOG were able to force the SLA faction under the command of the Accused out of Freetown in late January 1999.
32. During their occupation and withdrawal from Freetown, widespread atrocities against the civilian population were committed by the SLA faction under the command of the Accused.
33. After withdrawing from Freetown the SLA joined up with the RUF faction, who had finally reached the Waterloo area. A two-pronged joint SLA/RUF attack was then

launched against Freetown, which was repulsed by ECOMOG. The Accused all took part in this new attack along with the RUF leadership.

34. Whilst the First and Third Accused fled with the RUF leadership to Makeni the Second Accused with a part of the SLA faction headed to the Western jungle where numerous atrocities were committed against the civilian population under the command of the Second Accused.

II. CONSIDERATIONS WHEN ASSESSING THE LAW AND EVIDENCE

INTRODUCTION

35. Article 17(3) of the Statute, which reflects fundamental international standards, provides that the Accused shall be presumed innocent until proven guilty. The Prosecution bears the burden of establishing the guilt of the Accused, and, in accordance with Rule 87(A) of the Rules, must do so beyond reasonable doubt.
36. Rule 89(A) of the Rules provides that proceedings before the Special Court are governed by the rules contained in Rules 89-98, and that the Chambers are not bound by national rules of evidence. Rule 89(B) adds that in cases not otherwise provided for in those Rules, a Chamber “shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.” In addition, Rule 89(C) provides that “[a] Chamber may admit any relevant evidence.” This provision ensures that the administration of justice will not be brought into disrepute by artificial or technical rules of evidence.¹
37. In cases not otherwise provided for by the Rules, the Trial Chamber has discretion in the evaluation of the evidence, and can take the approach it considers most appropriate for the assessment of evidence, and determine the credibility of witnesses and the weight to be afforded to the evidence proffered by the parties based on all of the relevant evidence admitted at trial.² However, like any judicial discretion, this discretion must be exercised judiciously. There has now developed a body of case law in international criminal courts dealing with the principles applicable to the exercise of this discretion.

¹ *Prosecutor v. Fofana*, SCSL-04-14-T-371, ‘Appeal against Decision refusing Bail’, (“*Fofana Appeal Decision on Bail*”), Appeals Chamber, 11 March 2005.

² *Prosecutor v. Kupreškić et al.*, IT-95-16-A, “Appeal Judgement”, (“*Kupreškić Appeal Judgment*”), App. Ch., 23 October 2001, para. 334; *Prosecutor v. Rutaganda*, ICTR-96-3-A, “Judgement”, (“*Rutaganda Appeal Judgment*”) Appeals Chamber, 26 May 2003., para. 207; *Prosecutor v. Sesay et al.*, SCSL-04-15-T, “Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker”, (“*Sesay Ruling to Exclude Evidence*”) Trial Chamber, 23 May 2005, para. 4; *Fofana Appeal Decision on Bail*, paras 22-24.

CONTRADICTIONS WITHIN A WITNESS'S EVIDENCE, OR BETWEEN THE EVIDENCE OF DIFFERENT WITNESSES

38. The Trial Chamber has discretion to accept a witness's evidence notwithstanding inconsistencies with the witness's prior statements or the evidence of other witnesses.³ In assessing the evidence, the Trial Chamber may accept some parts of a witness's evidence and reject other parts.⁴
39. In particular, where the evidence of a witness relates to events that occurred years before the trial, the Trial Chamber should *not* treat "minor discrepancies between the evidence of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where that witness had nevertheless recounted the essence of the incident charged in acceptable detail."⁵ Lack of detailed memory on the part of a witness in relation to peripheral matters should not in general be regarded as necessarily discrediting the evidence.⁶
40. Thus, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has held that "[f]actors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence."⁷
41. The case law acknowledges in particular:
- a. that "... where the witness is testifying in relation to repetitive, continuous or traumatic events, it is not always reasonable to expect witnesses to recall with precision the

³*Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, "Judgement", (**Čelebići Appeal Judgment**) Appeals Chamber, 20 February 2001, para. 497; *Kupreškić Appeal Judgment*, paras 31 and 156; *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, "Judgement," (**Kajelijeli Appeal Judgment**) Appeals Chamber, 23 May 2005, paras. 96-97; *Prosecutor v. Semanza*, ICTR-97-20-A, "Judgement", (**Semanza Appeal Judgment**) Appeals Chamber, 20 May 2005, para. 224; *Prosecutor v. Limaj et al.*, IT-03-66-T, "Judgement", (**Limaj Trial Judgment**) Trial Chamber, 30 November 2005, paras 12, 543.

⁴*Prosecutor v. Strugar*, IT-01-42-T, "Judgement", (**Strugar Trial Judgment**) Trial Chamber, 31 January 2005, para. 7; *Kupreškić Appeal Judgment*, paras 332-333; *Prosecutor v. Kunarac et al.*, IT-96-23, IT-96-23/1-A, "Appeal Judgment", (**Kunarac Appeal Judgment**) Appeal Chamber, 12 June 2002, para. 228.

⁵ *Blagojević and Jokić Trial Judgment*, para. 23, *Prosecutor v. Krnojelac*, IT-97-25-T, "Judgement", (**Krnojelac Trial Judgment**) Trial Chamber, 15 March 2002, para. 69 (emphasis added).

⁶ *Ibid.*

⁷ *Kupreškić Appeal Judgment*, para. 31.

- details, such as exact date or time, and/or sequence of the events to which they testify,”⁸ and that such circumstances may impair the ability of such witnesses to express themselves clearly or present a full account of their experiences in a judicial context;⁹
- b. that “it lies in the nature of criminal proceedings that a witness may be asked different questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court;”¹⁰
 - c. that “[a] witness may also forget some matter or become confused;”¹¹
 - d. that while there may be cases in which the trauma experienced by a witness may make that person unreliable as a witness, there is no recognized rule of evidence that traumatic circumstances render a witness’s evidence unreliable, and, if the Trial Chamber is to treat a witness as unreliable due to “the traumatic context, it must demonstrate this *in concreto* through a reasoned opinion adequately balancing all the relevant factors;¹² and
 - e. that where a witness is testifying about extremely traumatic events, any observation they made at the time may have been affected by stress and fear.”¹³
42. These factors are taken into account when assessing the credibility of witnesses.¹⁴
43. In cases of *repeated* contradictions within a witness’ testimony, the evidence can still be relied on if it has been sufficiently corroborated.¹⁵

⁸ *Prosecutor v. Simić et al.*, IT-95-9-T, “Judgement”, (“**Simić Trial Judgment**”) Trial Chamber, 17 October 2003, para. 22.

⁹ *Čelebići Trial Judgment*, para. 595.

¹⁰ *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, (“**Naletilić Trial Judgment**”) Trial Chamber, 31 March 2003, para 10; *Prosecutor v. Vasiljević*, IT-98-32-T, “Judgement”, (“**Vasiljević Trial Judgment**”) Trial Chamber, 29 November 2002, para. 21; *Strugar Trial Judgment*, para. 8.

¹¹ *Strugar Trial Judgment*, para. 8.

¹² *Kunarac Appeal Judgment*, para. 324; see also *Prosecutor v. Kayishema*, ICTR-95-1-T, “Judgement and Sentence”, (“**Kayishema Trial Judgment**”) Trial Chamber, 21 May 1999, paras 73-75.

¹³ *Limaj Trial Judgment*, para. 15.

¹⁴ *Simić Trial Judgment*, para. 22; *Strugar Trial Judgment*, para. 8; *Limaj Trial Judgment* paras 12, 543.

¹⁵ *Prosecutor v. Halilović*, IT-01-48-T, “Judgement”, (“**Halilović Trial Judgment**”) Trial Chamber, 16 November 2005, para. 17.

CORROBORATION IS NOT REQUIRED

44. The Trial Chamber may rely on the testimony of a single witness as proof of a material fact;¹⁶ corroboration is not required although it may go to weight,¹⁷ and absence of corroboration may be particularly significant in the case of identification evidence.¹⁸ The uncorroborated testimony of a single witness may be sufficient to establish the presence of the Accused at the scene of a crime,¹⁹ and indeed, the Appeals Chamber of the ICTY has confirmed that an Accused may even be *convicted* on the basis of the evidence of a single witness, although such evidence must be assessed with the appropriate caution.²⁰

ASSESSING THE CREDIBILITY AND RELIABILITY OF WITNESSES

45. In addition to the matters referred to above, in assessing the credibility and reliability of witnesses, the Trial Chamber may have regard to matters such as the following:
- a. the fact that witnesses who do not have a high level of education may have difficulties in identifying and testifying to exhibits such as maps, and may have difficulties in testifying to dates, times, distances, colours and motor vehicles;²¹
 - b. the fact that the inability of witnesses to identify correctly types of weapons or the nature of injuries inflicted on a victim may be due to the witness's lack of knowledge of weapons or physiology, rather than any unreliability as a witness;²²
 - c. the fact that human memory degenerates over time²³ (and that peripheral details may be

¹⁶ Other, perhaps, than in the case of the testimony of a child witness not given under solemn declaration: *Kupreškić* Appeal Judgment, para. 33.

¹⁷ *Prosecutor v. Tadić*, IT-94-1-A, "Judgement", ("**Tadić Appeal Judgment**") Appeals Chamber, 15 July 1999, para. 65; *Čelebići* Appeal Judgment, para. 507; *Prosecutor v. Aleksovski*, IT-95-14/1-A, "Judgement", ("**Aleksovski Appeal Judgment**") Appeals Chamber, 24 March 2000, paras 62-63; *Kunarac* Appeal Judgment, paras. 268 (and paras. 264-271 generally); *Kupreškić* Appeal Judgment, para. 33; *Kajelijeli* Appeal Judgment, para. 170 (citing cases); *Prosecutor v. Rutaganda*, ICTR-96-3-T, Trial Chamber I, 6, "Trial Judgment and Sentence", ("**Rutaganda Trial Judgment**") Trial Chamber, December 1999, para. 18; *Čelebići* Trial Judgment, para. 594; *Prosecutor v. Akayesu*, ICTR-96-4-T, "Judgement," ("**Akayesu Trial Judgment**") Trial Chamber, 2 September 1998, paras. 132-136; *Kayishema and Ruzindana* Trial Judgment, para. 80; *Simić* Trial Judgment, para. 25; *Strugar* Trial Judgment, para. 9.

¹⁸ *Kupreškić* Appeal Judgment, paras 34, 220.

¹⁹ *Kajelijeli* Appeal Judgment, paras. 96-97.

²⁰ *Kordić and Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, "Judgement", ("**Kordić and Čerkez**") Appeals Chamber, 17 December 2004, para. 274 (emphasis added). *Halilović* Trial Judgment, para. 18.

²¹ *Rutaganda* Trial Judgment, para. 23.

²² *Ibid*, paras. 334-335.

²³ *Akayesu* Trial Judgment, paras 140, 454-455.

- forgotten over time, even if memories of core details remain vivid);
- d. the fact that witnesses may have difficulties in testifying through an interpreter, or that discrepancies in a witness statement given via an interpreter may be due to problems of interpretation;²⁴
 - e. the fact that “a significant number of witnesses requested protective measures at trial, and expressed concerns for their lives and those of their family;”²⁵
 - f. the fact that there is no reason why a person suffering from Post-Traumatic Stress Disorder (PTSD) cannot be a perfectly reliable witness;²⁶ survivors of such traumatic experiences cannot however be expected to recall the precise minutiae of events such as exact dates and times, and their inability to do so may in certain circumstances indicate truthfulness and lack of interference with the witness;²⁷
 - g. the fact that discrepancies between a witness’s testimony and the witness’s prior statement(s) may be due to a variety of factors, and do not necessarily indicate that the witness is not credible or reliable, such other factors include failings on the part of the Prosecution investigator, translation problems, and the fact that witness statements are not made under solemn declaration before a judicial officer; thus, the Trial Chamber may attach greater probative value to the witness’s oral testimony in court which has been subject to the test of cross-examination,²⁸ and
 - h. the fact that cultural factors of loyalty and honour may also have affected the witnesses’ evidence as to the events.²⁹

²⁴ *Rutaganda* Trial Judgment, paras 23, 334-335; *Akayesu* Trial Judgment, paras 145-154.

²⁵ *Limaj* Trial Judgment, para. 15.

²⁶ *Kupreškić* Appeal Judgment, para. 171; *Prosecutor v. Furundžija*, ICTY IT-95-17/1-T, “Judgement,” (“*Furundžija* Trial Judgment”), 10 December 1998, para. 109.

²⁷ *Furundžija* Trial Judgment, para. 113 (and see paras. 110 to 116 generally); *Akayesu* Trial Judgment, paras 142-144, 299.

²⁸ *Kayishema* Trial Judgment, paras 76-80; *Akayesu* Trial Judgment, para. 137; *Rutaganda* Trial Judgment, para. 19.

²⁹ *Limaj* Trial Judgment, para. 15.

HEARSAY EVIDENCE

46. Rule 89(C) gives the Chamber a broad discretion to admit relevant hearsay evidence,³⁰ that is, a statement of a person made otherwise than in the proceedings in which it is tendered, that is nevertheless tendered in those proceedings in order to establish the truth of what that person says.³¹ This applies even when the evidence cannot be examined at its source or when it is not corroborated by direct evidence.³² Proceedings in this legal system are conducted before professional judges who possess the necessary ability to begin by hearing hearsay evidence and then to evaluate it.³³ In the context of armed conflicts where thousands of people are displaced, detained or even killed, it can be expected that the witnesses will refer to events which others, and not they themselves, experienced, although such evidence must be considered on the basis of parity between the parties and on respect for the rights of the Accused as expressed in internationally recognised standards.³⁴

CIRCUMSTANTIAL EVIDENCE

47. Circumstantial evidence is admissible where it is in the interests of justice to admit it,³⁵ and is often used to establish the *mens rea* of an accused. If there is more than one conclusion which is reasonably open from the evidence, these conclusions must all be consistent with the guilt of an accused.³⁶

³⁰ *Aleksovski Appeal Decision on Evidence*, para. 15; *Prosecutor v. Blaškić*, IT-95-14-T, “Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability,” (“*Blaškić Decision on Admission of Hearsay*”) Trial Chamber, 21 January 1998, para. 10; *Prosecutor v. Tadić*, IT-94-1-T “Decision on Defence Motion on Hearsay” (*Tadić Decision on Hearsay*”), 5 August 1996, paras. 7, 17; *Kordić and Čerkez Appeal Judgment*, paras 281, 282.

³¹ *Aleksovski Appeal Decision on Evidence*, para. 15; *Blaškić Decision on Admission of Hearsay*, para. 10; *Tadić Decision on Hearsay*, paras 7, 17; *Kordić and Čerkez Appeal Judgment*, paras 281, 282.

³² *Simić Trial Judgment*, para. 23.

³³ *Aleksovski Appeal Decision on Evidence*, para. 15; *Blaškić Decision on Admission of Hearsay*, para. 10; *Tadić Decision on Hearsay*, paras. 7, 17.

³⁴ *Blaškić Decision on Admission of Hearsay*, para. 4.

³⁵ *Simić Trial Judgment*, para. 27.

³⁶ *Halilović Trial Judgment*, para. 15; *Kordić and Čerkez Appeal Judgment*, para. 289; *Delalić Appeal Judgment*, para. 458; *Simić Trial Judgment*, para. 27.

INSIDER WITNESSES

48. In any trial in which an ‘insider’ provides evidence it is for the Tribunal of fact to assess what, if any, impact the conditions surrounding the witness have affected the reliability and credibility of the testimony. For instance, the witness George Johnson, TF1-167 was a very senior member of the AFRC faction in the bush; consequently, upon him making the decision to testify if it was appropriate, upon an objective assessment of his security position that he be provided with protection. In the difficult task of evaluating the evidence, due regard can be had to this “context of fear.”³⁷
49. Insider witnesses play a crucial role in the trials in international criminal courts and are recognised as a pivotal source of evidence. In *Prosecutor v. Hassan Ngeze and Barayagwiza*, the ICTY Trial Chamber considered that the testimony of an insider was in the “the interests of justice.”³⁸ Thus, the fact that such insiders have commonly been granted guarantees of non-Prosecution or mitigation is not considered as undermining the credibility of their testimonies.

PAYMENTS TO WITNESSES

50. During the course of the trial, an issue was raised in respect of the payment of money to witnesses; as these were payments made by the Special Court, in accordance with its standard practices that are applicable to both Prosecution and Defence witnesses alike, there can be no suggestion that the payments influence the testimony of the witnesses.

EXPERT WITNESSES

51. Neither the Statute nor the Rules oblige a Trial Chamber to require medical reports or other scientific evidence as proof of a material fact.³⁹ In relation to experts, it is for the Court to determine whether the factual basis for an expert opinion is truthful and that

³⁷ *Limaj* Trial Judgment, para. 15.

³⁸ *Prosecutor v. Hassan Ngeze and Barayagwiza*, ICTR-99-52-I “Decision on the Defence Request to Hear the Evidence of Witness Y by Deposition,” Trial Chamber, 10 April 2003, para. 7.

³⁹ *Aleksovski* Appeal Judgment, para. 62.

determination is made in the light of all the evidence given.⁴⁰ Furthermore, the weight to be attributed to expert evidence is to be determined by the Trial Chamber in light of all the evidence adduced.⁴¹ According to the jurisprudence, the factors to consider when assessing the probative value of an expert's oral and written evidence are the professional competence of the expert, the methodologies used and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber.⁴² The Prosecution stresses that "[...] the expert may validly present his submissions on the issue of subordination, which naturally falls within the field of expertise of a military expert, and that, in this context, a military expert may express his opinion on matters of law."⁴³

DOCUMENTARY EVIDENCE

52. The weight to be attached to documents admitted into evidence is assessed when considering the entire evidence at the end of the trial.⁴⁴ If the original of a document is unavailable then copies may be relied upon.⁴⁵

RELEVANCE OF THE EVIDENCE OF ONE ACCUSED IN RELATION TO OTHER ACCUSED

53. As a general principle, the Trial Chamber should consider all of the evidence in a case in relation to all of the Accused in the case, so far as it is relevant. It is quite common in a joint trial for the evidence of one accused to be prejudicial to another accused. This does not mean that the evidence of each Accused cannot be taken into account in relation to each of the other accused. The ability of the Trial Chamber in such cases to consider the evidence as a whole in relation to all of the Accused enables it to get to the truth of the

⁴⁰ *Prosecutor v. Galić*, IT-98-29-T, "Decision on the Expert Witness Statements Submitted by the Defence", ("Galić Decision on Expert Witness") Trial Chamber, 27 January 2003, p. 4; *Čelebići Appeal Judgment*, para. 594.

⁴¹ *Galić Decision on Expert Witness*, p. 4; *Prosecutor v. Brđanin*, IT-99-36-T "Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown," Trial Chamber, 3 June 2003, p. 4.

⁴² *Blagojević Trial Judgment*, para. 27 endorsing *Vasiljević Trial Chamber's view*.

⁴³ *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, T "Decision on Report of Prosecution Expert Klaus Reinhardt", Trial Chamber 11 February 2004, p. 4.

⁴⁴ *Prosecutor v. Simić et al.*, IT-95-9-T, "Reasons for Decision on Admission of "Variant A&B" Document," Trial Chamber, 22 May 2002.

para. 12.

⁴⁵ *Fofana Appeal Decision on Bail*, para. 24.

matter in relation to all of the accused.⁴⁶

54. Thus, a witness presented by one Accused can give evidence against a co-Accused.⁴⁷ Similarly, evidence brought to light in the cross-examination of a witness by one Accused can be taken into account to the prejudice of another Accused, although the other Accused will have the right to further examine that witness to clarify the matter.⁴⁸

FAILURE TO PUT DEFENCE CASE TO PROSECUTION WITNESSES

55. The Rules of Procedure and Evidence of the Special Court do not have an equivalent rule to Rule 90(H)(ii) of the Rules governing procedures before the ICTY which provides:

In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness.⁴⁹

56. Nonetheless, the Prosecution submits that as a matter of good practice, and in accordance with general principles, each party is under a duty to put its case to witnesses for the opposing party.⁵⁰

⁴⁶ See, for instance, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Request for Severance of Three Accused”, (“Bagosora Decision”) Trial Chamber, 27 March 2006, para. 5 referring to earlier relevant case law of the ICTY and ICTR.

⁴⁷ See *Prosecutor v. Kvočka et al.*, IT-98-30-PT, “Decision on the ‘Request to the Trial Chamber to Issue a Decision on Use of Rule 90 H’”, Trial Chamber, 11 January 2001, p. 3, in which the Trial Chamber rejected a defence motion seeking to limit Prosecution cross-examination of Defence witnesses to questions relating to the accused who called that witness. The Trial Chamber considered “that a witness presented by an accused may give evidence against one of his co-accused, so that the co-accused has a right to cross-examine that witness, and further that to prohibit all cross-examination by a co-accused as requested in the Motion could exclude relevant evidence”.

⁴⁸ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Decision on the Defence Motion for the Re-Examination of Witness DE”, Trial Chamber, 19 August 1998, para. 15.

⁴⁹ The provision was added to the Rules of Procedure and Evidence of the ICTY on 17 November 1999. A similar provision was added to the ICTR Rules (Rule 90(G)(ii)) on 23 May 2003.

⁵⁰ In *Prosecutor v. Krajisnik*, it was noted by the Presiding Judge that the background to Rule 90(H)(ii) was that it would be unfair to a witness not to have the opportunity to respond to a party’s case, being unaware of what that case would be. See Transcript, 15 March 2006, p. 21428. See also *Prosecutor v. Oric*, IT-03-68-T, “Decision on Partly Confidential Defence Motion Regarding the Consequences of a Party Failing to Put its Case to Witnesses pursuant to Rule 90(H)(II)”, 17 January 2006; and *Prosecutor v. Brdjanin and Talic*, IT-99-36-T, “Decision on ‘Motion to Declare Rule 90(H)(ii) Void to the Extent that it is in violation of Article 21 of the Statute of the International Tribunal’ by the Accused Radoslav Brdjanin and on ‘Rule 90(H)(ii) Submissions’ by the Accused Momir Talic”, (“**Brdjanin Rule 90(H)(ii) Decision**”), 22 March 2002, for an analysis of the foundations, purpose and scope of the Rule.

57. This issue arose during the CDF proceedings where the Presiding Judge indicated that it was one to be considered at the end of the trial.⁵¹ The Prosecution provided the Trial Chamber in those proceedings with some relevant authorities when the point was raised.⁵²

58. The ICTR Appeals Chamber stated, prior to the adoption of an equivalent rule to Rule 90(H)(ii) of the ICTY Rules, that:

[W]hen weighing the Defence's allegations going to the credibility of the Prosecution witnesses, a Trial Chamber is entitled to take into account the fact that the Defence did not put such allegations to the witnesses for their reactions. Indeed, without the benefit of observing the witnesses' reactions to such allegations, the Trial Chamber was not in a position to determine whether there was merit in the Defence allegations. Contrary to the Appellant's claim, there is no indication that the Trial Chamber based its position on this matter on the version of Rule 90(G) which came into effect after the Appellant's trial.⁵³

59. In the *Akayesu* case before the International Criminal Tribunal for Rwanda (ICTR), the Trial Chamber had also found that a party must lay the foundations for its challenges and put those challenges to the witness in question during cross-examination, both as a matter of practicality and of principle.⁵⁴ The practical point is that in the absence of such a procedure, the Chamber is deprived of a resolution of the matter in the form of a convincing admission or rebuttal by the witness. The point of principle is that of fairness to the witness in having an allegation put to him so that he may respond to it.⁵⁵

60. The Trial Chamber in *Akayesu* went on to say that while this was a rule under the common law, "it is also simply a matter of justice and fairness to victims and witnesses, principles recognised in all legal systems throughout the world."⁵⁶ The precise circumstances in the *Akayesu* case were that the defence, in closing arguments, invited the Chamber to

⁵¹ *Prosecutor v Norman, Fofana, Kondewa*, Transcript, 14 February 2006, p. 65, lines 10-20.

⁵² *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-560, "Public Prosecution Authorities on the Duty of a Party to Put its Case to Witnesses in Cross-Examination", 16 February 2006. While the Defence for Fofana filed a Response, the issue did not fall to be decided at that stage of the proceedings, see SCSL-2004-14-T-561, "Fofana Response to Prosecution Authorities on the Duty of a Party to Put its Case to Witnesses in Cross-Examination", 17 February 2006.

⁵³ *Prosecutor v Kajelijeli*, ICTR-98-44A-A, "Judgement", Appeals Chamber, 23 May 2005, para. 26.

⁵⁴ *Akayesu* Trial Judgment, para. 46.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

disbelieve the testimony of prosecution witnesses on the basis that they belonged to a syndicate of informers or may have denounced the accused to take over his property, having failed to put this allegation to the witnesses concerned. The Trial Chamber did not accept the defence argument and determined that the credibility of each witness in the case had to be assessed on its merits.

61. As noted in *Akayesu*, the described rule has its origins in the common law and is followed in certain adversarial systems such as in England. It is generally known as the “the rule in *Browne v Dunn*”⁵⁷ which “emphasises the importance of cross-examination in obtaining comment upon facts in issue.”⁵⁸
62. The Prosecution submits that Rule 90(H)(ii) of the ICTY Rules and Rule 90(G)(ii) of the ICTR Rules merely codify a general principle of fairness. Commenting on the provision, the ICTY Appeals Chamber has stated:

Rule 90(H)(ii) seeks to facilitate the fair and efficient presentation of evidence whilst affording the witness cross-examined the possibility of explaining himself on those aspects of his testimony contradicted by the opposing party’s evidence, so saving the witness from having to reappear needlessly in order to do so and enabling the Trial Chamber to evaluate the credibility of his testimony more accurately owing to the explanation of the witness or his counsel.⁵⁹

63. The Prosecution submits that the Trial Chamber should refuse to accept or give less weight to Defence evidence that presents a line of defence that has not been put to Prosecution witnesses (for example the evidence of the First Accused that he was maltreated in the presence of Lt. Col. Petrie) in the interests of fairness to the witnesses and overall considerations of justice.

⁵⁷ *Browne v. Dunn* (1893) 6 R. 67, H.L.

⁵⁸ *Prosecutor v Brdjanin and Talic*, IT-99-36-T, “Decision on ‘Motion to Declare Rule 90(H)(ii) Void to the Extent that it is in violation of Article 21 of the Statute of the International Tribunal’ by the Accused Radoslav Brdjanin and on ‘Rule 90(H)(ii) Submissions’ by the Accused Momir Talic”, 22 March 2002, para. 12. The rule may be stated as follows: “If in a crucial part of the case, the prosecution intend to ask the jury to disbelieve the evidence of a witness for the defence it is right and proper that the witness should be challenged when in the witness-box, or at any rate, that it should be made plain while the witness is in the box that this evidence is not accepted”, Archbold, *Criminal Pleading, Evidence and Procedure* (London: 2001), p. 1097, cited in *Brdjanin Rule 90(H)(ii) Decision*, para. 12.

⁵⁹ *Prosecutor v Brdjanin and Talic*, IT-99-36-AR73.7, “Decision on the Interlocutory Appeal against a Decision of the Trial Chamber, as of right”, 6 June 2002, p. 4.

RELEVANCE OF EVIDENCE OF ACTS OCCURRING OUTSIDE THE TEMPORAL OR GEOGRAPHIC SCOPE OF THE INDICTMENT

64. Cases before international criminal courts commonly involve numerous crimes committed on a large scale over a significant period of time and over a large geographical area. Thus, in this case, the Indictment specifies the crimes charged by reference to geographical locations and periods of time. For instance, paragraph 68 of the Indictment charges the Accused with enslavement committed in Kono District “between about 14 February 1998 to January 2000,” and in “locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wonedu, Tomendeh.”
65. An accused can, of course, only be convicted of crimes with which he has been charged in the Indictment, even if at trial evidence emerges of other crimes for which he may bear responsibility. However, this does not mean that evidence of crimes or other conduct that occurred outside the geographical or temporal scope of the Indictment is irrelevant.⁶⁰
66. First, such evidence may nonetheless be relevant in determining whether the crimes charged have been proved beyond a reasonable doubt. For example, if an accused is charged with having murdered someone by shooting them on a specific date, this does not mean that evidence of the accused’s conduct, such as his preparatory acts or prior threats on other dates is inadmissible. These events occurring before and after the date of the alleged crime would typically not be pleaded in the indictment, but are, however, subject to pre-trial disclosure.
67. Evidence of crimes committed outside the geographic or temporal scope of the Indictment may be probative of the question whether the crimes charged in the Indictment were part of a widespread or systematic attack against a civilian population. Similarly, evidence that an accused exercised superior authority (for purposes of Article 6(3) of the Statute) shortly before the timeframe in the indictment, and/or shortly after the timeframe of the indictment, may clearly be probative of the question whether the accused exercised superior authority *during* the timeframe of the Indictment. In short, while the Trial Chamber is only called upon to decide what is charged in the indictment, in so doing, it

⁶⁰ *Prosecutor v. Strugar, Decision on the Defence Objection to the Prosecution’s Opening Statement Concerning Admissibility of Evidence*, Case No. IT-01-42-T, Trial Chamber. II, 22 January 2004, p. 3; *Prosecutor v. Kupreškić et al, Appeal Judgement*, Case No. IT-95-16-A, Appeals Chamber., 23 October 2001, paras. 321, 323.

must look at all of the evidence in the case considered as a whole, including evidence of matters falling outside the timeframe in the indictment.

68. All of the evidence in this case has been admitted by the Trial Chamber on the grounds that it is relevant. Where the Defence has had objections to the admission of evidence on grounds of relevance, it has had the opportunity to raise these objections during the trial. At this stage, at the end of the trial, the Trial Chamber must evaluate all of the evidence in the case as a whole. Evidence cannot be disregarded, merely because it deals with matters outside the geographical or temporal scope of the Indictment.
69. It furthermore needs to be emphasized that in order for an accused to be convicted of a crime charged in the indictment, it is not necessary for the Prosecution to prove beyond a reasonable doubt that the crime was in fact committed within the timeframe specified in the Indictment. It *cannot* be argued, for instance, that if witnesses are contradictory or uncertain as to the precise time at which a crime was committed, there must be a reasonable doubt as to whether the crime was within the temporal timeframe of the Indictment, and that the Accused must therefore be acquitted. The time of the commission of a crime is not a material element of the crime, and the guilt of an accused does not depend on it being proved.
70. The reason for specifying dates in an indictment is not because they are material to criminal liability but is to give notice to the Defence, so that it is able to prepare its case. However, it is clear that it is not always possible to be precise about exact dates when dealing with events on the scale that are under consideration, given especially the climate of upheaval in which they occurred. For this reason, the dates and timeframes given in the Indictment are often prefaced with qualifying words such as “between about” two given dates.
71. The common law rule concerning dates specified in an indictment, which was said in *Dossi* to be a rule that has existed “since time immemorial,”⁶¹ is expressed in *Archbold* as follows:

⁶¹ *R. v. Dossi*, 13 CR.App.R. 158 (CCA), at pp. 159-160 (“*Dossi*”): “From time immemorial a date specified in an indictment has never been a material matter unless it is actually an essential part of the alleged offence.... Thus, though the date of the offence should be alleged in the indictment it has never been necessary that it should be laid according to truth unless time is of the essence of the offence.”

... a date specified in an indictment is not a material matter unless it is an essential part of the alleged offence; the defendant may be convicted although the jury finds that the offence was committed on a date other than that specified in the indictment....

The prosecution should not be allowed to depart from an allegation that an offence was committed on a particular day in reliance on the principle in *Dossi* if there is a risk that the defendant has been misled as to the allegation he has to answer or that he would be prejudiced in having to answer a less specific allegation....⁶²

72. The rule in *Dossi* was applied by the Appeals Chamber of the ICTR in the *Rutaganda* case.⁶³ The *Dossi* principle has also been recognised by the Appeals Chamber of the ICTY in the *Kunarac* case.⁶⁴ *Dossi* was further cited with approval by the ICTY Trial Chamber in the *Tadic* case, which affirmed that the date of the crime is not of the essence.⁶⁵ The ICTR Trial Chamber in the *Kayishema and Ruzindana* case expressly approved this passage in the *Tadic* case and the authorities cited therein (including *Dossi*), and similarly affirmed that the Prosecution need not prove an exact date of an offence where the date or

⁶² *Archbold Criminal Pleading, Evidence and Practice*, 2002 Edition, paras. 1-127 to 128, emphasis added.

⁶³ *Prosecutor v. Rutaganda*, ICTR-96-3-A, "Judgement", Appeals Chamber, 26 May 2003, paras 296-306, especially para. 306: "It is the opinion of the Appeals Chamber that the alleged variance between the evidence presented at trial and the Indictment in relation to the date of the commission of the offence cannot lead to invalidation of the Trial Chamber's findings unless the said date is actually an essential part of the Appellant's alleged offence. However, such is not the case in this instance. The Appeals Chamber notes, moreover, that according to the evidence presented at trial, the weapons distributions occurred during a period that was reasonably close to the date referred to in the Indictment and that, therefore, the Appellant was not misled as to the charges brought against him. For these reasons, the Appeals Chamber dismisses this sub-ground of appeal and finds that the Trial Chamber did not commit the alleged error of law in this instance." The Appeals Chamber in this judgement affirmed the judgement of the Trial Chamber in this respect: see *Prosecutor v. Rutaganda*, ICTR-96-3-T, "Judgement", Trial Chamber, 6 December 1999, para 201: "The Chamber notes that the dates of the three incidents - 8 April, 15 April, and 24 April - vary from the date on or about 6 April, which is set forth in paragraph 10 of the Indictment. The phrase 'on or about' indicates an approximate time frame, and the testimonies of the witnesses date the events within the month of April. The Chamber does not consider these variances to be material or to have prejudiced the Accused. The Accused had ample opportunity to cross-examine the witnesses. In reviewing the allegation set forth in this paragraph of the Indictment, the Chamber finds that the date is not of the essence. The essence of the allegation is that the Accused distributed weapons in this general time period." (Footnote omitted.)

⁶⁴ *Prosecutor v. Kunarac et al.*, IT-96-23&23/1-A, "Judgement", Appeals Chamber, 12 June 2002, para. 217: "in the view of the Appeals Chamber, minor discrepancies between the dates in the Trial Judgement and those in the Indictment in this case go to prove the difficulty, in the absence of documentary evidence, of reconstructing events several years after they occurred and not, as implied by the Appellant, that the events charged in Indictment IT-96-23 did not occur."

⁶⁵ *Prosecutor v. Tadic*, IT-94-1-T, "Opinion and Judgement", 7 May 1997, para. 534.

time is not also a material element of the offence.⁶⁶ In that case the Trial Chamber stated:

It is unnecessary, however, for the Prosecution to prove an exact date of an offence where the date or time is not also a material element of the offence. Whilst it would be preferable to allege and prove an exact date of each offence, this can clearly not be demanded as a prerequisite for conviction where the time is not an essential element of that offence. Furthermore, even where the date of the offence is an essential element, it is necessary to consider with what precision the timing of the offence must be detailed. It is not always possible to be precise as to exact events; this is especially true in light of the events that occurred in Rwanda in 1994 and in light of the evidence we have heard from witnesses. Consequently, the Chamber recognises that it has balanced the necessary practical considerations to enable the Prosecution to present its case, with the need to ensure sufficient specificity of location and matter of offence in order to allow a comprehensive defence to be raised.⁶⁷

73. The principle is applied in the national courts of a variety of jurisdictions, including for instance England and Wales,⁶⁸ Australia,⁶⁹ Canada,⁷⁰ Trinidad and Tobago⁷¹ and Papua New Guinea.⁷²
74. In cases where the evidence indicates that the event in question happened outside the temporal timeframe of the indictment, the question is thus whether the accused “has been misled as to the allegation he has to answer or that he would be prejudiced in having to answer a less specific allegation.” The Prosecution submits that if some witnesses put the

⁶⁶ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Judgement and Sentence”, 21 May 1999, paras. 81-86.

⁶⁷ *Ibid*, para. 85.

⁶⁸ *R. v. JW* [1999] EWCA Crim 1088 (21 April 1999) (CCA); *R. v. Lowe* [1998] EWCA Crim 1204 (CCA).

⁶⁹ *R. v. Kenny Matter*, No. CCA 60111/97 (29 August 1997) (NSW CCA), where the indictment alleged offences in 1986 and the court convicted on evidence indicating that the offence happened in the last week of 1985; *R. v. Liddy* [2002] SASC 19 (31 January 2002) (SA CCA), esp. paras. 256ff; *R. v. Frederick* [2004] SASC 404 (7 December 2004) (SA CCA), esp. paras. 38-41.

⁷⁰ *R. v. Hughes* [1988] BCJ No. 2496; *R. v. B(G)* (1990), 56 CCC (3d) 200; *A.B. and C.S. v. R.*, [1990] 2 SCR 30 (SCC) both found at (<http://www.canlii.ca/ca/cas/scc/1990/1990scc59.html>).

⁷¹ *Bowen v. State*, Cr. App. No. 26 of 2004, Trinidad and Tobago Court of Appeal, 12 January 2005 (http://64.233.179.104/search?q=cache:LAekyq0Fx_wJ:www.ttlawcourts.org/Judgments/coa/2005/john/Cra26_2004.rtf+dossi+indictment&hl=en&gl=uk&ct=clnk&cd=5).

⁷² *State v. Fineko* [1978] PNGLR 262 (25th July, 1978) (<http://www.worldlii.org/pg/cases/PNGLR/1978/262.html>). The rule is not applicable where the defence has provided an alibi defence or where the age of the complainant is an essential element of the offence. See *R. v. Radcliffe* [1990] Crim LR 524 (CA).

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events within the relevant timeframe and others put it without or are uncertain as to time, it is difficult to see how the Defence could have been misled as to the allegation that the Accused has to answer. Even if all the evidence puts an event outside the timeframe of the Indictment, it is still difficult to see how the Defence would have been misled or prejudiced, given the inclusion in the Indictment of words such as “between about,” unless on the evidence it appears that the event was clearly so far outside the timeframe that the Indictment could not even be considered to be the same event as that to which the Indictment refers. Furthermore, the defence would have had the opportunity to cross-examine the Prosecution witnesses on this aspect of their evidence.

III. OBSERVATIONS ON THE TESTIMONY OF ALEX TAMBA BRIMA

75. The First Accused's evidence may be rejected in its entirety as founded on lies. The Accused has lied about his name, his nickname, his health, his occupation; all matters which may be regarded as highly relevant issues which have constituted for the First Accused important aspects of his defence.⁷³
76. Resolving whether or not the First Accused has lied in his evidence on these issues does not require findings on the merits of the evidence of Prosecution "insider" witnesses. The First Accused's lies are obvious on the face of his own evidence and the evidence (including documentary evidence) put to him in cross-examination.

"ALEX" TAMBA BRIMA/ TAMBA "ALEX" BRIMA

77. TF1-153 gave evidence that he had grown up with the First Accused – whom he called *Alex Tamba Brima* - at Wilberforce Barracks [emphasis added]. He testified that the First Accused was nicknamed "Gullit" because he was a very good footballer.⁷⁴ Asked about TF1-153's testimony in cross-examination, the First Accused gave the implausible explanation that TF1-153 had made a "mistake" because he had "gone mad."⁷⁵

79. A number of Prosecution witnesses testified that the First Accused's full name is Alex Tamba or Tamba Alex Brima. TF1-184 testified that "Gullit" was known as "*Alex Brima*".⁷⁸ TF1-334 testified that "Gullit" was "*Tamba Alex Brima*".⁷⁹ TF1-114 testified

⁷³ Brima's evidence on matters more directly relevant to the various subject headings in this brief, are addressed later in the brief under those subject headings (for eg, Brima's membership of the Supreme Council, his position as PLO II, his alibis for Kono and Bombali districts, and the invasion of Freetown).

⁷⁴ TF1-153, Transcript 22 September 2005, pp. 13-14; p. 56.

⁷⁵ Accused Alex Tamba Brima: Transcript 29 June 2006, p. 16.

⁷⁶ Accused Alex Tamba Brima, Transcript 19 June 2005, Closed session, pp. 22-23.

⁷⁷ Accused Alex Tamba Brima, Transcript 19 June 2005, Closed session, p. 23.

⁷⁸ TF1-184, Transcript 27 September 2005, p. 19.

that the name “*Alex Tamba Brima*” was announced by the mass media with regards to the overthrow of the government in May 1997.⁸⁰ TF1-033 testified that “*Tamba Alex Brima*” was known as “*Gullit*.”⁸¹ George Johnson testified that “*Alex Tamba Brima*’s” “aka name” was “*Gullit*.”⁸² [Emphases added.]

80. The First Accused testified that he had never been known as “*Alex*.”⁸³
81. Cross-examined on Prosecution Exhibit P81,⁸⁴ a Power of Attorney signed by him on 12 March 2003 in the name “*Tamba Alex Brimah*” [emphasis added], with a signature bearing the initials “*T*” and “*A*”, the First Accused lied. He testified that this Power of Attorney, appointing three lawyers including Special Court Duty Counsel AFRC Claire Carlton-Hanciles to act as his attorneys, was signed by him “under duress.”⁸⁵
82. No such claim was ever reported to any Special Court official, or articulated before any Chamber, whether by the Accused or through his Counsel.⁸⁶ The First Accused later gave an implausible explanation for the signature’s appearance, claiming that he had signed the Power of Attorney with the initials “*T-A-M*” (or “*T-M*”), as this was “how I abbreviate my signature.”⁸⁷
83. Prosecution Exhibit P82,⁸⁸ a Request for Legal Assistance, was also signed by the First Accused on 12 March 2003 with initials “*T*” and “*A*” in the name “*Tamba Alex Brimah*”. On this occasion, the First Accused accepted that the signature bore an initial “*A*”, but claimed that he had been forced to sign the document by a policeman serving in the SLP,⁸⁹

⁷⁹ TF1-334, Transcript 16 May 2005, p. 21.

⁸⁰ TF1-114, Transcript 14 July 2005, pp. 118-119.

⁸¹ TF1-033, Transcript 11 July 2005, p. 6.

⁸² George Johnson, Transcript 15 September 2005, pp. 9-10.

⁸³ Accused Alex Tamba Brima, Transcript 5 June 2006, p. 59.

⁸⁴ Exhibit P81, Power of Attorney, 12 March 2003 (This document, like Exhibits P82 and P83 is a Special Court document, filed with the Special Court’s Registry and bearing a stamped marking to that effect).

⁸⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 73-74.

⁸⁶ Brima at first denied that he had signed with the letter “*A*”, albeit that his signature obviously bore this initial (Accused Alex Tamba Brima, Transcript 28 June 2006, p. 74).

⁸⁷ When shown Exhibit P81 again, on the second day of cross-examination (Accused Alex Tamba Brima, Transcript 29 June 2006, p. 35).

⁸⁸ Exhibit P82, Request for Legal Assistance, 12 March 2003.

⁸⁹ Accused Alex Tamba Brima, Transcript of 28 June 2006, pp. 76-77.

later claiming that he was “under gunpoint by John Anthony and other security called Jeff.”⁹⁰

84. Exhibit P82 was stamped, certified and signed as a true copy of an original document by one Mariana Goetz on 14 March 2003. Exhibit P81 was witnessed and signed by three individuals, Beatrice Kruche, John Anthony, Mariana Goetz. No cogent explanation was provided by the First Accused as to why he would not have wanted to sign a Power of Attorney or Request for Legal Assistance voluntarily. No explanation was provided why the Office of the Principal Defender of the Special Court (not the Office of the Prosecutor) would have forced him to sign documents adding a further initial “A” to his signature or why they would have forced him to sign under a partly correct name.
85. Prior to being shown the documents in cross-examination, the only person in the previous three years to whom the First Accused had allegedly reported the incident was his late lawyer, a Mr. Terrence Terry.⁹¹ Mr. Terry was a senior Sierra Leonean advocate who had earlier represented Charles Taylor before this court in Mr. Taylor’s challenge to his immunity.⁹² It would be implausible that such a respected advocate like Mr. Terry would not have brought the First Accused’s very serious allegations to the attention of the relevant authorities.
86. The First Accused denied signing a third Prosecution Exhibit, P83.⁹³ This document is a Power of Attorney dated 24 March 2003, signed in the name “Tamba Alex Brimah”, and bearing a signature with initials “T” and “A”, strikingly similar in form to the signature which may be seen on exhibits P81 and P82. By it, the First Accused appointed the late Mr. Terence Terry to act as his attorney.⁹⁴
87. Prosecution Exhibit P83 was a document, like Exhibits P81 and P82, provided by and filed with the Special Court’s Registry. Exhibit P83 was received by the Registrar’s Office on 28 March 2003, and is marked with a stamp to that effect. The inference that the Chamber

⁹⁰ Accused Alex Tamba Brima, Transcript of 28 June 2006, p. 78.

⁹¹ Accused Alex Tamba Brima, Transcript of 28 June 2006, pp. 78-80; 82. (Brima claimed that the Prosecution “jogged my memory” regarding the incident, *ibid.*, p. 80; p. 82. He allegedly reported the incident to Mr. Terry in about May 2003, *ibid.*, p. 89. Mr. Terry died in June 2004, *ibid.*, p. 90.)

⁹² *Prosecutor v. Taylor*, SCSL-03-01-15, “Applicant’s Motion Made Under Protest and without Waiving of Immunity Accorded to a Head of State President Charles Ghankay Taylor”, 23 July 2003.

⁹³ Exhibit P83, Power of Attorney, 24 March 2003.

⁹⁴ Accused Alex Tamba Brima, Transcript of 28 June 2006, pp. 88-89.

may draw from the document's source and its filing thereafter is that it is indisputably authentic. No explanation has been provided on behalf of the Defence as to why the signature on that document should have been forged, and by whom.

88. The Chamber will recall that when the First Accused was asked to look at one of the above exhibits after they had all been taken away from him he panicked. He wanted a guarantee from the Chamber that the document given to him was the document which he said he signed.⁹⁵ It remains to be explained why.
89. The Prosecution submits that the answer lies in the fact that because the First Accused claimed that one of his signatures on one of the exhibits was false whilst the others were all genuine he would not be able to recognise which signature he had earlier claimed to be false. The Prosecution submits that all the signatures on the above exhibits as signed by the First Accused are genuine, which is why he would not be able to remember which signature on which document he claimed to be false.
90. The only inference that the Chamber may draw from Exhibits P81, P82 and P83, taken together, and the First Accused's account of how they came to be, is this: In the face of a signature which was obviously his own, the First Accused lied in an effort to manoeuvre his way out of what amounts to a devastating blow to his credibility and to this aspect of his defence.
91. The First Accused lied when he claimed that he had signed Exhibits P81 and P82 under duress, and he lied when he claimed that he had not signed Exhibit P83. The Prosecution submits that the First Accused's evidence on this issue may be rejected in its entirety as manifestly dishonest.⁹⁶
92. The most damning piece of evidence, however, to prove that the First Accused was lying when he said that he was not known as Alex can be found in the court records of his initial appearance. The First Accused, during cross-examination, gave evidence that he could read, write and speak English and also that he regarded himself as a reasonably well

⁹⁵ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 32-33.

⁹⁶ The Prosecution notes that Brima himself, in questions from the Prosecution and His Honour Justice Lussick, appeared to be unclear about which document he had claimed to be signed by him under duress and which he had claimed bore a forged signature (Alex Tamba Brima: Transcript 29 June 2006 p. 32-33).

educated man.⁹⁷ In the First Accused's initial appearance before Judge Itoe on 15 March 2003, the First Accused told and agreed with Justice Itoe that his name was Tamba Alex Brima on two separate occasions.⁹⁸ Two days later, in a continuation of his initial appearance, the First Accused again told and agreed with Justice Itoe that his name was Tamba Alex Brima on two separate occasions.⁹⁹ On each occasion Ms. Clare Carlton-Hanciles appeared on his behalf for the Defence.

93. The First Accused in his own evidence did not suggest that he was ever put under duress either before or by Justice Itoe. The Prosecution submits that he would have done so if this were the case as he has done against Lt. Col. Petrie and others. This piece of evidence on its own confirms that the First Accused accepts that he is sometimes known as Alex and that he has been lying under oath before this trial chamber in this respect.
94. The First Accused has relied upon a discharge book tendered during his evidence in chief.¹⁰⁰ This book purportedly corroborates his evidence on two issues: that he was not known as Alex, and that he never rose in the AFRC period to the rank of either sergeant or staff sergeant.
95. The discharge book does not constitute any or any serious challenge to the abundance of documentary evidence tendered by the Prosecution in support of the Prosecution case that the First Accused, was/is known as Alex Tamba or Tamba Alex Brima, served as a PLO 2 in the AFRC Government, and attained, in the period of AFRC rule, the rank of Staff Sergeant.¹⁰¹ The Prosecution summarises this evidence as follows:

- a. Exhibit P7 is a Proclamation dated 3 September 1997, contained in the Sierra Leone Gazette for 18 September 1997, naming members of the Council (the Armed Forces Revolutionary Council) with effect from 25 May 1997.¹⁰² They include at (6) "Staff

⁹⁷ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 4.

⁹⁸ Accused Alex Tamba Brima, Transcript 15 March 2003, p. 2.

⁹⁹ Accused Alex Tamba Brima, Transcript 17 March 2003, p. 7.

¹⁰⁰ Exhibit D14, Discharge Book Republic of Sierra Leone Military Forces for Tamba Brima, August 2001.

¹⁰¹ Brima conceded in cross-examination that President Kabbah had, on his return to Government in 1998, annulled all promotions given by the illegitimate AFRC Government, Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 56-57. See TF1-334, Transcript of 17 May 2005, p. 27; TF1-334, Transcript of 16 May 2005, p. 75; TF1-334, Transcript of 16 May 2005, p. 100; TF1-334, Transcript of 17 May 2005, p. 9.

¹⁰² Exhibit P7, Sierra Leone Gazette, No. 54, 18 September 1997, Armed Forces Revolutionary Council Secretariat Govt. Notice No. 215 The Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997 (P.N. No. 3 of 1997)

Sergeant Alex T. Brima”, obviously a reference to the Accused Brima.¹⁰³ The unavoidable inference from this document is that the First Accused was an original member of the Council formed immediately after the coup and that his name and rank at that time were as recorded on the official record giving effect to that.

- b. The “full AFRC Cabinet” is identified in a newspaper cutting from “The Pool” newspaper, dated 11 July 1997.¹⁰⁴ That cabinet includes PLOs, Directorates, Regional Secretaries, Secretaries of State and the “Supreme Council”.
- c. Under the heading “Supreme Council” there follows a list of names headed by Major Johnny Paul Koroma and Corporal Foday Saybana Sankoh. At (10) on the list there appears “Staff Sergeant Tamba Alex Brima – PLO II”, obviously a reference to the Accused Brima.
- d. Under the heading “PLO’s” the document reads at (2): “Staff Sergeant Alex Brima – Works and Labour, Sierratel, Customs and Excise, SALPOST”; again, obviously a reference to the Accused Brima.
- e. Minutes of an Emergency Council Meeting of the AFRC on 11 August 1997 – which the First Accused accepted he had attended – record as present “Staff Sgt. Tamba Alex Brima – PLO II” and “Ibrahim Bazzy Kamara – PLO III.”¹⁰⁵ The PLO II is obviously a reference to the First Accused.
- f. Minutes of a meeting held on 9 December 1997 record as present “Hon.” “Tamba Alex Brima – PLO II”. Others present include the PLO 1, “Hon. Abu Sankoh”, “Hon SB Khanu (55) and Hon. Tamba Gborie”.¹⁰⁶ The distribution list is marked to include “All Council members”.¹⁰⁷
- g. Whilst the First Accused denied, in cross-examination on this document, that he was an honourable, and further repeated his denial that he was called Tamba Alex Brima,¹⁰⁸ he is obviously the person identified on these minutes as the PLO 2. He

¹⁰³ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 34.

¹⁰⁴ Exhibit P93, Newspaper cutting from “The Pool” newspaper, 11 July 1997.

¹⁰⁵ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997.

¹⁰⁶ Exhibit P69, AFRC Secretariat, Minutes of Meeting held on 9 December 1997, 23 January 1998.

¹⁰⁷ Exhibit P69, p.2.

¹⁰⁸ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 42.

testified that he could not recall attending this meeting, but did not deny that it had occurred.¹⁰⁹ The Prosecution submits that there is only one inference that may be drawn from Exhibit P69: that the First Accused was present at a meeting on 9 December 1997, and that he was correctly identified in the minutes by rank, appointment and name.

- h. A Security Council Press Release dated 28 January 1998¹¹⁰ in which a member of the Supreme Council of the AFRC - obviously the First Accused - is identified as "Brima, Alex Tamba/ Staff Sergeant."¹¹¹ In response to this document the First Accused quite implausibly stated that the person who prepared it had lied.¹¹²

96. The Evidence of Defence witnesses does not support the First Accused's contention that he was not known as "*Alex*" Tamba Brima/ Tamba "*Alex*" Brima.

97. Even Defence witness TRC-01 gave evidence that he knew the First Accused as Alex Tamba Brima and that the First Accused had participated in the overthrow of the Kabbah Government.¹¹³ TRC-01 was both a reliable and credible witness who currently holds a very senior position in the SLA. His evidence on this point was not challenged by any of the Defence counsel.

98. [REDACTED]
[REDACTED] The First Accused in his own evidence states that at this time he was based under TRC-01 at the Army Headquarters and was on study leave having been attached to the Public Relations Office by TRC-01¹¹⁵ and that he would come only to collect his benefits from the Army at the time of the coup.¹¹⁶ This clearly shows that TRC-01 knew who the First Accused was.

¹⁰⁹ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 43-44.

¹¹⁰ Exhibit P84, Press Release SC/6472, entitled "Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions", 28 January 1998.

¹¹¹ Exhibit P84 reads, in relevant part: "THE SUPREME COUNCIL OF THE ARMED FORCES REVOLUTIONARY COUNCIL Name Title ... 7. BRIMA, Alex Tamba/ Staff Sergeant Principal Liaison Officer II, Works and Labour, Sierra Tel, Customs and Excise, SALPOST".

¹¹² Accused Alex Tamba Brima, Transcript 28 June 2006 p. 92 to 96.

¹¹³ TRC-01, Transcript 16 October 2006, p. 101.

¹¹⁴ TRC-01, Transcript 16 October 2006, pp. 104-105.

¹¹⁵ Accused Alex Tamba Brima, Transcript 6 June 2006, p.28-30

¹¹⁶ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 79-81.

99. Even Tamba Gborie in his statement refers to the First Accused being a student just prior to the Coup and causing a disturbance on one occasion when as a student he came to collect his pay.¹¹⁷
100. The Defence military expert Maj. Gen. Prins also learned during his extensive research for his report that Alex Tamba Brima was also known as Gullit.¹¹⁸
101. Another Defence witness DAB-079 who was in Freetown at the time of the May 1997 coup learned that Alex Tamba Brima was part of the soldiers who overthrew the government and was also known as Gullit.¹¹⁹ Defence witness DAB-126 heard over the radio that Alex Tamba Brima, aka Gullit, was one of the soldiers who overthrew President Kabbah's Government.¹²⁰
102. Defence witness DAB-037 stated that when he went to the training centre with the First Accused he was called Alex Tamba Brima, as that is what was indicated on his military card.¹²¹
103. When confronted with Exhibit P99,¹²² a letter concerning requests for documents in respect of Alex Tamba Brima and TF1-184, the First Accused did not even comment on the fact that the prison authorities furnished information in respect of Alex Tamba Brima. The First Accused was visibly confused by the contention put to him in cross-examination that TF1-184 was already a provost marshal before he allegedly agreed to give evidence against Johnny Paul Koroma.
104. It is case of the Prosecution that based on the oral evidence of both prosecution and Defence witnesses, some of whom knew the First Accused well, in addition to the documentary evidence before this court,¹²³ that there is no doubt that the First Accused was and is known as Alex Tamba Brima or Tamba Alex Brima.

¹¹⁷ Exhibit P89, p. 75.

¹¹⁸ Maj. Gen. Prins, Transcript 19 October 2006, p. 52.

¹¹⁹ DAB-079, Transcript 28 July 2006, pp. 62-63.

¹²⁰ DAB-126, Transcript 15 September 2006, pp.19-20.

¹²¹ DAB-037, Transcript 4 October 2006, p. 76.

¹²² Exhibit P99.

¹²³ Exhibit P86 and Exhibit P87.

“GULLIT”

105. A number of Prosecution witnesses testified that the First Accused was known by the alias “Gullit”. They included Gibril Massaquoi,¹²⁴ TF1-153,¹²⁵ George Johnson, TF1-334, TF1-184, and Lt. Col. John Petrie.
106. The First Accused testified that he had never been known as “Gullit”.¹²⁶ Rather, he claimed, this was a nickname by which his deceased brother Komba, a serving member of the SLA and Staff Sergeant at the time of his death on 8 May 2000, was known.¹²⁷
107. It was not put to a single Prosecution witness in cross-examination that “Gullit” was in fact the First Accused’s brother, Komba. This was also never suggested in the First Accused’s Defence Pre-Trial Brief,¹²⁸ and no such suggestion was put in “Brima’s Counsel’s General Understanding of the Prospective Testimony of First Accused.”¹²⁹
108. The First Accused’s evidence on this issue was obviously dishonest in the face of evidence from Prosecution witnesses who have no reason to lie. The Prosecution relies, in this part of the brief in particular, on the evidence of Prosecution witness Lt. Col. John Petrie.
109. Lt. Col. John Petrie gave the following evidence: he testified that “everybody” at the Joint Provost Unit, of which he was commanding officer, referred to Tamba “Alex” Brima as Gullit.¹³⁰ After his arrest in Juba on 18 January 2003, the man who had been pointed out to Petrie as Gullit¹³¹ was taken to the OSD¹³² headquarters in Freetown. There, he was questioned by CID Chief Superintendent FUK Darbo who asked him for his details. He gave his name as Tamba Brima.¹³³ Petrie later identified Gullit as one of the Special Court Accused.¹³⁴

¹²⁴ Gibril Massaquoi, Transcript 7 October 2005, p. 78.

¹²⁵ TF1-153, Transcript 22 September 2005, pp. 13-14.

¹²⁶ Accused Alex Tamba Brima, Transcript 5 June 2006, p. 61.

¹²⁷ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 16. It is noteworthy that it was not once put in the cross-examination of any Prosecution witness that “Gullit” was, in fact, Brima’s brother, Komba.

¹²⁸ Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005, para. 5.

¹²⁹ *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-504, “Annex A to Confidential Defence Disclosure Pursuant to Trial Chamber’s Order of 17 May 2005”, 25 May 2006.

¹³⁰ John Petrie, Transcript 5 October 2005, p. 67.

¹³¹ John Petrie, Transcript 5 October 2005, p. 71.

¹³² “Operational Support Department”.

¹³³ John Petrie, Transcript 5 October 2005, p. 76.

¹³⁴ John Petrie, Transcript 5 October 2005, pp. 81-82.

110. The First Accused testified that Lt. Col. Petrie was lying.¹³⁵ The Prosecution addresses issues arising out of the evidence of this witness in further detail below.

111. Documentary evidence corroborates the Prosecution's case that the First Accused was known by the nickname Gullit. Confronted with this evidence in cross-examination, the First Accused lied yet further.

a. Exhibit P86 is a record of an interview with the First Accused that took place on 13 January 2003 at the CID headquarters in Freetown. The interviewee's name is recorded as "Tamba Alex Brimah alias Gullit", and the record is purported to bear the First Accused's signature after the caution, and at the bottom of the first page.¹³⁶ The First Accused accepted that he had made the statement, but claimed that the signature was forged, and that he had made the statement under duress.¹³⁷ He claimed that Lt. Col. John Petrie was present, again, and that he, the First Accused, was held at gunpoint, beaten and stabbed twice in the hand with a bayonet.¹³⁸

b. Exhibit P87 is a second record of interview dated 7 February 2003 with "Tamba Alex Brimah alias Gullit [sic]".¹³⁹ This interview also purports to bear the First Accused's signature after the caution and at the bottom of each page. The First Accused denied signing the document, and also denied making the statement. According to him, the statement was a total fabrication.¹⁴⁰

c. An article entitled "A Day in Rebel Territory" by Eric Beauchemin whose author met both Brigadiers "Gullit" and "Five-Five" (and Johnny Paul Koroma) in Freetown.¹⁴¹

112. The First Accused accepted that he gave an interview at the CID headquarters on 13 January 2003. The interview was recorded on Exhibit P86. The only inference that may be drawn is that the record accurately recorded his name, and further that he signed it. Why should he not have? The First Accused's responses to Exhibits P86 and P87, and to

¹³⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 71 and p. 105.

¹³⁶ Exhibit P86, Record of Interview of Tamba Alex Brimah alias Gullit, 22 January 2003.

¹³⁷ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 21-22.

¹³⁸ Accused Alex Tamba Brima, Transcript 29 June 2006, p. 23

¹³⁹ Exhibit P87, Record of Interview of Tamba Alex Brimah alias Gullit, 7 February 2003.

¹⁴⁰ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 26-27.

¹⁴¹ Exhibit P85, Article entitled "A Day in Rebel Territory" by Eric Beauchemin, 21 January 2000.

Prosecution Exhibits P86, P81, P82 and P83 have demonstrated a pattern of reaction: denials and lies that become more extreme as the damning evidence which is presented to him accumulates. The only inference that may be drawn is that the First Accused, when presented with incriminating documentary evidence, lied, and then told more lies.

THE EVIDENCE OF LT. COL. JOHN PETRIE

113. Lt. Col. Petrie was a former British Army officer who was posted to Sierra Leone as part of the International Military Advisory and Training Team (IMATT) from October 2002 to October 2003, serving in Sierra Leone as Commanding Officer of the Republic of Sierra Leone Armed Forces (RSLAF) Joint Provost Unit (JPU).
114. Petrie gave a clear, honest and manifestly unbiased account of the First Accused's arrest in 2003 and his subsequent appearance in 2004 before the Special Court.
115. The First Accused testified that on 7 March 2003, when he was taken to the CID in Freetown, John Petrie along with others including OTP investigator John Berry, forced him under the "muzzles of their guns," to sign a ledger book in the name "Tamba Brima Gullit" and "roughed [him] up."¹⁴² John Petrie told him that if he moved, Petrie would shoot him.¹⁴³ The First Accused also testified that under John Petrie's watch, he was forced to make a statement under gunpoint, and even "stabbed with the bayonet twice." He testified that Petrie told him that he "did not cooperate with them to give evidence against Johnny Paul Koroma".¹⁴⁴
116. The First Accused's counsel put none of these allegations to Petrie in cross-examination. There are no grounds for impugning the credibility of this witness, and no grounds for finding that he lied on oath.
117. It beggars belief that the First Accused should claim that Petrie, who was serving in Sierra Leone as a member of the British Army when the First Accused was arrested on 7 March 2003, should have physically assaulted him, or sought to force him to "cooperate" with the Special Court, or should have forced him to sign a document in the wrong name. Again

¹⁴² Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 34-41.

¹⁴³ Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 38.

¹⁴⁴ Alex Tamba Brima: 16 June 2006, pp. 43-44.

there is no logical explanation why has the First Accused waited until now to raise these most serious of allegations. The answer is because they are lies.

118. If the Chamber accepts Lt. Col. Petrie's evidence, which the Prosecution says it must do, then it is bound to find that the First Accused has lied on at least all of the issues upon which their evidence differs.
119. It follows that the only inference this Chamber may draw is that the First Accused has lied about his full name, about his nickname, has lied in his attempts to discredit Prosecution witnesses, and has lied in court, on oath, time and again, when presented with evidence to the contrary.
120. All of the following Prosecution insider witnesses (TF1-153, TF1-184, TF1-167, TF1-334, TF1-045, TF1-033) knew the First Accused by the nickname of Gullit. Nearly all of them had known him for a long time and there would be no reason that they would not know his nickname.
121. A number of them also said that Gullit played football. It is the case of the Prosecution that most of the coup makers were apart of the 1st Battalion's football team. The alleged ringleader of the coup was Abu Sankoh, aka Zagallo, whilst the First Accused, aka Gullit was also one of the leaders of the coup.
122. The nicknames "Zagallo" and "Gullit" are both based on famous international footballers. Zagallo is a Brazilian International footballer and Rudd Gullit a Dutch international footballer.
123. The Prosecution submits that the only logical reason for Abu Sankoh and the First Accused being nicknamed after world famous footballers is because they both indeed played football. This is confirmed by Zagallo's statement¹⁴⁵ which is also quoted in the TRC Report¹⁴⁶ and Keen's book *Conflict and Collusion*,¹⁴⁷ both of which were relied on by the Defence military expert Maj. Gen. Prins.
124. Countless Defence witnesses refer to hearing about the coup through Tamba Gborie's announcement over the radio. This fact does not seem to be in dispute and is confirmed by

¹⁴⁵ Exhibit P88.

¹⁴⁶ TRC Report Vol. 3A, p. 242

¹⁴⁷ David Keen, "Conflict and Collusion" James Curry Ltd, Oxford 2005, p. 208.

Gborie in his statement¹⁴⁸ and is also referred to in the TRC report. Gborie in his statement also refers to the fact that that Alex Tamba Brima along with the football team based at Wilberforce barracks under Zagallo carried out the coup.¹⁴⁹ The First Accused in his own evidence admits that he heard that it was the football team who carried out the Coup.¹⁵⁰

125. In large part both Gborie's and Abu Sankoh, aka Zagallo's statements corroborate each other with respect to the persons who carried out the coup. Importantly, the persons both Gborie and Zagallo say carried out the coup are further corroborated by the evidence of Prosecution military insider witnesses TF1-334, TF1-184 and TF1-167 and the documents which name the AFRC Council such as Prosecution Exhibits P6 and P7 and those referred to in the Pool Newspaper as being members of the Supreme Council.
126. It is telling that most of the Defence witnesses (when read together) are nearly able to name this list of 17 as coup plotters less the three Accused. This, the Prosecution submits, is clear evidence that a majority of Defence witnesses who were SLAs in Freetown from the coup until the intervention are lying with regard to this aspect of their evidence. It is implausible that they can name nearly all the coup plotters except the three Accused, while also claiming not to have heard that any of the three Accused held any leadership role whilst based in Freetown.
127. Even Defence witness TRC-01 knew that the First Accused was also known as Gullit, played football and participated in the overthrow of the Kabbah Government.¹⁵¹ TRC-01 was both a reliable and credible witness who currently holds a very senior position in the SLA. His evidence on this point was not challenged by any of the Defence counsel.
128. [REDACTED]
[REDACTED] According to the First Accused's own evidence he was studying at the time of the coup.¹⁵³ Even the fact

¹⁴⁸ Exhibit P89, p. 81.

¹⁴⁹ Exhibit P89, p. 75-77.

¹⁵⁰ Accused Alex Tamba Brima, 29 June 2006, pp. 100.

¹⁵¹ TRC-01, Transcript 16 October 2006, p. 101.

¹⁵² TRC-01, Transcript 16 October 2006, pp. 104-105.

¹⁵³ Accused Alex Tamba Brima, Transcript 29 June 2006, p. 79.

that the First Accused is studying at the time of the coup is corroborated by Tamba Gborie's statement.¹⁵⁴

129. Another Defence witness who regarded the First Accused as his friend, DAB-096, knew that the First Accused played football¹⁵⁵ (a fact which the Accused in his own evidence denied¹⁵⁶). The Defence military expert Maj. Gen. Prins also learned during his extensive research for his report that Alex Tamba Brima was also known as Gullit.¹⁵⁷
130. Another Defence witness, DAB-079, who was in Freetown at the time of the May 1997 coup learned that Alex Tamba Brima was part of the soldiers who overthrew the government and was also known as Gullit.¹⁵⁸
131. It is significant that even a number of Defence witnesses, some of whom who knew the First Accused well, do not support important aspects of the First Accused's own evidence, namely that he was not referred to as Gullit.
132. It is clear that the First Accused only invented this story of his brother Komba being called Gullit at the time when he gave his own evidence.
133. It is case of the Prosecution that based on the oral evidence of both Prosecution and Defence witnesses, some of whom knew the First Accused well, in addition to the documentary evidence before this court,¹⁵⁹ that there is no doubt that the First Accused was and is known as Gullit.

THE FIRST ACCUSED'S ILL HEALTH

134. The First Accused claimed that the day after the coup he was in hospital following a road accident.¹⁶⁰ The only Defence witness who allegedly saw the First Accused in hospital at the time of the coup gave evidence that the First Accused was suffering from malaria.¹⁶¹

¹⁵⁴ Exhibit P 89, p. 75.

¹⁵⁵ DAB-096, Transcript 25 September 2006, p. 8.

¹⁵⁶ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 13, 101-107.; 29 June 2006, pp. 35-47, 59.

¹⁵⁷ Maj. Gen. Prins, Transcript 19 October 2006, p. 52.

¹⁵⁸ DAB-079, Transcript 28 July 2006, pp. 62-63.

¹⁵⁹ Exhibits P86 and P87.

¹⁶⁰ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 41-42.

¹⁶¹ DAB-059, Transcript 2 October 2006, p. 7.

Thus, the only witness who even partially corroborates the First Accused regarding this crucial part of his testimony is at odds with him on this salient point.

135. Tellingly, the First Accused did not produce a single medical record from 34th Military Hospital in respect of either his road accident or other alleged illnesses, nor were any of the doctors or other medical staff who allegedly treated him called to corroborate his injuries or illness.
136. The First Accused claimed that he suffered from hypertension and high blood pressure during the AFRC period of rule.¹⁶² He claimed that he was unable to carry out his functions as a PLO 2 in the AFRC Government because of ill health.¹⁶³ During cross-examination the First Accused's Defence counsel did not suggest to a single Prosecution witness that the First Accused suffered from ill health, let alone such serious ill health that he was unable to perform his duties as PLO 2 and that he was in and out of hospital throughout the Junta period.
137. Furthermore, during the AFRC Government period the First Accused gave evidence that he was accompanied on one of the three trips which he made to Kono by a medical orderly. This medical orderly was listed as a Defence witness but did not give evidence.¹⁶⁴ The First Accused is therefore not even corroborated on this part of his evidence.
138. In cross-examination, the First Accused testified that between 1997 and 2001, he was not well enough to fulfil his functions as a soldier.¹⁶⁵ He claimed he was "seriously sick".¹⁶⁶ At the time of the Intervention, he was not well enough to fight.¹⁶⁷ When travelling en route from Kailahun to Kono in July 1998 he did not fight because he was too unwell and because he was escaping for his life.¹⁶⁸
139. Not a single Defence witness gave evidence before this Court supporting the First Accused's assertion that he suffered any ill health throughout the period of the indictment

¹⁶² Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 58-59.

¹⁶³ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 58-59; Transcript 20 June 2006, p. 20 and Transcript 6 June 2006, pp. 60-61.

¹⁶⁴ Confidential Joint Defence Disclosure dated 10 May 2006 pursuant to Trial Chamber order of 26 April 2006 listed as a common witness under DAB-010

¹⁶⁵ Accused Alex Tamba Brima, Transcript 5 July 2006, p. 25.

¹⁶⁶ Accused Alex Tamba Brima, Transcript 5 July 2006, p. 29.

¹⁶⁷ Accused Alex Tamba Brima, Transcript 5 July 2006, p. 15.

¹⁶⁸ Accused Alex Tamba Brima, Transcript 5 July 2006, pp. 19-20.

let alone to such a degree that he could not fulfil his role as PLO 2 or was not capable of fighting.

140. Furthermore, the First Accused's evidence is not supported by the medical findings on his discharge from the military which state that he is "fit for his present Medical Category which is FE",¹⁶⁹ meaning that he was "fighting efficient". Nowhere in the discharge book is it suggested that the Accused suffered from any serious ill health from May 1997 to the date of his discharge. The First Accused sought to distance himself from this finding: he claimed in re-examination that he was not examined by any medical personnel before he was discharged,¹⁷⁰ a surprising claim given how much he was otherwise prepared to rely upon the contents of the discharge book.¹⁷¹
141. On the contrary, despite being seriously unwell, the First Accused gave evidence that he was arrested, beaten,¹⁷² and then detained in Kailahun district from March to July 1998, that he thereafter walked to Koidu Town and then drove to Yarya where he remained in hiding in the bush until September 1998. Having been arrested by "0-Five", he testified that he walked across Bombali District to Eddie Town where he was detained before moving to Benguema.¹⁷³ In Kailahun, he was detained at one point in a dungeon for two weeks.¹⁷⁴ When he was arrested by the Westside Boys in 1999, he was again thrown in a dungeon after allegedly being shot by TF1-167.¹⁷⁵ In all these periods, there is no evidence that the First Accused received any medical care, yet he managed to survive. This is despite the First Accused's own evidence that even whilst in detention during the trial the slightest problem would cause his blood pressure to rise,¹⁷⁶ and that during the Junta period an Alpha Jet would cause him palpitations until he was taken back to hospital.¹⁷⁷
142. It is utterly implausible that any medical condition from which he allegedly suffered was in the period 1997 to mid 1999, if existent, anything other than minor and intermittent. In any event, such ailments obviously were not of sufficient gravity in 1997 to prevent him

¹⁶⁹ Exhibit D14, Discharge Book Republic of Sierra Leone Military Forces for Tamba Brima, August 2001, p. 9.

¹⁷⁰ Accused Alex Tamba Brima, Transcript 6 July 2006, p. 115.

¹⁷¹ Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 7-15.

¹⁷² Accused Alex Tamba Brima, Transcript 8 June 2006, p. 50.

¹⁷³ Accused Alex Tamba Brima, Transcript 12 June 2006, pp. 43-44 and pp. 50-51.

¹⁷⁴ Accused Alex Tamba Brima, 8 June 2006, pp. 61-64.

¹⁷⁵ Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 10-12.

¹⁷⁶ Accused Alex Tamba Brima, Transcript 30 June 2006, pp. 23

¹⁷⁷ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 91

from taking up his duties as a PLO 2, and in 1998 and 1999 from leading a troop of soldiers through the bush in Bombali and on the attack and withdrawal from Freetown.¹⁷⁸

143. Once again, the First Accused has lied; this time about his medical condition in a desperate attempt to distance himself from the activities of the AFRC Government in which he held a very senior position.

THE FIRST ACCUSED'S PROFESSION

144. In the years following the signing of the Lomé peace agreement, the First Accused was involved in politics, and worked for the Commission for the Consolidation of Peace.¹⁷⁹ He was discharged from the army on 28 April 2001.¹⁸⁰ He testified in chief that in the period prior to his arrest in January 2003, he was doing business as a petty trader selling palm oil, hog meat and pig's foot.¹⁸¹ He sought to deny this in cross-examination, perhaps because the claim was implausible. He testified that he was "doing business", not doing business as a petty trader,¹⁸² and then testified he had meant that he was doing "petty-petty business", not petty trading.¹⁸³
145. In any event, the First Accused lied. Prior to testifying, he had held himself out to be a diamond miner, a far more plausible profession for a man who had been closely involved in mining activities in Kono in the period of AFRC rule,¹⁸⁴ and whose family continues to

¹⁷⁸ Prosecution witnesses describe in great detail Brima's movements and actions during this time period. For example, Brima's actions in the AFRC period (TF1-334, Transcript 16 May 2005, pp. 100-101; TF1-334, Transcript 17 June 2005, pp. 52-64; TF1-167, Transcript 15 September 2005, pp. 20-21); Brima's command of the troop from Koidu to Mansofinia (TF1-334, Transcript 20 May 2005; TF1-167, Transcript 19 September 2005, pp. 62 & 65); Brima leading the troop to Rosos, and from there to Colonel Eddie Town (TF1-334, Transcript 23 May 2005; TF1-334, Transcript 24-25 May 2005; TF1-167, Transcript 15 September 2005, pp. 51-60, & 68); Brima taking over command after SAJ Musa's death, and leading the troop the invasion of Freetown and the retreat (TF1-334, Transcript 13 June 2005, pp. 53-59; TF1-334, Transcript 14-16 June 2005; TF1-167, Transcript 15-16 September 2005; TF1-167, Transcript 16 September 2005, p. 10-13).

¹⁷⁹ Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 63-64.

¹⁸⁰ Exhibit D14, p. 5.

¹⁸¹ Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 17-18.

¹⁸² Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 65-67.

¹⁸³ Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 66-67.

¹⁸⁴ TF1-334 describes the First Accused as overseeing mining in the east while based in Koidu during the AFRC regime (TF1-334, Transcript 17 May 2005, pp. 52-53). TF1-153 details the First Accused's oversight of the mining operations in Kono. This included the First Accused's visits to Koidu and the distribution of diamonds (TF1-153, Transcript 22 September 2005, pp. 19-22; and Transcript 23 September 2005, pp. 60-61). TF1-167 also says that the First Accused was sent to Kono to take care of the diamonds (TF1-167, Transcript 15 September 2005, pp. 20-21). This was all denied by the First Accused, Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 49, 52.

be involved in mining in Kono District.¹⁸⁵ The First Accused sought to distance himself from mining in the course of his testimony¹⁸⁶ and lied when shown documentation that contradicted his evidence on this issue.

- a. In the signed statement which the First Accused accepts he gave to the CID on 22 January 2003,¹⁸⁷ his occupation is stated as “diamond miner”. In a second statement made on 2 February 2003,¹⁸⁸ his occupation is again stated to be “diamond miner”, and he is also described as “engaged in mining in Kono”.¹⁸⁹ In cross-examination, the First Accused repeated his claims that the first statement was made under duress, and that he did not make the second statement.¹⁹⁰
- b. When in the custody of the Special Court, the First Accused completed a Declaration of Means Form. That form is signed by him and dated 12 March 2003. He gives his profession as “diamond miner”.¹⁹¹ The First Accused denied in cross-examination that the form had been signed by him, and denied having seen it before he was cross-examined on its contents.¹⁹²
- c. His claim is dishonest and totally implausible: it is implausible that a Declaration of Means Form, which would have triggered financial assistance for him in the payment of the attorneys who now represent him, would have been signed or completed by anyone other than the First Accused.

THE FIRST ACCUSED’S EVIDENCE AGAINST PROSECUTION “INSIDER” WITNESSES

146. The First Accused made a series of allegations against Prosecution insider witnesses during his evidence-in-chief and in cross-examination.

¹⁸⁵ Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 48-50, pp. 56-57; and Transcript 6 July 2006, p. 68.

¹⁸⁶ Accused Alex Tamba Brima, Transcript 6 July 2006, p. 68.

¹⁸⁷ Exhibit P86, Record of Interview of Tamba Alex Brimah alias Gullit, 13 January 2003.

¹⁸⁸ Exhibit P87, Record of Interview of Tamba Alex Brimah alias Gullit, 7 February 2003.

¹⁸⁹ Exhibit P87, p. 2.

¹⁹⁰ Accused Alex Tamba Brima, Transcript 6 July 2006, p. 68.

¹⁹¹ Exhibit P98, Declaration of Means Form for Tamba Alex Brima, 12 March 2003. This document is filed with the Special Court’s Registry.

¹⁹² Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 68-69.

147. The explanations given by the First Accused as to why witnesses with no reason to lie would give damning evidence against him were utterly implausible. He testified that all 59 witnesses who gave evidence for the Prosecution came to lie,¹⁹³ and claimed that witnesses were paid.¹⁹⁴ He testified that every witness who gave evidence against him was asked by the Prosecution to call him Gullit.¹⁹⁵ Witness TF1-157, not an insider witness, and never detained at Pademba Road Prison, came to lie because once a Prosecution witness, he would be given “special treatment” to come and lie.¹⁹⁶
148. Lt. Col. John Petrie apparently lied when he testified that “Five-Five” was known as “Brigadier Five-Five”.¹⁹⁷ [REDACTED]
[REDACTED]
- Witness TF1-033 also testified that Tamba Brima was referred to as Brigadier Gullit; again, the First Accused said this witness was lying.¹⁹⁹ Witness TF1-114 allegedly lied about hearing the name Alex Tamba Brima on the radio.²⁰⁰ In painting this delusional portrait of a conspiracy of liars, the First Accused even went so far as to declare that the person who prepared a press release for the United Nations Security Council Committee on Sierra Leone was also lying.²⁰¹
149. The First Accused’s claims are utterly without foundation. The First Accused’s evidence that inducements were allegedly given by Petrie to soldiers, including Prosecution insider witnesses, at Pademba Road Prison for agreeing to testify against Johnny Paul Koroma may be rejected as obviously dishonest.
150. Furthermore, it is difficult to see what connection an inducement to testify against Johnny Paul Koroma (who escaped the arrests in January 2003 and whose current whereabouts are

¹⁹³ Accused Alex Tamba Brima: Transcript 29 June 2006, p. 14.

¹⁹⁴ For example, Accused Alex Tamba Brima, Transcript 28 June 2006, p. 57.

¹⁹⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 111.

¹⁹⁶ Accused Alex Tamba Brima, Transcript 29 June 2005, pp. 13-14 and TF1-157, Transcript 22 July 2005, p. 90.

¹⁹⁷ Alex Tamba Brima: Transcript 28 June 2006, p. 63; John Petrie: Transcript 5 October 2005, p. 77.

¹⁹⁸ Accused Alex Tamba Brima: Transcript 28 June 2006, Closed session, pp. 59-60; TF1-023, Transcript 10 March 2005, Closed session, p. 30.

¹⁹⁹ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 61-62; TF1-033, Transcript 12 July 2005, p. 21.

²⁰⁰ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 69-70; TF1-114, Transcript 14 July 2005, pp. 118-119.

²⁰¹ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 92-95; Prosecution Exhibit P84.

unknown) might have to the present proceedings against the Accused (Brima, Kamara and Kanu).²⁰²

151. Allegations which suggest that other “crime base” Prosecution witnesses lied as a result of being given or offered special treatment may also be rejected as obviously dishonest. All allegations by which the First Accused has sought to impugn the credibility of Prosecution witnesses are totally without foundation, manifestly dishonest, and may be rejected in their entirety.

²⁰² Indeed, when asked in cross-examination on behalf of the Third Accused about a possible motivation for testifying against the Third Accused, John Petrie gave the following evidence about detainees held in Pademba Road when he visited there in 2003: “MR KNOOPS: Thank you, Your Honour, I am very grateful. Q. Colonel, with respect to this investigation in Pademba Road, were you able to inquire into any potential motive regarding or stemming from the car dispute as to whether these individuals who talked with you about this incident, which you qualify as trivial, were revengious to Mr Kanu and were incriminating him? A. Are you talking about with respect to the incident that resulted in -- Q. Yes, the car incident? A. They'd been there for over two years. That particular incident, I felt, in their minds was long gone. They were -- I didn't sense that they were particularly vengeful towards Mr Kanu. They had -- they gave us the reason that they were picked up that night, the dispute over a car. Not one of them really came across saying that the dispute over the car was one person's fault or another. I mean, they blamed Five-Five, but equally what they were saying could have been their fault. But the two people that spoke at length, they were not particularly specific about Five-Five's role in the conflict. It was more of a -- it was a general explanation of their role and where they were and who they were with and it included a lot more people than just Five-Five. Q. Colonel, did they blame Mr Kanu for their arrest or detention? A. I got the impression that they blamed Johnny Paul Koroma more for the detention.”, John Petrie, Transcript 6 October 2005, pp. 28-29.

IV. DEFENCES

152. This section anticipates certain defences which each Accused may attempt to rely on based on arguments in their respective Pre-Trial Briefs and all the evidence adduced at trial.

THE “GREATEST RESPONSIBILITY” REQUIREMENT

153. In its Decision on Defence Motions for Judgement of Acquittal,²⁰³ the Trial Chamber, while not determining whether the reference to “persons who bear the greatest responsibility” in Article 1(1) of the Statute creates a jurisdictional requirement or a prosecutorial discretion,²⁰⁴ considered the category of persons contemplated by the provision and whether there was evidence at the Rule 98 stage that would place the three Accused in that category. The Trial Chamber examined the scope of Article 1(1) with reference to the exchanges between the UN Security Council, UN Secretary-General and Government of Sierra Leone at the time of the establishment of the Special Court, and determined that political and military leaders, other persons, and even children potentially came within the broad scope of the provision. Therefore, the Trial Chamber concluded that there was evidence, if believed, that was capable of placing each of the three Accused in the category of “persons who bear the greatest responsibility”. It was pointed out that the fact that others may also belong to this category did not place the three Accused beyond its reach. The Defence evidence has not cast doubt on the characterization of the level of responsibility borne by the three Accused. The Prosecution submits that the evidence establishes that the three Accused were all senior members of the AFRC holding leadership positions within that organization. As such, they participated in the crimes set out in the Indictment. There can therefore be no doubt that the three Accused are in actuality persons bearing the greatest responsibility for the acts charged.

²⁰³ *Prosecutor vs Brima, Kamara, Kanu*, SCSL-04-16-T-469. “Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98”, pp. 26-39.

²⁰⁴ See also *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-PT-026, “Decision on the Preliminary Motion on the Lack of Personal Jurisdiction filed on behalf of the Accused Fofana”, 3 March 2004.

OBEDIENCE TO SUPERIOR ORDERS

154. In his Pre-Trial Brief,²⁰⁵ the Third Accused submits that “although customary international law does not recognize [the defence of superior orders] as a complete excuse but merely as a potential mitigating circumstance with respect to the punishment, the Statute of the SCSL nor its Rules of Procedure and Evidence seem to exclude the applicability of this defence.” In this context, the Third Accused submits that “a potential argument arises in that the Accused acted upon a (Constitutional based) obligation as to the protection of his State which obligation arose irrespective of the character or nature of the conflict and/or Government at issue.”²⁰⁶
155. Art. 6 (4) of the Statute of the Special Court (which corresponds with Art. 7 (4) of the Statute of the ICTY and Art. 6 (4) of the Statute of the ICTR) states that “the fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.” Consequently, the Third Accused cannot rely upon the defence of superior orders to avoid criminal responsibility. This is because an absurdity would result if this defence was possible, because each person in the chain of command could claim that they followed superior orders of their government or superior.²⁰⁷
156. The Third Accused is charged with serious violations of international humanitarian law. They cannot be justified either by an “obligation to defend the country” or by “obedience to superior orders.”

²⁰⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-39, “Kanu – Defence Pre-Trial Brief and Notification of Defences Pursuant to Rule 67(A)(ii)(a) and (b)”, 22 March 2004, (“**Kanu Brief**”), p. 630, para 41 (iii).

²⁰⁶ *Kanu Brief*, page 629, para 41 (iii).

²⁰⁷ See *In ree von Leeb*, United States Military Tribunal at Nuremberg, Germany, October 28, 1948, 15 IL 376 (1949), cited in Dixon/Khan, *Archbold International Criminal Court: Practice, Procedure and Evidence*, 2003, p. 463. The fact that Article 33 I of the ICC Statute does, in exceptional circumstances, allow this defence, is irrelevant for the SCSL.

MISTAKE OF LAW AND MISTAKE OF FACT

157. This has been raised by the Third Accused in his Pre-Trial Brief²⁰⁸. According to him, “the defence of mistake of law may be raised in view of the potential unclarity of the prevailing law²⁰⁹ and the defence of mistake of fact can be raised if it amounts to an excuse to a criminal charge when, despite the existence of *actus reus*, the requisite *mens rea* is absent since the person mistakenly was of the honest and reasonable belief that there existed factual circumstances making the conduct lawful.” The Third Accused states that “this defence is of relevance in the case of him executing unlawful orders, while he was not aware that the order was unlawful and therefore lacked the requisite *mens rea*.²¹⁰”
158. It would seem that this defence concerns the Third Accused’s lack of knowledge that through his actions he was committing crimes under the Statute. Thus he claims to lack the requisite *mens rea* for the offences with which he is charged.
159. The question arises if the defence of mistake of fact/law (with the consequence that it excludes criminal responsibility) is a possible defence before the Special Court. Neither the Statute of the Special Court nor those of the ICTY and ICTR contain a provision that mistake of law/fact are defences. There is little jurisprudence from the Ad-Hoc Tribunals on this. The ICTY stated that “we subscribe to the view that obedience to superior orders does not amount to a defence per se but is a factual element which may be taken into consideration in conjunction with other circumstances of the case in assessing whether the defences of mistake of fact are made out.”²¹¹ Judge Cassese stated that [in relation to a guilty plea of the accused] “the accused cannot be allowed on the one hand to admit to his guilt and by the same token nullify this plea by claiming that he acted under a mistake of fact.”²¹² This seems to indicate that the defence exists. However, it is not clear if the defence would result in an acquittal. The ICTY does not provide clear guidance when it

²⁰⁸ Kanu Brief, p. 628-629, para 41 (i and ii).

²⁰⁹ Kanu Brief, p. 628, para 41 (i).

²¹⁰ Kanu Brief, page 629, para 41 (i, ii). This argument is the same as “obedience to superior order”, raised by the Accused in para 41 (iii). It will be discussed here under the concept of “mistake of law”.

²¹¹ *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, Joint Separate Opinion of Judge MacDonald and Judge Vohrah, para 34.

²¹² *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, Separate and Dissenting Opinion of Judge Cassese, para 10 and 37.

stated (with regards to the defence of duress²¹³) that “we take the view that duress cannot afford a complete defence of a soldier charged with crimes against humanity or war crimes in international law involving the taking of innocent lives.”²¹⁴ The majority adopted this reasoning saying that “the Appeals Chamber finds that duress does not afford a complete defence (...).”²¹⁵ The argument can be made that it is therefore also doubtful if mistake of fact/law would afford a complete defence.

160. However, the Prosecution submits that this question can ultimately remain open, because in its view, the evidence overwhelmingly shows all three Accused did have the requisite *mens rea* and did not lack the mental element. They all knew or had reason to know that their actions were wrong at the time when the crimes were committed, as evidenced by the following paragraphs.
161. All the Accused joined the SLA in around 1992 where they each undertook at least three months training, and in the case of the Third Accused, six months training.
162. TRC-01, an unchallenged Defence witness who was in a senior position of command and was also involved in training and recruitment gave specific evidence that the SLAs were trained by the ICRC in international humanitarian law, were well versed in the laws of war, and knew that it was wrong to kill civilians. According to this witness, a lot of the SLAs were even aware of the Geneva Conventions.²¹⁶
163. According to TRC-01, even the irregulars who fought alongside the SLAs had their training designed so that they would respect the standards of international humanitarian law in addition to imbibing the good ethical conduct of trained SLAs whom they fought alongside with.²¹⁷ TF1-167 confirms that as a vigilante he heard about the Geneva Conventions during his training.²¹⁸

²¹³ Someone acting under duress also lacks the necessary *mens rea*. He commits a crime not because he wants to, but because he is forced to do so.

²¹⁴ *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, Joint Separate Opinion of Judge MacDonald and Judge Vorah, para 88.

²¹⁵ *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, para 19.

²¹⁶ TRC-01, Transcript 16 October 2006, pp. 111-112. While the transcript reads “RCRC”, the Prosecution submits that the witness clearly said or meant to say “ICRC”, and that this is likely a transcription error.

²¹⁷ TRC-01, Transcript 16 October 2006, pp. 111-112

²¹⁸ TF1-167, Transcript 19 September 2005, p. 90

164. This is corroborated by at least two Defence witnesses who were former SLAs who gave evidence that they had received training in international humanitarian law.²¹⁹ The majority of the roughly one dozen former or serving SLAs who were with the AFRC faction in the jungle after the intervention gave evidence that they had not been taught during their training to kill, rape, or amputate the arms of civilians nor had they been taught to burn down the houses of civilians.²²⁰
165. Some of these same witnesses also considered it wrong for ECOMOG to kill surrendering soldiers and civilians.²²¹ A number of these same witnesses knew that SAJ Musa had ordered that innocent civilians should not be killed or amputated or their houses burnt or else they would face punishment.²²² Some Defence witnesses even gave evidence that SAJ Musa told the troop about crimes against humanity and that he would refer to the Geneva Conventions which he had with him in a book.²²³
166. Based on the above evidence it is the case of the Prosecution that the defence of mistake of fact/law is not applicable to the Third Accused. All the accused knew that it was wrong to kill, rape, amputate the arms, and burn houses and steal from civilians. They also knew that if they did so they would be committing crimes.

TU QUOQUE

167. It is well established in international humanitarian law that there is no defence based on any principle of *tu quoque*, i.e. the argument whereby the fact that the adversary has also committed similar crimes offers a valid defence. "The existence of an attack from one side involved in an armed conflict against the other side's civilian population does not justify

²¹⁹ DAB-033, Transcript 25 September 2006, pp. 38-39; TRC-01, Transcript 16 October 2006, p. 111-112, 118

²²⁰ DAB-033, Transcript 2 October 2006, pp. 48-49, 25 September 2006, pp. 84-85; DAB-095, Transcript 28 September 2006, pp. 3-4, 6; DBK-012, Transcript 18 October 2006, p. 25; DSK-113, Transcript 12 October 2006, pp. 111-112; DBK-117, Transcript 16 October 2006, pp. 30-31; DBK-129, Transcript 18 October 2006, pp. 2-5; DBK-005, Transcript 5 October 2006, p. 21, Transcript 4 October 2006, p. 58, Transcript 12 October 2006, pp. 5-8, 36-37; DBK-131, Transcript 26 October 2006, pp. 7-10; DSK-113, Transcript 12 October 2006, pp. 111-113.

²²¹ DAB-095, Transcript 28 September 2006, p. 7; DBK-012, Transcript 6 October 2006, pp. 55-58, 6 October 2006, pp. 84, 95; DBK-131, Transcript 26 October 2006, p. 10; DAB-033, Transcript 2 October 2006, pp. 93-94;

²²² DAB-095, Transcript 28 September 2006, pp. 52-55; DBK-012, Transcript 9 October 2006, pp. 18-19; DBK-131, Transcript 26 October 2006, p. 46

²²³ DAB-033, Transcript 25 September 2006, pp. 84-85; DBK-012, Transcript 9 October 2006, p. 18

an attack by that other side against the civilian population of its opponent.”²²⁴ “The ‘*tu quoque*’ defence has no place in contemporary international law. The bulk of this body of law lays down absolute, unconditional obligations not based on reciprocity.”²²⁵

MILITARY NECESSITY

168. In the opening statement in the case *Prosecutor vs. Brima et al.*,²²⁶ the Defence for the Third Accused made the following statement: “*The Defence evidence (...) will lay foundation for the invocation of the defence of military necessity with respect to some of the alleged burning, destruction and looting of the property described in the Indictment. (...) As previous judgments have made clear if the relevant attacks and if the Defence is able to show these were carried out as a result of military necessity, they are not unlawful. This is what we are going to prove with respect to some of the alleged activities in the indictment. The Defence will lay the foundation for the argument that some destruction of property served as a military objective and thus cannot incur criminal liability. (...) We will introduce evidence that AFRC members were primarily on the defensive and conducted defensive operations and carried out raids locally only in order to obtain supplies.*”
169. There is no general immunity of civilian property. Unlike civilians (and other non-combatants), who never can be a military objective and therefore can never be the direct target of the use of force,²²⁷ even if this would serve a military purpose,²²⁸ civilian property can if they are military objectives: “Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization offers a definite military advantage.”²²⁹ However, “indiscriminate attacks, that is to say attacks which strike civilian objects without distinction, may qualify as direct attacks against

²²⁴ *Prosecutor v Limaj et al*, IT-03-66, “Judgement”, Trial Chamber, 30 November 2005, para 193.

²²⁵ *Prosecutor v. Kupreškić et al.*, IT-95-16-T, “Judgement”, Trial Chamber, 14 January 2000, para 515-520.

²²⁶ Trial Transcript, 5 June 2006, p. 20.

²²⁷ *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, “Judgement”, Appeals Chamber, 17 December 2004, para 48: “The civilian population as such shall not be the object of an attack.”

²²⁸ *Ibid*, para 54: “The Appeals Chamber clarifies that the prohibition against attacking civilians may not be derogated from because of military necessity”

²²⁹ *Ibid*, para 53,

civilians. Indiscriminate attacks are expressly prohibited by Additional Protocol I. This prohibition reflects a well-established rule of customary law applicable in all armed conflicts.”²³⁰ It is worth emphasizing the fact that attacks on civilian property that are not military objectives cannot be justified by military necessity.²³¹ The Prosecution further points out that “all forms of wilful and unlawful appropriation of civilian property carried out during the armed conflict is plunder.”²³² “It includes both, large-scale seizures and appropriation by individual soldiers for their private gain.”²³³ Plunder is prohibited under Additional Protocol II²³⁴ and “infringe upon a number of norms of international humanitarian law.”²³⁵ Plunder “must involve grave consequences for the victims, thus amounting to a ‘serious violation’.”²³⁶ The seizure of private property is lawful if it is needed for the conduct of military operations.²³⁷

170. The Prosecution led evidence that the destruction of civilian property (burning of houses) and their looting/appropriation were a widespread and extensive practice within the AFRC. Those attacks were indiscriminate and directed against civilian property that were not military objects, for the destruction of houses of innocent civilians not involved in the conflict did not offer a definite military advantage. Their destruction was therefore unlawful and cannot be justified by military necessity. Furthermore, plunder (for example ‘Operation Pay Yourself’) was unlawful as it was not needed for the conduct of military operations, it was more serious as it deprived the already poor civilian population of its means to survive.

²³⁰ *Prosecutor v. Galić*, IT-98-29-T, “Judgement”, Trial Chamber, 5 December 2003, para 57.

²³¹ *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, “Judgement”, Appeals Chamber, 17 December 2004, para 54. *Prosecutor v. Blaskić*, IT-95-14-A, “Judgement”, Appeals Chamber, 29 July 2004, para 109. The Appeals Chamber rectified a misleading quote from the Trial Chamber that “targeting civilians and civilian property is an offence when not justified by military necessity.” *Prosecutor v. Strugar*, IT-01-42, “Judgement”, Trial Chamber, January 2005, para 280.

²³² *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, Trial Chamber, 31 March 2003, para 617; *Prosecutor Kordić and Čerkez*, IT-95-14/2, “Judgement”, Trial Chamber, 26 February 2001, para 352;

Prosecutor v. Jelisić, IT-95-10-A, “Judgement”, Trial Chamber, 14 December 1999, para 48.

²³³ *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, Trial Chamber, 31 March 2003, para 612-613.

²³⁴ Art. 4 (2)(g) of Additional Protocol II.

²³⁵ *Prosecutor v. Simić et al.*, IT-95-9-T, “Judgement”, Trial Chamber, 17 October 2003, para 98.

²³⁶ *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, Trial Chamber, 31 March 2003, para para 613, 614

²³⁷ *Prosecutor v. Simić et al.*, IT-95-9-T, “Judgement”, Trial Chamber, 17 October 2003, para 100.

ECOMOG JET-RAIDS

171. The Defence may well claim that it was the ECOMOG jet raids and bombardment which destroyed villages and caused deaths of civilians rather than the Accused or those under their command. The evidence, however, as a whole clearly indicates that this was not the case. Any ECOMOG jet raids which there may have been, as shown by the evidence, mostly occurred after the village had been attacked by the Accused and had already been subject to burning by the Accused and the troops under their command. Likewise the killings, amputations and rapes occurred in the villages before the ECOMOG jet raids.

ALIBI: GENERAL

172. "If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a defence in its true sense."²³⁸ Consequently, it is the burden of the Prosecution to prove beyond a reasonable doubt the alibi offered by the Accused is wrong and that the Accused was present and committed the crime.²³⁹
173. Only the First Accused has relied on the defence of alibi pursuant to Rule 67 and called alibi witnesses to prove his alibi (the First Accused's defence of alibi will be dealt with separately in this brief).
174. The Second and Third Accused have not raised the defence of alibi pursuant to Rule 67 despite them being well aware of this being an issue through the Prosecution motion filed following the evidence of the First Accused.²⁴⁰
175. The Prosecution accepts that it bears the burden of disproving the alibi of the First Accused. The Prosecution also accepts that under Rule 67, despite not raising a defence of alibi, the Second and the Third Accused are not precluded from pleading it.
176. Should this be the case the Prosecution submits that those alibi defences should be rejected in their entirety on the following basis:

²³⁸ *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, "Judgement", Appeals Chamber, 20 February 2001, para 581.

²³⁹ *Prosecutor vs. Kayishema and Ruzindana*, ICTR-95-1, "Judgement", Trial Chamber, 21 May 1999, para 234; *Prosecutor vs. Musema*, ICTR-96-13-T, "Judgement", Trial Chamber, 27 January 2000, para 108.

²⁴⁰ See generally *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-508, "Prosecution Motion for Relief in Respect of Violations of Rule 67", 7 July 2006.

177. The Third Accused raised the defence of alibi in his Pre-Trial Brief in respect of the UNAMSIL charges but not in respect of anything else.²⁴¹ The only reasonable inference deriving from this was that the Third Accused had no alibi for any of the other period and did not intend to rely on it as a defence. Should the Third Accused rely on it now it would merely be a belated afterthought in a desperate bid to avoid liability.
178. The Third Accused did not support the First Accused's alibi and say that he was with him when the First Accused allegedly escaped from Goba Water.²⁴²
179. Neither the Second Accused nor the Third Accused have led evidence that they were with anyone else, nor has any witness said that either the Second or Third Accused were with them, at the time of the commission of a crime charged in the Indictment.
180. The First Accused in his own evidence and various Defence witnesses have given evidence that the Second and Third Accused were under arrest from Colonel Eddie Town to Freetown. The Prosecution does not accept this evidence as it is founded on a series of demonstrable lies.
181. However, even if this Trial Chamber did accept this evidence then the three Accused would only be providing each other with alibis for the period from Colonel Eddie Town to Goba Water, a period during which the Prosecution submits few crimes were committed. There would be no alibi for Kono post-Intervention, the Bombali campaign including Karina, or the attack on Freetown.
182. In essence the Second and Third Accused are relying on the fact that none of their witnesses saw them in Kono, Bombali or Freetown and in the case of the Third Accused, Port Loko.

²⁴¹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-039, "Kanu – Defence Pre-Trial Brief and Notification of Defences Pursuant to Rule 67(A)(ii)(a) and (b), 22 March 2004, pp. 625-628

²⁴² *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-510, "Kanu – Response to Prosecution Motion for Relief in respect of Violations of Rule 67", 12 July 2006, para. 5.

MISTAKEN IDENTITY

183. The Prosecution anticipates that another potential defence of the Accused is that of mistaken identity.

184. This defence is likely to fall into two categories. The first is that those people who identified them or said they saw them were mistaken (this is likely to be more applicable to “crime base” witnesses), which is essentially a defence of alibi (because the Accused may claim the witness who identified him was wrong and he was at another place); whilst the second category is that those insiders who knew the Accused from before were lying.

First Category: “Crime-base” Identification

185. In the case of the Third Accused the Prosecution also anticipates the defence that there were many SLAs called “Five-Five” and that the “Five-Five” who committed the crimes in the Indictment was someone other than himself.

186. The Prosecution submits that the first category of witnesses would have no reason to lie especially if they are hearing the names at the time. They would have no reason to know that say “Gullit”, “Bazzy” or “Five-Five” would end up being an accused in this case. It was simply a name they heard at that time.

187. Other “crime base” witnesses would also be in a position to actually identify the Accused if they personally saw them when the crime was committed and heard them being called by their name or if they spent time with the Accused and there troop for example by being abducted

188. The only allegation presented before this Trial Chamber is that these Prosecution witnesses have lied against the Accused because they have been paid to do so by the Prosecution.

189. Not only is it fanciful to suggest that all Prosecution witnesses have been paid by the Prosecution to lie but no hard evidence has been produced to this effect, other than the usual witness expenses which are applicable to all witnesses appearing before this Court, whether for the Prosecution or the Defence.

190. There is therefore no good reason why the identification of the Accused by “crime base” witnesses as set out below should be disbelieved:

- a. The First Accused
 - i. Bombali and in particular Karina ---TF1-158, TF1-157
 - ii. Freetown in January 1999-----TF1-024, TF1-023, TF1-157
- b. The Second Accused.
 - i. Freetown in January 1999-----TF1-023
 - ii. Port Loko-----TF1-023
- c. The Third Accused
 - i. Kono pre-Intervention-----TF1-019
 - ii. Bombali and in particular Karina----TF1-158, TF1-157, TF1-094
 - iii. Freetown in January 1999-----TF1-227, TF1-094, TF1-157, TF1-085

Second Category: Insider Identification

191. The Prosecution submits that this category of witness is the best witness in terms of identification because these witnesses actually knew the Accused and are unlikely to make a mistake about identity.

All the Accused

Gibril Massaquoi – TF1-046

192. Gibril Massaquoi was a senior RUF commander who knew all three Accused from their days in Freetown on the Supreme Council.²⁴³
193. When he was released from Pademba Road Prison on 6 January 1999 during the Freetown Invasion he was taken to State House where he met the three Accused again.²⁴⁴ The First

²⁴³ Gibril Massaquoi, Transcript 7 October, 2005, pp. 76-79, 83

²⁴⁴ Gibril Massaquoi, Transcript 7 October 2005, pp. 113-115

Accused was in command whilst the Second and Third Accused also held command positions.²⁴⁵

194. Massaquoi spent two to three hours a day after his release at State House, so he would have known who was at State House and in command during the occupation of Freetown in January 1999.²⁴⁶ The First and Third Accused even made him speak to the BBC.²⁴⁷ He also spoke on the radio to Sam Bockarie requesting reinforcements for the Accused whilst they were in Freetown.²⁴⁸
195. Gibril Massaquoi also recognised the Second Accused as being the commander of the Westside Boys when he was sent to them by Foday Sankoh to tell them to stop disturbing commuters.²⁴⁹
196. Significantly, during cross-examination none of the lawyers for the Accused ever suggested to Gibril Massaquoi that none of the Accused was in Freetown during January 1999, nor was it suggested that the First Accused was not in command and that the other Accused did not hold senior command positions.
197. It is clear from this that the Accused have recently made up (probably from the time that the First Accused gave evidence) that they were not in Freetown at the time of the January 1999 Invasion. Were it otherwise, it is not plausible that they would have not challenged Gibril Massaquoi on this most crucial of issues.
198. The First Accused in his evidence suggested that Gibril Massaquoi may have held a grudge against him because Gibril Massaquoi had shot his brother Komba. Tellingly, Gibril Massaquoi was never cross-examined on this point by lawyers for the First Accused, which is a clear indication that this story was made up by the First Accused at the time of giving evidence in a desperate attempt to discredit Gibril Massaquoi, who had given damaging evidence against him.²⁵⁰

²⁴⁵ Gibril Massaquoi, Transcript 7 October 2005, p. 120

²⁴⁶ Gibril Massaquoi, Transcript 10 October 2005, p. 5, Transcript 11 October 2005, p. 64

²⁴⁷ Gibril Massaquoi, Transcript 7 October 2005, pp. 122-123

²⁴⁸ Gibril Massaquoi, Transcript 10 October 2005, pp. 8-9

²⁴⁹ Gibril Massaquoi, Transcript 10 October 2005, pp. 44-45

²⁵⁰ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 15-18 & Transcript 28 June 2006, pp. 65-68.

199. Even if it were the case that Gibril Massaquoi had killed the First Accused's brother in around 2000 (which the Prosecution does not accept) the Prosecution submits that this would not give a motive for Gibril Massaquoi to lie against the Accused. It may do so if the boot was on the other foot and the First Accused was giving evidence against Gibril Massaquoi, but not otherwise.
200. Apart from the alleged grudge referred to above by the First Accused (which the Prosecution does not consider to affect the credibility or reliability of Gibril Massaquoi) the First Accused in his own evidence did not otherwise challenge the credibility and reliability of Gibril Massaquoi.
201. No other witness has cast any aspersions on either the credibility or reliability of this witness. As such the Prosecution submits that his entire evidence may be believed especially as it relates to identification of the Accused.

██████████ - TF1-153

202. TF-153 grew up ██████████ barracks and knew him well.²⁵¹ Even the First Accused in his own evidence agrees that he grew up with TF1-153 at ██████████.²⁵² ██████████
██████████
203. TF1-153 saw the First Accused in Kono before the intervention ██████████
██████████ TF1-153 saw all the Accused at camp Rosos/Colonel Eddie Town in command positions.²⁵⁵
204. On the death of SAJ Musa TF1-153 identifies the First Accused as taking over command and leading the advance in to Freetown.²⁵⁶ TF1-153 saw the First and Third Accused at State House in Freetown during the January 1999 invasion as well as Gibril Massaquoi,

²⁵¹ TF1-153, Transcript 22 September 2005, pp. 13-14

²⁵² Accused Alex Tamba Brima, Transcript 19 June 2006, p. 22

²⁵³ TF1-153, Transcript 22 September 2005, p. 18

²⁵⁴ TF1-153, Transcript 22 September 2005, p. 22

²⁵⁵ TF1-153, Transcript 22 September 2005, pp. 73-85

²⁵⁶ TF1-153, Transcript 22 September 2005, pp. 93-98

who had just been released from Pademba Road jail²⁵⁷ and heard the Second Accused in Freetown collecting machetes at the WFP warehouse for 'Operation Cut Hand'.²⁵⁸

205. During cross-examination the Defence for the First Accused did not suggest to TF1-153 that he did not know him, that he did not see him in Kono before the intervention, that he was under arrest from Colonel Eddie Town to Freetown, that he was not in command after the death of SAJ Musa, that he did not lead the attack on Freetown and that he was not present in Freetown during the January 1999 invasion of Freetown.
206. During cross-examination neither the defence for the Second Accused nor the defence for the Third Accused suggested to TF1-153 that the Second and Third Accused were under arrest from Colonel Eddie Town to Freetown and that he did not see either the Second or Third Accused in Freetown during the January 1999 invasion of Freetown.
207. The First Accused suggested in his own evidence that [REDACTED]
[REDACTED]
[REDACTED] This was not put to TF1-153 during his cross-examination and has clearly been made up by the First Accused as an afterthought in an attempt to discredit TF1-153, who had given damaging evidence against him.
208. The First Accused, when asked why TF1-153 had lied about him before the court, could only come up with the explanation that [REDACTED]. Even if true (and there has been no evidence that it is) this is hardly a compelling reason for TF1-153 to give false testimony against the Accused.²⁶⁰
209. The Prosecution submits that such an assertion of dislike by the First Accused is no reason whatsoever why TF1-153's evidence should not be believed.
210. Apart from the above assertion of dislike by the First Accused no other witness has cast any aspersions on either the credibility or reliability of this witness and as such his entire evidence should be believed especially as it relates to identification.

²⁵⁷ TF1-153, Transcript 22 September 2005, p. 99

²⁵⁸ TF1-153, Transcript 23 September 2005, p. 18

²⁵⁹ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 22-23

²⁶⁰ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 16-17.

██████████ - TF1-033

211. This witness was in Freetown from the time of the coup until the intervention.²⁶¹ He testified that the First and Second Accused were involved in the coup and that they were both PLOs in the AFRC.²⁶² He also saw the First Accused in Freetown when the AFRC was in power.²⁶³ The First Accused agrees that he knew TF1-033 even before the coup in the NPRC days.²⁶⁴ ██████████, and he saw and knew the Second Accused in Kono ██████████.²⁶⁵
212. ██████████ the Accused as they moved across Bombali (including the attack on Karina)²⁶⁶ to Rosos²⁶⁷ and Colonel Eddie Town,²⁶⁸ and was with the Accused during the advance to and attack on Freetown in January 1999.²⁶⁹
213. Having known the Accused prior to the intervention and the fact that he spent nearly a year in there company ██████████ TF1-033 would have known and be able to identify the three Accused.
214. During cross-examination none of the Defence counsel suggested to TF1-033 that any of the Accused were not present in Kono, Bombali, Karina, Rosos, Colonel Eddie Town, the Freetown Invasion or any of the other places where the witness identified the Accused as being present.
215. During cross-examination none of the Defence counsel suggested to TF1-033 that any of the Accused were ever under arrest at Gberemantmatank during the advance to Freetown. TF1-033 was present at Goba Water when SAJ Musa was buried. He testified that he saw all the Accused there, yet no Defence counsel suggested to TF1-033 that the First and Third Accused escaped from Goba Water. Nor was it ever suggested to TF1-033 that the Second Accused was under arrest at Goba Water.

²⁶¹ TF1-033, Transcript 11 July 2005, pp. 3-4, 8-9

²⁶² TF1-033, Transcript 11 July 2005, p. 6-8

²⁶³ TF1-033, Transcript 12 July 2005, pp. 45-46

²⁶⁴ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 24; 11 July 2005, pp. 135-136

²⁶⁵ TF1-033, Transcript 12 July 2005, pp. 120-123

²⁶⁶ TF1-033, Transcript 11 July 2005, pp. 18-19

²⁶⁷ TF1-033, Transcript 11 July 2005, pp. 22 to 24

²⁶⁸ TF1-033, Transcript 12 July 2005, pp. 38, 40, 88-89. While this witness disavows knowledge of Colonel Eddie Town, it is the submission of the Prosecution that he did in fact go there, but knew it by another name – “Gberemantmatank”.

²⁶⁹ TF1-033, Transcript 11 July 2005, pp. 42-62

216. When the First Accused in his own evidence is asked why witness TF1-033 has lied about him in his evidence the only explanation which the First Accused has come up with is “
 [REDACTED]
 [REDACTED] The nature of this problem was never explained by the First Accused.
217. Furthermore, in describing his relationship with TF1-033 the First Accused stated in his own evidence, “I would say I hadn’t a problem with him as far as our relationship is concerned”.²⁷¹
218. Even the First Accused cannot give any explanation why TF1-033 may have come and lied about him before this Court. The Prosecution submits that no other witness has cast any aspersions on either the credibility or reliability of TF1-033 and as such his evidence in its entirety should be accepted especially as it regards identification.

[REDACTED] TF1-045

219. [REDACTED]. During the AFRC period he saw all three Accused at AFRC meetings in Freetown.²⁷² He was present in Kailahun when the First Accused’s diamonds were taken from him by the RUF.²⁷³
220. None of the Defence counsel suggested to TF1-045 that the three Accused did not attend AFRC meetings. [REDACTED]
 [REDACTED] by the RUF in Kailahun during the intervention. Nor was it suggested to TF1-045 that the First Accused did not have any diamonds with him when he was captured and searched by the RUF in Kailahun.
221. In his own evidence the First Accused gave no evidence as to why TF1-045 was lying against him. As such there is no reason to doubt the reliability and credibility of TF1-045. No other witness has cast any aspersions on either the credibility or reliability of TF1-045.

²⁷⁰ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 26

²⁷¹ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 26

²⁷² TF1-045, Transcript 19 July 2005, pp. 58-59, 65-72, 21 July 2005, pp. 94-96

²⁷³ TF1-045, Transcript 19 July 2005, p. 99, 21 July 2005, pp. 57-58

As such the Prosecution submits that the evidence of TF1-045 should be accepted in its entirety, especially as regards identification.

[REDACTED] - TF1-184

Witness TF1-184 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

TF1-184 [REDACTED] Third Accused,²⁷⁷ was friendly with him²⁷⁸ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

224. There can be no doubt that witness TF1-184 knew the Third Accused before the coup. TF1-184 identified the Third Accused as being Santigie Kanu and that his nickname was Five-Five, being the last two digits of his soldier number.²⁸²

225. TF1-184 stated that all the Accused overthrew the SLPP Government and were a part of the group known as the AFRC.²⁸³ TF1-184 knew the First Accused²⁸⁴ and the Second Accused²⁸⁵ [REDACTED]. The First Accused in his own evidence admits that he knew TF1-184 from this period.²⁸⁶ On the basis of his position in the [REDACTED]

²⁷⁴ TF1-184, Transcript 26 September 2005, p. 70

²⁷⁵ TF1-184, Transcript 26 September 2005, p. 71

²⁷⁶ TF1-184, Transcript 26 September 2005, p. 71

²⁷⁷ TF1-184, Transcript 26 September 2005, p. 80

²⁷⁸ TF1-184, Transcript 30 September 2005, p. 30

²⁷⁹ TF1-184, Transcript 26 September 2005, p. 82

²⁸⁰ TF1-184, Transcript 30 September 2005, pp. 30-32. Although the record reflects that the Accused said "Mile 88", the Prosecution submits, when the context is fully examined, that the witness undoubtedly was referring to Mile 38.

²⁸¹ TF1-184, Transcript 26 September 2005, p. 83

²⁸² TF1-184, Transcript 26 September 2005, p. 80

²⁸³ TF1-184, Transcript 26 September 2005, p. 83

²⁸⁴ TF1-184, Transcript 29 September 2005, p. 19

²⁸⁵ TF1-184, Transcript 29 September 2005, pp. 96-97

²⁸⁶ Accused Alex Tamba Brima, 19 June 2006, pp. 16-17

231. During cross-examination none of the Defence counsel of the Accused suggested to TF1-184 that any of the Accused was not present in Kono, Bombali, Karina, Rosos, Colonel Eddie Town or Freetown in January 1999 or any of the other places where the witness identified the Accused as being present.
232. During cross-examination no Defence counsel suggested to TF1-184 that any of the Accused were ever under arrest at Colonel Eddie Town or during the advance to Freetown. TF1-184 was present at Goba Water when SAJ Musa was buried, where he saw all the Accused, yet no Defence counsel suggested to him that the First and Third Accused escaped from Goba Water, nor was it ever suggested to TF1-184 that the Second Accused was under arrest at Goba Water.
233. During cross-examination no Defence counsel suggested to TF1-184 that any of the Accused was not in a position of command either in Freetown before the intervention, after the intervention at Kurubonla, Colonel Eddie Town, during the advance to Freetown or whilst the Accused were in Freetown.
234. With regard to the identity of the Accused and their whereabouts there is no compelling reason as to why the evidence of TF1-184 should not be believed.
235. It is clear from the lack of cross-examination on the point that all Accused accepted that they were where TF1-184 said they were when he gave evidence. He was not challenged on this aspect of his evidence.
236. It is the case of the Prosecution that this alleged lack of presence by the Accused at various locations by the Accused is an afterthought and was fabricated after the First Accused gave evidence. Otherwise, why else was it not put to TF1-184 and other Prosecution witnesses? There is no other logical explanation.
237. Even later challenges to TF1-184's credibility by subsequent Defence witnesses, such as the [REDACTED], were not put to TF1-184 during cross-examination. The First Accused in his own evidence did not even accuse TF1-184 of agreeing to give evidence against him. According to the First Accused TF1-184 had agreed to give evidence only against Johnny Paul Koroma.

238. Even this accusation by the First Accused is entirely illogical because it was well known that Johnny Paul Koroma had escaped arrest by the time the First Accused was in jail in March 2003. This is clearly an example of yet more lies which the First Accused gave in his evidence, such as [REDACTED], such as TF1-167 being the Second Accused's house cleaner when it was well known that TF1-167 was with the Second Accused as his security.
239. The accusations by Defence witnesses that TF1-184 [REDACTED] are not even supported by the Accused. These accusations have clearly been concocted by the First Accused's former brothers in arms under the instructions of the First Accused in a desperate attempt to discredit both TF1-184 and TF1-334 who had both given damaging evidence against him.
240. Tellingly, all the alleged evidence about witnesses TF1-184 and TF1-334 came after the Counsel for the First Accused stated before the Court that these witnesses needed to meet the First Accused in order to "get their story straight".²⁹³

George Johnson, aka Junior Lion - TF1-167

241. TF1-167 was security to Johnny Paul Koroma for two weeks immediately after the SLPP Government was overthrown on 25 May 1997. There after he became Chief of Security (CSO) to the Second Accused.²⁹⁴
242. TF1-167 in his position as CSO to the Second Accused during the AFRC government period would have known him and been able to recognise him. He even stayed in the Second Accused's family house in Kabala after the intervention.²⁹⁵
243. On account of the meetings which he accompanied the Second Accused to he would also have known and been able to recognise the First and Third Accused who would also have attended such meetings.

²⁹³ See Submissions, Transcript 25 July 2006, pp. 6-8, 13.

²⁹⁴ TF1-167, Transcript 15 September 2005, pp. 8-9

²⁹⁵ TF1-167, Transcript 15 September 2005, p. 30

244. He knew the First Accused who he says was PLO 2 and was sent to Kono²⁹⁶ as well as the Third Accused who was one of the persons who carried out the coup.²⁹⁷ He also saw the Third Accused when machetes were distributed in order to put down quietly protesting students.²⁹⁸ TF1-167 knew that the nickname of the Third Accused was Five-Five.²⁹⁹
245. After the intervention TF1-167 was with and saw the Second Accused in Kono. At this time the Second Accused was deputy to superman who was in overall command of the troops.³⁰⁰ Prior to leaving Kono with the Second Accused TF1-167 saw the First Accused arrive in Kono from Kailahun with reinforcements and take over command of the troop from the Second Accused.³⁰¹
246. After the First and Second Accused left Kono TF1-167 was with them when they went to Mansofinia, he was also with the Accused when the First Accused in front of the other Accused ordered Karina to be attacked.³⁰² He saw all the Accused moving through Karina during the attack.³⁰³
247. TF1-167 saw the Accused in Rosos in command positions and also saw them in command positions when they moved to Colonel Eddie Town. Before SAJ Musa arrived in Colonel Eddie Town the First Accused was the commander, the Second Accused was his deputy and the Third Accused was G5 commander.³⁰⁴
248. TF1-167 states that the Accused were arrested at Colonel Eddie Town on the arrival of Commander 0-Five for not carrying out operations properly and released by SAJ Musa on the advance to Freetown.³⁰⁵
249. Tellingly, none of the Accused through there Defence counsel during cross-examination suggested to TF1-167 that the Accused remained under arrest until the death of SAJ Musa

²⁹⁶ TF1-167, Transcript 15 September 2005, pp. 20-21

²⁹⁷ TF1-167, Transcript 15 September 2005, pp. 13-14

²⁹⁸ TF1-167, Transcript 15 September 2005, p. 23

²⁹⁹ TF1-167, Transcript 16 September 2005, p. 68

³⁰⁰ TF1-167, Transcript 15 September 2005, p. 38

³⁰¹ TF1-167, Transcript 15 September 2005, p. 39

³⁰² TF1-167, Transcript 15 September 2005, pp. 47, 53-54

³⁰³ TF1-167, Transcript 15 September 2005, p. 58

³⁰⁴ TF1-167, Transcript 15 September 2005, p. 69

³⁰⁵ TF1-167, Transcript 15 September 2005, pp. 74-79

- at Benguema and only then managed to escape. Furthermore, it was never suggested to TF1-167 that the Accused were not present in Freetown.
250. The Prosecution submits that the seed was sown for the Accused creating their false story about them being under arrest from Colonel Eddie Town to Freetown by the evidence of TF1-167 who was the first and only Prosecution witness who ever even alluded to the arrest of the Accused at Colonel Eddie Town. Before TF1-167 gave evidence the Accused had never indicated through their Pre-Trial Briefs or cross-examination that they were ever under arrest from Colonel Eddie Town to Freetown.
251. It is also telling that the First Accused and the Third Accused plead alibi in respect of two specific areas in their respective Pre-Trial Briefs. However, both ignore this defence of alibi when according to the First Accused in his evidence he and the Third Accused escape together at Goba Water and are either en route to Makeni or at Makeni during the Freetown invasion. It is clear from this omission that this alibi as pleaded by the First Accused in his evidence is a total fabrication.
252. En route from Colonel Eddie Town to Freetown before SAJ Musa's death at Benguema TF1-167 specifically places the First Accused as second in command to SAJ Musa, whilst the Second Accused is G4 (logistics) commander and the Third Accused is G5 (abductees/civilians) commander.³⁰⁶
253. After the death of SAJ Musa TF1-167 is present when the First Accused takes command of the troop and the Second Accused is appointed as his deputy.³⁰⁷ He also sees the Third Accused who he says is very close to the First Accused and is also a commander.³⁰⁸
254. TF1-167 saw all the Accused in State House as commanders during the 6 January invasion of Freetown.³⁰⁹ After the withdrawal from Freetown TF1-167 was with the Second Accused who was in command at Mamamah and the Westside.³¹⁰
255. During cross-examination none of the defence council of the Accused suggested to TF1-167 that any of the Accused were not present in Kono, Bombali, Karina, Rosos, Colonel

³⁰⁶ TF1-167, Transcript 16 September 2005, pp. 5-6

³⁰⁷ TF1-167, Transcript 16 September 2005, pp. 11-13

³⁰⁸ TF1-167, Transcript 16 September 2005, pp. 13, 16

³⁰⁹ TF1-167, Transcript 16 September 2005, pp. 27-28, 39-41

³¹⁰ TF1-167, Transcript 16 September 2005, pp. 64-71

Eddie Town, Freetown in January 1999, the Westside or any of the other places where the witness identified the Accused as being present.

256. The Prosecution submits that TF1-167 knew and could recognise all the Accused, who he worked closely with, especially the Second Accused, from before the 25 May 1997 coup right up until the Westside side in June 1999. As such TF1-167's identification of all the Accused in the places which he mentions should be accepted.

257. The Prosecution further submits that the credibility of TF1-167 was hardly brought into question by any witness before the court, including all of the Accused through cross-examination.

258. The First Accused suggested that TF1-167 had shot his brother. This was denied by TF1-167 and even if correct (which the Prosecution denies) it would not give TF1-167 any motive to come and lie against the First Accused. If anything it would give the First Accused a motive to lie against TF1-167 had there positions been reversed in this trial.

259. There is no suggestion of any other witness or any person connected with the special court telling TF1-167 that he should come and lie against the Accused in return for special treatment. It is submitted by the Prosecution that the evidence of TF1-167 should be believed in its entirety especially in relation to the identity of the Accused.

██████████ - TF1-334

260. TF1-334 ██████████
 ██████████ as admitted by the First Accused in his own evidence³¹¹ during the AFRC Government period and ██████████
 ██████████
 ██████████.³¹³

██████████ TF1-334 knew the Second and First Accused during the AFRC Government because he used to visit their offices when they were both PLOs ██████████

³¹¹ ██████████

³¹² TF1-334, Transcript 16 May 2005, pp. 9

³¹³ TF1-334, Transcript 17 May 2005, pp. 9-13

[REDACTED]

262. After the intervention TF1-334 saw the Second Accused in Koidu town who was the senior most SLA commander.³¹⁷ Before the SLAs withdrew from Kono TF1-334 saw the First Accused arrive and take over command from the Second Accused.³¹⁸ TF1-334 moved with the Accused from Kono via Tombodu to Mansofinia.³¹⁹

263. TF1-334 was personally present when SAJ Musa in Koinadugu District told the First Accused to find a base in the North.³²⁰ And when the First Accused returned to Mansofinia and restructured the troop.³²¹ He was also present when the First Accused appointed the Second Accused as his second in command and the Third Accused as his chief of staff at Mansofinia.³²²

264. TF1-334 travelled with the Accused and the troops under their command from Mansofinia to Camp Rosos and through all the various villages they attacked en route including Karina.

265. TF1-334 was present with all the Accused at Camp Rosos and Colonel Eddie Town until the advance to Freetown. During this period TF1-334 did not see or hear of any of the Accused being under arrest, rather he saw all three holding senior command positions.

266. TF1-334 was a part of the advance from Colonel Eddie Town to Freetown. At no stage during the advance did he see or hear of the Accused being under arrest, rather they all held senior command positions.

267. TF1-334 was present when the First Accused took command of the troop after the death of SAJ Musa at Benguema. He was also present when the First Accused appointed the Second Accused as his deputy and the Third Accused as his third in command.

³¹⁴ TF1-334, Transcript 16 May 2005, pp. 74-75; 17 June 2005, pp. 62-64

³¹⁵ TF1-334, Transcript 17 June 2005, p. 62

³¹⁶ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 4

³¹⁷ TF1-334, Transcript 18 May 2005, p. 21

³¹⁸ TF1-334, Transcript 19 May 2005, p. 10, 20 May 2005, p. 27, 55-56

³¹⁹ TF1-334, Transcript 20 May 2005, pp. 71-73

³²⁰ TF1-334, Transcript 20 May 2005, p. 86

³²¹ TF1-334, Transcript 20 May 2005, p. 87

³²² TF1-334, Transcript 20 May 2005, pp. 88-92

268. TF1-334 also saw all of the three Accused at State House after the invasion of Freetown on 6 January 1999 holding positions of command.

269. TF1-334 [REDACTED]
[REDACTED].

270. There can be no doubt that TF1-334 knew and was able to identify all the Accused. Tellingly, none of the defence council for any of the Accused during cross-examination suggested to witness TF1-334 that the Accused was not present at the places he said they were. Neither did any of the defence council for any of the Accused during cross-examination suggest to TF1-334 that the Accused were under arrest from Colonel Eddie Town to Freetown and did not take part in the Freetown invasion.

271. The Prosecution submits that the reason for this is that the Accused were not under arrest during this period and since TF1-334 gave evidence before TF1-167 the idea of any of them being under arrest had not even occurred to them.

[REDACTED] During TF1-334's cross-examination none of the Defence counsel of any of the Accused suggested to TF1-334 that [REDACTED]
[REDACTED]

[REDACTED] Tellingly, the First Accused in his own evidence does not even suggest that TF1-334
[REDACTED]
[REDACTED]
[REDACTED]

274. The accusations by Defence witnesses that TF1-334 [REDACTED]
[REDACTED]. These accusations have clearly been concocted by the First Accused's former brothers in arms under the instructions of the First Accused in a desperate attempt to discredit both TF1-184 and TF1-334 who had both given damaging evidence about him.

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275. Tellingly, all the alleged evidence about witnesses TF1-184 and TF1-334 came after the Counsel for the First Accused intimated that that these witnesses would meet with the First Accused to discuss their stories.³²³

³²³ See Submissions, Transcript 25 July 2006, pp. 6-8, 13.

V. JUNTA PERIOD: 25 MAY 1997 TO CIRCA 13 FEBRUARY 1998 – THE FACTS

PROSECUTION EVIDENCE

THE COUP

276. On 25 May 1997 (then) Corporal Tamba Gborie announced in a radio broadcast the overthrow of the SLPP Government of President Ahmad Tejan Kabbah by the ‘other ranks’ of the SLA.³²⁴
277. On around 28 May 1997, Major Johnny Paul Koroma announced on the radio his chairmanship of the Armed Forces Revolutionary Council or AFRC.³²⁵ Also on 28 May, a proclamation was issued by Koroma³²⁶ making provision for the interim administration of Sierra Leone by the Armed Forces Revolutionary Council (“the Council”).³²⁷ That proclamation was broadcast on SLBS on 29 May.³²⁸
278. By this proclamation, Sierra Leone’s elected Parliament and all political parties were dissolved, the Constitution of Sierra Leone “suspended” in so far as its provisions were inconsistent with the Proclamation or any law made under it, and the Council gave itself the power to order the detention of anyone it chose to “in the interest of public safety or public order.”³²⁹

COUP MAKERS AND FOOTBALLERS

279. The three Accused were all members of the group of other ranks SLAs who plotted and carried out the coup.

³²⁴ TF1-334, Transcript 16 May 2005, pp. 26-27; Exhibit P88: Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998, pp. 10-11; Exhibit P89: Statement of Tamba Gborie, 25 March 1998, pp. 81-82.

³²⁵ TF1-334, Transcript 16 May 2005, p. 44; Exhibit 89: Statement of Tamba Gborie, p. 84.

³²⁶ Hereafter referred to as “Proclamation of 28 May 1997”.

³²⁷ Exhibit P4: Proclamation Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997, Public Notice No. 3 of 1997 published 28 May 1997.

³²⁸ Exhibit P75: SLBS Radio Broadcast 29 May 1997, 15:26 GMT. Proclamation issued by the Administration of Sierra Leone Armed Forces Revolutionary Council 1997, in Freetown on 28 May 1997. Corroborated by Exhibit P88: Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998, p. 12; Exhibit P89: Statement of Tamba Gborie, 25 March 1998, p. 86.

³²⁹ Exhibit P4: Proclamation Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997, Public Notice No. 3 of 1997 published 28 May 1997, paras. 1-2, para. 6. Para 6(3): “Any order made under subparagraph (1) directing that any person be detained shall not be questioned in any court of law.”

280. TF1-334 gave evidence that 17 men plotted and carried out the coup. They were (predominantly) ‘other ranks’³³⁰ members of the SLA and members of a football team of the 1st Battalion in Wilberforce.³³¹ They were identified³³² as Staff Sergeant Abu Sankoh, aka “Zagallo,”³³³ Sergeant Alex Tamba Brima,³³⁴ Sergeant Ibrahim Bazy Kamara,³³⁵ Corporal Hassan “Papah” Bangura, Warrant Officer Class II “Woyoh,”³³⁶ Corporal Gborie,³³⁷ Santigie Borbor Kanu, aka “Five-Five,”³³⁸ Corporal Momoh Derty and others.³³⁹

281. Corroborating TF1-334, George Johnson testified that the following twelve ‘other ranks’³⁴⁰ soldiers in the SLA were amongst those who carried out the coup (in the order as in the preceding paragraph): “Zagallo”, Alex Tamba Brima, aka “Gullit,” Ibrahim Bazy Kamara, aka “Dark Angel,” Hassan “Papa” Bangura, aka “Bomb Blast,” “Foday Kallay” [sic], “Sullay Falaba,” “Biorbo,” “Rambo” – Chief Security to Johnny Paul Koroma, “Woyoh,” “Sammy” or Samuel Kargbo, Santigie Kanu, aka “55,” and Momoh “Durti” [sic].³⁴¹

282. Gibril Massaquoi gave evidence that 17 key junior officers participated in the coup.³⁴² He named the following other ranks SLAs: Abu Sankoh, aka “Zagalo,” Ibrahim Bazy Kamara, aka “Bazy,” “Bioyoh” Sesay, “Woyoh,” and “Bomb Blast.”³⁴³

³³⁰ Save as indicated below. TF1-334, Transcript 16 May 2005, p. 27.

³³¹ TF1-334, Transcript 17 May 2005, pp. 12-13; Transcript 17 June 2005, p. 67.

³³² TF1-334, Transcript 17 May 2005, pp. 9-10. Ranks as at May 1997.

³³³ Exhibit P88: Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, gives Sankoh’s full name as “Alfred Abu Sankoh.” According to his statement, he was 39 years old in 1998. He corroborates TF1-334’s evidence regarding the football team: he says that he was coach of the army football team which was camped and trained at the Wilberforce Military Football grounds (p. 4).

³³⁴ Aka Gullit. TF1-334, Transcript 16 May 2005, p. 75.

³³⁵ Aka IB, aka Makavelle. TF1-334, Transcript 16 May 2005, p. 75; or Dark Angel: George Johnson, Transcript 15 September 2005, p. 9.

³³⁶ TF1-334, Transcript 17 May 2005, pp. 3-4. Full name Franklyn Conteh: TF1-334’s testimony on Exhibit P6, Transcript 17 May 2005, p. 27. Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled “The Full AFRC Cabinet,” front and back pages (infra), refers to this individual as “WOII Conteh F.”

³³⁷ TF1-334, Transcript 17 May 2005, p. 15.

³³⁸ TF1-334, Transcript 17 May 2005, p. 28. Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled “The Full AFRC Cabinet”, front and back pages (infra), refers to this individual as “Sergeant Khanu SB”.

³³⁹ TF1-334, Transcript 19 May 2005, pp. 12-13. Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled “The Full AFRC Cabinet”, front and back pages (infra), refers to this individual as “Corporal Momoh Bangura”.

³⁴⁰ George Johnson, Transcript 15 September 2005, p. 15.

³⁴¹ George Johnson, Transcript 15 September 2005, pp. 14-15.

³⁴² Gibril Massaquoi, Transcript 11 October 2005, pp. 104-105.

³⁴³ Gibril Massaquoi, Transcript 7 October 2005, pp. 76-78.

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283. Prosecution witness TF1-184 worked as a personal security for SAJ Musa for two to three months in the AFRC period.³⁴⁴ He also testified that the First, Second and Third Accused overthrew the SLPP Government. TF1-114 recalled Corporal Gborie announcing the Coup by AFRC Junta forces on the mass media, and recalled the name of one of the PLOs, Alex Tamba Brima, alias "Gullit," announced by the media.³⁴⁵

[REDACTED]

[REDACTED] In this period, the Second Accused was a security to the Attorney-General, Mr. Gooding. [REDACTED].³⁴⁷ The First Accused testified that he was security to Strasser based at Kabasa lodge.³⁴⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

285. At the time of the May 1997 coup, the Third Accused was deployed at Camp Charlie, in Mile 91, [REDACTED].³⁵² [REDACTED]

[REDACTED] The Third Accused had also been a security to Captain Strasser during the NPRC regime.³⁵⁵ Abu Sankoh, during the NPRC Junta, served as Chief Security Officer to Major J.P. Gbondo, who was a member of the Supreme Council and Secretary of State in the Ministry of Works,³⁵⁶ and Tamba Gborie was assigned to the Secretary of State North, Lt.-Col. Fallah Sewa, as bodyguard.³⁵⁷

³⁴⁴ TF1-184, Transcript 26 September 2005, pp. 74-75 and Transcript 30 September 2005, p. 54.

³⁴⁵ TF1-114, Transcript 14 July 2005, pp. 118-119 and Transcript 18 July 2005, p. 24.

³⁴⁶ TF1-184, Transcript 29 September 2005, pp. 96-97; Transcript 29 September 2005, p. 19; TF1-184, Transcript 26 September 2005, Closed session, p. 71; Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 24-25; Transcript 6 June 2006, p. 20; Transcript 19 June 2006, p. 25; Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998 & Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 70.

³⁴⁷ TF1-184, Transcript 29 September 2005, pp. 96-97; Accused Alex Tamba Brima, Transcript 28 June 2006, p. 25.

³⁴⁸ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 20 and Transcript 19 June 2006, p. 25.

³⁴⁹ TF1-334, Transcript 17 June 2005, p. 62.

³⁵⁰ TF1-184, Transcript 29 September 2005, p. 19.

³⁵¹ TF1-184, Transcript 26 September 2005, Closed session, p. 71.

³⁵² TF1-184, Transcript 30 September 2005, p. 34.

³⁵³ TF1-184, Transcript 26 September 2005, p. 80.

³⁵⁴ TF1-184, Transcript 26 September 2005, p. 82.

³⁵⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 24.

³⁵⁶ Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998.

³⁵⁷ Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 70.

286. In 1998, statements were obtained by the SLP from “Alfred” Abu Sankoh,³⁵⁸ alias Zagallo and from Tamba Gborie.³⁵⁹ Both were arrested and executed in October 1998.³⁶⁰
287. Sankoh corroborates TF1-334’s evidence that the May 1997 coup makers were football players: he says that he selected a total of 25 men to form the team, comprising a combination of soldiers and a few civilians employed by the army.³⁶¹ Tamba Gborie, who says he was staying at Wilberforce Military Barracks prior to the coup, says that he knew a few of the military personnel who were members of the military football camping at the barracks, including “Alex Brima.”³⁶²
288. On 24 May 1997, Sankoh says, he called up 17 men, including members of the football team and “Sgt. Alex Tamba Brima” and “Lance Corporal Tamba Gborie,” and they planned to arrest the senior officers at the Military Headquarters in Cockerill.³⁶³ The men also included WO II Franklyn Conteh, Sgt Ibrahim Bazy Kamara, Cpl. “Mohamed” [sic] Kanu, alias “Five-Five.”³⁶⁴
289. The coup makers broke into Pademba Road Prison early in the morning on 25 May 1997 to get reinforcements. They released Johnny Paul Koroma who had been detained as a result of a previous coup attempt, and many other SLA soldiers, including Prosecution witness George Johnson.³⁶⁵ George Johnson went to the army headquarters at Cockerill with Major Johnny Paul Koroma. On his arrival, Johnson and assembled soldiers were sent to the army ordinance at Murray Town to get more arms and ammunition.³⁶⁶ Johnny Paul Koroma assumed command of the men very shortly after his release from Pademba Road.³⁶⁷
290. After the takeover, TF1-334 saw the First Accused at State House.³⁶⁸ On the day of the coup, TF1-153 also saw him at Wilberforce barracks. The First Accused arrived with a

³⁵⁸ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998.

³⁵⁹ Exhibit P89, Statement of Tamba Gborie, 25 March 1998.

³⁶⁰ Accused Alex Tamba Brima, Transcript 20 June 2006, p. 41, p. 48.

³⁶¹ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 6.

³⁶² Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 75.

³⁶³ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 7.

³⁶⁴ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, pp. 7-8.

³⁶⁵ TF1-334, Transcript 17 May 2005, pp. 12-13; George Johnson, Transcript 15 September 2005, p. 7.

³⁶⁶ George Johnson, Transcript 15 September 2005, p. 12.

³⁶⁷ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 10; Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 79.

³⁶⁸ TF1-334, Transcript 17 June 2005, p. 61.

Land Rover and the British High Commissioner's jeep, and explained that "they had overthrown."³⁶⁹ [REDACTED]

[REDACTED] As per the First Accused's announcement, SAJ Musa did return to Sierra Leone and joined the AFRC Government being second in authority only to Johnny Paul Koroma. This raises the question as to how the First Accused, who, according to his own evidence, was only a corporal who did not take part in the Coup, would have had access to such inside information shortly after the Coup. The answer must be that he was an integral part of the Coup.

[REDACTED]

292. The evidence of Prosecution witnesses regarding the planning and first hours of the Coup is corroborated by the statements of Abu Sankoh and Tamba Gborie. Sankoh says that after the group seized military equipment from Cockerill barracks, Gborie went with a group of soldiers to the Sierra Leone Broadcasting Service ("SLBS").³⁷³

293. He says the First Accused was posted at the Wilberforce Military Barracks ([REDACTED]), Sgt. Brima Kamara was posted to the army ordinance at Murray Team and Franklyn Conteh to take care of the military headquarters. He refers to Alex Brima, as a "coup leader."³⁷⁴ Sankoh headed to Pademba Road Prison at around 7 am with a group of soldiers, including Sgt. Ibrahim Bazy Kamara and Cpl. Foday Kallay.³⁷⁵

294. The Prosecution submits that the evidence that the Accused and others carried out the coup is highly significant. It is the case of the Prosecution that it was on account of their role in overthrowing the SLPP Government that the Accused and the other ranks soldiers who

³⁶⁹ TF1-153, Transcript 22 September 2005, pp. 12-13.

³⁷⁰ TF1-153, Transcript 22 September 2005, pp. 15-16.

³⁷¹ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 6.

³⁷² TF1-184, Transcript 26 September 2005, pp. 83-84.

³⁷³ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 8.

³⁷⁴ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, pp. 8-9.

³⁷⁵ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 9.

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carried out the coup were rewarded by being appointed to senior positions within the newly established AFRC Government.

295. Thus it was the involvement of the Accused in the coup which enabled them to be elevated from the other ranks to positions within the AFRC hierarchy such as Honourables, PLOs, Supreme Council members, which superseded rank and as such, placed them in positions of authority during the Junta period.

296. Furthermore, it is the case of the Prosecution that the AFRC hierarchy continued to exist in the jungle after the intervention so that when the AFRC evolved into a military organisation after the intervention, the hierarchical positions held during the Junta period were converted into command positions based on the Junta hierarchy of seniority.

BEGINNING OF COOPERATION BETWEEN RUF AND SLAS: AFRC AND THE SUPREME COUNCIL

297. Cpl. Foday Sankoh, the leader of the RUF, was invited by Johnny Paul Koroma, the newly appointed chairman of the AFRC, to join in sharing political power almost immediately after the Coup. The invitation was accepted and together the two groups set about securing their control and power.

298. The period in which the AFRC was in government was also known as the Junta.³⁷⁶ This lasted for about nine months, from around 25 May 1997 to around 12/13 February 1998.

299. The three Accused were all members of the AFRC, honourables, and members of the Supreme Council.

300. TF1-334 gave evidence naming the AFRC's members and their functions. His evidence is corroborated in every material respect, not only by contemporaneous documentary evidence, but also by the evidence of other Prosecution insider witnesses, including George Johnson and Gibril Massaquoi.

³⁷⁶ George Johnson, Transcript 15 September 2005, pp. 21-22.

³⁷⁷ [REDACTED] TF1-334, Transcript 15 June 2005, Closed Session, p. 66.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
303. Prosecution witness George Johnson was chief security officer to the Second Accused during the Junta and was extremely close to him. He accompanied him to meetings and used to go with securities on operations for the Second Accused, giving him situation reports on his return.³⁸⁵
304. Prosecution witness Gibril Massaquoi was a former RUF spokesman and a member of the Supreme Council during the Junta.³⁸⁶
305. By the Proclamation of 28 May 1997, the Armed Forces Revolutionary Council, or “the Council,” was to consist of a chairman, deputy chairman and other members not exceeding 27 in number.³⁸⁷
306. TF1-334 testified that the president, or chairman, was Major Johnny Paul Koroma, and the

³⁷⁸ TF1-334, Transcript 16 May 2005, Closed Session, pp. 8-9.

³⁷⁹ TF1-334, Transcript 17 June 2005 Closed Session, pp. 38-39.

³⁸⁰ TF1-334, Transcript 16 May 2005, Closed Session, p. 12.

³⁸¹ TF1-334, Transcript 16 May 2005, Closed Session, p. 12. Although he never attended those meetings himself, Transcript 17 June 2005, Closed Session, p. 31.

³⁸² TF1-334, Transcript 16 May 2005, Closed session, pp. 12-13. For e.g., of Exhibit P4, Transcript 16 May 1997, p. 59; of Exhibit P5.1, Transcript 16 May 2005, pp. 71-72.

³⁸³ TF1-334, Transcript 16 May 2005, Closed session, p. 11.

³⁸⁴ George Johnson, Transcript 15 September 2005, p. 20.

³⁸⁵ George Johnson, Transcript 15 September 2005, pp. 17-19.

³⁸⁶ Gibril Massaquoi, Transcript 7 October 2005, p. 72. He received two months salary in this role, and attended two meetings; a third meeting was aborted, Gibril Massaquoi, Transcript 7 October 2005, p. 75.

³⁸⁷ Exhibit P4, para. 1. Membership of the Council was in July 1997 to not exceed 40. Exhibit P5.1, Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation (Amendment) Decree, 1997, AFRC Decree No. 4, made and issued on 12 July 1997, para. 1; TF1-334, Transcript 16 May 2005, pp. 71-72.

vice-president, or deputy chairman, was Corporal Foday Sankoh. In Sankoh's absence,³⁸⁸ SAJ Musa, Secretary of State, or Chief Secretary of State,³⁸⁹ acted as vice-president, or deputy chairman.³⁹⁰

307. In July 1997, Johnny Paul Koroma's "Cabinet" was announced. By this time, original members of the "Council" had become the "Supreme Council."³⁹¹

308. TF1-334 testified that the 17 men who plotted the May 1997 coup all became Supreme Council members and honourables.³⁹²

309. Johnny Paul Koroma was the head of the Supreme Council and the vice-chairman was SAJ Musa. Other members were Colonel Avivavo, Deputy Defence Minister,³⁹³ and RUF members who included Colonel Sam Bockarie, aka Mosquito, Colonel Issa Sesay, Colonel Morris Kallon, aka "Bilai Wai Karim," Lieutenant Eldred Collins and Colonel Mike Lamin.³⁹⁴

310. George Johnson testified that the government formed after the Coup, the Armed Forces Revolutionary Council, was made up of the 16 men [sic] who carried out the coup and most of the RUF commanders who had come to Freetown.³⁹⁵

311. Gibril Massaquoi testified that both the army and the RUF were represented on the Supreme Council. He testified that army members of the Supreme Council fell into two groups: the 'other ranks' who carried out the Coup, and Major Johnny Paul Koroma, who was head of the Supreme Council, the Chief of Defence Staff, Brigadier SFY Koroma, the

³⁸⁸ Sankoh had been arrested in Nigeria in March 1997 along with Prosecution witness Gibril Massaquoi. He was, at the time of the coup, staying at the Sheraton Guest House in Abuja. He was free to leave the guest house, but was not free to leave Abuja. Gibril Massaquoi, Transcript 7 October 2005, pp. 32-33, 36.

³⁸⁹ TF1-334, Transcript 16 May 2005, p. 77. Corroborated by George Johnson, save that Johnson says that Sam Bockarie, aka Mosquito, took over as Vice-President in Sankoh's absence, and further that Issa Sesay took over from him when Bockarie went to Kenema, Transcript 15 September 2005, p. 18. Corroborated by Gibril Massaquoi, Transcript 7 October 2005, p. 81.

³⁹⁰ TF1-334, Transcript 16 May 2005, p. 56, 66.

³⁹¹ Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages. A Secretary-General, Colonel AK Sesay, who chaired meetings of the Supreme Council, was appointed later on, TF1-334, Transcript 16 May 2005, pp. 66-67; Exhibit P4, para. 1(4).

³⁹² TF1-334, Transcript 16 May 2005, p. 57, 92. Corroborated by George Johnson, Transcript 15 September 2005, p. 15. Corroborated by Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 13.

³⁹³ TF1-334, Transcript 17 May 2005, pp. 2-3.

³⁹⁴ TF1-334, Transcript 17 May 2005, pp. 6-8.

³⁹⁵ George Johnson, Transcript 15 September 2005, pp. 17-18.

Chief of Army Staff,³⁹⁶ Colonel SO William and SAJ Musa, Chief Secretary of State.³⁹⁷

312. He named ‘other ranks’ members of the Supreme Council as follows: Tamba Brima, aka Gullit, Abu Sankoh, aka Zagallo, Ibrahim Bazzy Kamara, aka Bazzy, Bioh Sesay, Woyoh, Bomb Blast and Santigie Kanu, aka Five-Five.³⁹⁸ Gibril Massaquoi was nominated to the Supreme Council by Sam Bockarie. Other RUF members were Mike Lamin, Issa Sesay, Denis Mingo, and Bockarie.³⁹⁹ Foday Sankoh and his advisor Daniel G. Kallon were also members of the Supreme Council.⁴⁰⁰

313. The evidence of Prosecution insider witnesses is further corroborated as follows:

- a. Prosecution Exhibit P6 is a Government Notice of the AFRC naming members of the “Armed Forces Revolutionary Council” with effect from 25 May 1997.⁴⁰¹ All the Accused are named as members.
- b. “Supreme Council” members named in a newspaper announcement of members of the “Full AFRC Cabinet”, dated 11 July 1997, include all the Accused”.⁴⁰²
- c. On the evidence of Prosecution insider witnesses and other documentary evidence tendered by the Prosecution, the only inference is that numbers (6) to (22) inclusive on this list are the 17 ‘other ranks’ SLAs who plotted and carried out the coup. The list is strikingly similar to the complete list of names provided by witness TF1-334 of the 17 coup plotters.
- d. In August 1997, Gibril Massaquoi attended a meeting at Cockerill military headquarters attended by all the Accused.⁴⁰³ Prosecution Exhibit P34 is a set of Minutes of an “Emergency Council Meeting of the AFRC” held at State House on

³⁹⁶ Or the Army Chief of Staff – used by witnesses alternately. For example, TF1-045, Transcript 19 July 2005, p. 58; and TF1-045, Transcript 19 July 2005, p. 61.

³⁹⁷ Gibril Massaquoi, Transcript 7 October 2005, pp. 72-73.

³⁹⁸ Gibril Massaquoi, Transcript 7 October 2005, pp. 76-79, 83.

³⁹⁹ Gibril Massaquoi, Transcript 7 October 2005, pp. 79-80.

⁴⁰⁰ Gibril Massaquoi, Transcript 7 October 2005, p. 80.

⁴⁰¹ Exhibit P6, Government Notice 215 dated 3 September 1997, in the Sierra Leone Gazette, No. 52, 4 September 1997, issued pursuant to subparagraph (2) of paragraph 1 of the Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997 (Exhibit P4, above). Government Notice 215 is repeated in a later edition of the Sierra Leone Gazette (No. 64, 18 September 1997), see Exhibit P7.

⁴⁰² Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled “The Full AFRC Cabinet”, front and back pages.

⁴⁰³ Gibril Massaquoi, Transcript 7 October 2005, p. 83.

- 11 August 1997. Amongst those present were the First and Second Accused.⁴⁰⁴
- e. Gibril Massaquoi gave evidence that he recognised these as minutes for an emergency Supreme Council meeting which he received as a member of the Supreme Council.⁴⁰⁵ It is notable that the First and Second Accused are identified as present, alongside Major Johnny Koroma, Captain SAJ Musa, and Colonel Mike Lamin; all of whom were said to be members of the Supreme Council by the First Accused,⁴⁰⁶ TF1-334,⁴⁰⁷ and Gibril Massaquoi.⁴⁰⁸
- f. Gibril Massaquoi attended an “extraordinary” meeting of the Supreme Council at State House in late August/September 1997.⁴⁰⁹ Amongst those present were the Second and the Third Accused.⁴¹⁰
- g. Massaquoi attended a third meeting of the Supreme Council which was aborted. Present were Johnny Paul Koroma, the AFRC Secretary-General (Col. AK Sesay⁴¹¹), Issa Sesay, “Gullit,” “Five-Five,” Bazzy and the Chief of Defence Staff.⁴¹²
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- i. In around October/November 1997 he attended a meeting at the Youyi Building, again chaired by the Chief of Army Staff and attended by Commander B, Morris Kallon, Denis Mingo, aka Superman, Gibril Massaquoi, CO Isaac, Steve Bioh [sic],

⁴⁰⁴ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997.

⁴⁰⁵ Gibril Massaquoi, Transcript 7 October 2005, p. 102-103.

⁴⁰⁶ Accused Alex Tamba Brima, Transcript 67-68, 3 July 2006.

⁴⁰⁷ TF1-334, Transcript 17 May 2005, pp. 2, 8.

⁴⁰⁸ Gibril Massaquoi, Transcript 7 October 2005, pp. 72-72, 79.

⁴⁰⁹ Gibril Massaquoi, Transcript 7 October 2005, p. 86.

⁴¹⁰ Ibrahim Bah was a General and part of the special forces, and an RUF representative in Burkina Faso, Gibril Massaquoi, Transcript 7 October 2005, p. 37.

⁴¹¹ For example, Exhibit P6.

⁴¹² Gibril Massaquoi, Transcript 7 October 2005, p. 93.

⁴¹³ TF1-045, Transcript 19 July 2005, p. 57.


⁴¹⁴ TF1-045, Transcript 19 July 2005, pp. 57-63.

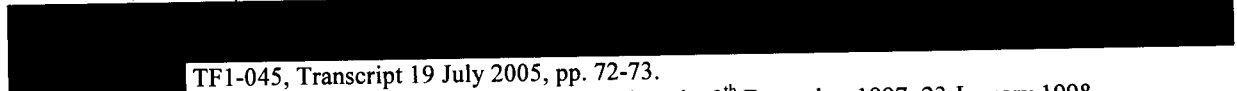
Morris Kallon, Issa Sesay, “Five-Five,” and General “Bupleh” [sic].⁴¹⁵

- j. There was a meeting towards the end of November 1997 at Johnny Paul’s lodge at Spur Road in Freetown attended by members of the RUF command and amongst others the First Accused from the AFRC.⁴¹⁶
- k. Minutes of a Meeting held on 9 December 1997 list the attendees as including “Hon Abu Sankoh – PLOI,” “Hon” “Tamba Alex Brima – PLOII,” “Hon SB Khanu (Five-Five),” “Tamba Gborie,” “Capt SAJ Musa,” “Lt.-Col Issac H Sesay,” “Col Mike Lamin,” and “Morries Kanou.”⁴¹⁷
- l. Supreme Council members named in a press release issued by the Security Council Committee on Sierra Leone in January 1998 include at (7) “Brima, Alex Tamba/Staff Sergeant Principal Liaison Officer II,” at (16) “Kamara, Brima Bazy/Staff Sergeant Principal Liaison Officer III,” at (19) “Khanu, S.B./Sergeant,”⁴¹⁸ When confronted with the aforesaid press release, the First Accused, incredibly, responded that the people who had prepared the press release were lying.⁴¹⁹

314. Even Defence witness TRC-01, who was a senior military officer in the SLA at that time, knew that all the three Accused were members of the Supreme Council of the AFRC Government. The Defence did not challenge their own witness on this point, who the Prosecution submits was both a credible and reliable witness.⁴²⁰ According to DBK-005, the Accused were also all members of the AFRC Government Supreme Council prior to the intervention.⁴²¹

⁴¹⁵ TF1-045, Transcript 19 July 2005, pp. 63-66.

⁴¹⁶ TF1-045, Transcript 19 July 2005, pp. 71-72. 

 TF1-045, Transcript 19 July 2005, pp. 72-73.

⁴¹⁷ Exhibit P69, AFRC - Secretariat Minutes of Meeting held on the 9th December 1997, 23 January 1998.

⁴¹⁸ Exhibit P84, Press Release entitled Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions, 28 January 1998. See also reference to “Sergeant Kanu,” “commonly known as “Honourable 55,” as a member of the “AFRC Supreme Council” in Exhibit P97, Newspaper clipping from Standard Times, 13 December 1997, article entitled “We are merely using politicians.”

⁴¹⁹ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 92-96 (at pp. 95-96).

⁴²⁰ TRC-01, Transcript 16 October 2006, p. 104.

⁴²¹ DBK-005, Transcript 12 October 2006, pp. 18-19.

315. The Prosecution submits that there is no doubt that the First Accused, as well as the Second and Third Accused, on the evidence of both Prosecution and Defence witnesses as well as exhibited documents, were members of the AFRC Supreme Council.

POWERS OF SUPREME COUNCIL

316. Prosecution witness Gibril Massaquoi was a member of the Supreme Council. He testified that the Supreme Council was the body overseeing the law-making and decision-making of the country.⁴²² As a member of the Supreme Council, he was well-placed to give this evidence.

317. At paragraph 14 of the minutes of a Supreme Council meeting held on 11 August 1997, the Council is described as “the Highest Council of the Land.”⁴²³

318. The First Accused, too, gave evidence that the Supreme Council “made up the Armed Forces Revolutionary Council,”⁴²⁴ and was “the most important body,” that “takes all decisions.”⁴²⁵

319. By paragraph three of the Proclamation of 28 May 1997, the “Council” (in practice known as the Supreme Council) had “power for such purposes as it may think fit, and in the national interest, to make laws which shall become known as decrees.”⁴²⁶ Paragraph six of the Proclamation is illustrative of the power then vested in the Council: “the Council” (or any person or authority appointed by it) displaced references to the former President, Vice-President, Ministers and Cabinet in the Constitution of Sierra Leone and in any legislation existing prior to 25 May 1997.⁴²⁷

320. Legislation was thereafter enacted pursuant to the provisions of paragraph three of the Proclamation of 28 May 1997, including “The Constitution of Sierra Leone, 1991

⁴²² Gibril Massaquoi, Transcript 7 October 2005, p. 72; corroborated by TF1-334, Transcript 16 May 2005, p. 57.

⁴²³ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997.

⁴²⁴ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 79.

⁴²⁵ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 69.

⁴²⁶ Exhibit P4, para. 3 (1).

⁴²⁷ Exhibit P4, para. 6, “Subject to any decree made by the Council, any reference to President, Vice-President, Minister or Cabinet in the Constitution of Sierra Leone which came into operation on 1st October, 1991, or in any enactment continued in existence by virtue of this Proclamation should on and after 25 May 1997, be construed as a reference to the Council or to such person or authority as the Council may by Order appoint”.

(Amendment) Decree, 1997,” which provided for the establishment of a Police Council and of a Defence Council.⁴²⁸ In effect, the Supreme Council even had the power to amend the constitution which they exercised by passing the above decree. Tellingly, both the Police and the Defence Council placed members of the AFRC Government in pivotal roles. The Prosecution submits that by making these amendments to the Constitution the aim of the AFRC was to consolidate its grip on power through its control of the police and all matters relating to defence.⁴²⁹

321. Gibril Massaquoi testified that the Supreme Council met once a month, and also for emergency meetings, as necessary.⁴³⁰ Decisions were made either by simple majority or by the high table comprising senior representatives of the SLAs and the RUF, namely, Johnny Paul Koroma, Abu Sankoh, SAJ Musa, Brigadier SFY Koroma, Sam Bockarie, and Issa Sesay when Sam Bockarie was not in Freetown.⁴³¹
322. Minutes of these meetings indicate the sort of issues that were raised and decided upon by the Supreme Council. The response to the looting problem in Freetown is a demonstration of the legislative powers of the Council, and of the Council’s ability to respond to criminality.
323. Gibril Massaquoi testified to a meeting attended by him in August 1997. SO Williams talked about rampant looting by some Supreme Council members, naming in particular “Five-Five” and his bodyguards.⁴³² A decision was made at the meeting that a body known as the Western Area Security Patrol be set up and empowered to curb looting and other activities in the city.⁴³³
324. This decision had teeth: on November 1997, an anti-looting decree was enacted. It made

⁴²⁸ Exhibit P8, The Constitution of Sierra Leone 1991(Amendment) Decree, 1997, AFRC Decree No. 7, made and issued on 3 December 1997. Other Orders made and issued thereafter by the Supreme Council included Exhibit P9, The Change of Titles Order 1997, Public Notice No. 11 of 1997, made and issued on 3 December 1997; Exhibit P71a, The Bank of Sierra Leone (Amendment) Decree 1997, made and issued on 3 July 1997; Exhibit P71b, The Imposition of Curfew Decree 1997, made and issued on 20 August 1997

⁴²⁹ ⁴²⁹ Exhibit P8, The Constitution of Sierra Leone 1991(Amendment) Decree, 1997, AFRC Decree No. 7, made and issued on 3 December 1997, pp. 2-3.

⁴³⁰ Gibril Massaquoi, Transcript 7 October 2005, p. 72.

⁴³¹ Gibril Massaquoi, Transcript 7 October 2005, pp. 81-82.

⁴³² Gibril Massaquoi, Transcript 7 October 2005, p. 84. Five-Five was present and denied the looting.

⁴³³ Gibril Massaquoi, Transcript 7 October 2005, p. 85. Matters of a purely military nature were also discussed, the military presence, build-up by ECOMOG and deployments.

legislative provision for the establishment and powers of an “anti-looting squad”⁴³⁴ and was enacted “to make provision for the protection of persons against harassment and intimidation.”⁴³⁵

325. The Supreme Council discussed and made decisions on funding for the regime, and on the supply of arms and ammunition. Minutes of an Emergency Meeting on 11 August 1997 indicate that the Council discussed sources of revenue for the government, including sale of petroleum, imports and customs duties, and “proceeds from sale of Diamonds.”⁴³⁶ It is pertinent to note that even at this early stage the Supreme Council realised the importance of diamond mining as being one of the only sources of income in financing the Junta.

At a further meeting attended by Gibril Massaquoi in late August/September 1997, the focus of the discussion was on how to get a stock of ammunition and arms held in Burkina Faso to Freetown for use by the AFRC and the RUF. Again, a decision was made with important consequences: the Supreme Council agreed to send Ibrahim Bah with a letter for the Burkina Faso President, Blaise Campaore, asking for his assistance in adding arms and ammunition to the present stock.⁴³⁷ Gibril Massaquoi later travelled to Burkina Faso with the letter, and money for transport of the arms and ammunition back to Sierra Leone.⁴³⁸

327. Following on from this, TF1-045 testified to a meeting in September 1997 at the officers’ mess at Wilberforce, chaired by the Chief of Army Staff (SO Williams) and attended by RUF members Issa Sesay, Morris Kallon, Superman, Eldred Collins, Rambo and Gibril Massaquoi, and on the “AFRC” side the Army Chief of Staff,⁴⁴⁰ “Five-Five” and Bazzy. Eldred Collins told the group that a corridor was open for ammunition to land at the

⁴³⁴ Exhibit P10, The Armed Forces Revolutionary Council (Anti-Looting) Decree, 1997, AFRC Decree No. 6, made and issued on 17 November 1997, paras. 2 and 5.

⁴³⁵ *Ibid.*, preamble.

⁴³⁶ Exhibit 34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997, para. 7. Decisions were made at this meeting, including the appointment of a Governor of the Bank of Sierra Leone (para. 11).

⁴³⁷ Gibril Massaquoi, Transcript 7 October 2005, pp. 87-88.

⁴³⁸ Gibril Massaquoi, Transcript 7 October 2005, pp. 88-89.

⁴³⁹ [REDACTED]

⁴⁴⁰ TF1-045, Transcript 19 July 2005, p.58.

Magburaka airfield.⁴⁴¹ The above is a good example of how the Supreme Council worked together in arranging this arms and ammunition shipment. In essence, they were working together towards the same common aim of keeping the Junta in power.

PRINCIPAL LIAISON OFFICERS

328. The First and Second Accused were Principal Liaison Officers (“PLOs”) 2 and 3, respectively, in the AFRC Cabinet.

329. TF1-334 testified that three PLOs worked directly with the president and were also members of the Supreme Council. He testified that they supervised and monitored various ministries of the government.⁴⁴²

330. He gave evidence that the PLO 1 was Staff Sergeant Abu Sankoh, aka Zagallo, the PLO 2 was Sergeant Tamba Alex Brima, aka Gullit, and the PLO 3 was Ibrahim Bazy Kamara.⁴⁴³ That the First accused was a PLO2 and the Second Accused a PLO3 is not denied by the First Accused in his evidence. Defence counsel for the Second Accused did not challenge the First Accused during cross-examination that the Second Accused was not PLO 3 and thus has adopted the evidence of the First Accused on this point.

331. George Johnson testified that the Second Accused was PLO 3,⁴⁴⁴ and had under his control Ministries for Customs, Energy and Power, Lotto and the Queen Elizabeth Quay. People from the ministries would report to him: for example, Hassan Papah Bangura for the Ministry for Energy and Power.⁴⁴⁵ [REDACTED]

332. The PLO’s position in government was an extremely important one. They were members of the Supreme Council and superior to all remaining members of that Council, save

⁴⁴¹ TF1-045, Transcript 19 July 2005, pp. 57-63. The group also talked about putting a stop to the harassment of the civilian population in Freetown, and Eldred Collins told the group that a corridor was open for ammunition to land at the Magburaka airfield.

⁴⁴² TF1-334, Transcript 16 May 2005, p. 57.

⁴⁴³ TF1-334, Transcript 16 May 2005, pp. 99-101.

⁴⁴⁴ George Johnson, Transcript 15 September 2005, p. 8.

⁴⁴⁵ George Johnson, Transcript 15 September 2005, p. 20.

Johnny Paul Koroma, SAJ Musa and A.K. Sesay.

333. Exhibit P5.2 is a Decree establishing the office of Principal Liaison Officer.⁴⁴⁶ By paragraph two, the PLOs were appointed from amongst the Supreme Council members.⁴⁴⁷ The Decree provides that they “shall be responsible for supervising, monitoring and co-ordinating the operations of any Department of State or such other business of Government, as may from time to time be assigned to him.”⁴⁴⁸ The First Accused, in his own evidence, even admitted that the three PLOs would report to SAJ Musa in his role as Chief Secretary of State in respect of the ministries,⁴⁴⁹ which they were responsible for supervising, monitoring, and co-ordinating under Exhibit P5.2.
334. Minutes of an “Emergency Council Meeting” held on 11 August 1997 demonstrate the relative superiority of the PLOs over other Supreme Council members.⁴⁵⁰ A Decision was made at this meeting following reports concerning the “attitude and conduct of some Council members.”⁴⁵¹ The Decision was directed to the PLOs (1 to 3) who attended the meeting: “All Principal Liaison Officers must have effective control over the Honourable members of the Council.”⁴⁵²
335. Similarly, in minutes of a meeting held on 9 December 1997, PLOs are asked “to organise the Honourables in consultation with the SOS Trade so that they divide the City into Zones for effective monitoring.”⁴⁵³
336. The Prosecution submits that based on the evidence as a whole regarding the Supreme Council and PLOs, there can be no doubt that PLOs in the AFRC hierarchy were more senior than Honourables and were only beneath Johnny Paul Koroma and SAJ Musa in the AFRC chain of command.

⁴⁴⁶ Exhibit P5.2, Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree 1997, AFRC Decree No. 3, made and issued on 12 July 1997.

⁴⁴⁷ Exhibit P5.2, Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree 1997, AFRC Decree No. 3, made and issued on 12 July 1997, para. 2.

⁴⁴⁸ Exhibit P5.2, Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree 1997, AFRC Decree No. 3, made and issued on 12 July 1997, para. 3.

⁴⁴⁹ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 95.

⁴⁵⁰ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11th August 1997, 16 August 1997.

⁴⁵¹ *Ibid.*, para. 14.

⁴⁵² Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11th August 1997, 16 August 1997, para. 16.

⁴⁵³ Exhibit 69, AFRC - Secretariat Minutes of Meeting held on the 9th December 1997, 23 January 1998, para. 6. Relates to monitoring of rice stores in Freetown.

THE SIERRA LEONE ARMED FORCES, SECRETARIES OF STATE AND THE SUPREME COUNCIL

337. Following the Coup, the Sierra Leone Armed Forces retained a military structure and leadership which operated in parallel to the political wing of government, albeit subject to its interference.⁴⁵⁴ The Supreme Council and its members had political authority over the military, which fell under the ultimate command of Major Johnny Paul Koroma.
338. Supreme Council meetings were attended by the military leadership including SFY Koroma (Chief of Defence Staff) and SO Williams (Chief of Army Staff), and evidence relating to Supreme Council meetings shows that often matters of a purely military nature were discussed. TF1-045 testified that the Chief of Army Staff chaired meetings of the Supreme Council attended by him.⁴⁵⁵
339. Johnny Paul Koroma, formerly a major in the Sierra Leone Army, was Commander In Chief of the Sierra Leone Armed Forces.⁴⁵⁶ Colonel Avivavo Kamara was Deputy Defence Minister.⁴⁵⁷ The Director of Defence was Brigadier Mani, the Chief of Defence Staff was Brigadier SFY Koroma, and the Army Chief of Staff was SO Williams.⁴⁵⁸
340. TF1-334 testified that there were three Resident Ministers in the AFRC. They were the Resident Minister of the North, Major Kamara, aka Bush Fall, later promoted to Lt. Col., the Resident Minister of the South, Major AF Kamara, alias Ambush Commander, later promoted to Lt. Col., and the Resident Minister in the East, Captain Eddie Kanneh (previously dismissed from the SLA).⁴⁵⁹ Eddie Kanneh reported directly to Johnny Paul Koroma⁴⁶⁰ and worked closely with Sam Bockarie in the diamond rich areas of both Kono and Kenema.⁴⁶¹

⁴⁵⁴ TF1-184, Transcript 30 September 2005, pp. 47-48

⁴⁵⁵ TF1-045, Transcript 19 July 2005, p. 61.

⁴⁵⁶ TF1-334, Transcript 16 May 2005, pp. 89-90; Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet."

⁴⁵⁷ TF1-334, Transcript 16 May 2005, p. 99; TF1-184, Transcript 30 September 2005, p. 47.

⁴⁵⁸ TF1-334, Transcript 17 May 2005, pp. 18-19; TF1-184, Transcript 30 September 2005, p. 47. Corroborated by George Johnson, Transcript 20 September 2005, p. 12. SFY Koroma is corroborated by TF1-045, Transcript 19 July 2005, p. 57. SFY Koroma and SO Williams are corroborated by Gibril Massaquoi, Transcript 7 October 2005, p. 73.

⁴⁵⁹ TF1-334, Transcript 17 May 2005, pp. 16-17. Corroborated, in part, by Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages, under the heading "Regional Secretaries" as follows: "Major A.M. Koroma – North," Major A.F. Kamara – South," "Captain (Retired) E.P. Kanneh - East."

⁴⁶⁰ TF1-045, Transcript 19 July 2005, p. 32; TF1-334, Transcript 17 May 2005, p. 17.

⁴⁶¹ TF1-334, Transcript 17 May 2005, pp. 56-57; George Johnson, Transcript 15 September 2005, p. 17.

341. Prosecution Exhibit P 5.3,⁴⁶² an AFRC Decree made on 12 July 1997, established a Council of Secretaries which was “directly and collectively responsible” to the AFRC.⁴⁶³ The head of the Council was to be the Chief Secretary of State (SAJ Musa) and the Council was to otherwise consist of other Secretaries of State appointed by the AFRC.⁴⁶⁴
342. By paragraph 4(b) of the Decree, the Council of Secretaries was to “execute the policies and directives of the Armed Forces Revolutionary Council.” By paragraph 6(2), the Chief Secretary of State (SAJ Musa) was to be “responsible for communicating the policy decisions and directives” of the AFRC to the Council of Secretaries and “conveying the decisions of the Council of Secretaries” to the AFRC. The Chief Secretary of State was also obliged to submit to the AFRC “regular reports from the Secretaries of State regarding the operations in their respective Departments of State.”⁴⁶⁵
343. According to Exhibit P5.3 therefore, the Secretaries of State North (Major Kamara, aka Bush Fall), South (Major AF Kamara, alias Ambush Commander) and East (Captain Eddie Kanneh) executed the policies and directives of the Supreme Council via a Council of Secretaries with SAJ Musa at their head.
344. SAJ Musa effectively acted as the conduit for the flow of information between the Secretaries of State and the operations over which they had responsibility, and the Supreme Council. That flow of information was required to be “regular.”
345. The overwhelming inference from the evidence is that the Secretaries of State effectively acted as the link between the political wing of the AFRC (the Supreme Council) and the military (including members of the RUF) that was deployed in the provinces.
346. There were AFRC Secretariats in the provinces headed, for example, in Tongo by an “AFRC” Sergeant Junior.⁴⁶⁶ The AFRC Secretariats were the offices of the relevant regional Secretary of State.⁴⁶⁷ One week after the May 1997 coup, an AFRC/RUF

⁴⁶² Exhibit P5.3, Armed Forces Revolutionary Council (Establishment of Council of Secretaries) Decree 1997, AFRC Decree No. 2, made and issued on 12 July 1997, commenced on 10 July 1997.

⁴⁶³ *Ibid.*, para. 2.

⁴⁶⁴ *Ibid.*, para. 3.

⁴⁶⁵ *Ibid.*, para. 6(3).

⁴⁶⁶ TF1-045, Transcript 19 July 2005, pp. 45-46.

⁴⁶⁷ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 107.

Secretariat was established in Kenema Town and remained there until February 1998.⁴⁶⁸

347. There were brigades deployed in the Eastern, Northern and Southern provinces, headed by brigade commanders. The brigade commander in the East was SLA Colonel Fallah Sewa, in the South, SLA Colonel Boissy Palmer, and in the North, SLA Colonel Momodou.⁴⁶⁹ Men working under the brigades included both members of the SLA and RUF.⁴⁷⁰
348. The Resident Ministers could call for the assistance of the brigade commander in their area if need be, for example, if in either Kenema or Kono the Kamajors attacked or otherwise attempted to interrupt the mining operations. The SLAs and RUF jointly guarded the forced mining operations in both Kenema and Kono.

Rank and Appointment

349. There were promotions made of SLA soldiers in the early days of the AFRC period. Johnny Paul Koroma promoted himself from major to lieutenant-colonel.⁴⁷¹ SAJ Musa was promoted from captain to lieutenant-colonel.⁴⁷² Witness George Johnson was promoted by the Second Accused to the rank of sergeant.⁴⁷³ A number of the original coup plotters were promoted to the ranks of sergeant and staff sergeant.⁴⁷⁴
350. The First Accused's emphasis on his rank – corporal, on his evidence – was the basis for an implausible line of defence: namely, that he could not have occupied a senior political position in government during the Junta, or a senior position in the military hierarchy in the bush thereafter, because of the junior rank (corporal) held by him during the period of the Junta.⁴⁷⁵

⁴⁶⁸ TF1-122, Transcript 24 June 2005, pp. 5-7.

⁴⁶⁹ TF1-334, Transcript 17 May 2005, pp. 20-21.

⁴⁷⁰ TF1-334, Transcript 17 May 2005, pp. 21-22; TF1-045, Transcript 19 July 2005, pp. 35-37.

⁴⁷¹ TF1-334, Transcript 16 May 2005, pp. 89-90.

⁴⁷² TF1-334, Transcript 16 May 2005, p. 93.

⁴⁷³ George Johnson, Transcript 15 September 2005, p. 9.

⁴⁷⁴ Contrast, for example, ranks for the 17 as they appear on Exhibit P6, Government Notice 215 dated 3 September 1997, in the Sierra Leone Gazette, No. 52, 4 September 1997, with ranks as given by witness TF1-334 in his evidence of who plotted and carried out the coup. For example, Corporal Adams, Hector Bob Lahai (a civilian), Abdul Sesay (a civilian), Ibrahim "Bioh" Sesay (a civilian) rose to the ranks of sergeant, lance-corporal, lance-corporal, and lance-corporal respectively. See TF1-334, Transcript 17 May 2005, pp. 2-8.

⁴⁷⁵ The First Accused testified that he still, during the Junta period, respected the authority of the army. He testified, for example, that he, as an other ranks soldier, would not have been able to supervise the deputy defence minister, who

351. The First Accused's evidence not only fails to take into account that promotions were given by Johnny Paul Koroma soon after the coup, particularly of those who plotted the coup and/or occupied positions in the political or military administration (it is notable that the First Accused, who refers to himself as a corporal, is named as sergeant and staff sergeant in all documents of the period⁴⁷⁶), but more significantly the military concept known to him and other (former SLA) witnesses who testified that military rank is superseded by appointment. In the period of AFRC rule, political appointment (for example, to the Supreme Council, or as PLO, or as an Honourable) superseded military rank.

352. This concept of position superseding rank is even accepted by at least two Defence witnesses. For example, according to the evidence of DAB-018, Honourable Momoh Derty was more senior than a colonel on account of him being an honourable and the position of honourable overrode military rank.⁴⁷⁷

353. According to the evidence of DAB-018, because of the position as an honourable, Honourable Momoh was able to command a convoy from Kono to Freetown of over 60 SLAs, including officers senior in rank to him.⁴⁷⁸

██████ DBK-131 also gave evidence that position superseded rank in the military. At the time of the coup, DBK-131 ██████████ while Momoh, aka Derty, was only a private, and

355. Thus, TF1-184 testified that, during the AFRC period, persons in the military with the

was a colonel and therefore a senior officer in the army: Transcript 20 June 2006, pp. 20-21. The Prosecution submits that this testimony is only true if the appointment of deputy defence minister superseded Brima's appointment to the Supreme Council and as a PLO. The First Accused could not explain why Corporal Gborie would have announced the coup, instead of a more senior officer, or why Gborie said that "other ranks" were the ones who carried out the coup (Exhibit P89, Statement of L/Cpl. Tamba Gborie, p.81), Transcript 29 June 2006, pp. 44-45. The First Accused also denied Gborie's statement that Gborie had received briefings from the First Accused, claiming that he could not make briefings of that nature to Gborie because Gborie was more senior in rank, although both appear to have been corporals, (Exhibit P89, Statement of L/Cpl. Tamba Gborie, p.81), Transcript 29 June 2006, p. 88. The First Accused could not explain why a Staff Sergeant Medical Orderly would be assigned to accompany him, merely a corporal, to Kono: Transcript 3 July 2006, pp. 96-100.

⁴⁷⁶ The Prosecution also notes that the First Accused accepted in cross-examination that President Kabbah annulled all Junta promotions when the SLPP resumed power. Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 56-57.

⁴⁷⁷ DAB-018, Transcript 7 September 2006, p. 57.

⁴⁷⁸ DAB-018, Transcript 6 September 2006, pp. 71-73.

⁴⁷⁹ DBK 131, Transcript 26 October 2006, p.25.

rank of lieutenant-colonel would salute the Third Accused, a member of the Supreme Council.⁴⁸⁰ TF1-334, in explaining the command structure of the AFRC regime, described Johnny Paul Koroma as the head of the AFRC, with the rank of major, later promoted to lieutenant-colonel.⁴⁸¹ Yet the higher ranked Colonel A.K. Sesay reported to Koroma.⁴⁸²

356. Similarly, in Tongo, a Major Eagle of the RUF was deputy to an SLA Captain Kati (major being the higher rank). The appointment/position, rather than the rank, was what mattered.⁴⁸³ The First Accused accepted, in cross-examination, that Major Johnny Paul Koroma was, by virtue of his appointment as defence minister, superior to and able to give orders to Colonel SO Williams.⁴⁸⁴

357. George Johnson testified that Zagallo (Abu Sankoh) was head of the 16 [sic] men who plotted the coup.⁴⁸⁵ He was the most senior amongst the coup plotters and it was he who master minded the plan.⁴⁸⁶ It is notable, therefore, that Zagallo should have been appointed to the position of PLO 1 in the Junta government. The inference, for example from Prosecution Exhibit P6,⁴⁸⁷ is that members of the Council are listed in order of importance.

358. Tellingly, the First Accused on his own evidence states that on his third trip to Kono he was accompanied by Staff Sgt. Komba Mogboi who was a medical orderly in order to mind his health.⁴⁸⁸ Why would a lowly corporal be assigned a staff sergeant, who was senior in rank to him, to go to mind his health? The First Accused's justification of the staff sergeant assisting with language problems is implausible, bearing in mind that earlier in his evidence he testified that he himself acted as an interpreter for a injured Kono soldier.⁴⁸⁹ The only logical explanation is that this is a clear example of the First

⁴⁸⁰ TF1-184, Transcript 30 September 2005, p. 47.

⁴⁸¹ TF1-334, Transcript 16 May 2005, pp. 89-90.

⁴⁸² TF1-334, Transcript 16 May 2005, p. 90.

⁴⁸³ TF1-045, Transcript 19 July 2005, p. 43.

⁴⁸⁴ Accused Alex Tamba Brima, Transcript 4 July 2006, p. 19.

⁴⁸⁵ George Johnson, TF1-167, Transcript 15 September 2005, p. 20.

⁴⁸⁶ Exhibit 89, Statement of Tamba Gborie, 25 March 1998, pp. 76-77.

⁴⁸⁷ Exhibit P6, The Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997, P.N. No. 3 of 1997, 3 September 1997, in The Sierra Leone Gazette, No. 52. Members of the Armed Forces Revolutionary Council are listed in the following order: Koroma, Sankoh, Musa and A. K. Sesay as numbers 1 to 4 respectively, (5) is listed as Abu Sankoh, (6) as Alex T. Brima and (7) as Brima B. Kamara.

⁴⁸⁸ Accused Alex Tamba Brima, Transcript 8 June 2006 pp. 23-24.

⁴⁸⁹ Accused Alex Tamba Brima, Transcript 7 June 2006, pp. 14-15.

Accused's position as an Honourable, PLO 2 and member of the Supreme Council superseding the rank of a higher ranking soldier.

359. The order of political importance established during the Junta continued in effect after the AFRC evolved into a purely military organisation in the bush. The First Accused's appointment as PLO 2, Honourable, and member of the Supreme Council were the indicators of his political authority. The inference is that he, as PLO 2, and the Second Accused, as PLO 3, were the next most important amongst the coup plotters, and, after Johnny Paul Koroma and SAJ Musa, the next most important in the political administration in Sierra Leone.
360. All members of the Coup became honourables and members of the Supreme Council. In the bush, this meant that they retained command positions in the military hierarchy. The AFRC government system of hierarchy remained intact after the Intervention when the newly evolved AFRC military organisation came into existence.
361. Thus, TF1-184 gave evidence of the First Accused's "Council,"⁴⁹⁰ and TF1-334 spoke about "the brigade."⁴⁹¹ All evidence relating to command structures have the First Accused at the head, and the Second Accused as his number two, with remaining former Supreme Council members and honourables, including the Third Accused, occupying the most important positions in the command hierarchy under them.
362. The only logical inference must be that the AFRC hierarchy established during the Junta period (i.e. PLO, Supreme Council member, Honourable) continued in the bush after the intervention once the AFRC evolved into a military organisation.

All Accused

363. The First Accused's argument that as a corporal prior to the Intervention it was impossible for him to have any command responsibility after the Intervention when the AFRC was removed from power, is not sustainable on the evidence for the following reasons: (a) the above-mentioned concept of position superseding rank which continued after the Intervention; and (b) the fact that after the Intervention, once the SLAs were in the jungle they had their own system of ranks known as "bush ranks" which were followed in the

⁴⁹⁰ TF1-184, Transcript 27 September 2005, p. 39 and Transcript 29 September 2005, p.69.

⁴⁹¹ TF1-334, Transcript 19 May 2005, p. 37; Transcript 20 May 2005, p. 88; and Transcript 16 June 2005, p. 49.

jungle.

364. For example, DBK-037 gave evidence that before the intervention [REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴⁹²

365. Thus, as is shown by the evidence of DBK-037, the First Accused may have been an 'other ranks' soldier prior to the Intervention, but he may have been promoted to a senior rank in the jungle. Indeed, it is the case of the Prosecution that all honourables were promoted at Masiaka to colonel,⁴⁹³ that the First and Second Accused were promoted to brigadier at Mansofinia,⁴⁹⁴ and the Third Accused was promoted later to brigadier.⁴⁹⁵

366. After the death of SAJ Musa at Benguema, the First and Second Accused became commander and second in command respectively, and again were promoted. The evidence shows that these "bush ranks" were respected⁴⁹⁶ and that SAJ Musa and all Accused used to promote other soldiers based on their performance in the field.⁴⁹⁷ Tellingly, as with DBK-037, after the conflict the Sierra Leonean government and the Sierra Leone Army declined to recognise these "bush ranks." As with DBK-037, [REDACTED]
[REDACTED] the three Accused all reverted back to the 'other ranks' positions they held prior to the Coup. This would explain the First Accused's rank being stated as Corporal in his discharge book.

367. The Prosecution submits that the Accused's argument of not being in a position to have any command responsibility in the bush after the Intervention, on the basis of them being other ranks soldiers, should be rejected in its entirety on the above two bases; namely the concept of position superseding rank, and the use of "bush ranks" in the jungle. The evidence, taken as a whole, speaks otherwise, and the First Accused's evidence to the contrary is a lie.

⁴⁹² DBK-037, Transcript 4 October 2006, p. 74.

⁴⁹³ TF1-334, Transcript 19 May 2005, pp. 15-16.

⁴⁹⁴ TF1-334, Transcript 20 May 2005, pp. 88-89.

⁴⁹⁵ TF1-334, Transcript 13 June 2005, p. 59.

⁴⁹⁶ Soldiers were following the orders of their superiors in the bush, See DSK-113, Transcript 12 October 2006, p. 113; DBK-117, Transcript 16 October 2006, pp. 31-32; DBK-129, Transcript 18 October 2006, p. 5.

⁴⁹⁷ DBK-131, Transcript 10 October 2006, p. 26-27. The witness was promoted to captain. Others were promoted to lieutenant.

REPORTING, PREVENTION AND PUNISHMENT OF CRIMES DURING THE AFRC PERIOD

368. Minutes of Supreme Council meetings were kept and all members of the Supreme Council received copies of these minutes,⁴⁹⁸ the inference being that Supreme Council members would have known or been on notice of any matter reported to the Supreme Council, with a good example being the aforementioned enactment of an anti-looting decree.
369. In September 1997, TF1-045 attended a meeting at the officers' mess at Wilberforce, chaired by the Chief of Army Staff (SO Williams). Amongst those present were "Five-Five" and Bazzy. The group talked about putting a stop to the harassment of the civilian population in Freetown.⁴⁹⁹ The print media in Freetown was also reporting "massive looting" by Honourables at around this time.⁵⁰⁰
370. TF1-045 attended a further meeting in around October/November 1997 in Freetown at the Youyi building. Amongst those present were "Five-Five", the Army Chief of Staff, and General "Bupleh" [sic].⁵⁰¹ They talked about the harassment and raping of civilians in Freetown by AFRC and RUF members.⁵⁰² The evidence clearly demonstrates that the AFRC Government was aware of crimes being committed during its tenure and that it had the power to prevent and punish such illegal activities if it chose to do so. Prime examples of this power were the anti-looting decree and the arrest of Supreme Council members and honourables involved in the looting of the Iranian Embassy.
371. The Junta's response to perceived criminality or any opposition may be seen in the way in which a student strike was dealt with in Freetown in August 1997. Machetes were distributed by Johnny Paul Koroma's Chief Security Officer, Rambo, to RUF and SLA fighters in the presence of most of the honourables, including the Second and Third Accused. The strike was thereafter "put back quietly" on the orders of Johnny Paul Koroma by RUF and SLA fighters. Prosecution witness George Johnson later saw bodies

⁴⁹⁸ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 101.

⁴⁹⁹ TF1-045, Transcript 19 July 2005, pp. 57-63. The group also talked about putting a stop to the harassment of the civilian population in Freetown, and Eldred Collins told the group that a corridor was open for ammunition to land at the Magburaka airfield. See para.

⁵⁰⁰ Exhibit P94, Newspaper clipping from The Point, 19 September 1997, article entitled "Honourables or Out-Laws". See also Exhibit P66, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", Released by the Bureau of Democracy, Human Rights, and Labour, 30 January 1998, p. 3.

⁵⁰¹ TF1-045, Transcript 19 July 2005, pp. 64-66.

⁵⁰² TF1-045, Transcript 19 July 2005, pp. 66-71.

in Connaught Hospital.⁵⁰³

372. In a further demonstration that the government had the ability to take action against those who committed crimes, honourables held responsible for the looting of the Iranian Embassy in Freetown on 31 December 1997 were dismissed from the Supreme Council, the Armed Forces Revolutionary Council and the armed forces. They included SLAs Hassan Papah Bangura and Tamba Gborie.⁵⁰⁴ According to the First Accused, the Supreme Council made the decision to take action against these individuals.⁵⁰⁵
373. This is a clear indication that even the most senior Junta figures were not above the law during the Junta period with arrest warrants even being issued for Issa Sesay for his role in the looting of the Iranian Embassy. This is in itself a good example of the joint co-operation between the SLAs and RUFs in the Supreme Council, whereby arrest warrants were issued by the Supreme Council against both senior SLA and RUF members of the Supreme Council.
374. This is further illustrated by the arrest of senior RUF leaders Gibril Massaquoi and Steve Bio, who were arrested by Issa Sesay, a senior RUF, on allegations that they were working to overthrow Johnny Paul Koroma.⁵⁰⁶

CONTINUED COOPERATION BETWEEN RUF AND SLA

375. The RUF and the AFRC worked together during the period of Junta rule to achieve a common aim: to gain, exercise and retain political power and control over the territory of Sierra Leone.⁵⁰⁷

⁵⁰³ George Johnson, Transcript 15 September 2005, p. 23. See also Exhibit P66, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", Released by the Bureau of Democracy, Human Rights, and Labour, 30 January 1998, pp. 4, 6, 15.

⁵⁰⁴ TF1-334, Transcript 17 May 2005, pp. 57-59; Exhibit P89, Statement of Tamba Gborie, 25 March 1998, pp. 89-90; Exhibit 78, AFRC Press Release, 3 January 1998. Note that the title of Honourable changed to "People Revolutionary Leader" with effect from 15 December 1997. The title of Principal Liaison Officer was also changed to "Coordinating Officer," Exhibit P95, Newspaper clipping from Unity Now, 17 December 1997, article entitled "Reshuffle." All three points corroborated by Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998, p. 18.

⁵⁰⁵ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 54-55; Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 89.

⁵⁰⁶ Gibril Massaquoi, Tf1-046, Transcript 7 October 2005, pp. 108-110.

⁵⁰⁷ Exhibit P60, Personal Statement by Lt. JP Koroma on 1 October 1999; Exhibit P61, Revolutionary United Front's Apology to the Nation, delivered on SLBS, 18 June 1997.

376. Prosecution witnesses have testified that the relationship between the SLA and the RUF during the AFRC Junta was cordial.⁵⁰⁸ In spite of their individual differences, the evidence is that RUF and SLAs continued to attend Supreme Council meetings together and that the AFRC Government remained in power for roughly nine months until February 1998.⁵⁰⁹
377. The Chamber heard evidence in particular from two former high level members of the RUF: Gibril Massaquoi, former spokesman of the RUF, and witness TF1-045, [REDACTED]⁵¹⁰ They each testified to a high level of cooperation during the Junta between members of the RUF and the SLA.
378. Gibril Massaquoi was in Freetown between August and October 1997 (before being arrested on 16 October 1997 for allegedly plotting a coup⁵¹¹) and gave evidence that the relationship between the SLA and the RUF was “cordial” in that period.⁵¹² He testified that he saw RUF and SLAs deployed together outside Freetown in Makeni and Magburaka, and working together at the AFRC Secretariats in Kenema and Bo.⁵¹³
379. Gibril Massaquoi arrived in Freetown on 2 August 1997⁵¹⁴ carrying letters from Sankoh for Johnny Paul Koroma and Sam Bockarie. In the letter to Koroma, Sankoh asked for assistance regarding his detention in Nigeria, and asked that he (Koroma) and the RUF work together cordially.⁵¹⁵ Massaquoi delivered the letter to Bockarie in Kenema. It asked Bockarie to work with the AFRC and to work to secure Sankoh’s release from Nigeria.⁵¹⁶
380. In spite of the departure of Sam Bockarie for Kenema, the AFRC Junta continued to govern, and members of the RUF remained in Freetown as part of the AFRC Junta and

⁵⁰⁸ TF1-334, Transcript 17 May 2005, p. 22.

⁵⁰⁹ Exhibit P41, Fourth Report of the Secretary General on the Situation in Sierra Leone 18 March 1998 (S/1998/249), para. 6, reports that Freetown fell to ECOMOG on 13 February 1997, and that ECOMOG subsequently took control of Bo, Kenema, Zimmi, Lunsar, Makeni, Kabala and Daru.

⁵¹⁰ TF1-045, Transcript 19 July 2005, pp. 7-8. [REDACTED]

⁵¹¹ And detained at Pademba Road Prison from 17 October 1997. Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 108-110.

⁵¹² Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 104-105.

⁵¹³ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 104-109.

⁵¹⁴ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 63.

⁵¹⁵ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 65.

⁵¹⁶ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 65.

attended Supreme Council meetings.⁵¹⁷ After the Coup, witness TF1-045, [REDACTED]

[REDACTED]
[REDACTED]⁵¹⁹ TF1-334 testified that Sam Bockarie worked closely with the Resident Minister East.⁵²⁰ Captain Yamao Kati, an SLA,⁵²¹ was commander for the AFRC and RUF in Tongo in charge of a company of over 200⁵²² mixed AFRC/RUF soldiers based there. Capt. Kati worked under his brigade (East) and sent reports to the brigade commander, but also gave information to RUF Commander Sam Bockarie whenever he (Sam Bockarie) was in Kenema.⁵²³ Capt. Kati's deputy was a member of the RUF, a Major Eagle.⁵²⁴

381. Gibril Massaquoi gave evidence that on his arrival in Freetown in August 1997, the RUF had offices at Cockerill, given to them by Johnny Paul Koroma.⁵²⁵ When Massaquoi was in Freetown, the AFRC government paid RUF members who were deployed at various fronts, or who were ministers or members of the Supreme Council.⁵²⁶

382. TF1-184 gave evidence of a cooperative relationship between Mosquito and senior SLA figures in the AFRC government.⁵²⁷ He testified that Mosquito would discuss things with "council" members when he came to Freetown, and he testified to seeing him in one of the council's meetings.⁵²⁸ On this occasion, Mosquito brought a diamond from Kono which was sold, and the money generated used to pay the teachers.⁵²⁹

383. Gibril Massaquoi testified about Supreme Council meetings attended by him in around August and September 1997. They were attended by Issa Sesay and others, and Exhibit

⁵¹⁷ The First Accused testified that the RUF was "part of the AFRC government" throughout the period from May 1997 to February 1998: Transcript 7 June 2006, pp. 50-51; although there was a "very big problem" between the leaders: Transcript 8 June 2006, p. 4.

⁵¹⁸ TF1-045, Transcript 19 July 2005, pp. 29-30. [REDACTED]

⁵¹⁹ TF1-045, Transcript 19 July 2005, pp. 30-32.

⁵²⁰ TF1-334, Transcript 17 May 2005, pp. 56-57.

⁵²¹ TF1-045, Transcript 19 July 2005, pp. 42-43. Kati was later replaced by AFRC Commander Captain Jalloh. TF1-045, Transcript 19 July 2005, p. 76.

⁵²² TF1-045, Transcript 20 July 2005, pp. 61-62.

⁵²³ TF1-045, Transcript 19 July 2005, p. 37 and Transcript 21 July 2005, p. 84.

⁵²⁴ TF1-045, Transcript 19 July 2005, pp. 35-39, 42-43.

⁵²⁵ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 68-69.

⁵²⁶ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 107-108.

⁵²⁷ TF1-184, Transcript 29 September 2005, p. 27.

⁵²⁸ TF1-184, Transcript 30 September 2005, pp. 53-54.

⁵²⁹ TF1-184, Transcript 30 September 2005, pp. 54-56.

P69 is a set of minutes of a Council (or Supreme Council) meeting in December 1997 attended by RUF members including Issa Sesay, Morris Kallon and Mike Lamin.⁵³⁰

[REDACTED]

385. RUF and SLA forces received their arms and ammunition from the same sources and the supply of arms and ammunition was arranged jointly at the Supreme Council level, involving the cooperation not only of the two factions but also their leaders and foreign governments, in covert, complex and expensive operations.

DEFENCE EVIDENCE

386. The First Accused's evidence is a continuation of outright lies and dubious explanations when read against all the evidence produced at trial. Much of the First Accused's own evidence on key areas, such as his denial of involvement in the Coup, his status as an honourable or member of the AFRC Supreme Council, was not even supported by a number of Defence witnesses. The First Accused claims that it was a lie that the Third Accused was in Freetown at the time of the Coup, and insists instead that he was at Camp Charlie and only came to Freetown at the time of the Coup.⁵³⁵ Once again this is clearly a lie by the First Accused. The only Defence witness who said that the Third Accused was based at Camp Charlie did not see the Third Accused on the day of the coup, nor again at Camp Charlie.⁵³⁶

⁵³⁰ Exhibit P69, AFRC - Secretariat Minutes of Meeting held on the 9 December 1997, 23 January 1998.

⁵³¹ TF1-045, Transcript 19 July 2005, p. 75.

⁵³² TF1-045, Transcript 19 July 2005, p. 56.

⁵³³ TF1-045, Transcript 19 July 2005, p. 57.

⁵³⁴ TF1-045, Transcript 19 July 2005, pp. 56-60.

⁵³⁵ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 105-107.

⁵³⁶ DSK-113, Transcript 12 October 2006, pp. 97-98.

387. The Defence has led evidence that the soldiers at Camp Charlie, led by Akim, came to Freetown on the day of the coup to try and put it down after receiving radio communication for support. If this is true, why did the Third Accused not go with the support team from Camp Charlie to Freetown? What was the Third Accused doing in Camp Charlie until June? This is clearly a lie when the evidence of the Third Accused being an honourable (even the First Accused in his evidence admits that the Third Accused was an Honourable⁵³⁷) and member of the Supreme Council is looked at as a whole. As discussed below, there must have been a reason why some 'other ranks' were made Honourables and PLOs whilst others were not.
388. The First Accused's evidence that his co-Accused did not take part in the Coup, were not honourables (with the exception of the Third Accused) or members of the Supreme Council, was not challenged by his co-accused during their cross-examination of the First Accused. The Prosecution submits that the Accused have adopted those elements of the First Accused's evidence which they do not challenge, especially so far as it relates to their own clients (the Second and Third Accused).
389. Likewise, much of the evidence the First Accused gave about the co-Accused during the Junta period has not been supported by a number of Defence witnesses. Incredibly, while the First Accused admits that he trained with the Second Accused, was his friend before the Coup and was a PLO with him during the Junta period, but claims not to know whether the Second Accused was involved in the Coup.⁵³⁸ This is totally implausible and can only be regarded as yet another lie.
390. According to the evidence of the First Accused the Second Accused even saved the lives of the First Accused's family at the time of the Intervention. Incredibly, despite being good friends with the Second Accused, the First Accused does not know that the Second Accused is also known as Bazzy, a fact which is even admitted by the Second Accused in his Pre-Trial Brief.⁵³⁹

⁵³⁷ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 41.

⁵³⁸ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 100, 104-105.

⁵³⁹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-148, "Kamara – Defence Pre-trial Brief", 21 February 2005, para 7.

391. The First Accused denied being an honourable and being a member of the Supreme Council.⁵⁴⁰ Instead, he testified that he became a member of the “Council” only.⁵⁴¹ He testified that he was appointed a member of the Council as a gesture of appreciation arising out of his father’s death.⁵⁴² He offers no explanation as to why he was appointed a PLO 2.⁵⁴³ He denied that he was one of the coup plotters or that he carried out the Coup,⁵⁴⁴ and even denied that he played football.⁵⁴⁵ The First Accused’s evidence is utterly implausible, particularly in light of the abundance of documentary and other evidence to the contrary.
392. The First Accused gave evidence-in-chief that his father, a retired⁵⁴⁶ expert armourer in the army,⁵⁴⁷ died in the days after the Coup, when he fell into a coma as a result of a Nigerian bomb dropping around the area in Aberdeen where he was working on repairing a faulty gun.⁵⁴⁸ Only one Defence witness supported the First Accused’s account of how his father died, and this witness was not an eyewitness to the alleged incident.⁵⁴⁹
393. Prosecution Exhibit P91 is a Death Notification Report relating to the First Accused’s father, dated 31 May 1997.⁵⁵⁰ It records the “immediate cause” of the First Accused’s father’s death as “hypertension diabetes”⁵⁵¹ and further states that the First Accused’s father’s death was “non violent.”⁵⁵²
394. The First Accused could not remember the time of day his father died,⁵⁵³ which the Prosecution submits is implausible if the account of his death was honest. The reality is

⁵⁴⁰ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 23-24.

⁵⁴¹ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 70.

⁵⁴² Accused Alex Tamba Brima, Transcript 6 June 2006, p. 49.

⁵⁴³ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 56-57.

⁵⁴⁴ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 32, 61. The First Accused claimed that 24 officers who were arrested and subsequently executed by the SLPP for the overthrow of the SLPP government were the only men whom he knew to be responsible for the coup: Transcript 6 June 2006, p. 37 and Transcript 29 June 2006, pp. 111-112.

⁵⁴⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 101-102 and Transcript 29 June 2006, p. 43. The First Accused claimed he played volleyball: Transcript 6 June 2006, p. 31. The First Accused also denied that the Second Accused played football: Transcript 20 June 2006, p. 11.

⁵⁴⁶ In 1996 (Accused Alex Tamba Brima, Transcript 28 June 2006, p. 5).

⁵⁴⁷ Accused Alex Tamba Brima, Transcript 5 June 2006, p. 62.

⁵⁴⁸ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 39-40.

⁵⁴⁹ DAB-059, Transcript 2 October 2006, p. 16.

⁵⁵⁰ Exhibit P91, Office of Chief Registrar of Births and Deaths Death Statistical/Notification Report, 11 June 1997.

⁵⁵¹ Exhibit P91, at heading 11.

⁵⁵² Exhibit P91, at heading 12.

⁵⁵³ Accused Alex Tamba Brima, Transcript 30 June 2006, p. 16.

that the First Accused's father died for the reasons stated on the Death Notification Report: hypertension diabetes, not a violent death

395. It is implausible that the First Accused would have been chosen to be a member of the AFRC Council as a gesture of appreciation arising out of his father's death.⁵⁵⁴ This is even more far-fetched because the First Accused, by his own testimony, had four elder brothers, [REDACTED]⁵⁵⁵ [REDACTED].⁵⁵⁶ No explanation was given by the First Accused as to why he received a plum Council appointment to the exclusion of his equally (or more) meritorious brothers. Moreover, there must have been numerous 'other ranks' soldiers whose relatives made sacrifices that were equal to or greater than that of the First Accused's father during the attack in question, yet were not rewarded with a position amongst the national executive of Sierra Leone. If the First Accused's story about his father's death were true, surely a simple promotion would have sufficed as a gesture of gratitude for his father's sacrifice.
396. Moreover, why would a retired man have been collected to repair the weapon in the first place, as the SLA would have had other serving armourers at the time? The First Accused himself admits that he knew of another armourer in the army at that time.⁵⁵⁷ The Prosecution submits that the First Accused is lying regarding the reason why he was appointed as a member of the council and that his evidence about it being compensation for his father's death is not believable, bearing in mind the medical records which clearly show that his father's death was non violent and was from hypertension and diabetes.
397. It is implausible that the First Accused, an 'other ranks' member of the SLA, should have been appointed to a senior position in government as Public Liaison Officer 2, along with Abu Sankoh, aka Zagallo as Public Liaison Officer I, and the Second Accused as Public Liaison Officer 3 if he was not himself involved in plotting and executing the coup. To think that the AFRC government would feel the need to fill some of its most important executive positions with a raft of undistinguished soldiers simply beggars belief. It is even

⁵⁵⁴ It is also highly improbable that the First Accused's father, a retired member of the SLA, should have been chosen to fix a gun for the AFRC Junta in the days after the coup. The First Accused testified that none of his brothers were appointed to the Council (Accused Alex Tamba Brima, 30 June 2006, pp. 39-40).

⁵⁵⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 5.

⁵⁵⁶ Assuming that the First Accused was a corporal at the time of the coup. *See* Exhibit D13, Piece of paper on which the First Accused wrote names of his 4 brothers, their army ranks and army numbers.

⁵⁵⁷ Accused Alex Tamba Brima, Transcript 11 June 2006, p. 11.

more incredulous that of all the lowly corporals to choose from, the fledgling AFRC government would entrust important responsibilities to a man who was seriously ill.

398. It is implausible that the First Accused did not know why Zagallo, Gborie, the Second Accused, and the Third Accused were appointed as Council members.⁵⁵⁸ It is implausible that the Council members named by the First Accused should have been selected from amongst the vast number of other ranks in the SLA, bearing in mind that other ranks constitute the bulk of the SLA, if they were not all involved in planning and executing the coup.⁵⁵⁹

399. There must have been a reason why the 17 other ranks were made council members and only three of them appointed to the more senior position of PLO, reporting directly to SAJ Musa as chief Secretary of State, making them in effect only one step below Johnny Paul Koroma, the AFRC chairman.

400. The Prosecution submits that the only logical reason was because these 17 other ranks soldiers were rewarded for the role which they played in the Coup and the more senior coup plotters, such as the First and Second Accused, were made PLOs in recognition of them being coup leaders and placing Johnny Paul Koroma and SAJ Musa in charge. Their role in the Coup is corroborated by the statements of Abu Sankoh, aka Zagallo,⁵⁶⁰ and Tamba Gborie,⁵⁶¹ both of which were exhibited before the Court and have been quoted in the TRC Report under the heading "Staging the Coup."⁵⁶²

401. The First Accused denied in cross-examination that he and the Second Accused were Honourables,⁵⁶³ although he had identified himself and the Second Accused as amongst the former Honourables who were arrested and then detained in Colonel Eddie Town.⁵⁶⁴ It is telling that the list of coup plotters and Supreme Council members provided by

⁵⁵⁸ Accused Alex Tamba Brima, Transcript 30 June 2006, p. 39.

⁵⁵⁹ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 13.

⁵⁶⁰ Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998.

⁵⁶¹ Exhibit P89, Statement of Tamba Gborie, 25 March 1998.

⁵⁶² Report of the Sierra Leone Truth and Reconciliation Commission, Vol. 3A, paras. 677-693.

⁵⁶³ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 34 and Transcript 3 July 2006, pp. 40-42.

⁵⁶⁴ The First Accused testified that he was arrested by Commander 0-Five on the orders of SAJ Musa because he was a former honourable of the AFRC, Accused Alex Tamba Brima, Transcript 12 June 2006, p. 48.

Prosecution witnesses is consistent with the list of SLAs whom the First Accused names as Honourables detained with him in Colonel Eddie Town.⁵⁶⁵

402. It is not believable that, whilst acting as PLO 2 and being a member of the AFRC Government and attending council meetings, the First Accused did not know who the honourables were and why they were called honourables. Even the First Accused's own Defence witnesses contradict his evidence that he and the Second Accused were not honourables. According to DBK-005, the Accused were all honourables with securities and as such were important men.⁵⁶⁶ According to DBK-005, the Accused were also all members of the AFRC Government Supreme Council prior to the intervention.⁵⁶⁷
403. Likewise, DAB-063 heard that all the Accused took part in the overthrow of the Kabbah Government and were referred to as honourables. He heard that the Third Accused was an honourable and that the First and Second Accused were members of the Supreme Council.⁵⁶⁸ He also knew that the First Accused was also known as Gullit.⁵⁶⁹ Even Defence witnesses gave evidence that the persons referred to as honourables were the 'other ranks' who carried out the Coup.⁵⁷⁰ Once again, the First Accused is lying.
404. The First Accused claimed that he was not able to perform his duties as a PLO because of the deterioration in his health.⁵⁷¹ However, he was still able to, and did, give regular written and verbal reports to SAJ Musa as Chief Secretary of State.⁵⁷² The First Accused testified that because of his ill health, all of the departments which he was supposed to monitor, supervise, and coordinate were removed from him and given to other Council members. He was not, however, removed from the position of PLO 2.⁵⁷³ This claim is

⁵⁶⁵ Alex Tamba Brima, Transcript 12 June 2006, pp. 60-61. Honourables detained in Colonel Eddie Town were Sergeant Ibrahim Kamara, Warrant Officer Class 2 Franklyn Conteh, Corporal Santigie Kanu, Corporal Hassan Bangura, Abdul Sesay, Ibrahim Sesay, and George Adams.

⁵⁶⁶ DBK-005, Transcript 12 October 2006, pp. 17-18.

⁵⁶⁷ DBK 005, Transcript 12 October 2006, pp. 18-19.

⁵⁶⁸ DAB-063, Transcript 2 August 2006, pp. 61-62, 70.

⁵⁶⁹ DAB-063, Transcript 2 August 2006, p. 70.

⁵⁷⁰ DBK-012, Transcript 18 October 2006, p. 28; DAB-059, Transcript 2 October 2006, pp. 5-6, 28; DAB-033, Transcript 2 October 2006, pp. 49-50; DAB-063, Transcript 2 August 2006, p. 61.

⁵⁷¹ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 82-83; Transcript 6 June 2006, pp. 58-59.

⁵⁷² Accused Alex Tamba Brima, Transcript 20 June 2006, pp. 17-18. The First Accused appeared to deny this evidence in cross-examination, Transcript 3 July 2006, pp. 90-92.

⁵⁷³ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 93.

totally implausible if it is indeed the case that the First Accused was too ill to carry out the functions of a PLO 2.

405. Furthermore, not a single witness (either Prosecution or Defence) gave evidence that the First Accused suffered from any major illness prior to the intervention. In fact, from the treatment which the First Accused was able to endure based on his own evidence after the intervention, if believed (and the Prosecution submits that it is not to be believed as being yet more lies) would indicate that the First Accused must have been very fit and well as opposed to being severely ill.
406. The First Accused testified that the members of the Supreme Council included Johnny Paul Koroma, SAJ Musa, Chief of Defence Staff Brigadier SFY Koroma, Sam Bockarie, Mike Lamin,⁵⁷⁴ and the Secretaries of State North, South and East.⁵⁷⁵ He testified that the Supreme Council was distinct from the AFRC “Council.”⁵⁷⁶
407. The Council “recommended,” whereas the Supreme Council took all the decisions.⁵⁷⁷ Members of the Council, he claimed, included himself, Abu Sankoh, the Second and Third Accused, Brima Kamara, Hassan Bangura, Tamba Gborie, “Samba” [sic] Kargbo, Momoh Bangura, Franklin [sic] Conteh, Moses Kabia, Issa Sesay, Morris Kallon, Denis Mingo and Gibril Massaquoi.⁵⁷⁸ What is telling is that the men whom the First Accused testified are “Council” members regularly appear *alongside* men whom he has identified as “Supreme Council” members in documents identifying “AFRC” or “Council,” or “Supreme Council” members (as the original members of the Council became known).⁵⁷⁹
408. It is also a lie that the Council which the First Accused sat on did not make decisions. The minutes of a council meeting dated 11 August 1997, which the First Accused attended, clearly show that decisions were made as opposed to recommendations.⁵⁸⁰ This demonstrates yet another lie from the First Accused.

⁵⁷⁴ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 63-64; Transcript 7 June 2006, p. 18, 38 and Transcript 3 July 2006, p. 68.

⁵⁷⁵ Accused Alex Tamba Brima, Transcript 20 June 2006, p. 26 and Transcript 6 June 2006, pp. 63-66.

⁵⁷⁶ Accused Alex Tamba Brima, Transcript 6 June 2006, pp.68-71.

⁵⁷⁷ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 69.

⁵⁷⁸ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 70-71.

⁵⁷⁹ For example, Exhibit P6, Exhibit P93, Exhibit P84.

⁵⁸⁰ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday, 11 August 1997.

409. The First Accused seems to suggest in his evidence that those responsible for carrying out the Coup were those persons who were executed on 28 October 1998. This would indicate that the Coup was carried out by senior officers in the SLA assisted by Zagallo and Gborie from the 'other ranks'. This is clearly wrong, as it is well known through Gborie's radio announcement that the coup had been carried out by 'other ranks'.⁵⁸¹ Many Defence witnesses also confirm that the coup was carried out by 'other ranks'.⁵⁸² It would also be illogical for the senior officers to carry out the coup and then appoint 'other ranks' in key positions such as PLOs.
410. The First Accused denied being responsible for overseeing mining in the AFRC period,⁵⁸³ an implausible claim given the abundance of Prosecution evidence to the contrary, and in light of his efforts to disassociate himself from mining in other aspects of his evidence.⁵⁸⁴ Tellingly, the First Accused, when captured at Bedu crossing after the intervention, was found to have a diamond in his possession.⁵⁸⁵ The logical inference to be drawn from this fact is that he acquired this diamond whilst he was PLO 2 supervising mining in Kono.
411. Bearing in mind the previous section of this brief dealing with the First Accused's own evidence, there are no grounds for accepting any of the evidence by which the First Accused has sought to extricate himself from evidence which paints him, beyond any doubt, as a coup plotter, a senior and active figure in the Junta Government, an Honourable and member of the Supreme Council. All the evidence overwhelmingly points to this conclusion.

⁵⁸¹ Exhibit P89, Statement of L/Cpl. Tamba Gborie, p.81.

⁵⁸² DAB-095, Transcript 28 September 2006, p. 8; DAB-147, Transcript 3 October 2006, p. 54; TRC-01, Transcript 16 October 2006, p. 101.

⁵⁸³ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 26.

⁵⁸⁴ This aspect of the First Accused's evidence is addressed in the previous section of the brief. *See* section Observations on The First Accused's Evidence.

⁵⁸⁵ TF1-045, Transcript 19 July 2005, pp. 98-99.

VI. MODES OF LIABILITY

412. The Prosecution submits that the evidence establishes the responsibility of the three Accused under Articles 6(1) and 6(3) of the Statute for the fourteen counts in the Indictment. The recognition in the Statute that individuals may be held criminally responsible for their participation in the commission of offences in any of several capacities is in clear conformity with general principles of criminal law.⁵⁸⁶ The Statute does not make any legal distinction between the different modes of participation and the consequences of engaging in any of the mentioned forms of participation entails equal criminal liability.⁵⁸⁷

PLANNING, INSTIGATING, ORDERING, COMMITTING AND AIDING AND ABETTING: ARTICLE 6(1) OF THE STATUTE

Planning

413. In order to secure a conviction for planning a crime, the Prosecution must show that: (1) the accused, either alone or in concert with others, designed or organized the commission of the *actus reus* of a crime which was subsequently perpetrated.⁵⁸⁸ The criminal conduct designed constitutes one or more statutory crimes that are later perpetrated⁵⁸⁹ by another person⁵⁹⁰ and can be an acts or omissions;⁵⁹¹ (2) the planning was a factor substantially contributing to the criminal conduct;⁵⁹² and (3) the accused acted with direct intent, or was aware of the substantial likelihood that a crime would be committed in the execution of the plan.⁵⁹³

⁵⁸⁶ *Prosecutor v. Delalic et al. (Celebici)*, IT-96-21-A, 'Judgement', Trial Chamber, 16 November 1998, para. 321.

⁵⁸⁷ Antonio Cassese, "International Criminal Law", Oxford University Press, 2003, at p. 180. The ICTY and ICTR adopt a purposive approach, wherein they sought to establish the object and purpose of the provisions of the Statute as opposed to narrow construction. See e.g. *Tadic* Appeal Chamber Judgment, para. 189.

⁵⁸⁸ *Brima* Decision on Motion for Acquittal, para. 284; *Akayesu* Trial Judgment, para. 480.

⁵⁸⁹ *Kordić and Čerkez* Appeals Judgment, para. 26 ; *Kordić and Čerkez* Trial Judgment, para. 386; *Limaj* Trial Judgment, para. 513; *Akayesu* Trial Judgment, para. 473.

⁵⁹⁰ *Bagilishema* Trial Judgment, para. 30.

⁵⁹¹ *Kordić and Čerkez* Appeal Judgment, para. 31.

⁵⁹² *Ibid.*, para. 26; *Bagilishema* Trial Judgment, para. 30; *Stakić Rule 98bis* Decision, paras. 103-104.

⁵⁹³ *Brima* Decision on Motion for Acquittal, para. 284; *Kordić and Čerkez* Appeal Judgment, paras. 29, 31.

414. It needs to be established that the Accused, directly or indirectly, intended the crime in question to be committed.⁵⁹⁴ The required *mens rea* is that of intent or recklessness.⁵⁹⁵ The accused may be held criminally responsible for “planning” crimes that are committed in the execution of his plan, even if those crimes were not part of the plan, provided that he was aware of the substantial likelihood of their being committed.⁵⁹⁶
415. There may be different levels of culpability for “planning”, depending on different levels of command.⁵⁹⁷ A superior commander, for example, may determine the overall strategy whereas the field commander may have substantial discretion in determining his or her own tactical plan in accordance with the superior commander’s operational requirements.
416. An accused may be held liable on the basis of planning alone, but may additionally be liable under other modes of liability where the evidence supports such a finding. In these circumstances, the accused’s involvement in planning the crime at least constitutes an aggravating factor.⁵⁹⁸

Instigating

417. In order to secure a conviction for instigating a crime, the Prosecution must show that: (1) the *actus reus* of a crime was performed by a person other than the accused; (2) the accused prompted the person to commit an offence punishable under the Statute,⁵⁹⁹ in the sense that the conduct of the accused was a factor substantially contributing to the conduct of the other person;⁶⁰⁰ and (3) the accused acted with direct intent, or was aware of the substantial likelihood that a crime would be committed in response to his prompting.⁶⁰¹

⁵⁹⁴ *Brđanin* Trial Judgment, para. 268.

⁵⁹⁵ *Blaškić* Trial Judgment, para. 267.

⁵⁹⁶ *Kordić and Čerkez* Appeal Judgment, para. 30; *Tadić* Trial Judgment para. 692.

⁵⁹⁷ *Kupreškić* Trial Judgment, para. 862, where a commander that has been held criminally liable for passing orders from his superiors to his subordinates is also considered to have “assisted in the strategic planning of the whole attack.”

⁵⁹⁸ *Brđanin* Trial Judgement, para. 268.

⁵⁹⁹ *Orić* Trial Judgment, para. 270.

⁶⁰⁰ *Akayesu* Trial Judgment, para. 482; *Blaškić* Trial Judgment, para. 280; *Brđanin* Trial Judgement, para. 269; *Rutaganda* Trial Judgment, para. 38 ; *Prosecutor v. Strugar*, IT-01-42-T, “Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98 bis”, Trial Chamber, 21 June 2004, para. 86; *Kvočka et al.* Trial Judgment, para. 252; *Naletilić and Martinović* Trial Judgment, para. 60; *Brđanin* Trial Judgment, para. 269; *Kordić and Čerkez* Appeal Judgment, para. 27.

⁶⁰¹ *Brima* Decision on Motion for Acquittal, para. 293; *Kordić and Čerkez* Appeal Judgment, paras. 32;.

418. There must be a causal connection between the instigation and the execution of the crime, but this connection need not amount to a *conditio sine qua non*.⁶⁰² Instigation can be express or implied, and can also occur by omission rather than by a positive act, provided that the accused intended to cause the direct perpetrator to act in a particular way and, in fact, had that effect.⁶⁰³ A superior's persistent failure to prevent or punish crimes by his subordinates can also constitute instigation.⁶⁰⁴

419. It is necessary that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts or omissions.⁶⁰⁵ Consequently, as in the case of "planning", the accused may be held criminally responsible for "instigating" crimes that are committed in the course of executing the instigated crime, even if the accused did not intend to instigate such crimes, so long as he was aware of the substantial likelihood of their being committed.⁶⁰⁶ Accordingly, the required *mens rea* is that of intent or recklessness.⁶⁰⁷

Ordering

420. In order to secure a conviction for ordering a crime, the Prosecution must demonstrate that: (1) the *actus reus* of the crime was performed by a person or persons other than the accused, with or without the participation of the accused; (2) the perpetrator(s) acted in execution of an express or implied order given by the accused to a subordinate or other person over whom the accused was in a position of authority; and (3) the accused issued the order with direct intent, or was aware of the substantial likelihood that a crime would be committed in the execution of the order.⁶⁰⁸

⁶⁰² *Blaškić* Trial Judgment, para. 280; *Tadić* Trial Judgment, para. 688; *Kvočka* Trial Chamber Judgment, para. 252; *Čelebići* Trial Judgment, para. 327; *Kordić and Čerkez* Trial Judgment, para. 387; Also see Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, page 190; *Galić* Trial Judgment, para. 168; *Akayesu* Trial Judgment, para. 482; *Orić* Trial Judgment, para. 271.

⁶⁰³ *Blaškić* Trial Judgment, para. 280; *Brđanin* Trial Judgment, para. 269.

⁶⁰⁴ *Blaškić* Trial Judgment, para. 337.

⁶⁰⁵ *Brđanin* Trial Judgment, para. 269.

⁶⁰⁶ *Limaj et al.* Trial Judgment para. 514; *Tadić* Appeal Judgment, para. 220: "What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* is required..." ; *Tadić* Trial Judgment, para. 692.

⁶⁰⁷ *Blaškić* Trial Judgment, para. 267.

⁶⁰⁸ *Strugar* Trial Judgment, paras. 331-333; See also *Brima* Decision on Motion for Acquittal, para. 296.

421. An accused may be held liable for orders given within regular military formations as well as irregular bodies, such as paramilitary forces, in which there is no *de jure* superior-subordinate relationship, provided the accused is vested with an authority that enables him or her to give orders to the other members of the group.⁶⁰⁹ The necessary authority may be informal or of a purely temporary nature.⁶¹⁰
422. There is no requirement that the order be in writing or in any particular form.⁶¹¹ It may be express or implied.⁶¹² An order “does not need to be given by the superior directly to the person who performs the *actus reus* of the offence.”⁶¹³ The existence of an order may be proven circumstantially and there is no requirement to adduce direct evidence that the order was given.⁶¹⁴
423. That an accused is in a position of authority and “ordered” a particular crime may be inferred from a number of factors, including the number of illegal acts; the number, identity and type of troops involved; the effective command and control exerted over these troops; the logistics involved, if any; the widespread occurrence of the acts; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved; the location of the superior at the time; and the superior’s knowledge of crimes committed by his subordinates.⁶¹⁵ An accused may also be liable for receiving a criminal order and using his powers to instruct his subordinates to perform it. According to the *Kupreškić* Trial Chamber, this amounts to the “reissuing of orders that were illegal in the circumstances.”⁶¹⁶
424. A causal link between the act of ordering and the physical perpetration of a crime is a required component of the *actus reus* of ordering.⁶¹⁷ Such link need not be such that the offence would not have been committed in the absence of the order.⁶¹⁸

⁶⁰⁹ *Strugar* Trial Judgment, para. 331; *Kordić and Čerkez* Appeal Judgment, para. 28; *Kordić and Čerkez* Trial Judgment, para. 388; *Brđanin* Trial Judgment, para. 270.

⁶¹⁰ *Semanza* Appeal Judgment, para. 363; *Kordić and Čerkez* Trial Judgment, para. 388;

⁶¹¹ *Strugar* Trial Judgment, para. 331; *Blaškić* Trial Judgment, para. 281.

⁶¹² *Blaškić* Trial Judgment, para. 281.

⁶¹³ *Ibid.*, para. 282.

⁶¹⁴ *Strugar* Trial Judgment, para. 331; *Kordić and Čerkez* Trial Judgment, para. 388; *Blaškić* Trial Judgment, para. 281.

⁶¹⁵ *Galić* Trial Judgment, para. 171; *Blaskić* Trial Judgment, para. 307.

⁶¹⁶ *Kupreškić* Trial Judgment, para. 862.

⁶¹⁷ *Strugar* Trial Judgment, para. 332.

425. With regard to the *mens rea*, it must be established that the accused in issuing the order intended to bring about the commission of the crime, or was aware of the substantial likelihood that it would be committed in execution of the order.⁶¹⁹ However, if the order is generic (e.g. a general order to abuse prisoners of war), the mental element of recklessness or gross negligence is sufficient.⁶²⁰ It should be mentioned that it is the *mens rea* of the person who gave the order that is important and not that of the actual perpetrator.⁶²¹

426. A conviction for “ordering” a particular crime will not be entered where the accused has committed the same crime.⁶²²

Committing

427. An accused may be found liable for directly committing a crime if the Prosecution has demonstrated that: (1) the accused performed all elements of the *actus reus* of the crime in question. This means the participation of the accused physically or otherwise directly, in the material elements of a crime under the Court’s Statute⁶²³ or failing to act when such a duty exists,⁶²⁴ and (2) the accused acted with the required *mens rea* for the crime in question.⁶²⁵ The accused must either possess the *mens rea* of the relevant crime, or be aware of the substantial likelihood that a crime would occur as a consequence of his act or omission.⁶²⁶

Aiding and Abetting

428. The elements of aiding and abetting are: (1) the accused carries out an act or omission⁶²⁷ specifically directed to assist, encourage or lend moral support to the perpetration of a crime physically committed by a person other than the accused; (2) the accused’s conduct

⁶¹⁸ Ibid.

⁶¹⁹ *Blaškić* Appeal Judgment, para. 42; *Kordić* Appeal Judgment, para. 30; *Strugar* Trial Judgment, para. 333.

⁶²⁰ Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p. 194, footnote 13; *Blaškić* Trial Judgment, para. 267.

⁶²¹ *Blaškić* Trial Judgment, para. 282.

⁶²² *Stakić* Rule 98 bis Decision, para. 109.

⁶²³ *Kvočka* Trial Judgment, para. 251.

⁶²⁴ *Simić* Trial Judgment, para. 137; *Stakić* Trial Judgment, para. 439; *Vasiljević* Trial Judgment, para. 62; *Krstić* Trial Judgment, para. 601.

⁶²⁵ *Kordić and Čerkez* Trial Judgment, para. 376; *Kvočka* Trial Judgment, para. 251.

⁶²⁶ *Kvočka* Trial Judgment, para. 251.

⁶²⁷ *Brdanin*, Trial Judgment, para. 271; *Kvočka*, Trial Judgment, para. 256; *Aleksovski* Trial Judgment, para. 62; *Blaskić* Trial Judgment, para. 284. Examples are given in *Tadić* Trial Judgment, para. 686; *Celebici* Trial Judgment, para. 842; *Akayesu* Trial Judgment, para. 705

has a substantial effect upon the perpetration of the crime; and (3) the accused acted with knowledge that his conduct would assist in the commission of the crime.⁶²⁸

429. While having a role in a system without influence would not be enough to attract criminal responsibility⁶²⁹, there is no requirement that the conduct of the aider and abettor be a *conditio sine qua non* of the actions of the perpetrator.⁶³⁰ The fact that similar assistance could have been obtained from someone else does not remove the accused's responsibility.⁶³¹
430. Aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals.⁶³² Presence during the commission of the crime can constitute "abetting" if it has an encouraging effect on the perpetrators, or gives them moral support or psychological support, or has a significant legitimizing or encouraging effect on the principals, even if the accused takes no active part in the crime.⁶³³ The presence of a superior can be perceived as an important *indicium* of encouragement or support.⁶³⁴
431. The *actus reus* of aiding and abetting can take place before, during or after the crime has been committed, and this form of participation may take place geographically and temporally removed from the crime's location and timing.⁶³⁵ It is not necessary for the person aiding or abetting to be present during the commission of the crime.⁶³⁶ Thus, presence, particularly when coupled with a position of authority, is a probative, but not determinative, indication that an accused encouraged or supported the perpetrators of the

⁶²⁸ *Blaškić Appeal Judgment*, para. 45 (citing *Vasiljević Appeal Judgment*, para. 102); *Strugar Trial Judgment*, para. 349; *Brdanin Trial Judgment*, para. 271; *Blaskić Trial Judgment*, para. 284

⁶²⁹ *Furundžija Trial Judgment*, para. 233.

⁶³⁰ *Strugar Trial Judgment*, para. 349 (citing *Blaškić Appeal Judgment*, para. 48); *Furundžija Trial Judgment*, paras. 233-235.

⁶³¹ *Furundžija Trial Judgment*, paras 224, 233.

⁶³² *Furundžija Trial Judgment*, para. 199.

⁶³³ *Tadić Trial Judgment*, paras 689-692 (see also paras 678-687); *Akayesu Trial Judgment*, paras 546-548; *Čelebići Trial Judgment*, paras 327-328; *Furundžija Trial Judgment*, paras 205-209, 232-235.

⁶³⁴ *Brdanin Trial Judgment*, para. 271; *Akayesu Trial Judgment*, paras 693, 704-705.

⁶³⁵ *Blaškić Appeal Judgment*, para. 48; *Simić Trial Judgment*, para. 162; *Naletilić and Martinović Trial Judgment*, para. 163; *Vasiljević Trial Judgment* para. 70; *Kvočka Trial Judgment*, para. 256; *Blaškić Trial Judgment*, para. 285; *Krnojelac Trial Judgment*, para. 88; *Kunarac Trial Judgment*, para. 391; *Aleksovski Trial Judgment*, paras 62, 129.

⁶³⁶ *Akayesu Trial Judgment*, para. 484.

crime.⁶³⁷ The Prosecution submits that a persistent failure to prevent or punish crimes by subordinates over time may also constitute aiding or abetting.⁶³⁸ Aiding and abetting does not require a pre-existing plan or arrangement to engage in the criminal conduct in question and the principal may not even know about the accomplice's contribution.⁶³⁹

432. The *mens rea* requirement for aiding and abetting is satisfied if the accused knows – in the sense of awareness – that his actions or omissions will assist the perpetrator in the commission of a crime.⁶⁴⁰ The aider and abettor must at least have accepted that the commission of a crime would be a possible and foreseeable consequence of his conduct.⁶⁴¹ Such awareness may be inferred from all relevant circumstances and does not need to be explicitly expressed.⁶⁴² The aider and abettor needs to have, as a minimum, accepted that his assistance would be a possible and foreseeable consequence of his conduct.⁶⁴³ While the aider and abettor need not share the *mens rea* of the principal, he must be aware of the essential elements of the crime ultimately committed by the principal.⁶⁴⁴ It is not necessary that the aider and abettor know the precise crime that was intended or actually committed, as long as he was aware that one or a number of crimes would probably be committed, and one of those crimes was in fact committed.⁶⁴⁵

433. Conduct held to constitute aiding and abetting has included supplying the weapon or other instruments used in the commission of the crime;⁶⁴⁶ failing to prevent others from perpetrating crimes in circumstances where the accused is under a legal obligation to

⁶³⁷ *Kvočka* Trial Judgment, para. 257; *Kunarac* Trial Judgment, para. 393; see *Tadić* Trial Judgment, para. 689; *Aleksovski* Trial Judgment, paras 64-65; *Akayesu* Trial Judgment, para. 693.

⁶³⁸ *Blaškić* Trial Judgment, para. 337.

⁶³⁹ *Kordić and Čerkez* Trial Judgment, para. 399; *Tadić* Trial Judgment, para. 677; *Čelebići* Trial Judgment, paras 327-328.

⁶⁴⁰ *Strugar* Trial Judgment, para. 350 (citing *Tadić* Appeal Judgment, para. 229; *Aleksovski* Appeal Judgment, para. 162; *Blaškić* Appeal Judgment, para. 49); *Furundžija* Trial Judgment, para. 245; *Čelebići* Trial Judgment, paras 327-328; *Kunarac* Trial Judgment, para. 392. The principal need not know that he has been assisted by the aider and abettor. *Tadić* Appeal Judgment, para. 229 (ii); *Brđanin* Trial Judgment, para. 272.

⁶⁴¹ *Kvočka* Trial Judgment, para. 255.

⁶⁴² *Strugar* Trial Judgment, para. 350; *Tadić* Trial Judgment, paras 675-676; *Čelebići* Trial Judgment, paras 327-328.

⁶⁴³ *Blaškić* Trial Judgment, para. 286: "in addition to knowledge that his acts assist the commission of the crime, the aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct."

⁶⁴⁴ *Strugar* Trial Judgment, para. 350 (citing *Aleksovski* Appeal Judgment, para. 162).

⁶⁴⁵ *Strugar* Trial Judgment, para. 350 (citing *Blaškić* Appeal Judgment, para. 50); *Brđanin* Trial Judgment, para. 272.

⁶⁴⁶ *Tadić* Trial Judgment, paras 680, 684 (referring with apparent approval to the *Zyklon B* and *Mulka* cases).

protect a victim;⁶⁴⁷ failing to maintain law and order by a person in a position of authority;⁶⁴⁸ and the presence of the accused coupled with a position of authority during the perpetration of a crime.⁶⁴⁹

434. Either aiding or abetting alone is sufficient to render the perpetrator criminally liable.⁶⁵⁰

SUPERIOR RESPONSIBILITY: ARTICLE 6(3) OF THE STATUTE

435. A superior will be held criminally responsible for the crimes of his subordinates where: (1) an offence was committed; (2) there existed a superior-subordinate relationship between the accused and the perpetrator of the offence; (3) the accused knew or had reason to know that the perpetrator (subordinate) was about to commit the offence or had done so; and (4) the accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator.⁶⁵¹

The Effective Control Test

436. The *actus reus* consists of the existence of a superior-subordinate relationship, i.e. a hierarchical relationship between the accused and the perpetrator, in which the former has 'effective control' over the latter.⁶⁵² The test of 'effective control' concerns the material ability of the accused to prevent offences or to punish the offenders.⁶⁵³ The hierarchical relationship need not be formalized, as it may be derived from the accused's *de facto* or *de*

⁶⁴⁷ *Tadić* Trial Judgment, para. 686 (referring with apparent approval to the *Borkum Island Case*); *Akayesu* Trial Judgment, paras 704-705 (failure of *bourgmestre* to maintain law and order in a commune, and failure to oppose killings and serious bodily or mental harm, found to constitute a form of tacit encouragement, which was compounded by being present at such criminal acts); *Aleksovski* Trial Judgment, para. 88.

⁶⁴⁸ *Akayesu* Trial Judgment, paras 704-705.

⁶⁴⁹ *Rutaganira* Trial Judgment, paras 76-77.

⁶⁵⁰ *Akayesu* Trial Judgment, para. 484; while "aiding" is defined by the ICTR as "giving assistance to someone", abetting is defined as "facilitating the commission of an act by being sympathetic thereto."

⁶⁵¹ *Čelebići* Appeal Judgment, paras 189-198, 225-226, 238-239, 256, 263; *Strugar* Trial Judgment, para. 357; It is settled that Article 7(3) applies to both international and internal armed conflicts. *Kordić and Čerkez* Trial Judgment, para. 401.

⁶⁵² *Čelebići* Appeal Judgment, paras 197 and 255-6 and 303; *Čelebići* Trial Judgment, para. 378; *Kajelijeli* Appeal Judgment, para. 87.

⁶⁵³ *Čelebići* Appeal Judgment, para. 196; *Strugar* Trial Judgment, para. 362-363; *Kayishema* Appeal Judgment, para. 302; *Kunarac* Trial Judgment, para. 396; *Bagilishema* Appeal Judgment, para. 50.

jure position of superiority.⁶⁵⁴ As stated by the Appeals Chamber in *Aleksovski*, “it does not matter whether [the accused] was a civilian or a military superior, if it can be proved that [...] he had the powers to prevent or to punish [...]”⁶⁵⁵ Article 6(3) applies equally to temporary or ad hoc military units if, at the time of the alleged acts, the offenders were under the effective control of the accused.⁶⁵⁶

437. “Effective control” need not take the form of military-style command.⁶⁵⁷ Responsibility may be incurred by civilians who are not part of a military structure, such as political leaders, if they *de facto* constitute part of the chain of command.⁶⁵⁸ It should be noted that the ICTY has held that the existence of *de jure* authority creates a *presumption* that effective control exists.⁶⁵⁹ Thus, when the accused had an official title within an organisation, it is presumed that he had effective control over his subordinates, unless proof of the contrary is produced.⁶⁶⁰
438. A *de facto* superior who lacks formal letters of appointment but who has, in reality, effective control over the perpetrators of offences equally incurs criminal responsibility.⁶⁶¹ In the same vein, the mere *ad hoc* or temporary nature of a military unit or an armed group does not *per se* exclude a relationship of subordination between the member of the unit or group and its commander or leader.⁶⁶² There is no requirement that the relationship between the superior and the subordinate be permanent in nature.⁶⁶³

⁶⁵⁴ *Čelebići* Appeal Judgment, paras 192-194; *Kordić and Čerkez* Trial Judgment, paras 405-406, 416; *Krnojelac* Trial Judgment, para. 93; *Kunarac* Trial Judgment, para. 396; *Galić* Trial Judgment, para. 173; *Stakić* Trial Judgment, para. 459.

⁶⁵⁵ *Aleksovski* Appeal Judgment, para. 76.

⁶⁵⁶ *Strugar* Trial Judgment, para. 362; *Kunarac* Trial Judgment, paras 399, 628.

⁶⁵⁷ *Baglishema* Appeal Judgment, para. 55; *Kajelijeli* Appeal Judgment, para. 87.

⁶⁵⁸ *Aleksovski* Appeal Judgment, para. 76; *Čelebići* Appeal Judgment, paras 195-197, reaffirming the conclusion of the Trial Chamber in *Čelebići* Trial Judgment, paras 356-363.

⁶⁵⁹ The ICTY Appeals Chamber in *Čelebići* held that “[i]n general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced.” *Čelebići* Appeal Judgment, para. 197; this was repeated in *Galić* Trial Judgment, para. 173.

⁶⁶⁰ *Hadžihasanović* Trial Judgment, para. 83.

⁶⁶¹ *Brđanin* Trial Judgment, para. 276.

⁶⁶² *Kunarac* Trial Judgment, para. 399; *Strugar* Trial Judgment, para. 362; *Halilović* Trial Judgment, para. 61; *Orić* Trial Judgment, para. 310.

⁶⁶³ *Limaj* Trial Judgment, para. 522.

439. A superior may also be responsible for crimes committed by a subordinate more than one level down the chain of command.⁶⁶⁴ In the *Halilović* case, the Trial Chamber referred to the judgment in the case against the Japanese Admiral Soemu Toyoda tried in the aftermath of World War II:

The military tribunal in that case highlighted that subordination does not have to be direct and stated that (*Toyoda* case, p. 5006): “[i]n the simplest language it may be said that this Tribunal believes the principle of command responsibility to be that, if this accused knew, or should by the exercise of ordinary diligence have learned, of the commission by his subordinates, *immediate or otherwise*, of the atrocities proved beyond a shadow of a doubt before this Tribunal or of the existence of a routine which would countenance such, and, by his failure to take any action to punish the perpetrators, permitted the atrocities to continue, he has failed in his performance of his duty as a commander and must be punished.”⁶⁶⁵

440. There is no requirement that the superior-subordinate relationship be direct or immediate in nature.⁶⁶⁶ For example, the relationship between a commander of one unit and troops belonging to other units that are temporarily under his command, constitutes the hierarchic relationship of superior-subordinate.⁶⁶⁷ Effective control can exist, whether that subordinate is immediately answerable to that superior or more remotely under his command.⁶⁶⁸ A superior may also be responsible for crimes committed by a subordinate more than one level down the chain of command.⁶⁶⁹ Thus, whether this sort of control is directly exerted upon a subordinate or mediated by other sub-supersiors or subordinates is immaterial, as long as the responsible superior would have means to prevent the relevant crimes from being committed or to take efficient measures for having them sanctioned.⁶⁷⁰

⁶⁶⁴ *Strugar* Trial Judgment, paras. 363-366; see also ICRC Commentary to the Additional Protocols, p. 1013, para. 3544.

⁶⁶⁵ *Halilović* Trial Judgment, para. 63, footnote 149.

⁶⁶⁶ *Strugar* Trial Judgment, para. 363; *Orić* Trial Judgment, paras 310-311; *Čelebići* Appeal Judgement, para. 252.

Stakić Trial Judgment, 31 July 2003, para. 459.

⁶⁶⁷ This essentially was the view expressed in the post-World War II trial of the Japanese General Tomoyuki Yamashita, by the U.S. Military Commission (subsequently affirmed by the U.S. Supreme Court). *Trial of General Tomoyuki Yamashita Before U.S. Military Commission* (Oct. 7–Dec. 7, 1945), summarized in 4 U.N. War Crimes Commission, Law Reports of Trials of War Criminals 1, 33-35 (1948). Affirmed in the appeal before the U.S. Supreme Court in *In re Yamashita*, 327 U.S. 1 (1946).

⁶⁶⁸ *Halilović* Trial Judgment, para. 63.

⁶⁶⁹ *Strugar* Trial Judgment, paras 363-366.

⁶⁷⁰ *Orić* Trial Judgment, paras 307 et seq.

441. The Appeals Chamber in *Blaskić* held that “the indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had the power to prevent, punish, *or* initiate measures leading to proceedings against the alleged perpetrators where appropriate.”⁶⁷¹
442. The jurisprudence provides for certain criteria that may be indicative of the existence of authority in terms of effective control.⁶⁷² They include the formality of the procedure used for appointment of a superior,⁶⁷³ the official position held by the accused,⁶⁷⁴ the position of the accused within the military or political structure,⁶⁷⁵ the actual tasks that he performed,⁶⁷⁶ the power of the superior to issue orders whether *de jure* or *de facto*⁶⁷⁷ or take disciplinary action,⁶⁷⁸ the power to appoint leaders of local groups, and charged specific persons with a specific task,⁶⁷⁹ the fact that subordinates show in the superior's presence greater discipline than when he is absent,⁶⁸⁰ the fact that the subordinates were informing the accused of measures taken,⁶⁸¹ the capacity to transmit reports to competent authorities for the taking of proper measures,⁶⁸² the capacity to sign orders,⁶⁸³ provided that the signature on a document is not purely formal or merely aimed at implementing a decision made by others,⁶⁸⁴ but that the indicated power is supported by the substance of the document⁶⁸⁵ or that it is obviously complied with,⁶⁸⁶ an accused's high public profile, manifested through public appearances and statements⁶⁸⁷ or by participation in high-

⁶⁷¹ *Blaškić* Appeal Judgment, para. 69 (emphasis added); *Akayesu* Trial Judgment, para. 491; *Strugar* Trial Judgment, para. 366; *Halilović* Trial Judgment, para. 63; *Orić*, Trial Judgment, paras 307 et seq. (emphasis added).

⁶⁷² *Orić* Trial Judgment, paras 307 et seq.

⁶⁷³ *Halilović* Trial Judgment, para. 58.

⁶⁷⁴ *Kordić and Čerkez* Trial Judgment, paras 418-424.

⁶⁷⁵ *Kordić and Čerkez* Trial Judgment, para. 423.

⁶⁷⁶ *Kordić and Čerkez* Trial Judgment, para. 424.

⁶⁷⁷ *Aleksovski* Trial Judgment, paras 101, 104; *Blaškić* Trial Judgment, para. 302; *Kordić and Čerkez* Trial Judgment, para. 421; *Kajelijeli* Trial Judgment, paras 403-404.

⁶⁷⁸ *Blaškić* Trial Judgment, para. 302; *Hadžihasanović* Trial Judgment, paras 83 et seq.

⁶⁷⁹ *Orić* Trial Judgment, para. 700.

⁶⁸⁰ *Čelebići* Appeal Judgment, para. 206, endorsing the findings of *Čelebići* Trial Judgment, para. 743.

⁶⁸¹ *Čelebići* Appeal Judgment, para. 209.

⁶⁸² *Aleksovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, para. 302.

⁶⁸³ *Čelebići* Trial Judgment, para. 672; *Kordić and Čerkez* Trial Judgment, para. 421; *Naletilić and Martinović* Trial Judgment, para. 67.

⁶⁸⁴ *Kordić and Čerkez* Trial Judgment, para. 421.

⁶⁸⁵ *Ibid.*

⁶⁸⁶ *Naletilić and Martinović* Trial Judgment, para. 67.

⁶⁸⁷ *Kordić and Čerkez* Trial Judgment, para. 424.

profile international negotiations,⁶⁸⁸ the fact that witnesses had described his sphere of command, the respect he enjoyed and his widely acknowledged leadership,⁶⁸⁹ the fact that an accused had been promoted as commander.⁶⁹⁰

443. The effective control test can be satisfied even when the superior is not competent to order and/or implement sanctions himself. It has been held that the superior has to order or execute appropriate sanctions⁶⁹¹ or, if not yet able to do so, he or she must at least conduct an investigation⁶⁹² and establish the facts⁶⁹³ in order to ensure that offenders under his or her effective control are brought to justice.⁶⁹⁴ The superior need not conduct the investigation or dispense the punishment in person,⁶⁹⁵ but he or she must at least ensure that the matter is investigated⁶⁹⁶ and transmit a report to the competent authorities for further investigation or sanction.⁶⁹⁷ As in the case of preventing crimes, the superior's own lack of legal competence does not relieve him from the duty of taking action within his material ability.⁶⁹⁸

444. The proof of the existence of a superior-subordinate relationship does not require the identification of the principal perpetrators, particularly not by name, nor that the superior had knowledge of the number or identity of possible intermediaries, provided that it is at least established that the individuals who are responsible for the commission of the crimes were within a unit or a group under the control of the superior.⁶⁹⁹

⁶⁸⁸ *Alekovski* Trial Judgment, para. 101; *Kordić and Čerkez* Trial Judgment, para. 424; *Strugar* Trial Judgment, para. 398.

⁶⁸⁹ *Čelebići* Appeal Judgment, paras 206, 209, endorsing the findings of *Čelebići* Trial Judgment, paras 746-750.

⁶⁹⁰ *Čelebići* Appeal Judgment, para. 206.

⁶⁹¹ As for instance, by suspending a subordinate: *Ntagerura* Trial Judgment, para. 650.

⁶⁹² *Kordić and Čerkez* Trial Judgment, para. 446; *Brđanin* Trial Judgment, para. 279; *Halilović* Trial Judgment, paras 74, 97, 100.

⁶⁹³ *Halilović* Trial Judgment, paras 97, 100.

⁶⁹⁴ *Strugar* Trial Judgment, para. 378; *Halilović* Trial Judgment, para. 98.

⁶⁹⁵ *Halilović* Trial Judgment, paras 99-100.

⁶⁹⁶ *Ibid.*, paras 97, 100.

⁶⁹⁷ *Blaškić* Appeal Judgment, para. 632; *Blaškić* Trial Judgment, paras 302, 335, 464; *Kordić and Čerkez* Trial Judgment, para. 446; *Kvočka* Trial Judgment, para. 316; *Stakić* Trial Judgment, para. 461; *Brđanin* Trial Judgment, para. 279; *Halilović* Trial Judgment, paras 97, 100.

⁶⁹⁸ *Alekovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, paras 302, 335, 464; *Halilović* Trial Judgment, para. 100.

⁶⁹⁹ *Blaškić* Appeal Judgment, para. 217. See also *Hadžihasanović* Trial Judgment, para. 90.

The Superior Knew or Had Reason to Know

445. Article 6(3) requires that the superior either (a) knew or (b) had reason to know that his subordinates were about to commit criminal acts or had already done so. Whereas the former requires proof of actual knowledge, the latter requires proof only of some grounds which would have enabled the superior to become aware of the crimes of his or her subordinates.⁷⁰⁰

446. Actual knowledge may be established by way of circumstantial evidence.⁷⁰¹ The superior's position per se is not to be understood as a conclusive criterion⁷⁰² but may appear to be a significant indication from which knowledge of a subordinate's criminal conduct can be inferred.⁷⁰³ For instance, the fact that crimes were committed frequently or notoriously by subordinates of the accused, indicates that the superior had knowledge of the crimes.⁷⁰⁴ Circumstantial evidence can in particular be gained from⁷⁰⁵ the number, type and scope of illegal acts, the time during which they occurred, the number and type of troops, the logistics involved, the geographical location of the acts, their widespread occurrence, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved and the location of the commander at the time.⁷⁰⁶ Additionally, the fact that a military commander "will most probably" be part of an organized structure with

⁷⁰⁰ Ibid., para. 317.

⁷⁰¹ *Čelebići* Trial Judgment, paras 383, 386; *Kordić and Čerkez* Trial Judgment, para. 427; *Krnojelac* Trial Judgment, para. 94; *Naletilić* Trial Judgment, para. 71; *Galić* Trial Judgment, para. 174; *Brđanin* Trial Judgment, para. 278; *Strugar* Trial Judgment, para. 368; *Halilović* Trial Judgment, para. 66; *Limaj* Trial Judgment, para. 524; *Hadžihasanović* Trial Judgment, para. 94; *Bagilishema* Trial Judgment, para. 46; *Kajelijeli* Trial Judgment, para. 778; *Aleksovski* Trial Judgment, para. 80; *Blaškić* Trial Judgment, para. 307; these Judgments indicate that the position of authority of the superior over the subordinate is a significant indication in itself that the superior knew of crimes committed by his subordinates.

⁷⁰² *Blaškić* Appeal Judgment, para. 57; *Bagilishema* Trial Judgment, para. 45; *Semanza* Trial Judgment, para. 404; *Kajelijeli* Trial Judgment, para. 776.

⁷⁰³ *Aleksovski* Trial Judgment, para. 80; *Blaškić* Trial Judgment, para. 308.

⁷⁰⁴ The Trial Chamber held that "[t]he crimes committed in the *Čelebići* prison-camp were so frequent and notorious that there is no way that [the accused] could not have known or heard about them." *Čelebići* Trial Judgment, para. 770.

⁷⁰⁵ This list of criteria is in particular referred to in *Čelebići* Trial Judgment, para. 386; *Blaškić* Trial Judgment, para. 307; *Kordić and Čerkez* Trial Judgment, para. 427; *Galić* Trial Judgment, para. 174; *Brđanin* Trial Judgment, para. 276, footnote 736; *Strugar* Trial Judgment, para. 368; *Limaj* Trial Judgment, para. 524; *Hadžihasanović* Trial Judgment, para. 94; *Bagilishema* Trial Judgment, para. 968; Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, p. 17.

⁷⁰⁶ *Orić* Trial Judgment, paras 316 -324.

reporting and monitoring systems has been cited as a factor facilitating the showing of actual knowledge.⁷⁰⁷

447. A superior can be held responsible on the basis of having had reason to know, had he made use of information which, by virtue of his superior position and in compliance with his duties, was available to him, that subordinates were about to commit or had already committed crimes.⁷⁰⁸

448. It is sufficient that the superior be in possession of sufficient information in written or oral form,⁷⁰⁹ or even general in nature, to be on notice of the likelihood of illegal acts by his subordinates, i.e., so as to justify further inquiry in order to ascertain whether such acts were indeed being or about to be committed.⁷¹⁰ Such information must suggest the need for further inquiry into the likely or possible unlawful acts of subordinates and need not be explicit or specific.⁷¹¹ In particular, with regard to the duty to prevent, the superior need be on notice only of the “risk” or possibility of crimes being committed by his subordinates, not that crimes will certainly be committed.⁷¹² Moreover, the Prosecution submits that where a superior possesses such information, he has an affirmative duty to take reasonable measures to prevent criminal conduct, that go beyond his duty to investigate the situation.⁷¹³

449. In *Celebici*, the ICTY Appeals Chamber held that “knowledge may be presumed ... if [the superior] had the *means* to obtain the knowledge but deliberately refrained from doing

⁷⁰⁷ *Naletilić and Martinović* Trial Judgment, para. 73.

⁷⁰⁸ *Čelebići* Trial Judgment, paras 387-389, 393; *Blaškić* Trial Judgment, para. 332; *Bagilishema* Trial Judgment, para. 46; *Čelebići* Appeal Judgment, para. 238; *Galić* Trial Judgment, para. 175.

⁷⁰⁹ *Čelebići* Appeal Judgment, para. 238; *Kvočka* Trial Judgment, para. 318; *Galić* Trial Judgment, para. 175.

⁷¹⁰ *Čelebići* Trial Judgment, para. 393; *Kordić and Čerkez* Trial Judgment, para. 437; *Strugar* Trial Judgment, paras 369-370; *Čelebići* Appeal Judgment, para. 241; *Blaškić* Appeal Judgment, para. 62; *Kvočka* Trial Judgment, para. 318; *Krnojelac* Trial Judgment, para. 94; *Naletilić and Martinović* Trial Judgment, para. 74; *Galić* Trial Judgment, para. 175; *Brđanin* Trial Judgment, para. 278; *Blagojević* Trial Judgment, para. 792; *Halilović* Trial Judgment, para. 68; *Kayishema* Trial Judgment, para. 228; *Semanza* Trial Judgment, para. 405; *Kajelijeli* Trial Judgment, para. 778; *Kamuhanda* Trial Judgment, para. 609.

⁷¹¹ *Bagilishema* Appeal Judgment, para. 28; *Čelebići* Appeal Judgment, paras 236, 238; *Strugar* Trial Judgment, para. 369; *Kvočka* Trial Judgment, paras 317-318; *Kordić and Čerkez* Trial Judgment, para. 437.

⁷¹² *Krnojelac* Appeal Judgment, paras 155, 166, 169, 170, 173-180. *Strugar* Trial Judgment, paras 370, 416-418.

⁷¹³ *Kvočka* Trial Judgment, paras 317-318; *Čelebići* Appeal Judgment, para. 238 (notice of the violent or unstable character of subordinates may trigger duty to intervene); *Strugar* Trial Judgment, para. 373.

so.”⁷¹⁴ The superior need not have possessed knowledge of the *specific* details of the crime.⁷¹⁵

450. This determination does not require the superior to have actually acquainted himself with the information in his possession,⁷¹⁶ nor that the information would, if read, compel the conclusion of the existence of such crimes.⁷¹⁷ It rather suffices that the information was available to the superior and that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by subordinates.⁷¹⁸

451. This does not necessarily mean that the superior may be held liable for failing personally to acquire such information in the first place.⁷¹⁹ However, as soon as the superior has been put on notice of the risk of illegal acts by subordinates,⁷²⁰ he is expected to stay vigilant and to inquire about additional information, rather than doing nothing⁷²¹ or remaining willfully blind.⁷²²

452. Examples of information which have been found to place a superior on notice of the risk of criminal conduct by a subordinate – and consequently that show that the superior possessed the requisite knowledge - include that of a subordinate having a notoriously

⁷¹⁴ *Čelebići* Appeal Judgment, para. 226; *Stakić* Trial Judgment, paras 460-461; in the *Halilović* case, the Trial Chamber held that knowledge cannot be presumed if a person fails in his duty to obtain the relevant information, but it may be presumed where a superior had the means to obtain the relevant information and deliberately refrained from doing so, see *Halilović* Trial Judgment, para. 69.

⁷¹⁵ *Čelebići* Appeal Judgment, para. 238: “[a] showing that a superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he ‘had reason to know’... This information does not need to provide specific information about unlawful acts committed or about to be committed. For instance, a military commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge.” This view was also repeated by the ICTY Trial Chamber in *Galić* Trial Judgment, 5 Dec. 2003, para. 175; *Krnjelac* Appeal Judgment, para. 155.

⁷¹⁶ *Čelebići* Appeal Judgment, para. 239; *Galić* Trial Judgment, para. 175.

⁷¹⁷ *Čelebići* Trial Judgment, para. 393; *Naletilić and Martinović* Trial Judgment, para. 74; *Halilović* Trial Judgment, para. 68; *Hadžihasanović* Trial Judgment, para. 97.

⁷¹⁸ *Čelebići* Trial Judgment, para. 393.

⁷¹⁹ *Čelebići* Appeal Judgment, para. 226; *Blaškić* Appeal Judgment, para. 62; *Halilović* Trial Judgment, para. 69; *Limaj* Trial Judgment, para. 525.

⁷²⁰ Instead of the “risk” of crimes by subordinates, as used in describing the standard of possible awareness in the case law of this Tribunal (*Krnjelac* Appeal Judgment, para. 155; *Čelebići* Trial Judgment, para. 383; *Strugar* Trial Judgment, para. 416), some judgments speak of “likelihood” (*Kordić and Čerkez* Trial Judgment, para. 437; *Limaj* Trial Judgment, para. 525) or even of “substantial” and “clear likelihood” (*Strugar* Trial Judgment, paras 420, 422). Yet this language, rather than requiring a higher standard, seems merely to express that with such a degree of likelihood the risk test is definitely satisfied. See also *Hadžihasanović* Trial Judgment, paras 98, 102 et seq.

⁷²¹ *Strugar* Trial Judgment, para. 416.

⁷²² *Čelebići* Trial Judgment, para. 387; *Halilović* Trial Judgment, para. 69.

violent or unstable character and that of a subordinate drinking prior to being sent on a mission.⁷²³ Similarly, a commander's knowledge of, for example, the criminal reputation of his subordinates may be sufficient to meet the *mens rea* standard if it amounted to information which would put him on notice of the present and real risk of offences within the jurisdiction of the Special Court.⁷²⁴

Necessary and Reasonable Measures

453. A superior must take reasonable and necessary measures within his material abilities to prevent the offence or punish the offender.⁷²⁵ There is no rigid definition as to what constitutes reasonable measures;⁷²⁶ it should be decided on a case-by-case basis in light of the superior's material abilities.⁷²⁷ Such 'available' measures have been held to include measures which are beyond the legal authority of the superior, if their undertaking is materially possible.⁷²⁸
454. Indeed a superior may be held liable despite lacking the formal legal competence to take particular measures to prevent or repress offences committed by subordinates.⁷²⁹ Such a superior ordinarily can, for example, alert others concerning crimes committed or about to be committed by subordinates.⁷³⁰
455. At the same time, however, mere punishment by the superior of a subordinate after the crimes had been committed cannot remedy the superior's failure to take 'necessary and reasonable measures' in advance aimed at preventing the crime.⁷³¹

⁷²³ *Čelebići* Appeal Judgment, para. 238; *Krnjelac* Appeal Judgment, para. 154; *Hadžihasanović* Trial Judgment, para. 100.

⁷²⁴ *Brđanin* Trial Judgment, para. 278, referring to *Čelebići* Appeal Judgment, paras 223 and 241; *Halilović* Trial Judgment para. 68.

⁷²⁵ *Strugar* Trial Judgment, para. 372; *Aleksovski* Appeal Judgment, para. 76; *Blaškić* Trial Judgment, para. 335; *Čelebići* Trial Judgment, paras. 377, 395.

⁷²⁶ *Aleksovski* Trial Judgment, para. 81; *Čelebići* Trial Judgment, para. 394.

⁷²⁷ *Strugar* Trial Judgment, para. 372, 374, 378.

⁷²⁸ *Čelebići* Trial Judgment, para. 395. *Stakić* Trial Judgment, para. 461.

⁷²⁹ *Strugar* Trial Judgment, para. 372; *Čelebići* Trial Judgment, para. 395; *Kordić and Čerkez* Trial Judgment, para. 443.

⁷³⁰ *Aleksovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, para. 302. See also Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para 3562; *Blaškić* Trial Judgment, para. 335. *Stakić* Trial Judgment, para. 461.

⁷³¹ *Blaškić* Trial Judgment, para. 336. *Stakić* Trial Judgment, para. 461.

456. The contours of a superior's duty to prevent crimes by subordinates were addressed in the *Strugar* case, where the ICTY Trial Chamber stated that "if a superior has knowledge or has reason to know that a crime is being or is about to be committed, he has a duty to prevent the crime from happening and is not entitled to wait and punish afterwards."⁷³² The Trial Chamber listed several factors considered by the post-World War II tribunals in establishing a superior's responsibility for failure to prevent crimes by his subordinates, including *inter alia* the failure to issue orders aimed at bringing practices into accord with the rules of war, the failure to secure reports that military actions had been carried out in accordance with international law, the failure to protest against or criticize criminal acts, the failure to take disciplinary measures to prevent criminal acts by subordinates, and the failure to insist before a superior authority that immediate action be taken against perpetrators of crimes.⁷³³
457. The Trial Chamber in *Strugar* also held that "a superior's duty to punish the perpetrators of a crime includes at least an obligation to investigate possible crimes, to establish the facts, and if the superior has no power to sanction, to report them to the competent authorities."⁷³⁴

Plurality of Superiors

458. More than one superior may be held responsible for their failure to prevent or punish the same crime committed by a subordinate.⁷³⁵ The fact that an accused may himself have had superiors does not impact on his own responsibility as a superior. Command responsibility applies to every commander at every level.⁷³⁶

⁷³² *Strugar* Trial Judgment, para. 373; See also *Blaškić* Trial Judgment, para. 336. Customary international law allows for conviction on the sole basis that the superior failed to prevent the crimes of his subordinates even if the perpetrators were punished after crimes had been committed. *US v. von Leeb and others* (High Command Case), US Military Tribunal sitting at Nuremberg, Judgment of 28 October 1948, in TWC, XI, p. 568, also in *Annual Digest* 1948 ; *US v. List and others* (Hostages Case), US Military Tribunal sitting at Nuremberg, Judgment of 19 February 1948, TWC, XI, p. 1298-99, also in *Annual Digest* 1948.

⁷³³ *Strugar* Trial Judgment, para. 374.

⁷³⁴ *Strugar* Trial Judgment, para. 376.

⁷³⁵ *Blaškić* Trial Judgment, para. 303; *Krnojelac* Trial Judgment, para. 93.

⁷³⁶ *Halilović* Trial Judgment, para. 62. *Blaškić* Trial Judgment, paras 296, 302, 303; *Krnojelac* Trial Judgment, para. 93; *Naletilić and Martinović* Trial Judgment, para. 69.

459. Finally, an accused who is found guilty under Article 6(1) of the Statute should not also be convicted of the same crime pursuant to Article 6(3); instead, his superior position will be considered an aggravating factor in sentencing.⁷³⁷

JOINT CRIMINAL ENTERPRISE

460. 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.⁷³⁸

461. The three Accused are all charged as participants in a joint criminal enterprise (“JCE”) the plan, purpose or design of which was to take any action necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be shared with persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise. As set out in the Indictment, the common plan included gaining and exercising control over the civilian population of Sierra Leone in order to prevent or minimize resistance to the geographic control of the three Accused and others, and to use members of the population to provide support to the members of the joint criminal enterprise. It is the Prosecution’s theory that the common plan either directly involved the commission of the crimes alleged against the three Accused or that the full extent of the crimes was a reasonably foreseeable consequence of that plan.

462. The key players in the joint criminal enterprise during the relevant time frame included those named in the Indictment as well as other members of the AFRC and the Revolutionary United Front (RUF) who shared the common design throughout. It is not alleged that *every* member of the AFRC and *every* member of the RUF was necessarily a member of the joint criminal enterprise.

⁷³⁷ *Kordić and Čerkez* Appeal Judgment, para. 34 (quoting *Blaškić* Appeal Judgment, para. 91).

⁷³⁸ *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.

463. There are three recognized forms of joint criminal enterprise.⁷³⁹ The first category or ‘basic form’ describes cases where all participants, acting pursuant to a common purpose which amounts to or involves the commission of one or more crimes listed in the Statute, 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.⁷⁴⁰ 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.⁷⁴¹ 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.⁷⁴² On a proper analysis, the first and second categories may be regarded not as separate ‘categories’ of joint criminal enterprise liability, but merely as two different ways in which an accused can participate in a joint criminal enterprise under the ‘basic form’ of liability.⁷⁴³ 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.⁷⁴⁴ Regardless of the role played by each participant in the commission of the crime, all of the participants in the joint criminal enterprise are guilty of the same crime.⁷⁴⁵
464. The Trial Chamber accepted in its Decision pursuant to Rule 98⁷⁴⁶ that the Prosecution had specified all three variants of JCE liability in the Indictment⁷⁴⁷ as well as in the Pre-Trial

⁷³⁹ *Tadić* Appeal Judgment, paras 195-226; *Vasiljević* Appeals Judgment, paras 96-99.

⁷⁴⁰ *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, “Judgement”, 17 September 2003, (“*Krnojelac Appeal Judgement*”), para. 32.

⁷⁴¹ *Ibid.*, para. 89.

⁷⁴² *Ibid.*, para. 96.

⁷⁴³ 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).

⁷⁴⁴ *Vasiljević* Appeals Judgment, para. 99.

⁷⁴⁵ *Vasiljević* Appeals Judgment, paras 110-111; *Blagojević and Jokić* Trial Judgment, para. 702.

⁷⁴⁶ *Brima* Decision on Motion for Acquittal, para. 323 and 326.

⁷⁴⁷ Indictment, paras 33-35.

Brief.⁷⁴⁸ The Indictment is indeed clear in alleging all three categories, as it specifically states 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”⁷⁴⁹ 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.⁷⁵⁰

465. The Prosecution submits that all three variants of JCE may be applicable to the facts proven at trial and that the Trial Chamber may rely on the variant or variants of JCE liability which it concludes best fit the facts of this case.⁷⁵¹

466. The following elements establish liability as a co-perpetrator in a joint criminal enterprise:⁷⁵²

- i. A plurality of persons;
- ii. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime listed in the Statute; and
- iii. The participation of the accused in the execution of the common plan;
- iv. Shared intent to commit a crime in furtherance of the common plan, or personal knowledge of a system of ill-treatment and intent to further the criminal purpose of the system;
- v. 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 and willingly taking the risk that the crime might occur.⁷⁵³

⁷⁴⁸ Pre-Trial Brief, para. 209 [REDACTED]

⁷⁴⁹ Indictment para. 34.

⁷⁵⁰ See further Prosecutor v. Krnojelac, IT-97-25, “Judgment”, 15 March 2002, (“Krnojelac Trial Judgment”) 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.”

⁷⁵¹ Cf. Kupreški Trial Judgement, para. 745-746.

⁷⁵² Prosecutor v. Kvočka, IT-98-30/1-T, “Judgement”, 2 November 2001, (“Kvočka Trial Judgement”), para. 266; See also Tadić Appeal Judgement, para. 227.

⁷⁵³ Brđanin Trial Judgement, para. 265; see also Tadić Appeal Judgement, para. 228; Stakić Appeal Judgment, paras 64-65.

PLURALITY OF PERSONS

467. A joint criminal enterprise can be large or more restricted in size. In the *Karemera* case, the ICTR Appeals Chamber confirmed that it would be incorrect to suggest that liability can arise only from participation in enterprises of limited size or geographical scope.⁷⁵⁴ In the case of a large scale joint criminal enterprise, the participants may change over a period of time, with new members joining, and some persons ceasing to be members.
468. There is no requirement that the plurality of persons be organized in a military, political or administrative structure⁷⁵⁵ and membership in the enterprise may be fluid so long as the common aim remains constant.⁷⁵⁶ Identification of a perpetrator by category is sufficient if the precise identity is not known.⁷⁵⁷ For example, it has been found that a “group including the leaders of political bodies, the army, and the police who held power in the Municipality of Prijedor” was a plurality of persons, meeting the first element of JCE.⁷⁵⁸

COMMON PURPOSE

469. It is necessary to demonstrate the existence of a common plan, design or purpose which amounts to or involves the commission of one or more crimes listed in the Statute. While the aim of defeating the enemy and regaining control of territory is not in itself a criminal aim, if the plan *involves* the commission of crimes against civilians in order to achieve that aim, liability may be invoked under the doctrine of JCE.
470. There is no need for the Prosecution to establish that the common plan, design or purpose was expressly or formally agreed between the various members of the joint criminal enterprise, or previously arranged or formulated.⁷⁵⁹ Furthermore, the understanding or arrangement may be an unspoken one. In other words, it is only necessary that the person

⁷⁵⁴ *Prosecutor v Karemera*, “Decision on Jurisdictional Appeals: Joint Criminal Enterprise”, 12 April 2006, para. 16. See also *Krajisnik* Trial Judgment, para. 876.

⁷⁵⁵ *Vasiljević* Appeal Judgment, para. 100.

⁷⁵⁶ *Brđanin* Trial Judgment” para. 261; *Tadić* Trial Judgment para. 227; *Blagojević and Jokić* Trial Judgment, paras 700-701.

⁷⁵⁷ *Kvočka* Trial Judgment para. 266; *Tadić* Appeal Judgment, para. 227; *Prosecutor v. Rasevic*, IT-97-25/1-PT, “Decision regarding Defence Preliminary Motion on the Form of the Indictment”, Trial Chamber, 28 April 2004, para. 47; *Prosecutor v. Stojan Zupljanin*, IT-99-36-I, “Second amended Indictment”, October 2004.

⁷⁵⁸ *Prosecutor v Stakić*, Appeal Judgment, para. 69.

⁷⁵⁹ *Krajisnik* Trial Judgment, para. 883.

have a tacit common state of mind with other members of the joint criminal enterprise, which may be inferred from all the circumstances. The existence of such a common plan, design or purpose may be established by circumstantial evidence, and may be inferred from all the evidence.⁷⁶⁰ 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.”⁷⁶¹ 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.”⁷⁶²

471. While the physical perpetrator of crimes will often be a member of the enterprise, it is well-established that persons, such as leaders, who may be more removed from the *actus reus* of a crime are not immune from liability. Senior leaders necessarily divide tasks up amongst each other and use the means at their disposal, such as armies, to execute the common plan. A commander may use the forces under his control, while another participant makes inflammatory speeches and yet another provides political support. Therefore, it has been held that a JCE may exist even if none or only some of the physical perpetrators are part of the enterprise if they are procured by members of the enterprise to commit crimes which further the common plan.⁷⁶³ In an interlocutory decision in the *Ojdanic* case, Judge Bonomy considered the question of the membership of the physical perpetrator in the JCE in some detail and concluded in relation to the ICTY/R case law that:

it is not inconsistent with the jurisprudence of the Tribunal for a participant in a JCE to be found guilty of commission where the crime is perpetrated by a person or persons who simply act as an instrument of the JCE, and who are not shown to be participants in the JCE. There is certainly no binding

⁷⁶⁰ *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; *Krnjelac* Trial Judgement, para. 80, footnote 236; *Prosecutor v. Anto Furundžija*, IT-95-17/1-A, “Judgement”, (“**Furundžija Appeals Judgement**”), 21 July 2000, para. 119; *Krnjelac* Appeal Judgement, paras. 81, 96.

⁷⁶¹ *Tadić* Appeal Judgement, para. 227; *Krnjelac* Trial Judgement, para. 80.

⁷⁶² *Furundžija* Appeals Judgment, para. 120.

⁷⁶³ *Krajisnik* Trial Judgment, para. 883.

decision of the Appeals Chamber that would prevent the Trial Chamber from finding an accused guilty on that basis.⁷⁶⁴

472. 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. It is not necessary to prove an agreement between the accused and the physical perpetrators of the crimes, however it must be shown that the accused knew of the system and agreed to it.⁷⁶⁵
473. In the case of a large scale joint criminal enterprise, the participants may change over a period of time, with new members joining, and some persons ceasing to be members. A new and distinct joint criminal enterprise may come into existence if the objective of the enterprise changes, such that the objective is fundamentally different in nature and scope from the original plan. The members of the new joint criminal enterprise may be the same, or alternatively it may be that only some of the original members joined the new enterprise.⁷⁶⁶

PARTICIPATION OF THE ACCUSED

474. Participation in a joint criminal enterprise need not involve the commission of a specific crime but may take the form of assistance in, or contribution to, the execution of the common purpose.⁷⁶⁷ Presence at the scene of the crime is not required.⁷⁶⁸ The accused's contribution need not have been substantial or necessary to the achievement of the objective of the enterprise.⁷⁶⁹ "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".⁷⁷⁰
475. An accused's contribution to the JCE may take different forms, but a sufficient contribution is clearly made when an accused physically or directly perpetrates a serious

⁷⁶⁴ *Prosecutor v Milutinovic et al.*, "Decision on Ojdanic's Motion Challenging Jurisdiction: Indirect Co-Perpetration", 22 March 2006, para. 13.

⁷⁶⁵ *Kvočka* Appeal Judgment, para. 118; *Krnojelac* Appeal Judgment, para. 97.

⁷⁶⁶ *Blagojević and Jokić* Trial Judgment, paras 700-701.

⁷⁶⁷ *Stakić* Appeal Judgment, para. 64.

⁷⁶⁸ *Kvočka* Appeal Judgment, paras 112-113.

⁷⁶⁹ *Krajisnik* Trial Judgment, para., 883.

⁷⁷⁰ *Krnojelac* Trial Judgment, para. 82.

crime that advances the goal of the criminal enterprise, or when a person in a position of authority or influence knowingly fails to protest against the commission of such crimes.⁷⁷¹ In the specific context of the second category of JCE liability, the *actus reus* focuses on the accused's participation in the enforcement of a system of ill treatment or repression. The necessary participation can be inferred from, among other factors, the position and functions of the accused.⁷⁷²

SHARED INTENT

476. As set out by this Trial Chamber, the shared intent in the first form of criminal enterprise exists where the accused possesses the intent to commit a crime in furtherance of the common plan.⁷⁷³ This intent to commit a crime can exist even when the accused does not personally commit the crime but nevertheless intends this result.⁷⁷⁴
477. The shared intent to commit crimes in furtherance of the common plan may be inferred from the evidence. When reliance is placed on the state of mind of an accused by inference, that inference must be the only reasonable inference available on the evidence.⁷⁷⁵ Shared intent may, and often will, be inferred from knowledge of the plan and participation in its advancement.⁷⁷⁶
478. However, if the Trial Chamber is not satisfied that the Accused shared the state of mind required for the commission of the crimes charged pursuant to a joint criminal enterprise, it may nevertheless consider the Accused's responsibility as an aider or abettor.⁷⁷⁷
479. Regarding the second type of JCE, the *Tadic* Judgement stressed that the *mens rea* element comprised: "(i) knowledge of the nature of the system and (ii) the intent to further the common concerted design to ill-treat the inmates."⁷⁷⁸ Personal knowledge of the system of ill treatment can be proven by express testimony or by reasonable inference from the

⁷⁷¹ *Kvočka* Trial Judgment, para. 309.

⁷⁷² *Kvočka* Trial Judgment, para. 272; *Kvočka* Appeal Judgment, para. 101.

⁷⁷³ *Brima* Decision on Motion for Acquittal, para. 311.

⁷⁷⁴ *Tadic* Appeal Chamber Judgment, para. 196; *Brdjanin* TCJ para. 264.

⁷⁷⁵ *Vasiljević* Appeals Judgment, para. 120.

⁷⁷⁶ *Kvočka* Trial Judgment, para. 271.

⁷⁷⁷ *Vasiljević* Trial Judgment, paras 68-69.

⁷⁷⁸ *Tadić* Appeals Chamber Judgement, para. 203; *Krnojelac* Appeal Judgment, para. 89; *Kvočka* Trial Judgment, para. 311.

accused's position of authority.⁷⁷⁹ The ICTY Appeals Chamber has also stated that the required criminal intent does not require the accused's personal satisfaction, enthusiasm, or personal initiative in contributing to the joint criminal enterprise.⁷⁸⁰

CRIMES AS A NATURAL AND FORESEEABLE CONSEQUENCE

480. For the application of third category joint criminal enterprise liability, it is necessary to prove that: (a) crimes that were not intended as part of the implementation of the common purpose occurred; (b) these crimes were a natural and foreseeable consequence of effecting the common purpose and (c) the participant in the joint criminal enterprise was aware that the crimes were a possible consequence of the execution of the common purpose, and in that awareness, he nevertheless acted in furtherance of the common purpose.⁷⁸¹ The crime must be shown to have been foreseeable to the particular accused.⁷⁸² Although it has been held until now that more than negligence is required, liability attaches where the risk was both a predictable consequence of the execution of the common design and the accused was either *reckless* or *indifferent* to that risk.⁷⁸³

DISTINCTION BETWEEN LIABILITY PURSUANT TO A JCE AND AIDING AND ABETTING

481. An aider and abettor carries out acts directed to assist, encourage, or lend moral support to the perpetration of a specific crime and this support has a substantial effect on the perpetration of that crime, while a co-perpetrator in a joint criminal enterprise performs acts which are in some way directed to the furtherance of the common objective through the commission of crimes.⁷⁸⁴ An aider and abettor has knowledge that his acts assist the commission of a specific crime, while the co-perpetrator in a joint criminal enterprise intends to achieve the common objective.⁷⁸⁵ In the context of a crime committed by several co-perpetrators in a joint criminal enterprise, the aider and abettor is always an

⁷⁷⁹ *Tadić* Appeal Judgment, para. 228.

⁷⁸⁰ *Kvočka* Appeal Judgment, para. 106.

⁷⁸¹ *Stakić* Appeal Judgment, para. 87.

⁷⁸² *Tadić* Appeal Judgment, para. 220.

⁷⁸³ *Tadić* Appeal Chamber Judgment para 204, 220, 228.

⁷⁸⁴ *Tadić* Appeal Judgment, para. 229.

⁷⁸⁵ *Tadić* Appeal Judgment, para. 229.

accessory to these co-perpetrators, although the co-perpetrators may not even know of the aider and abettor's contribution.⁷⁸⁶ 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.⁷⁸⁷ When, however, an accused participates in a crime that advances the goals of the criminal enterprise, it is often reasonable to hold that his form of involvement in the enterprise amounts to that of a co-perpetrator.⁷⁸⁸

⁷⁸⁶ *Tadić* Appeal Judgment, para. 229.

⁷⁸⁷ *Tadić* Appeal Judgment, para. 229.

⁷⁸⁸ *Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radic, Zoran Zigic, Dragoljub Prcac*, IT-98-30/1-T, 2 November 2001, Judgment, Trial Chamber, at para. 284.

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**VII. LIABILITY OF THE THREE ACCUSED FOR CRIMES COMMITTED DURING
THE JUNTA PERIOD 25 MAY 1997 – 13 FEBRUARY 1998**

JOINT CRIMINAL ENTERPRISE

482. The Prosecution submits that on the evidence presented in relation to the Junta period, the Trial Chamber should be satisfied beyond a reasonable doubt of the guilt of the three Accused for the crimes committed in Kono; the specific crimes of unlawful killings, physical violence and abductions and forced labour in Kenema District; and unlawful killings, looting and burning in Bo District, pursuant to the theory of joint criminal enterprise.

PLURALITY OF PERSONS

483. Members of the AFRC, including Brima, Kamara and Kanu, and members of the RUF, including Issa Hassan Sesay, Morris Kallon and Augustine Gbao participated in the joint criminal enterprise. The key players in the enterprise during the Junta period 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. The three Accused all participated in the Coup on 25 May 1997 and were appointed to senior positions within the AFRC government. The RUF were invited to share power almost immediately, resulting in a plurality of persons belonging to both groups in the government, holding key decision-making authority.

COMMON PLAN

484. Throughout the Junta period, there was an armed conflict in Sierra Leone between, on the one hand, forces of the Junta and, on the other, forces of ECOMOG, CDF (including Kamajors) and SLAs who had remained loyal to the Kabbah Government. The common aim of the Accused, together with other members of the AFRC and RUF, was to use any means necessary to retain political power and control over the territory of Sierra Leone, including through the commission of crimes within the jurisdiction of the Special Court.

Controlling the diamond wealth of the country as a source of revenue for the Junta and eliminating all perceived opposition formed part of that plan. The plan, design or purpose amounted to an organized system to terrorize the civilian population into submission and ensure its political and practical support for the Junta through forced labour, killings and serious physical and mental injury. There was at the time a widespread and systematic attack against the civilian population in Sierra Leone.

485. The existence of the plan may be inferred from all the evidence of a widespread and consistent pattern of crimes committed in Kono, Kenema and Bo Districts. The only means to consolidate and retain control of the population was through the commission of crimes.
486. The Accused were members of the Supreme Council of the AFRC Government, which acted as both a legislative and executive body. The Accused were referred to as honourables.⁷⁸⁹ The First and Second Accused were given senior positions within the Supreme Council as Public Liaison Officers.⁷⁹⁰ 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.⁷⁹¹ The Supreme Council carried out the day-to-day functions of government, including the issuing of decrees and proclamations.⁷⁹² There were ministerial positions⁷⁹³ and military commanders.⁷⁹⁴ The Sierra Leonean Army was under the control of the Supreme Council and had soldiers stationed in Makeni, Kenema, Bo and, later,

⁷⁸⁹ 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."

⁷⁹⁰ 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.

⁷⁹¹ TF1-334, TF1-046.

⁷⁹² See Exhibits P4, P5.1, P5.2, P5.3, P6, P7, P8, P9 and P10.

⁷⁹³ Witness TF1-334, TT 17 May 2005, pp. 16-17.

⁷⁹⁴ Witness TF1-334, TT 17 May 2005, pp. 18-22.

Kailahun, Daru and Tongo.⁷⁹⁵ The Supreme Council was the most senior body of the AFRC government and oversaw law and decision-making in Sierra Leone.⁷⁹⁶

487. 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. Not only were all three Accused participants in the coup d'état which deposed the elected government of Tejan Kabbah, but they were also instrumental in establishing the AFRC, along with other members of the coup d'état.⁷⁹⁷ The members of the coup placed a former Sierra Leone Army ("SLA") officer, Johnny Paul Koroma, in charge of the new administration and once the RUF had accepted the invitation to share in the political power, the two groups set about securing their control and power over Sierra Leone.⁷⁹⁸
488. 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.⁷⁹⁹
489. As a demonstration of the implementation of the common plan, the evidence shows that the SLA and RUF worked and mined together in Kono.⁸⁰⁰ Mines monitoring officers were appointed and the evidence is that civilians were forced to mine.⁸⁰¹ An AFRC/RUF secretariat was established in Kenema Town and opposition was eliminated during an operation in Kenema in December 1997 in which persons accused of supporting the Kamajors were killed.⁸⁰² People were forced to mine and beaten for failing to comply with AFRC/RUF instructions.⁸⁰³ Civilians were killed during operations in Bo in search of Kamajors, their supporters and others who refused to align with the AFRC Government.

⁷⁹⁵ Witness TF1-334, TT 17 June 2005, p. 53

⁷⁹⁶ Gibril Massaquoi, TT 11 October 2005, p. 104 and 7 October 2005, p. 72.

⁷⁹⁷ See Exhibit P37, Security Council Resolution 1132, concerning Sierra Leone and the AFRC, 8 October 1997.

⁷⁹⁸ TF1-334, Transcript 16 May 2005, pp. 44-45; Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 46-48.

⁷⁹⁹ TF1-334, Transcript 16 May 2005, p. 54.

⁸⁰⁰ TF1-334, Transcript 17 May 2005, p. 53.

⁸⁰¹ TF1-334, Transcript 17 May 2005, p. 53.

⁸⁰² TF1-122, Transcript 24 June 2005, pp. 33-34, 35-49, 104.

⁸⁰³ See e.g. TF1-045, Transcript 19 July 2005, 55.

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PARTICIPATION OF THE ACCUSED IN THE COMMON PLAN

490. The three Accused contributed to the achievement of the common design through their positions as integral and senior members of the Supreme Council, which was governing the country from 25 May 1997 to 13 February 1998 and under whose administration diamond mining was organized.
491. The First Accused oversaw diamond mining in Kono,⁸⁰⁴ appointed Mines Monitoring Officers⁸⁰⁵ and reports were sent to him about occurrences there.⁸⁰⁶ The Third Accused also went to Koidu Town during the Junta period and held meetings with Sam Bockarie, senior commander of the RUF.⁸⁰⁷
492. While Sam Bockarie apparently exercised some control over the Eastern territories, he was not in complete control of Kenema. Furthermore, he had been ordered by Foday Sankoh to take commands from Johnny Paul Koroma during the relevant time period.⁸⁰⁸
493. The Prosecution notes the time frame of the unlawful killings in Kenema: 25 May 1997 to 19 February 1998, this 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 ranking member of the AFRC government in charge of the mining.⁸⁰⁹
494. The crimes in Bo District were similarly committed while each of the three Accused was an integral and senior member of the Supreme Council. They attended AFRC Supreme Council meetings and accessed minutes thereof. By virtue of their positions of power and activities during the Junta period, the three Accused assisted in putting the forced mining program into effect and implemented strategies to terrorize the civilian population where support for the AFRC/RUF was felt to be lacking. In view of their position of authority or influence, they had the power to protest against the commission of crimes but knowingly failed to do so.

⁸⁰⁴ TF1-334, Transcript 17 May 2005, pp. 52-53; George Johnson, Transcript 15 September 2005, p. 21.

⁸⁰⁵ TF1-153, Transcript 22 September 2005, p. 18.

⁸⁰⁶ TF1-153, Transcript 22 September 2005, pp. 22-23.

⁸⁰⁷ TF1-019, Transcript 30 June 2005, pp. 85-86, 100-101.

⁸⁰⁸ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp.46-48.

⁸⁰⁹ TF1-045, Transcript 19 July 2005, p. 39.

SHARED INTENT

495. The Prosecution submits that the shared intent to commit crimes in furtherance of the common plan may be inferred from the evidence of a system of forced mining and attacks against civilians. The Prosecution submits that the only reasonable conclusion on the evidence is that the three Accused all shared the intent to perpetrate the crimes committed during the Junta period.
496. The crimes committed during the Junta period cannot possibly have been isolated, unrelated acts. This inference may be drawn, *inter alia*, from the commonality of the perpetrators (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, the commonality in the purpose for which the crimes were committed and the fact that the crimes were committed over a wide geographic area throughout the period of the Junta rule.

CRIMES AS A NATURAL AND FORESEEABLE CONSEQUENCE

497. Alternatively, based upon the evidence of the common design, it was foreseeable that the full extent of the crimes, even if not agreed upon, would be committed and the Accused, with that awareness, nevertheless acted in furtherance of the plan. The Prosecution submits that physical violence and killings would be foreseeable consequences of the implementation of a system of forced mining even if such acts were not intended as part of the common plan.

INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 6(1) OF THE STATUTE*Planning, Instigating and Aiding and Abetting*

498. During the relevant period, each of the three 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. They attended AFRC Supreme Council meetings and accessed minutes thereof, where issues were raised including looting, raping, harassment of the civilian population in Freetown and diamonds.

The First Accused: Alex Tamba Brima, aka Gullit

499. As can be concluded from the Prosecution and other evidence adduced above (both oral and documentary) in the face of the lies of the First Accused during his own testimony it is clear that the First Accused was known either as Alex Tamba Brima or Tamba Alex Brima, that his nickname was Gullit, and that he was one of the coup plotters who overthrew the Kabbah Government in May 1997.
500. The evidence further shows that as a reward for his role in overthrowing the Kabbah Government, he and the other 17 coup plotters were referred to as honourables and given a position on the AFRC Council, which over a short period of time became known as the Supreme Council. The Supreme Council was the most important governing body in Sierra Leone.
501. The First Accused, as one of the leaders of the Coup, was appointed as PLO 2, and was only beneath Johnny Paul Koroma, SAJ Musa and Abu Sankoh, aka Zagallo, in the Junta hierarchy. In this role, he had numerous ministries under his supervision and as such played a key role in the government. Through his position as PLO 2, he was able to wield power and authority over soldiers and officers higher in rank than himself on the basis of his position as an honourable and the military concept of position superseding rank.
502. The evidence shows that the First Accused played a full role in the AFRC government. He regularly attended Supreme Council meetings where government policies were discussed and articulated, which were thereafter passed on to the Secretaries of State for implementation through SAJ Musa who was the Chief Secretary.
503. The First Accused knew full well that the AFRC Government, through its various secretariats in both Kenema and Kono, were forcing civilians to mine on behalf of the AFRC Government. He personally visited these sites and received reports from the mining monitoring officers. The First Accused in particular was in contact with Eddie Kanneh, the Resident Minister for the East, and the AFRC Secretariats in both Kono and Kenema. Even when the Intervention occurred, the First Accused was in Kono monitoring the mining.

504. The First Accused intended or knew that the policy of the AFRC was to force civilians to mine, as diamond mining had been identified as one of only three potential main sources of income for the AFRC Government. The First Accused knew, through his attendance at Supreme Council meetings (where he received reports from the relevant secretaries of state and brigade commanders, either directly or through SAJ Musa) that it was a policy to eliminate all opposition to the AFRC Government. Particularly, the First Accused was in contact with Eddie Kanneh, the Resident Minister for the East, as well as the AFRC Secretariats in both Kono and Kenema.
505. The Prosecution submits that the First Accused is liable for planning and instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the Junta period. In concert with other members of the Supreme Council, the First Accused planned that civilians would be forced to mine in order to meet the needs of the Junta. This is evident from the First Accused's activities in Kono and the pattern of forced mining in Kono and Kenema. The only possible inference on the evidence is that the First Accused intended that civilians would be deprived of their liberty. Alternatively, or in addition, the First Accused prompted others, through the mines monitoring officers, to commit the crime of enslavement and is therefore liable for instigating. Alternatively, the First Accused is liable for aiding and abetting the crime of enslavement. His presence in Kono was designed to assist in the organization of the diamond mining. Forced mining was so widespread that the only possible inference, in view of his position of authority, is that he actively encouraged it. Reports were sent to him by TF1-153, and thus there can be no doubt that he was aware that his actions or omissions would assist the direct perpetrators in the commission of the crime. Similarly, the First Accused knew that it was a policy to eliminate all opposition to the AFRC and actively encouraged this policy.

The Second Accused: Brima Bazy Kamara, aka Bazy

506. The same evidence above for the First Accused applies equally to the Second Accused in relation to his role as a coup plotter, honourable, member of the Supreme Council and PLO 3, being under only the First Accused.

507. The Second Accused did not contradict the First Accused's evidence during his own cross examination of the First Accused. In his Pre-Trial Brief, the Second Accused stated that he was in custody when the Coup took place.⁸¹⁰ However, he did not produce a single witness to give evidence to this effect at trial.
508. As PLO 3, the Second Accused was beneath only Johnny Paul Koroma, SAJ Musa, PLO 1 and the First Accused in the Junta hierarchy. Like the First Accused, he had numerous ministries under his supervision and, like the First Accused, attended Supreme Council meetings. The only reasonable inference is that he must have known about the policies of the AFRC Government, which included forced mining. As with the First Accused, his position as an honourable and PLO meant that his position superseded his rank.
509. No evidence has come before this Trial Chamber that the Second Accused was too unwell to fulfil his role as PLO 3 and indeed, numerous Defence witnesses knew the Second Accused as PLO 3,⁸¹¹ as being an honourable,⁸¹² and being a member of the Supreme Council of the AFRC Government.⁸¹³
510. No explanation has been given before this Chamber why an 'other ranks' soldier like the Second Accused held the positions of Honourable, PLO 3, or was a member of the Supreme Council.
511. The only logical inference based on the evidence of the Prosecution (both oral and documentary) was that the Second Accused was one of the leaders of the Coup that overthrew the Kabbah Government, and that such prestigious and powerful positions were given to him as a reward for his role in installing the AFRC Government under Johnny Paul Koroma.
512. The Prosecution submits that the Second Accused is liable for planning and instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the Junta period. In concert with other

⁸¹⁰ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-148, "Kamara – Defence Pre-Trial Brief," 21 February 2005, para. 10.

⁸¹¹ DBK-012, Transcript 5 October 2006, p. 80; DBK-129, Transcript 9 October 2006, pp. 60-63; DBK-005, Transcript 5 October 2006, p. 36; Accused Alex Tamba Brima, Transcript 3 July 2006, p. 41.

⁸¹² DBK-117, Transcript 16 October 2006, pp. 28-30; DAB-063, Transcript 2 August 2006, p. 61; DBK-005, Transcript 12 October 2006, p. 9.

⁸¹³ DBK-005, Transcript 12 October 2006, p. 18; TRC-01, Transcript 16 October 2006, p. 104.

members of the Supreme Council, the Second Accused planned that civilians would be forced to mine in order to meet the needs of the Junta. This is evident from the pattern of forced mining in Kono and Kenema. The only possible inference on the evidence is that the Second Accused intended that civilians would be deprived of their liberty. Alternatively, or in addition, the Second Accused prompted others, through his position of authority, to commit the crime of enslavement and is therefore liable for instigating. Alternatively, the Second Accused is liable for aiding and abetting the crime of enslavement. Forced mining was so widespread that the only possible inference, in view of his role on the Supreme Council, is that he actively encouraged it. Similarly, the Second Accused knew that it was a policy to eliminate all opposition to the AFRC and actively encouraged this policy.

Third Accused: Santigie Kanu, aka Five-Five

513. The same evidence above for the First Accused applies equally to the Third Accused in relation to him being a coup plotter, honourable, and member of the Supreme Council.
514. The Third Accused did not contradict the First Accused's evidence during his own cross-examination of the First Accused.
515. As a member of the Supreme Council, the Third Accused was only beneath Johnny Paul Koroma, SAJ Musa, and the 3 PLOs in the Junta hierarchy. Like the First Accused, the Third Accused attended Supreme Council meetings, and the only reasonable inference is that he must have known about the policies of the AFRC Government, which included forced mining in both Kono and Kenema. As with the First Accused, the Third Accused's position as an honourable and Supreme Council member meant that his position superseded his rank.
516. Based on all of the evidence, the only reasonable inference is that the Third Accused knew of the use of civilians for forced mining in Kono, as according even to a Defence witness, he visited Koidu Town and addressed a hall of dignitaries and youth about issues affecting Koidu Town.⁸¹⁴

⁸¹⁴ DAB-042, Transcript 15 September 2006, pp. 89, 95-98.

517. No evidence has come before this Trial Chamber that the Third Accused was too unwell to fulfil his role as an honourable and member of the Supreme Council. Indeed, numerous Defence witnesses knew the Third Accused as being an honourable⁸¹⁵ and being a member of the Supreme Council of the AFRC Government.⁸¹⁶
518. No explanation has been given before this trial why an 'other ranks' soldier like the Third Accused held the positions of honourable and Supreme Council member.
519. The only logical inference based on the evidence of the Prosecution (both oral and documentary) was that the Third Accused was one of the leaders of the Coup that overthrew the Kabbah Government, and such prestigious and powerful positions were given to him as a reward for his role in installing the AFRC Government under Johnny Paul Koroma.
520. The Prosecution submits that the Third Accused is liable for planning and instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the Junta period. In concert with other members of the Supreme Council, the Third Accused planned that civilians would be forced to mine in order to meet the needs of the Junta. This is evident from the pattern of forced mining in Kono and Kenema. The only possible inference on the evidence is that the Third Accused intended that civilians would be deprived of their liberty. Alternatively, or in addition, the Third Accused prompted others, through his position of authority, to commit the crime of enslavement and is therefore liable for instigating. Alternatively, the Third Accused is liable for aiding and abetting the crime of enslavement. Forced mining was so widespread that the only possible inference, in view of his role on the Supreme Council, is that he actively encouraged it. Similarly, the Third Accused knew that it was a policy to eliminate all opposition to the AFRC and actively encouraged this policy.

⁸¹⁵ DAB-059, Transcript 27 September 2006, p. 89; DBK-012, Transcript 6 October 2006, p. 50; DBK-117, Transcript 16 October 2006, pp. 28-30; DAB-063, Transcript 2 August 2006, p. 61; DBK-005, Transcript 5 October 2006, p. 36; Accused Alex Tamba Brima, Transcript 3 July 2006, p. 41.

⁸¹⁶ DAB-063, Transcript 2 August 2006, p. 62; DBK-005, Transcript 12 October 2006, p. 19; TRC-01, Transcript 16 October 2006, p. 104.

SUPERIOR RESPONSIBILITY (ARTICLE 6(3) OF THE STATUTE)

521. The Prosecution submits that in the light of all the evidence, coupled with the high level of authority possessed by the three Accused during the period of Junta rule, all three Accused bear responsibility pursuant to Article 6(3) of the Statute for the crimes committed during this period. Political leaders, such as the three Accused, if they *de facto* constitute part of the chain of command, can incur liability under Article 6(3).
522. The evidence set out above establishes the power and authority of the Supreme Council of which all three Accused were members. The Supreme Council met regularly, and had control over the police and political authority over the military. The three Accused and other members of the Supreme Council collectively clearly had the material ability to prevent offences or to punish those subordinates responsible for committing crimes. Evidence of this ability is contained in the response to the looting problem in Freetown and the establishment of the Western Area Security Patrol.⁸¹⁷ There is no evidence that steps were taken to prevent or punish forced mining, indeed, the evidence is that forced mining amounted to a government policy or was at least tolerated.
523. The evidence of Supreme Council meetings, the presence of the military at those meetings, and the reporting structure establishes that the three Accused knew or had reason to know that their subordinates were about to commit criminal acts or had already done so. The pattern of similar offences and, in particular, the First Accused's presence in Kono reinforces this assertion.
524. The three Accused and other members of the Supreme Council collectively had a number of means at their disposal to prevent the offences or punish the perpetrators. Indeed, through the Supreme Council their ability to put in place law enforcement structures was unlimited.

⁸¹⁷ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 85.

VIII. JUNTA PERIOD: 25 MAY 1997 – 13 FEBRUARY 1998 – CRIME-BASES

DIAMOND MINING IN KONO DISTRICT

525. The AFRC Junta gained and exercised power and control over the diamond mining areas of Sierra Leone in the period of their rule. Following the coup, former SLA-deployments gave the AFRC strong footholds in various parts of the country including in Koidu town and Kenema town.⁸¹⁸ Diamond mining was carried out in Kono District and in Tongo, Kenema District, by RUF and SLA members working together⁸¹⁹ for and under the AFRC administration, ultimately the Supreme Council. Revenue from diamonds was one of the main sources of income for the Junta.⁸²⁰ Defence witnesses do support the Prosecution case that SLA/RUF worked and mined together in Kono.⁸²¹

526. SAJ Musa headed the AFRC's mining unit.⁸²² He assigned the First Accused to oversee the diamond mining in Kono.⁸²³ Abu Sankoh was also responsible for supervising mining in his position as PLO 1 with responsibility for mineral resources.⁸²⁴ Both Kono and Kenema are in the Eastern Province and therefore also fell under the supervision of Secretary of State East Captain Eddie Kanneh.⁸²⁵ SAJ Musa, the First Accused and Sankoh were of all members of the Supreme Council.

527. The Chamber heard evidence from, in particular, two Prosecution insider witnesses closely involved in the diamond mining in Kono and Kenema Districts.⁸²⁶

⁸¹⁸ Exhibit P57, No Peace Without Justice Conflict Mapping Report, 10 March 2004, p. 31.

⁸¹⁹ TF1-334, Transcript 17 May 2005, pp. 53-54.

⁸²⁰ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11th August 1997, 16 August 1997, para. 7. The aim of this meeting was to discuss the general financial position of the country (para. 2).

⁸²¹ DAB-100, Transcript 28 September 2006, pp. 127-128; DAB-101, Transcript 12 September 2006, pp. 75, 100-101; DAB-113, Transcript 7 September 2006, p.123; DAB-122, Transcript 18 September 2006, pp. 82 & 89.

⁸²² Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages, under main heading "The Full AFRC Cabinet", "Captain SAJ Musa – Secretary of Mineral Resources and Chief Secretary"; Exhibit P84, Press Release entitled Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions, 28 January 1998, at (26) "Musa, Solomon A. J. / Captain Chief Secretary of State & Secretary of State, Lands Mines and the environment".

⁸²³ TF1-334, Transcript 17 May 2005, pp. 52-53; George Johnson, TF1-167, Transcript 15 September 2005, p. 21. Johnson testified that Brima was sent to Kono by Major Johnny Paul Koroma.

⁸²⁴ Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages.

⁸²⁵ TF1-334, Transcript 17 May 2005, pp. 52-53.

⁸²⁶ TF1-153, Transcripts 22-23 September 2005; TF1-045, Transcript 19-22 July 2005.

[REDACTED]

[REDACTED] There were about 20 to 30 mines monitoring officers in Kono. [REDACTED]

529. The First Accused would come and go from Kono during the time [REDACTED]

[REDACTED]⁸³¹

The Third Accused also came to Koidu Town during the Junta period and through his position as an honourable and member of the Supreme Council was able to address the dignitaries of Koidu Town in the community centre. It is the case of the Prosecution that whilst meeting senior figures in Koidu Town it would have been almost impossible for the Third Accused not to know that forced mining was taking place in Koidu Town and other parts of Kono.⁸³²

530. The mining in Kono was supervised by both SLA and RUF soldiers, with civilians carrying out the mining [REDACTED]

[REDACTED]⁸³⁴ Defence witnesses support the Prosecution case that the SLA/RUF soldiers forced civilians to mine for them.⁸³⁵ In view of evidence that SLA/RUF worked and mined together in Kono, the evidence of DAB-039 that only the RUF forced civilians to mine should be rejected.⁸³⁶

531. TF1-153 saw Mosquito in Kono on three to five occasions. [REDACTED]

[REDACTED]⁸³⁷ TF1-019 testified that Mosquito and "Honourable

⁸²⁷ TF1-153, Transcript 22 September 2005, p. 18.

⁸²⁸ TF1-153, Transcript 22 September 2005, p. 19.

⁸²⁹ TF1-153, Transcript 22 September 2005, p. 21.

⁸³⁰ TF1-153, Transcript 22 September 2005, p. 19.

⁸³¹ TF1-153, Transcript 22 September 2005, pp. 22-23.

⁸³² DAB-042, Transcript 15 September 2006, p. 89.

⁸³³ TF1-334, Transcript 17 May 2005, p. 53.

⁸³⁴ DAB-113, Transcript 7 September 2006, p.102.

⁸³⁵ DAB-122, Transcript 18 September 2006, p.89; DAB-113, Transcript 7 September 2006, pp. 123-124; DAB-101, Transcript 12 September 2006, pp. 75, 80, 101-102.

⁸³⁶ DAB-039, Transcript 5 September 2006, p.95.

⁸³⁷ TF1-153, Transcript 23 September 2005, p. 60.

Five-Five” would occasionally lodge in Koidu Town on Sahr Lebbie Street.⁸³⁸ They would both come and go from Koidu Town.⁸³⁹

532. There was a two pile system in operation in Koidu Town: meaning that miners would distribute into two piles, one for the government and one for the owner licence-holder.⁸⁴⁰

533. The mining sites became very dangerous during the time the witness was in staying in Koidu Town. He reported to his senior mines managing officer, Mr. Kawawa Jallow, that he would see dead bodies by the side of the pit. [REDACTED]

[REDACTED].⁸⁴¹

DIAMOND MINING IN KENEMA DISTRICT

[REDACTED] The Prosecution submits that clearly, during the AFRC period, diamond mining in Tongo came under the AFRC control. According to Witness TF1-062, Tongo was under AFRC control from August 1997 until around January 1998.⁸⁴² From the evidence of Witness TF1-045, the arrival in Kenema of AFRC soldiers and the mining activities started even before August 1997. [REDACTED]

535. Supreme Council member Sam Bockarie was in overall command of both Kenema and Tongo.⁸⁴⁸ He had men involved in mining for him personally in Tongo, and they reported directly to him.⁸⁴⁹ Other commanders also were involved in “personal” mining.⁸⁵⁰

⁸³⁸ TF1-019, Transcript 30 June 2005, pp. 87-88.

⁸³⁹ TF1-019, Transcript 30 June 2005, pp. 87-88.

⁸⁴⁰ TF1-153, Transcript 22 September 2005, p. 22.

⁸⁴¹ TF1-153, Transcript 22 September 2005, pp. 22-25.

⁸⁴² TF1-062, Transcript 27 June 2005, pp. 7-8, 37-38. TF1-062 testified that the troops left in the Muslim month of Ramadan.

⁸⁴³ TF1-045, Transcript 21 July 2005, p. 76-77.

⁸⁴⁴ TF1-045, Transcript 19 July 2005, pp. 33-34.

⁸⁴⁵ TF1-045, Transcript 19 July 2005, p. 34.

⁸⁴⁶ TF1-045, Transcript 19 July 2005, p. 38.

⁸⁴⁷ TF1-045, Transcript 21 July 2005, p. 81.

⁸⁴⁸ TF1-045, Transcript 21 July 2005, p. 85.

⁸⁴⁹ TF1-045, Transcript 19 July 2005, p. 35.

536. Separately, there was an AFRC mining programme⁸⁵¹ in Tongo involving both RUF and SLA⁸⁵² commanders.
537. SLA Captain Yamao Kati was commander in Tongo in charge of a company of over 200 mixed “AFRC”/RUF soldiers deployed to Tongo to fight the Kamajors, and also to carry out mining. When Sam Bockarie was in Kenema, Kati would report and give information to him, although he in fact worked under the Brigade (East).⁸⁵³
538. Hundreds of civilians were used to carry out the mining in Tongo.⁸⁵⁴ Civilians were organised by a civilian administration called the AFRC Secretariat. In Tongo, SLA Staff Sergeant Junior Sheriff was in charge of the AFRC Secretariat.⁸⁵⁵ When a civilian found a diamond at the mining site, it would be handed over ultimately to Eddie Kanneh, the Resident Minister in Kenema, or sent to Freetown.⁸⁵⁶
539. Committees⁸⁵⁷ of civilians escorted by armed AFRC fighters were formed to “collect” civilians by force to be handed over to the Secretariat. The civilians were guarded so that they would not escape. When they were captured, they were undressed, their shoes removed, and sometimes they were tied one to the other.⁸⁵⁸ They worked at the mining sites under gunpoint.⁸⁵⁹ Civilians were forced to mine: if they refused to do so they were beaten, tortured or killed.⁸⁶⁰
540. [REDACTED]
[REDACTED].⁸⁶¹ The AFRC remained in control of Tongo at this time. Kati had died and the AFRC Commander was Captain Jalloh, an

⁸⁵⁰ TF1-045, Transcript 21 July 2005, pp. 7-8.

⁸⁵¹ TF1-045, Transcript 21 July 2005, p. 8.

⁸⁵² Note that witness TF1-045 referred frequently in his evidence to “AFRC” meaning “SLA” soldiers. Having said this, he also gave evidence that since the 1997 coup, there was no distinction between AFRC and RUF because everyone became the AFRC, Transcript 21 July 2005, pp. 91.

⁸⁵³ TF1-045, Transcript 19 July 2005, pp. 35-39; 42-43; Transcript 20 July 2005, p. 62. Transcript 21 July 2005, p. 84.

⁸⁵⁴ TF1-045, Transcript 19 July 2005, pp. 47-48. TF1-045 estimates that about 300-500 people were mining in Tongo at this time.

⁸⁵⁵ TF1-045, Transcript 19 July 2005, pp. 45-46; TF1-334, Transcript 17 May 2005, pp. 54-55.

⁸⁵⁶ TF1-045, Transcript 19 July 2005, pp. 53-55.

⁸⁵⁷ Committee members also received a commission on diamonds valued by them for the AFRC/RUF, TF1-045, Transcript 21 July 2005, pp. 88-89.

⁸⁵⁸ TF1-045, Transcript 19 July 2005, pp. 48-51.

⁸⁵⁹ TF1-045, Transcript 19 July 2005, p. 52.

⁸⁶⁰ TF1-045, Transcript 19 July 2005, p. 55. Witness saw two incidents of killings of civilians in Tongo, Transcript 21 July 2005, pp. 9-17.

⁸⁶¹ TF1-045, Transcript 19 July 2005, p. 75.

“AFRC.”⁸⁶² [REDACTED]
 [REDACTED]
 [REDACTED] Resident Minister Eddie Kanneh

was also in Kenema at this time.⁸⁶⁴

POLICY TO ELIMINATE ALL OPPOSITION TO THE AFRC GOVERNMENT

541. It was a policy of the AFRC government to eliminate all opposition to it. That policy was shared by all of those in Government, SLAs and RUF, and was shared by all members of the Supreme Council, including the three Accused. The AFRC Government ordered, as a matter of policy, attacks on villages like Tikonko, in Bo, which supported the former SLPP Government.

542. For example, TF1-053 describes AFRC soldiers abusing SLPP members and eventually burning down the SLPP building in Bo Town.⁸⁶⁵ On another occasion in Gerihun, TF1-054 attended a meeting with Kamajors, local students, and AFRC representatives including Mike Lamin and Gbao.⁸⁶⁶ The AFRC delegation said they wanted to join forces with the Kamajors. Instead, soldiers started shooting outside,⁸⁶⁷ attacked the Vice President’s house with an RPG,⁸⁶⁸ and killed Chief Demby.⁸⁶⁹ The clear message sent by these attacks was that “you are either for us or against us,” with elimination being the consequence of resistance.

⁸⁶² TF1-045, Transcript 19 July 2005, p. 76.

⁸⁶³ TF1-045, Transcript 19 July 2005, p. 78.

⁸⁶⁴ TF1-045, Transcript 19 July 2005, pp. 78-79.

⁸⁶⁵ TF1-053, Transcript 18 April 2005, pp. 98-99.

⁸⁶⁶ TF1-054, Transcript 19 April 2005, pp. 86-87.

⁸⁶⁷ TF1-054, Transcript 19 April 2005, p. 88.

⁸⁶⁸ TF1-054, Transcript 19 April 2005, p. 89.

⁸⁶⁹ TF1-054, Transcript 19 April 2005, pp. 92-93.

THE CRIMES: KENEMA DISTRICT 25 MAY 1997-19 FEBRUARY 1998**COUNTS 1 – 2**

543. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNTS 3 – 5: UNLAWFUL KILLINGS

544. Both Prosecution and Defence evidence shows that during the AFRC/RUF government (May 1997 – February 1998), there was established an AFRC/RUF secretariat in Kenema Town.⁸⁷⁰ Eddie Kanneh was Secretary of State East for the AFRC. Sam Bockarie, aka Mosquito, was also present.⁸⁷¹ The AFRC/RUF were stationed in Kenema town for about nine months, from 25 May 1997 to February 1998.⁸⁷²

545. The Prosecution submits that the AFRC/RUF carried out unlawful killings in Kenema. In December 1997 AFRC/RUF troops in Kenema launched ‘Operation No Living Thing’ on Kenema Town, in which people were accused of being Kamajors and arrested.⁸⁷³ One man was killed, his belly opened and his intestines stretched across the road at a check point manned by AFRC/RUF.⁸⁷⁴

546. In February 1998, seven civilians, including B. S. Massaquoi and Andrew Quee were arrested and accused of being Kamajor supporters. They were tortured and killed.⁸⁷⁵

547. The Prosecution submits that there was no serious challenge to the Prosecution evidence of unlawful killings in Kenema in cross-examination and the evidence was not disputed by Defence witnesses.⁸⁷⁶ That Defence witness DAB-147 did not witness the killings does

⁸⁷⁰ TF1-122, Transcript 24 June 2005, pp. 5-8; DAB-147, Transcript 3 October 2006, pp.19, 22, 62 & 63.

⁸⁷¹ TF1-122, Transcript 24 June 2005, pp. 7-8; DAB-147, Transcript 3 October 2006, p.23.

⁸⁷² TF1-122, Transcript 24 June 2005, p. 7.

⁸⁷³ TF1-122, Transcript 24 June 2005, pp. 32-33.

⁸⁷⁴ TF1-122, Transcript 24 June 2005, pp. 33-34, 104.

⁸⁷⁵ TF1-122, Transcript 24 June 2005, pp. 35-49

⁸⁷⁶ DAB-033, Transcript 25 September 2006 and 2 October 2006; DAB-147, Transcript 3 October 2006. No where in the evidence of the two Defence Witnesses, did they dispute the Prosecution evidence on killings in Kenema.

not mean they never happened.⁸⁷⁷ The Prosecution evidence should be accepted.

548. The evidence shows that at the time of the Coup, the Kamajors were in control of Tongo Field.⁸⁷⁸ On or about August 1997, Junta soldiers entered Tongo.⁸⁷⁹ 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.⁸⁸⁰ 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.⁸⁸¹

549. The Prosecution submits that in Tongo, during the AFRC/RUF Junta, mining continued under AFRC/RUF control.⁸⁸² Both Prosecution and Defence evidence shows that men of both factions were present and in control of Tongo.⁸⁸³ Control of Tongo mining starting in August 1997 continued until the troops left in January 1999, due to frequent Kamajor attacks.⁸⁸⁴ Civilians who disobeyed orders or stole diamonds were shot and killed.⁸⁸⁵ Anyone refusing to mine would be beaten, tortured, or killed.⁸⁸⁶

550. While acknowledging unlawful killings in Tongo, the Defence sought to attribute the killings to only the RUF faction.⁸⁸⁷ The Prosecution submits that on the basis of the evidence as a whole it cannot reasonably be inferred that while the two factions AFRC/RUF, were both be in control in Tongo, only one faction and not the other, committed crimes. The Prosecution submits that there is evidence that the AFRC also committed unlawful killings in Tongo.

⁸⁷⁷ DAB-147, Transcript 3 October 2006, p.38. The witness kept moving between Tongo and the AFRC Secretariat at Kenema (p.22), which may explain why he was unable to witness any killings.

⁸⁷⁸ TF1-062, Transcript 27 June 2005, p. 6.

⁸⁷⁹ TF1-062, Transcript 27 June 2005, pp. 8-9.

⁸⁸⁰ TF1-062, Transcript 27 June 2005, pp. 11-12.

⁸⁸¹ TF1-062, Transcript 27 June 2005, pp. 14-16.

⁸⁸² TF1-062, Transcript 27 June 2005, pp. 20-21.

⁸⁸³ TF1-045, Transcript 19 July 2005, pp. 38-43; DAB-147, Transcript 3 October 2006, p. 35; DAB-033, Transcript 2 October 2006, p. 109; DAB-063, Transcript 2 August 2006, p. 23.

⁸⁸⁴ TF1-062, Transcript 27 June 2005, pp. 37-38. The witness says that the troops left in the Muslim month of Ramadan. That year's month of Ramadan closely corresponded with January 1998.

⁸⁸⁵ TF1-062, Transcript 27 June 2005, pp. 33-37.

⁸⁸⁶ TF1-045, Transcript 19 July 2005, p. 55 ("If he refused to mine and you are captured, you will be beaten. You will undergo serious torture, if -- and if you are not lucky you will die. They will shoot you with a gun.")

⁸⁸⁷ DAB-147, Transcript 3 October 2006, p. 36.

COUNTS 10 – 11: PHYSICAL VIOLENCE

551. The Prosecution submits that it has led sufficient evidence to prove the use of physical violence in Kenema. In June 1997 a civilian, Bonnie Wailer, was detained by AFRC/RUF soldiers and assaulted before being killed, along with two others.⁸⁸⁸
552. 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 four others were arrested in February 1998.⁸⁸⁹ They were alleged to be Kamajor supporters.⁸⁹⁰
553. 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.⁸⁹¹ As already submitted above, these civilians were later killed.
554. The Prosecution submits that there was no serious challenge to the Prosecution evidence of the use of physical violence on civilians in Kenema District in cross-examination, and the evidence was not disputed by Defence witnesses.⁸⁹² That Defence witness DAB-147 did not witness any beatings of civilians by soldiers in Kenema at the time that he was there does not mean that it never happened.⁸⁹³ The Prosecution submits that its evidence should be accepted.

⁸⁸⁸ TF1-122, Transcript 24 June 2005, pp. 18-23.

⁸⁸⁹ TF1-122, Transcript 24 June 2005, p. 35.

⁸⁹⁰ TF1-122, Transcript 24 June 2005, p. 37.

⁸⁹¹ TF1-122, Transcript 24 June 2005, pp. 36-45.

⁸⁹² DAB-033, Transcript 25 September 2006 and 2 October 2006; DAB-147, Transcript 3 October 2006. No where in the evidence of the two Defence Witnesses, did they dispute the Prosecution evidence regarding use of physical violence by AFRC in Kenema.

⁸⁹³ DAB-147, Transcript 3 October 2006, p.38. [REDACTED]

COUNT 13: ABDUCTIONS AND FORCED LABOUR

555. The Prosecution adduced evidence that about 300-500 people mined under AFRC control in 1997.⁸⁹⁴ The indicia of enslavement were present whenever a “government work day” was announced. 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 mine⁸⁹⁵ is echoed in the evidence of Witness TF1-062.

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

557. There is evidence that 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.⁸⁹⁶

558. The diamonds were weighed at the AFRC secretariat and given to Eddie Kanneh.⁸⁹⁷ Kanneh, Secretary of State East in the AFRC Government, reported to the Supreme Council.⁸⁹⁸

559. The Prosecution submits that its evidence is overwhelming and should be believed. The evidence of Defence witness DAB-033, suggesting that only the RUF engaged in diamond mining and forced people to mine,⁸⁹⁹ is implausible and should be rejected. The claim by Defence witness DAB-147 that he never witnessed AFRC soldiers forcing civilians to mine⁹⁰⁰ is untruthful and should be rejected. That the witness did not witness the forced mining does not mean it never happened. In any case, the witness was in Tongo for a very

⁸⁹⁴ TF1-045, Transcript 19 July 2005, p. 47.

⁸⁹⁵ TF1-045, Transcript 19 July 2005, pp. 49-55.

⁸⁹⁶ TF1-062, Transcript 27 June 2005, pp. 27-37.

⁸⁹⁷ TF1-045, Transcript 19 July 2005, pp. 54-55.

⁸⁹⁸ TF1-334, Transcript 17 May 2005, pp. 16-17; TF1-114, Transcript 14 July 2005, p. 127.

⁸⁹⁹ DAB-033, Transcript 25 September 2006, pp. 43-45, 59.

⁹⁰⁰ DAB-147, Transcript 3 October 2006, p. 38.

limited period of time and may well not have been in a position to witness the forced mining.⁹⁰¹

THE CRIMES: BO DISTRICT 1 JUNE 1997-30 JUNE 1997

COUNTS 1 – 2

560. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNTS 3 – 5: UNLAWFUL KILLINGS

Tikonko

561. The Prosecution submits that it has led sufficient evidence of unlawful killings by the AFRC 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 Tikonko.⁹⁰² Five civilians were shot at Tikonko Junction.⁹⁰³ 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.⁹⁰⁴ Twenty civilian corpses were buried in the town.⁹⁰⁵

562. The Prosecution evidence of unlawful killings is corroborated by Defence witness DAB-137, who however, does not know who was responsible for the attack on Tikonko.⁹⁰⁶ The Prosecution evidence that AFRC soldiers committed the unlawful killings therefore remains substantially undisputed and should be believed.

⁹⁰¹ DAB-147, Transcript 3 October 2006, p.22. The witness went to Tongo only twice and stayed 2-3 days.

⁹⁰² TF1-004, Transcript 23 June 2005, p. 12.

⁹⁰³ TF1-004, Transcript 23 June 2005, p. 13.

⁹⁰⁴ TF1-004, Transcript 23 June 2005, pp. 19-26.

⁹⁰⁵ TF1-004, Transcript 23 June 2005, pp. 30.

⁹⁰⁶ DAB-137, Transcript 3 October 2006, pp. 12-13.

Gerihun

563. In June 1997, delegates from Freetown, including Mike Lamin had arrived in Gerihun to speak with the Village Chiefs and Kamajors of Gerihun about uniting with the AFRC. Lamin's proposal was rejected.⁹⁰⁷ The Prosecution has led sufficient evidence to prove that Junta soldiers then entered a hotel in Bo Town looking for Chief Demby and Kamajors.⁹⁰⁸ They were told that he was in Gerihun.⁹⁰⁹
564. 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.⁹¹⁰ The only Defence witness who testified about the death of Paramount Chief Demby merely heard⁹¹¹ about his death and does not know who killed him.⁹¹²
565. 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. That the SLA and AFRC were working together in Bo District is evidenced by the involvement of both RUF (Mike Lamin and Augustine Gbao) and AFRC (Boisy Palmer, A. F. Kamara, and A. B. Kamara) personnel.⁹¹³ The evidence is also clear that those responsible for the attack on Gerihun reported directly to the Supreme Council.⁹¹⁴ This, the Prosecution submits, is a prime example of the Junta Government eliminating any potential opposition.
566. In view of the cogent Prosecution evidence in support of unlawful killings in Gerihun by the AFRC, the evidence of Defence witness DAB-138 that he did not witness or hear anything being done by the military and that it was the Kamajors who were killing people in Bo,⁹¹⁵ is untruthful and should be rejected.

⁹⁰⁷ TF1-054, Transcript 19 April 2005, pp. 87-88.

⁹⁰⁸ TF1-054, Transcript 19 April 2005, pp. 81-84.

⁹⁰⁹ TF1-054, Transcript 19 April 2005, pp. 86-88.

⁹¹⁰ TF1-053, Transcript 18 April 2005, pp. 105-111; TF1-054, Transcript 19 April 2005, pp. 91-94.

⁹¹¹ DAB-137, Transcript 2 October 2006, pp. 126-127.

⁹¹² DAB-137, Transcript 3 October 2006, pp. 11-13.

⁹¹³ TF1-054, Transcript 19 April 2005, pp. 78, 87, 92-93.

⁹¹⁴ TF1-334, Transcript 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. Both Mike Lamin and Gbao attended the meeting in Gerihun, and they announced themselves as a delegation from Freetown; TF1-054, Transcript 19 April 2005, p. 87.

⁹¹⁵ DAB-138, Transcript 19 October 2006, pp.42-44.

COUNT 14: LOOTING AND BURNING

567. The evidence shows that the attacks on Bo Town occurred during the time of the AFRC government. The Prosecution submits that the attack on Tikonko was by the AFRC and it was motivated by the presence of Kamajors in the town.⁹¹⁶ The soldiers sang that the people of Tikonko would know them that day.⁹¹⁷

568. Both Prosecution and Defence evidence shows that during the attack houses in the village were burnt.⁹¹⁸ The Defence evidence shows that there was also looting.⁹¹⁹ The Prosecution submits that the AFRC committed the looting and burning. The only Defence witness who testified about crimes committed in Tikonko did not know who attacked the village and committed the crimes.⁹²⁰ The Prosecution therefore submits that the Prosecution evidence should be accepted.

⁹¹⁶ TF1-004, Transcript 23 June 2005, pp.5-7.

⁹¹⁷ TF1-004, Transcript 23 June 2005, p. 16.

⁹¹⁸ TF1-004, Transcript 23 June 2005, p. 28; DAB-137, Transcript 2 October 2006, p.128.

⁹¹⁹ DAB-137, Transcript 3 October 2006, p.12.

⁹²⁰ DAB-137, Transcript 3 October 2006, p.12.

IX. POST-INTERVENTION PERIOD: FROM 13 FEBRUARY 1998 UNTIL JUNE 1999

WITHDRAWAL FROM FREETOWN AFTER THE INTERVENTION

569. It is pertinent to note that, rather than imploding from within due to infighting between the two factions, the Junta continued in power until it was forcefully removed by ECOMOG and troops loyal to former President Kabbah on around 13th February 1998.
570. Even then, the AFRC Government did not go easily. They fought a three or four day battle against superior ECOMOG forces supported by air power in and around Freetown, before finally withdrawing in a disorganised manner after they had ran desperately short of ammunition.⁹²¹
571. Col. Iron testified that the AFRC faction initially retreated from Freetown in a chaotic fashion.⁹²² It is however the case of the Prosecution that even though the retreat was in disarray the Joint criminal enterprise between the two factions remained intact.
572. Early signs of this can be seen at Masiaka when Johnny Paul Koroma ordered Operation Pay Yourself over the BBC as the troops fled Freetown.⁹²³ Almost simultaneously from Kenema Sam Bockarie, aka Mosquito ordered Operation Pay Yourself.⁹²⁴
573. These announcements by the respective leaders of the SLA and RUF led to widespread looting in and around Masiaka⁹²⁵ and Kenema,⁹²⁶ by both SLAs and RUF, as the groups headed towards the relative safety of Kono and Kailahun.
574. At Masiaka, senior SLA commanders were present including the Second and Third Accused.⁹²⁷ Senior RUF commanders at Masiaka included Issa Sesay and Superman.⁹²⁸ At Masiaka it can be seen that the SLA and RUF were still working together when SAJ Musa organised a meeting and put together a joint SLA /RUF operation to rescue family

⁹²¹ TF1- 334, Transcript 17 May 2005, p. 68

⁹²² Exhibit P36, Military Expert Witness Report on the Armed Forces Revolutionary Council by Col. Richard Iron, August 2005, C2.2

⁹²³ TF1-334, Transcript 17 May 2005, pp. 72-73

⁹²⁴ TF1-045, 19 July 2005, p. 82

⁹²⁵ TF1-334, 17 May 2005, p. 74.

⁹²⁶ TF1-045, 22 July 2005, p. 11; 19 July 2005, pp. 82-83.

⁹²⁷ TF1-334, Transcript 17 May 2005, pp. 69-71.

⁹²⁸ TF1-184, Transcript 26 September 2005, p. 90.

members of SLAs and RUFs who had been stranded in Bo after they were driven out by the Kamajors.⁹²⁹ The subsequent operation was led by A.F.Kamara (SLA) and Issa Sesay (RUF).⁹³⁰

575. At Masiaka all honourables were promoted to the rank of colonel/brigadier general,⁹³¹ and thus retained senior command positions in the bush. It is the case of the Prosecution that on the basis of position superseding rank, the AFRC hierarchy prior to the intervention continued in the jungle after the intervention. Namely, the chain of command was: Johnny Paul Koroma, followed by SAJ Musa, followed by the three PLOs and finally the honourables.
576. From Makeni the Second Accused joined SAJ Musa in Kabala, where SAJ Musa was in command of the troops. At Kabala SAJ Musa called a meeting that was attended by the Second Accused and Superman.⁹³² It was decided at this meeting that the SLAs and RUF should capture Kono and claim international recognition, and that Johnny Paul Koroma should be collected from his village to go with them.⁹³³
577. At Kabala Mosquito was eager to know about the life of Chairman Johnny Paul Koroma and regularly contacted Superman over the Radio to get particulars. Mosquito wanted the Koroma to come to Kailahun.⁹³⁴
578. It is the case of the Prosecution that command and control was gradually being restored within the SLA and RUF troops from Masiaka onwards, although along the lines of separate chains of command. Full command was finally restored at Makeni, after Johnny Paul Koroma had addressed the troops at a muster parade.⁹³⁵
579. It is notable that senior members of both the SLA (the Second and Third Accused) and RUF (Issa Sesay, Morris Kallon and Superman) leadership were all present when Johnny

⁹²⁹ TF1-167, Transcript 15 September 2005, pp. 27-28; TF1-334, 17 May 2005, pp. 74-75.

⁹³⁰ TF1-167, Transcript 15 September 2005, p. 27-28.

⁹³¹ TF1-167, Transcript 15 September 2005, pp.27-28.

⁹³² TF1-167, Transcript 15 September 2005, pp. 30-31.

⁹³³ TF1-334, Transcript 17 May 2005, pp. 82-83.

⁹³⁴ TF1-334, Transcript 17 May 2005, p. 85.

⁹³⁵ TF1-334, Transcript 17 May 2005, p. 87

Paul Koroma addressed the muster parade.⁹³⁶ The two factions were therefore both still working together at this point.

580. Johnny Paul Koroma largely reiterated SAJ Musa's plan at Kabala to move to Kono and make a defensive stronghold in the East.⁹³⁷ En route to Kono Sewafe was burnt down on Johnny Paul Koroma's orders⁹³⁸ and civilians were also abducted to carry things for the troops.⁹³⁹

THE CAPTURE OF KOIDU TOWN IN MID-FEB 1998

581. The RUF and SLAs jointly attacked Koidu Town. After an initial rebuff by a Kamajor ambush, the joint SLA/RUF force finally captured Koidu Town around the end of February 1998.⁹⁴⁰ Superman was in command of the attack whilst the Second Accused was his deputy.⁹⁴¹

582. Once Koidu Town was captured on Johnny Paul Koroma's arrival he became commander of all forces in Kono with Issa Sesay as the senior most RUF man on the ground, followed by Superman.⁹⁴²

583. Due to the belief that civilians had betrayed them to the ECOMOG in Freetown and the Kamajors in Kono, Johnny Paul Koroma ordered that Kono should be a "civilian no go area", so that any civilian who refused to join them should be executed.⁹⁴³ Johnny Paul Koroma also said that all civilian houses should be burned down in Koidu Town to stop any civilian from settling there. Issa Sesay reinforced what Johnny Paul Koroma had said about the civilians. Johnny Paul Koroma's order was followed and the civilians were forced out of Koidu Town and their houses were burned down.⁹⁴⁴

⁹³⁶ TF1-334, Transcript 17 May 2005, pp. 86-87

⁹³⁷ TF1-334, Transcript 17 May 2005, p. 87

⁹³⁸ TF1-334, Transcript 17 May 2005, p. 93

⁹³⁹ TF1-334, Transcript 17 May 2005, pp. 91-92

⁹⁴⁰ TF1-334, Transcript 17 May 2005, pp. 102-103

⁹⁴¹ TF1-167, Transcript 15 September 2005, p. 31

⁹⁴² TF1-334, Transcript 17 May 2005, pp. 116-117

⁹⁴³ TF1-334, Transcript 18 May 2005, pp. 3-5

⁹⁴⁴ TF1-334, Transcript 18 March 2005, pp. 5-9

584. Johnny Paul Koroma said that it was vital that Kono should be defended because they would be able to acquire diamonds to fund their movement.⁹⁴⁵ Johnny Paul Koroma announced his intention to go to Kailahun and then on to Liberia, Burkina Faso and Libya to purchase arms and ammunition which could be sent to Kono via Kailahun.⁹⁴⁶
585. Before leaving for Kailahun, Johnny Paul Koroma had a meeting with Superman, Morris Kallon and the Second Accused whereby it was agreed that the SLAs would be under the command of the RUF in Kono. After about a week in Kono, Johnny Paul Koroma left with Issa Sesay, Morris Kallon, Mike Lamin, Akim, and SLA Rambo to join Sam Bockarie in Kailahun.⁹⁴⁷
586. After Johnny Paul Koroma left for Kono, the Second Accused automatically became the top SLA commander in Kono, based on his position as the most senior AFRC Supreme Council member present in Kono at that time.⁹⁴⁸ Superman was the overall commander in Kono and was based at Dabundeh Street in Koidu Town. He was deputised by the Second Accused, who was based with the other SLAs at Masingbi Road.⁹⁴⁹
587. Superman had a radio set in Debundeh Street, which allowed him to keep in contact with Mosquito, who was his overall commander and based in Kailahun.⁹⁵⁰ Initially, the SLA commanders such as Hassan Papah Bangura, aka Bomblast could use the radio in Dabundeh Street; for instance, evidence was given that Hassan Papah Bangura spoke to Issa Sesay.⁹⁵¹ Even after the confusion between the SLAs and RUF arose in Kono after Morris Kallon shot two SLAs, the SLAs were still able to freely monitor the radio set.⁹⁵²
588. Superman decided on the command structure for the defence of Kono in the presence of the Second and Third Accused, Momoh Dorty and Morris Kallon.⁹⁵³ In Kono the troops were divided into battalions. Battalion commanders included Saidu Kambulai (aka Baski),

⁹⁴⁵ TF1-334, Transcript 18 May 2005, p. 6

⁹⁴⁶ TF1-334, Transcript 18 May 2005, p. 6

⁹⁴⁷ TF1-334, Transcript 18 May 2005, pp. 18-19

⁹⁴⁸ TF1-334, Transcript 18 March 2005, pp. 21-22

⁹⁴⁹ TF1-334, Transcript 18 March 2005, p. 24; TF1-167, 15 September 2005, p. 38

⁹⁵⁰ TF1-334, Transcript 18 March 2005, pp. 24-25

⁹⁵¹ TF1-334, Transcript 18 March 2005, p. 36

⁹⁵² TF1-334, Transcript 19 May 2005, p. 3

⁹⁵³ TF1-167, Transcript 15 September 2005, pp. 35-36

Saidu Mansafari (aka Tito), and Savage.⁹⁵⁴ Some battalions were mixed RUF and SLA whilst others were mainly either all SLA or RUF.⁹⁵⁵

589. The SLA HQs was based at Masingbi Road where the Second Accused, Hassan Papah Bangura, George Johnson (aka Junior Lion) and other SLAs were based.⁹⁵⁶

590. The SLA had battalions under their command at Jagbwema Fiama; Tombodu Town, Sewafe, Yengema, and Woama.⁹⁵⁷

591. RUF commanders based in Kono under Superman included Komba Gbundema at Yomandu, Rambo at Gandorhun, Col. Issac Mongor, Col. David Vandy, Lt. Col. Emmanuel Williams (aka Rocky).⁹⁵⁸

592. Through radio communications the SLAs and RUF were ordered to conduct operations by Sam Bockarie. These operations were carried out jointly. For example, on one occasion when Mosquito was sending ammunition from Kailahun to the SLAs and RUF in Kono, both the SLAs and RUF were ordered by Mosquito to clear Koidu Geiya so that the ammunition could be received. This was done.⁹⁵⁹

593. On another occasion Mosquito warned the SLAs/RUF in Kono that the ECOMOG troops had advanced towards Njaiama Sewafe and were heading towards Koidu Town. Mosquito wanted Kono to be a stronghold for the Junta forces so he ordered the SLAs and RUF to destroy Sewafe Bridge in order to block the ECOMOG advance to Koidu Town.⁹⁶⁰ Attempts were made to do this.⁹⁶¹

594. It is the case of the Prosecution that the SLAs and the RUF were working together in Kono, through their own separate commanders and chains of command, in order to achieve the joint objective of securing Kono so that they could exploit its diamond resources in order to fund their movement to eventually recapture Freetown.

⁹⁵⁴ TF1-167, Transcript 15 September 2005, p. 38.

⁹⁵⁵ TF1-334, Transcript 19 May 2005, pp. 17-26.

⁹⁵⁶ TF1-334, Transcript 19 May 2005, pp. 26-27.

⁹⁵⁷ TF1-334, Transcript 19 May 2005, pp. 17-26.

⁹⁵⁸ TF1-334, Transcript 19 May 2005, pp. 31-47.

⁹⁵⁹ TF1-334, Transcript 18 May 2005, pp. 29-31.

⁹⁶⁰ TF1-334, Transcript 18 May 2005, pp. 31-34.

⁹⁶¹ TF1-334, Transcript 20 May 2005, pp. 51-53.

595. The Prosecution submits that the first signs of this clear strategic objective can be inferred from the fact that after the Accused left Kono in mid-May 1998 and reported to SAJ Musa, they were ordered by SAJ Musa to find a base in the north. The order to find such a base is a clear indication that once the SLAs and RUF had established themselves in the East their ultimate aim was to head north back to Freetown.
596. The Prosecution accepts that the First Accused was not in Kono when it was retaken by the joint SLA/RUF force in late February 1998. It is the case of the Prosecution that the First Accused fled Kono shortly before the intervention in the face of threatened Kamajor attacks.
597. It is the case of the Prosecution that the First Accused fled towards Guinea with diamonds which he had acquired through his role as PLO 2, supervising diamond mining in Kono together with his securities.⁹⁶²
598. The Prosecution accepts that Johnny Paul Koroma was humiliated by Sam Bockarie when he reached Kailahun, was stripped of his diamonds and sent to Kangama where he essentially remained under house arrest until after the Freetown invasion
599. It is the case of the Prosecution, however, that Johnny Paul Koroma's humiliation at the hands of Sam Bockarie was before the First Accused was stripped of his diamonds and that the First Accused was not present when Johnny Paul Koroma had his diamonds taken from him under the orders of Sam Bockarie.
600. With regard to the First Accused, it is the case of the Prosecution that he was captured by the RUF at Bedu crossing in Kailahun district whilst attempting to flee to Guinea. Whereupon he was searched and the diamonds which he had stolen whilst in Kono were retrieved from him.⁹⁶³
601. The First Accused may have been subject to some minor maltreatment whilst in Kailahun, however it is the case of the Prosecution that this only lasted for a few days and thereafter the First Accused was back on good terms with Sam Bockarie and the other RUF commanders in Kailahun.

⁹⁶² TF1-045, Transcript 19 July 2005, pp. 98-99.

⁹⁶³ TF1-045, Transcript 19 July 2005, pp. 98-99.

602. It is the case of the Prosecution that the First Accused was sent by Sam Bockarie from Kailahun to Kono, of his own free will no later than the end of April with logistic supplies⁹⁶⁴ for the Second Accused and Superman, with a view to cementing the strained relationship that was existing between the SLAs and RUF in Kono as a result of RUF Morris Kallon shooting two SLAs.⁹⁶⁵
603. Notwithstanding this strained relationship, the SLAs and RUF were still working together in Kono after it was retaken at the end of February under their two separate chains of command, headed respectively by the Second Accused for the SLAs and Superman for the RUF.
604. It is the case of the Prosecution that whilst the Second Accused was working with Superman in Kono, SAJ Musa was based in the Koinadugu Axis, having declined to go to either Kono or Kailahun.⁹⁶⁶
605. The Third Accused was shuttling between SAJ Musa and the Second Accused in order to keep SAJ Musa informed of the developments on the ground in Kono.⁹⁶⁷ This further underlines the cooperation between the RUF and SLAs after the Intervention, whereby SAJ Musa was covering the northern approach to Kono whilst keeping himself informed of developments in Kono.
606. For the crimes committed in the Koinadugu Axis during this period by SLA SAJ Musa and RUF Superman working together please refer to the Koinadugu crime-base section of this brief.
607. For the crimes committed in Kono after the Intervention please refer to the Post-Intervention Period section of this brief.

⁹⁶⁴ TF1-334, Transcript 20 May 2005, pp.44, 50-51.

⁹⁶⁵ TF1-334, Transcript 19 May 2005, pp. 9-14.

⁹⁶⁶ TF1-184, Transcript 27 September 2005, pp. 6-7

⁹⁶⁷ TF1-334, Transcript 18 May 2005, pp. 19-20, Transcript 16 June 2005, p. 37.

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SLA WITHDRAWAL TO MANSOFINIA AND ADVANCE TO CAMP ROSOS UNDER THE COMMAND OF THE FIRST ACCUSED

608. Around the end of April/early May, the First Accused arrived in Kono from Kailahun with logistics for the SLA and RUF forces.⁹⁶⁸ The First Accused, based on his position as PLO 2 in the AFRC Government, assumed command from the Second Accused in Kono upon his arrival.⁹⁶⁹ The First Accused called the senior SLAs together at 55 Spot and told them about Johnny Paul Koroma's mistreatment and how the First Accused's diamonds had been taken from him by the RUF.⁹⁷⁰
609. Even Defence witness DAB-039 in his evidence-in-chief heard that Alex Tamba Brima, aka Gullit, was in Kono and telling his troops not to cause havoc. This Defence evidence corroborates the Prosecution claim that the First Accused was commanding troops in the field in Kono.⁹⁷¹
610. Thereafter, under threat from the advancing ECOMOG and Kamajor forces, and bearing in mind their strained relationship with the RUF in Kono, the SLAs under the command of the First Accused withdrew from Kono to Mansofinia via Tombodu and the First Accused's own village of Yarya.⁹⁷² At Tombodu the First and Second Accused came across Savage, the SLA Battalion commander in Tombodu who had already committed a large number of crimes there.⁹⁷³
611. At Mansofinia the First and Second Accused left the troop whilst they travelled to report to SAJ Musa at Mongo Bendugu. Whilst the SLA had been operating together with the RUF in Kono, SAJ Musa (who was the most senior commander after Johnny Paul Koroma) was commanding the SLAs in the Koinadugu Axis.⁹⁷⁴
612. Accordingly, as the most senior commanders in the field, the First and Second Accused reported to SAJ Musa, who ordered them to find a base in the north.⁹⁷⁵ After this meeting the First and Second Accused returned to Mansofinia, where the First Accused was in

⁹⁶⁸ TF1-334, Transcript 19 May 2005, p. 8; Transcript 20 May 2005 pp. 44, 50-51.

⁹⁶⁹ TF1-224, Transcript 19 May 2005, p. 8

⁹⁷⁰ TF1-334, Transcript 19 May 2005, pp. 14-15

⁹⁷¹ DAB-039, Transcript 5 September 2006, pp. 88-89.

⁹⁷² TF1-167, Transcript 15 September 2005, pp. 44-45

⁹⁷³ TF1-167, Transcript 15 September 2005, pp. 45-45

⁹⁷⁴ TF1-184, Transcript 30 September 2005, p. 62

⁹⁷⁵ TF1-334, Transcript 20 May 2005, pp. 82-86

command of the whole troop.⁹⁷⁶ SAJ Musa sent the Third Accused with some soldiers⁹⁷⁷ to join the First Accused's troop at Mansofinia. SAJ Musa had confirmed the First Accused as the commander of the SLAs in Mansofinia.⁹⁷⁸

613. After returning to Mansofinia after meeting SAJ Musa, the First Accused reorganised his troop.⁹⁷⁹ The First Accused announced that he was the Chief of Command and the head of the brigade while promoting himself to the rank of brigadier, the Second Accused was appointed Deputy Chief in Command and a member of the brigade administration and promoted to brigadier, the Third Accused was appointed as Chief of Staff and a member of the brigade administration although he remained a colonel.⁹⁸⁰
614. The brigade was comprised of four companies, each with a company commander who, along with the operation commander [REDACTED] and military supervisors, was responsible to the Third Accused. The brigade administration was responsible for the direct command of the Brigade.⁹⁸¹ Each company had a company supervisor who reported directly to the First Accused.⁹⁸²
615. The brigade structured by the First Accused also had an adjutant, military police commander, regimental sergeant major (RSM), intelligence officer, brigade administrator, task force commander and political advisor.⁹⁸³ The troop had a total strength of about 500.⁹⁸⁴ It is the case of the Prosecution that the brigade as structured by the First Accused was a well-organised and effective military force as it headed north to find a base.
616. TF1-167 was appointed as provost marshal in charge of discipline to ensure that jungle justice was adhered to. Jungle justice involved not stealing government property (e.g. arms, ammunition, medicine) and that there should be no raping during operations. Punishments for breaching jungle justice included flogging or death.⁹⁸⁵

⁹⁷⁶ TF1-334, Transcript 20 May 2005, pp. 86-87

⁹⁷⁷ TF1-334, Transcript 20 May 2005, p. 87-88.

⁹⁷⁸ TF1-334, Transcript 20 May 2005, p. 88

⁹⁷⁹ TF1-167, Transcript 15 September 2005, p. 47-48; TF1-334, Transcript 20 May 2005, p. 87-88.

⁹⁸⁰ TF1-334, Transcript 20 May 2005, pp. 87-101

⁹⁸¹ TF1-334, Transcript 20 May 2005, pp. 87-101

⁹⁸² TF1-334, Transcript 23 May 2005, p. 3-6, 26, 43-44,

⁹⁸³ TF1-334, Transcript 23 May 2005, pp. 27-39

⁹⁸⁴ TF1-334, Transcript 23 May 2005, p. 39

⁹⁸⁵ TF1-167, Transcript 15 September 2005, pp. 48-49

617. The Second Accused was also made G4 in charge of logistics and the Third Accused also appointed G5⁹⁸⁶ in charge of abductees.
618. Tellingly, from Kono to Rosos to Colonel Eddie Town to Freetown, FAT Sesay is always referred to in the evidence of the Prosecution military insiders (TF1-184, TF1-167⁹⁸⁷ and TF1-334⁹⁸⁸) as an administrative officer. Even the evidence of certain Defence witnesses point to the fact that this was FAT Sesay's role within the troop.
619. For example, DAB-033⁹⁸⁹ referred to FAT Sesay as a dull man who was not physically fit in the battlefield and that he was only there to advise. DBK-131 referred to FAT Sesay as keeping the nominal role.⁹⁹⁰ The Prosecution's case is that FAT Sesay was never in command of the troop as the First Accused and some of the Defence witnesses claim, but instead was an administrative officer throughout the time the SLA faction was in the jungle.
620. Before leaving Mansofinia, the First Accused issued orders that any civilian or soldier who attempted to run away would be shot on sight and that any village which repelled an attack should be burned.⁹⁹¹ In addition, he ordered that all strong civilians captured en route were to be made part of the troop.⁹⁹²
621. After leaving Mansofinia the troop passed back through Yarya, which was the First Accused's own village.⁹⁹³ The First Accused had a radio set with him when he left Mansofinia, and initially over the radio he declined Superman's invitation to return to Kono.⁹⁹⁴
622. The Prosecution submits that these regular radio conversations, when possible, between the First Accused and the RUF leadership is a significant piece of evidence of how the two factions were working together.

⁹⁸⁶ TF1-167, Transcript 15 September 2005, p. 50

⁹⁸⁷ TF1-167, Transcript 15 September 2005, p. 41

⁹⁸⁸ TF1-334 Transcript 25 May 2005 p.9; Transcript 23 May 2005, p.32.

⁹⁸⁹ DAB-033, Transcript 25 September 2006, pp 98-99.

⁹⁹⁰ DBK-131, Transcript 26 October 2006, pp. 56-57.

⁹⁹¹ TF1-334, Transcript 23 May 2005, p. 17

⁹⁹² TF1-334, Transcript 23 May 2005, pp. 16-17

⁹⁹³ TF1-167, Transcript 15 September 2005, p. 51

⁹⁹⁴ TF1-334, Transcript 23 May 2005, p. 41

623. The Prosecution accepts that there may have been times when the different leaders in each faction fell out with each other or even amongst themselves for short periods. It is however the submission of the Prosecution that this is not fatal to the joint criminal enterprise, as ultimately both groups were working in unison towards the same goal, namely the reinstatement of the Junta Government in Freetown. This plan became more apparent after the death of SAJ Musa at Benguema in December 1999.
624. The troop under the First Accused moved through Bombali District in an organised military fashion. An advance group led the way, followed by the brigade administration where the Accused were based, which was followed by a rear group. A standard operating procedure was developed whereby the first group attacked a village and then called in the HQ group. The rear group would then burn down the village.
625. Shortly after the attack on Karina the First Accused's troop lost its radio man and microphone, which meant that the First Accused could only monitor the radio communications of other commanders who were using the airwaves.⁹⁹⁵ The First Accused could therefore listen to the radio communications of the RUF and SAJ Musa's forces but could not call them to let them know of his position.
626. It is the case of the Prosecution that from the advance to Mansofinia to Camp Rosos, the First Accused was at all times the commander of the SLA troops who formed a part of his brigade, whilst the Second Accused was second in command to the First Accused and the Third Accused held a senior command position.
627. For crimes committed in Bombali please refer to Bombali crime-base section in this brief.

CAMP ROSOS

628. Eventually the SLA troop under the First Accused set up a base camp at a place which came to be known as camp Rosos. At this stage they were still unable to communicate their position to anyone because they still had no microphone for their radio set, though they could still only monitor the radio conversations of others.

⁹⁹⁵ TF1-334, Transcript 23 May 2005, pp. 79-81

629. Discipline was enforced within the troop en route from Mansofinia to Bombali by TF1-167, who was appointed Provost Marshall by the First Accused at Mansofinia.⁹⁹⁶ As Provost Marshall it was TF1-167's job to ensure that the troops abided by jungle justice.
630. Jungle Justice involved not stealing government property (such as arms, ammunition, medicines), and not raping during operations. Anyone caught breaking these rules would be punished by death or public flogging. As provost marshal, TF1-167 reported directly to the First and Second Accused.⁹⁹⁷
631. At Camp Rosos the First Accused appointed a Mammy Queen to look after women's affairs, and who had the power to lock undisciplined women in a rice box. The discipline order was clearly spelt out and was signed by the Third Accused.⁹⁹⁸ The Third Accused was in total control of women at camp Rosos.⁹⁹⁹ TF1-334 saw this disciplinary system in operation.¹⁰⁰⁰
632. On arriving at Camp Rosos, the First Accused ordered that it should be a made a civilian 'no go' area, meaning that there should be no civilians within 15 miles of Rosos and that captured civilians who were brought to the camp should be executed. The First Accused passed this order in the presence of the Second and Third Accused.¹⁰⁰¹ These orders were carried out.¹⁰⁰²
633. The First Accused ordered 'Operation Clear the Area' whereby all villages surrounding Rosos were to be burnt down. The area was to be "jarred jarred," meaning everything of importance was to be taken.¹⁰⁰³ These orders were carried out.¹⁰⁰⁴
634. It is telling that as soon as a microphone was found at Batkanu and radio contact could be re-established, the First Accused, in addition to calling SAJ Musa and Brig. Mani, also called Issa Sesay and Morris Kallon, both of whom were senior RUF commanders.¹⁰⁰⁵

⁹⁹⁶ TF1-167, Transcript 15 September 2005 pp. 48-49

⁹⁹⁷ TF1-167, Transcript 15 September 2005 pp. 49-50

⁹⁹⁸ TF1-334, Transcript 24 May 2005, pp. 62-65.

⁹⁹⁹ TF1-334, Transcript 24 May 2005, pp. 62-65.

¹⁰⁰⁰ TF1-334, Transcript 24 May 2005, pp 67-68.

¹⁰⁰¹ TF1-334, Transcript 23 May 2005, p. 104

¹⁰⁰² TF1-334, Transcript 24 May 2005, pp. 2-5.

¹⁰⁰³ TF1-334, Transcript 23 May 2005, p. 105

¹⁰⁰⁴ [REDACTED]

¹⁰⁰⁵ TF1-334, Transcript 24 May 2005, pp. 31-36.

From this it can clearly be inferred that the First Accused regarded himself as still working with the RUF leadership.

635. When the First Accused reported to SAJ Musa it is important to note that at that time SAJ Musa was still working together with Superman on the Koinadugu axis. It is also significant that the First Accused also immediately made radio contact with Brig. Mani and informed him that he was unable to find him. This corroborates TF1-334's evidence that at Mansofinia SAJ Musa had ordered the First Accused to find Brigadier Mani and set up a base camp in the north. Again this is significant evidence to show that the First Accused did report to SAJ Musa in Mansofinia in early May 1998 and that his alibi in this respect is a lie.
636. During the First Accused's radio conversation with Issa Sesay he reported his position and told Issa Sesay that Issa Sesay should have confidence in him and that he was relying on Issa Sesay's co-operation.¹⁰⁰⁶ The First Accused then spoke to Morris Kallon and explained to him why he moved from Kono and that he was still pursuing the cause. Morris Kallon was happy that communication between the two had been restored.¹⁰⁰⁷
637. The case of the Prosecution is that it can be inferred from all the evidence, including the crime-base evidence dealt with elsewhere in this Brief, that the common intention as between the Accused, other members of the AFRC, and the RUF leadership, was the reinstatement of the Joint SLA/RUF Government in Freetown (that is, to regain and to retain political power and control over the territory of Sierra Leone), and to do so by any means necessary, including through the commission of crimes within the jurisdiction of the Special Court.
638. On a later occasion SAJ Musa informed the First Accused of his position in Mongo Bendugu, which had just been recaptured from the Guineans along with arms and ammunition. SAJ Musa also told the First Accused of his plan to attack Kabala by pretending to surrender.¹⁰⁰⁸

¹⁰⁰⁶ TF1-334, Transcript 24 May 2005, p. 36

¹⁰⁰⁷ TF1-334, Transcript 24 May 2005, p. 36

¹⁰⁰⁸ TF1-334, Transcript 24 May 2005, p. 44.

639. Other evidence in the Koinadugu section of this brief suggests that this attack did take place and that it was a joint attack with Superman's RUF forces. At this stage (i.e. before the Accused reached Colonel Eddie Town) the evidence suggests that the SLAs and RUF were still working together.
640. The First Accused also called Mosquito on the radio to renew their relationship, which had been in existence since the Junta period and throughout the First Accused's stay in Kailahun, before he left for Kono with logistics for the joint SLA/RUF troop based there under the Second Accused and Superman.
641. During his radio communication with Mosquito the First Accused explained why he had been out of contact, briefed Mosquito on the areas that his troop had attacked, and updated him on his current position.¹⁰⁰⁹ Mosquito in return informed the First Accused that he was happy, that the two sides (RUF and SLA) were brothers, and that Johnny Paul Koroma was safe
642. It is these and other later continuing radio contacts, especially after the death of SAJ Musa at Benguema, between the First Accused and the RUF leadership which the Prosecution mainly relies on to show that the First Accused and the other Accused were always working with the RUF to re-establish the Junta in Freetown notwithstanding SAJ Musa's stated aim of reinstating the SLA.
643. In particular, this shared intention of collectively reinstating the Junta became apparent through the radio communications between the Accused and the senior RUF leadership after the death of SAJ Musa. These continued through to the attack on Freetown, the retreat from Freetown by the SLAs and the joint re-attack on Freetown by both the SLA and RUF after the SLAs have been driven from Freetown by ECOMOG at the end of January 1999.
644. It is the case of the Prosecution that from the time the troop arrived at Camp Rosos until their departure to Colonel Eddie Town, the First Accused was at all times the commander of the SLA troops who formed a part of his brigade, whilst the Second Accused was

¹⁰⁰⁹ TF1-334, Transcript 24 May 2005, p. 56.

second in command to the First Accused and the Third Accused held a senior command position.

COLONEL EDDIE TOWN

645. After remaining in Camp Rosos for about three months, in around September 1998 under pressure from ECOMOG the First Accused with his Brigade moved from Camp Rosos to a new camp referred to as Major/Colonel Eddie Town (so-named because it was discovered by Major/Colonel Eddie on the orders of the First Accused).¹⁰¹⁰ In particular, this followed an ECOMOG jet attack where Jalloh the radio operator died.¹⁰¹¹ Witness DBK-126 gave evidence of how the SLA faction in Camp Rosos was harnessing solar power in order to recharge the batteries for their radios.¹⁰¹²
646. At Colonel Eddie Town discipline continued to be enforced amongst the troops. TF1-167 was arrested to face jungle justice after he shot his second in command.¹⁰¹³ The Prosecution submits that this is an indication of how effective the disciplinary procedure was amongst the SLAs. An investigation was carried out against TF1-167,¹⁰¹⁴ following which he surrendered for arrest. It is also significant that at this time TF1-167 held a senior position as a battalion commander and as such even soldiers who were either senior in rank or held senior positions were equally subject to discipline. Another example discipline being applied to people in senior positions was the arrest of Bio and Bomblast who were former honourables and members of the AFRC Supreme Council.¹⁰¹⁵
647. In Colonel Eddie Town the First Accused passed laws against stealing government property, against raping and the proscribed punishment for a breach of those laws. For example, any fighter who was reluctant to go on a ambush was subject to being publicly flogged.¹⁰¹⁶

¹⁰¹⁰ TF1-167, Transcript 15 September 2005, p. 68; TF1-334, Transcript 24 May 2005, pp. 72-73.

¹⁰¹¹ TF1-334, Transcript 24 May 2005, p. 72.

¹⁰¹² DBK-126, Transcript 25 October 2006, pp. 47-48.

¹⁰¹³ TF1-167, Transcript 15 September 2005, pp.76-77.

¹⁰¹⁴ DBK-037, Transcript 4 October 2006, p. 73-75.

¹⁰¹⁵ TF1-184, Transcript 27 September 2005, pp.31-32.

¹⁰¹⁶ TF1-167, Transcript 15 September 2005, p. 78.

648. At Colonel Eddie Town the town itself served as the Brigade HQ. The First Accused remained the senior most commander, followed by the Second Accused, whilst the Third Accused remained G5 officer and FAT Sesay was G1 administration.¹⁰¹⁷
649. At Colonel Eddie Town the First Accused summoned the entire brigade, including the commanders (the Second and Third Accused were also present) and ordered the operation commander to distribute the companies in surrounding villages in order to take up defensive positions.¹⁰¹⁸
650. The 4th company (or D company) was based in the surrounding village of Rochin under the command of TF1-167, with Sammy as his intelligence officer and Kordale as his second in command.¹⁰¹⁹
651. As commander of 4th (D) company TF1-167 kept arms and ammunition within his company which he distributed before operations. He used civilians to carry arms and ammunition who were under supervision of the Battalion G5. TF1-167 was reporting directly to the First Accused who also used to give him instructions. During operations he reported to the operations commander.¹⁰²⁰
652. Whilst at Colonel Eddie Town seven women who were accused of witchcraft were displayed and impaled by SLAs at the HQ. Three of these women died. They were impaled by Cyborg, Kabila, Mad Crazy, and SBU Killer, all of whom were SLAs.¹⁰²¹ It is the case of the Prosecution that since all the Accused were based at the HQ in Colonel Eddie Town they either would have ordered the impaling or at the very least been aware of it.
653. At Colonel Eddie Town over the radio SAJ Musa informed the First Accused that he was sending Major 0-Five and some SLAs to reinforce the First Accused's Brigade at Colonel Eddie Town. SAJ Musa said that he wanted to make Colonel Eddie Town an SLA defensive area. SAJ Musa said that he would follow after the reinforcements. The First

¹⁰¹⁷ TF1-167, Transcript 15 September 2005, p. 69.

¹⁰¹⁸ TF1-334, Transcript 24 May 2005, p. 87.

¹⁰¹⁹ TF1-167, Transcript 15 September 2005, p. 70.

¹⁰²⁰ TF1-167, Transcript 15 September 2005, pp. 70-72.

¹⁰²¹ TF1-167, Transcript 15 September 2005, pp. 72-74.

- Accused told SAJ Musa that he was standing by to receive the men.¹⁰²² SAJ Musa kept in contact with Commander 0-Five as Commander 0-Five travelled to meet up with the First Accused at Colonel Eddie Town as both Commander 0-Five and SAJ Musa had radio sets.
654. Prior to the arrival of Commander 0-Five and his men the First Accused made promotions and in anticipation of the arrival of more men with Commander 0-Five renamed the four companies as battalions.¹⁰²³
655. [REDACTED]
[REDACTED]
[REDACTED]¹⁰²⁴
656. [REDACTED] Witness TF1-334 heard the RUF spokesman Eldred Collins declare 'Operation Spare No Soul' over the BBC radio. According to Collins, under 'Operation Spare No Soul' soldiers should destroy any village which they captured and spare no person.¹⁰²⁵
657. [REDACTED]
[REDACTED] During the return to Colonel Eddie Town Commander 0-Five at Kantia executed 15 civilians who he had captured from Kamalo en route.¹⁰²⁶
658. Commander 0-Five arrived at Colonel Eddie Town with roughly 200 men and reported to the First Accused. On Commander 0-Five's arrival the Brigade Administrator FAT Sesay listed the soldiers who arrived at Colonel Eddie Town with Commander 0-Five.¹⁰²⁷ This ties in with the Defence witnesses who describe FAT Sesay as an administrator who kept the nominal role.¹⁰²⁸
659. On Commander 0-Five's arrival the First Accused created two new battalions: one known as the 5th Battalion, and the other known as the STF Battalion, which comprised mostly of Special Task Force (STF) soldiers from Liberia.¹⁰²⁹ The First Accused also increased the

¹⁰²² TF1-334, Transcript 24 May 2005, pp. 90-91.

¹⁰²³ TF1-334, Transcript 24 May 2005, pp. 92-92.

¹⁰²⁴ TF1-334, Transcript 24 May 2005, pp. 101-104.

¹⁰²⁵ TF1-334, Transcript 24 May 2005, pp. 105-106

¹⁰²⁶ TF1-334, Transcript 25 May 2005, p. 4

¹⁰²⁷ TF1-334, Transcript 25 May 2005, pp. 9, 33, 35

¹⁰²⁸ DBK-131, Transcript 26 October 2006, pp. 56-57.

¹⁰²⁹ TF1-334, Transcript 25 May 2005, p. 45

strength of other existing battalions by providing them each with some of Commander 0-Five's men.¹⁰³⁰ The First Accused also made further promotions on the arrival of Commander 0-Five and his men.¹⁰³¹

660. It is the case of the Prosecution that at no time were the Accused under arrest at Col. Eddie town. In the alternative, it is the case of the Prosecution that if the Accused were ever under arrest this was only for a very short period after the arrival of Commander 0-Five and that they were released prior to the arrival of SAJ Musa at Colonel Eddie Town.
661. The only Prosecution witness who alludes to the Accused being arrested at Colonel Eddie Town is TF1-167 and even he says that Commander 0-Five planned the arrest with the other battalion commanders because the Accused were not carrying out operations properly.¹⁰³² Even then, according to TF1-167 the Accused were released by SAJ Musa at Newton where the First Accused was made SAJ Musa's second in command, the Second Accused became third in command and the Third Accused was put in a command position whilst looking after the abductees who were with them.¹⁰³³
662. It is the case of the Prosecution that the First Accused has seized upon this small opening in the testimony of TF1-167 to fabricate an elaborate lie about his being under arrest from Colonel Eddie Town to Goba Water. The Prosecution further submits that the First Accused, having artfully crafted this lie after listening to the entire Prosecution case, has convinced the SLA Defence witnesses who advanced from Colonel Eddie Town to Freetown to lie on his behalf in order to back up his patent fabrication.¹⁰³⁴
663. In contrast to TF1-167's account, the First Accused testified that he was brought to Colonel Eddie Town under arrest by Commander 0-Five, where he found the other Accused already under arrest.¹⁰³⁵ Tellingly, not one Defence witness could corroborate the Accused on the circumstances of his arrest at Colonel Eddie Town. Once again this is a

¹⁰³⁰ TF1-334, Transcript 25 May 2005, pp. 46-47

¹⁰³¹ TF1-334, Transcript 25 May 2005, p. 48

¹⁰³² TF1-167, Transcript 15 September 2005, pp. 75-76

¹⁰³³ TF1-167, Transcript 16 September 2005, pp. 3-6

¹⁰³⁴ In this respect, the Prosecution draws the attention of the court to the following exchange, in which counsel for the First Accused appears to insinuate that defence insider witnesses were not able to testify until they had a chance to speak with the First Accused and get their "stories straight", Transcript 25 July 2006, pp. 6-13.

¹⁰³⁵ Accused Alex Tamba Brima, Transcript 12 June 2006, pp. 43-44, 54-55; 6 July 2006, pp. 12-13

clear indication that both the Accused and their Defence witnesses are lying about the fact that the Accused were under arrest from Colonel Eddie Town to Freetown.

664. TF1-167, who was also under arrest facing jungle justice also states that the First Accused ordered him to go and meet SAJ Musa and guide him into Colonel Eddie Town.¹⁰³⁶ This is corroborated by TF1-184 who was travelling with SAJ Musa from Koinadugu to Colonel Eddie Town who states that en route to Colonel Eddie Town SAJ Musa radioed the First Accused that they were coming and the First Accused sent TF1-167 to meet them and guide them into Colonel Eddie Town.¹⁰³⁷
665. According to the Prosecution this clearly indicates that the First Accused had been released and was back in command, even if it can be accepted that he was ever detained on Commander 0-Five's orders. According to TF1-334, SAJ Musa radioed the First Accused and told him that he had had an infight with Superman and was on his way to Colonel Eddie Town, which again indicates that the First Accused was not arrested on the arrival of Commander 0-Five.¹⁰³⁸
666. It is the case of the Prosecution that if any former honourables were under arrest when SAJ Musa arrived it was Bioh and Bomblast, who had ostensibly both been accused of being witches but in reality were arrested for not supporting the First Accused in his bid to retain command after SAJ Musa arrived in Colonel Eddie Town.¹⁰³⁹
667. It is the case of the Prosecution that even before SAJ Musa's arrival in Colonel Eddie Town the First Accused and other Accused had started to form a faction consisting of former AFRC council members which did not want to hand over command to SAJ Musa.
668. Whilst at Colonel Eddie Town the First Accused had further radio communications with Mosquito, Issa Sesay and Morris Kallon where greetings were exchanged.¹⁰⁴⁰ SAJ Musa banned communications with the RUF once he arrived at Colonel Eddie Town following his split with Superman in Koinadugu.

¹⁰³⁶ TF1-167, Transcript 15 September 2005, p. 77

¹⁰³⁷ TF1-184, Transcript 27 September 2005, p. 27

¹⁰³⁸ TF1-334, Transcript 25 May 2005, p. 54

¹⁰³⁹ TF1-334, Transcript 16 June 2005, p. 42; TF1-184, Transcript 27 September 2005, pp. 34-35

¹⁰⁴⁰ TF1-334, Transcript 13 June 2005, pp. 33-37

669. According to TF1-184 and TF1-334 the First Accused was in command at Colonel Eddie Town when SAJ Musa arrived.¹⁰⁴¹ After the arrival of SAJ Musa at Colonel Eddie Town with about 250 more SLAs SAJ Musa took over command of all troops at Colonel Eddie Town and restructured the Brigade.¹⁰⁴²
670. SAJ Musa appointed the First Accused as his deputy who was to directly report to him, SAJ Musa appointed the Second Accused as third in command whilst the Third Accused remained as Chief of Staff.¹⁰⁴³ SAJ Musa appointed military supervisors who were to report directly to him but were subordinate to the First Accused.¹⁰⁴⁴ SAJ Musa also made appointments and promotions but kept the basic structure of six battalions.¹⁰⁴⁵
671. At Colonel Eddie Town SAJ Musa called a muster parade and told the troops of his intention to advance to Freetown and reinstate the army.¹⁰⁴⁶ At this muster parade SAJ Musa reminded the troop about crimes against humanity and said that there should be no burning of houses or amputations and that if anybody broke the laws which he had given, disciplinary action would be taken.¹⁰⁴⁷
672. Most Defence witnesses who attended SAJ Musa's muster parade at Colonel Eddie Town accept that SAJ Musa announced his intention to advance to Freetown and that he ordered that crimes should not be committed against the civilian population during the advance.
673. The main difference between the Prosecution witnesses and the Defence witnesses who were on the advance from Colonel Eddie Town to Freetown relates to the position that the Accused occupied when the troop under SAJ Musa left Colonel Eddie Town for Freetown. Whilst the Prosecution witnesses place the Accused in command, the Defence witnesses who were present at Colonel Eddie Town place the Accused as being under arrest.
674. Significantly, however, none of the Defence witnesses corroborated where the First Accused testified that he and the Third Accused escaped from (i.e at Goba Water). On the contrary, DSK-113 said he saw the First and Third Accused after Benguema moving

¹⁰⁴¹ TF1-184, Transcript 29 September 2005, pp. 54-55, TF1-334, 25 May 2005, p. 55

¹⁰⁴² TF1-334, Transcript 25 May 2005, p. 55

¹⁰⁴³ TF1-334, Transcript 13 June 2005, p. 26, Transcript TF1-184 27 September 2005, pp. 41-42

¹⁰⁴⁴ TF1-334, Transcript 13 June 2005, pp. 3-9

¹⁰⁴⁵ George Johnson, TF1-167, Transcript 16 September 2005, p. 8

¹⁰⁴⁶ TF1-184, Transcript 27 September 2005, pp. 40-41

¹⁰⁴⁷ TF1-334, Transcript 13 June 2005, pp. 26-27

around freely, going up and down and sitting with Adamu Mansa and FAT Sesay.¹⁰⁴⁸ Clearly this indicates that the Accused were not under arrest and there was not such a commotion on the death of SAJ Musa as suggested by the First Accused in his evidence.

675. It is also significant that DSK-113 was present when SAJ Musa was buried at Goba Water, however he makes no mention in his evidence of the Accused or anyone else escaping at Goba Water.¹⁰⁴⁹
676. According to the evidence of the First Accused and most of the Defence witnesses who were present at Colonel Eddie Town when the troop advanced from Colonel Eddie Town to Freetown, the brigade left in an organised fashion and continued its advance to Freetown in an organised and structured military fashion.¹⁰⁵⁰
677. The advance party led the way, followed by the HQ party which consisted of the medical unit, radio operators, ammunition, the prisoners and the command including SAJ Musa, with a group in the rear and the RDF battalion supporting the various groups as it advanced.¹⁰⁵¹
678. It is significant that in the First Accused's own evidence he is able to give considerable details about the composition of the HQ Party, how SAJ Musa called the Battalion commanders for briefings at the HQ Party, the content of those briefings, how he was able to hear SAJ Musa talking to his men over the radio and the crux of those conversations at the HQ party and basically how he was able to describe the detailed workings of the Brigade HQ and its movements.¹⁰⁵²
679. The Prosecution submits that the First Accused was able to make all the above observations as the Brigade HQ advanced because he was second in command to SAJ Musa and close to him at all times. The Prosecution submits that if the First Accused was under arrest and closely guarded by even up to 32 guards (according to one Defence witness¹⁰⁵³), it would not have been possible for him to give such detailed evidence regarding how the HQ Brigade operated and in particular what SAJ Musa was doing as the

¹⁰⁴⁸ DSK-113, Transcript 12 October 2006, pp. 105, 114-115.

¹⁰⁴⁹ DSK-113 Transcript 12 October 2006, p. 107.

¹⁰⁵⁰ Exhibit P36, Expert Report of Col. Iron

¹⁰⁵¹ George Johnson, TF1-167, Transcript 15 September 2005, p. 86

¹⁰⁵² Accused Alex Tamba Brima, Transcripts 13 June 2006 and 5 July 2006.

¹⁰⁵³ DAB-033, Transcript 2 October 2006, p. 91.

Brigade advanced from Colonel Eddie Town to Freetown. The First Accused is clearly lying about his position within the HQ Brigade. He was a commander, not a prisoner.

680. The usual structure during the advance was that the advance party would clear the area and then radio for the HQ party to move forward, followed by the rear party. The Troop moved in a strategic manner, carrying out hit-and-run operations on ECOMOG positions for food and ammunition whilst avoiding large scale ECOMOG garrisons such as at Port Loko.¹⁰⁵⁴
681. So organised was the troop structure and movement that even each battalion had its own battalion administration (mirroring that of the brigade administration), with three separate companies each with a company commander allowing both an adequate span of command and chain of command.¹⁰⁵⁵ (*See section The AFRC as a Military Organisation*)
682. According to the Prosecution friction continued between SAJ Musa and the First Accused before SAJ Musa's death at Benguema. Such friction mainly revolved around the First Accused's eagerness to keep in contact with the RUF who were in the rear and SAJ Musa's disowning of the RUF following his split with Superman in Koinadugu.
683. According to TF1-184, before Lunsar SAJ Musa and the First Accused had an argument where SAJ Musa shouted at the First Accused not to communicate with the RUF who were in the rear, at which point the First Accused grumbled about the fact that SAJ Musa was telling them what to do.¹⁰⁵⁶
684. The Prosecution considers this important evidence of the First Accused's intention to take over the troop and link up with the RUF, especially when viewed in the context of his earlier communications with RUF Mosquito, Issa Sesay and Morris Kallon whilst at camp Rosos and Colonel Eddie Town and the First Accused arranging for the arrest of Bio and Bomblast at Colonel Eddie Town for refusing to support his bid to retain command when SAJ Musa arrived at Colonel Eddie Town.
685. At Mamamah Mosquito announced that his troops had attacked RDF and that troops under his command were moving toward Freetown. On hearing this, SAJ Musa accused radio operator Alfred Brown of passing on information to the RUF and warned Alfred Brown

¹⁰⁵⁴ DBK-131, Transcript 26 October 2006, p. 46 and Exhibit P36, Expert Report of Col. Iron.

¹⁰⁵⁵ DBK-131, Transcript 26 October 2006, pp. 58-59.

¹⁰⁵⁶ TF1-184, Transcript 27 September 2005, pp. 43-44.

not to come near the set again.¹⁰⁵⁷ Once again the Prosecution submits it can be inferred that despite SAJ Musa's warning not to contact the RUF and his intention to reach Freetown before the RUF, other members of his troop were still secretly contacting the RUF behind SAJ Musa's back.

686. When the troop reached Newton shortly before the attack on Benguema, SAJ Musa and his men all took an oath that on reaching Freetown they will only say that they have come to reinstate the Army.¹⁰⁵⁸ It is telling that, according to TF1-184, after the oath was taken he heard the First Accused call his men who included the Second and Third Accused and other former members of the AFRC Council to discuss whether SAJ Musa's plan was to their benefit. According to this witness, they decided against SAJ Musa's plan to reinstate the army.¹⁰⁵⁹
687. It is the case of the Prosecution that through the First Accused's continued contacts with the RUF and the fact that SAJ Musa's plan was not to the benefit of the Accused and other former AFRC members that it can be inferred that the Accused and the other former AFRC council members objective on reaching Freetown was to reinstate the old SLA/RUF Junta.
688. During the Junta period all the Accused had held senior positions as honourables and PLOs which entitled them to the benefits of high office. Whilst in the jungle the Accused also enjoyed senior command positions. It is the case of the Prosecution that if SAJ Musa was successful in reinstating the Army then the Accused all ran the risk of at best being restored to the army as members of the other ranks and at the worst facing court martial for their role in the May 1997 coup. Such court martial had already led to the execution of 28 former SLAs who were a part of the AFRC Government in October 1998.
689. After heavy fighting Benguema was captured in late December 1998. It was at Benguema that SAJ Musa was killed after an ammunition dump exploded. TF1-184 believed that the SAJ Musa had been shot in the back of the head from close range by the First Accused.¹⁰⁶⁰ Tellingly, all the Accused, Woyoh and other members on the AFRC Council were close by

¹⁰⁵⁷ TF1-334, Transcript 13 June 2005, pp. 46-48.

¹⁰⁵⁸ TF1-184, Transcript 27 September 2005, pp. 46-47.

¹⁰⁵⁹ TF1-184, Transcript 27 September 2005, p. 47.

¹⁰⁶⁰ TF1-184, Transcript 27 September 2005, pp. 49-61, pp. 105-107.

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when SAJ Musa died.¹⁰⁶¹ Before the troop left Goba Water there was grumbling amongst the troop that the First Accused had killed SAJ Musa.¹⁰⁶²

690. It is the case of the Prosecution that the First Accused conspired along with the other Accused and some of the former AFRC Council members to kill SAJ Musa because they were not in agreement with his plan to reinstate the Army, which may have left them in a vulnerable position. In the alternative, the death of SAJ Musa was extremely convenient for the Accused and some of the other former AFRC Council members who shared the same intention of the Accused. According to TF1-153, the Accused, Woyoh and others were celebrating when the First Accused became commander on the death of SAJ Musa.¹⁰⁶³

691. Support for the Prosecution's case can be found in the fact that one of the first actions that the First Accused took when taking over command after the death of SAJ Musa was to re-establish the previously banned radio contacts with Mosquito to let him know that SAJ Musa was dead and that he was in command.¹⁰⁶⁴

692. The Prosecution submits that the evidence shows that from the death of SAJ Musa until the attack, withdrawal and joint re-attack on Freetown with the RUF, the Accused were working with the RUF in order to capture Freetown and reinstate the Junta.

693. Even at Goba Water (where SAJ Musa was buried) a joint RUF/SLA force under SLA Brigadier Mani and RUF Superman had been advancing to Makeni.¹⁰⁶⁵

694. Upon SAJ Musa's death the First Accused immediately took command of the troop and was even seen wearing SAJ Musa's uniform as a symbol of his assumption to power.¹⁰⁶⁶ The Second Accused was appointed second in command, the Third Accused was appointed third in command, Woyoh was promoted to brigadier and SAJ Musa's chief of security was appointed as the First Accused's chief of security.¹⁰⁶⁷ The First Accused made some changes in appointments and promotions but kept the same brigade

¹⁰⁶¹ TF1-184, Transcript 27 September 2005, pp. 49-61, pp. 105-107; George Johnson, TF1-167, Transcript 16 September 2005, p. 10, TF1-334 Transcript 13 June 2005, pp. 53-54.

¹⁰⁶² TF1-334, Transcript 13 June 2005, p. 57.

¹⁰⁶³ TF1-153 Transcript 22nd September 2005 p 94

¹⁰⁶⁴ George Johnson, TF1-167, Transcript 16 September 2005, p. 11

¹⁰⁶⁵ George Johnson, TF1-167, Transcript 16 September 2005, p. 19

¹⁰⁶⁶ TF1-184, Transcript 27 September 2005, pp. 56, 59-60, TF1-334, Transcript 13 June 2005, p. 57

¹⁰⁶⁷ TF1-334, Transcript 13 June 2005, pp. 59-62, TF1-184, Transcript 27 September 2005, p. 56

administration and battalion structure as SAJ Musa had put in place at Colonel Eddie Town.¹⁰⁶⁸

695. During the advance to Freetown, after the operation to York but before they left for Hastings, the First Accused radioed Mosquito in Kailahun and informed him that the troop wanted to attack Freetown but that he lacked logistics and arms and ammunition and also needed reinforcements. Mosquito agreed to send reinforcements to the First Accused to enable him to enter Freetown.¹⁰⁶⁹
696. Later after the operation to Waterloo the First Accused radioed Issa Sesay who informed him that they (RUF) had captured Kono and were heading towards Makeni and that they were on the way to reinforce the First Accused. The First Accused told Issa Sesay that they were awaiting reinforcements then the entire troop (SLA and RUF) would enter Freetown.¹⁰⁷⁰
697. The First Accused around the same time also contacted Superman. Superman told the First Accused that his troops were moving towards Makeni and promised to reinforce the First Accused's position so that they (RUF and SLA) can enter Freetown.
698. The Prosecution submits that through these radio contacts between the First Accused and the senior most leadership of the RUF in the field (Mosquito, Issa Sesay and Superman) it can be inferred that the First Accused was planning a joint attack on Freetown with the RUF in order to reinstate the Junta. It can further be inferred from all the evidence, including the crime-base evidence dealt with elsewhere in this Brief, that the common intention as between the Accused, other members of the AFRC, and the RUF leadership, was to use any means necessary to achieve this aim, including through the commission of crimes within the jurisdiction of the Special Court.
699. It is also significant that SAJ Musa died at Benguema around 22 December, yet the actual attack on Freetown did not take place until 6 January, nearly three weeks later. Benguema is only about 30 km from Freetown. The clear inference is that for those nearly three

¹⁰⁶⁸ TF1-334, Transcript 13 June 2005, pp. 67-80

¹⁰⁶⁹ TF1-334, Transcript 13 June 2005, pp. 88-89

¹⁰⁷⁰ TF1-334, Transcript 13 June 2005, p. 91

weeks the SLA faction under the First Accused was waiting for the RUF to reinforce them so that they could jointly attack Freetown.

700. As indicated in Col. Iron's report and the evidence of other witnesses, over this three week period food was running short, morale amongst the First Accused's troop was declining and they had been subject to an ECOMOG air attack at Allen Town where they had lost troops.¹⁰⁷¹ Under these circumstances, the First Accused, in order to keep the structure and cohesion of his force together, could no longer afford to await the RUF reinforcements, who were bogged down after Makeni, and thus had no other option but to launch his assault on Freetown.¹⁰⁷²
701. Even after the SLA Faction under the First Accused had successfully taken Freetown the expectation was that the RUF would join them and consolidate their gains in Freetown, as is evidenced by the continued radio communications between the two parties as set out below.
702. At around 7.30 to 8am on 6 January 1999 the SLA faction under the First Accused captured State House which became their headquarters.¹⁰⁷³ On the same day the Second Accused had made radio contact with Mosquito whilst he was outside State House.¹⁰⁷⁴
703. At State House on the first day (i.e. 6 January) the Third Accused announced over local radio that he was chief of staff, that the army had taken over the reins of government from President Kabbah, and that the First Accused was the commander of the troops.¹⁰⁷⁵ This was endorsed later in the day by FAT Sesay over the BBC.¹⁰⁷⁶ On the same day Mosquito announced over Radio France that troops under the command of the First Accused had captured Freetown and State House and that he would continue to defend State House.¹⁰⁷⁷

¹⁰⁷¹ Exhibit P36, Military Expert Witness Report on the Armed Forces Revolutionary Council by Col. Richard Iron, August 2005, D2.8, D2.9.

¹⁰⁷² Exhibit P36, Military Expert Witness Report on the Armed Forces Revolutionary Council by Col. Richard Iron, August 2005, D2.8, D2.9.

¹⁰⁷³ George Johnson, TF1-167, Transcript 16 September 2005, pp. 26-27.

¹⁰⁷⁴ TF1-184, Transcript 27 September 2005, pp. 60-61; Transcript 29 September 2005, pp. 99-100.

¹⁰⁷⁵ TF1-334, Transcript 14 June 2005, p. 19

¹⁰⁷⁶ TF1-334, Transcript 14 June 2005, pp. 20-21

¹⁰⁷⁷ TF1-334, Transcript 14 June 2005, p. 20

704. On 6 January, Gibril Massaquoi was released from Pademba Road Prison and taken to State House where the First Accused was in command.¹⁰⁷⁸ Gibril Massaquoi was a senior RUF leader who along with Steve Bio had been arrested by Issa Sesay and jailed in Sept 1997 for attempting to overthrow Johnny Paul Koroma.
705. Prior to leaving State House on 6 January, Gibril Massaquoi, Steve Bio and the First Accused discussed the failure of the RUF to reinforce the AFRC with arms and ammunition before they invaded Freetown.¹⁰⁷⁹ This, the Prosecution submits, is another clear indication that the First Accused waited as long as he could for RUF reinforcements before being compelled to attack Freetown alone without the RUF support he felt he needed.
706. Later the same day Gibril Massaquoi was called by the First and Third Accused to speak to the BBC and clarify that State House was under the control of a group comprised of both the AFRC and the RUF.¹⁰⁸⁰ This is another clear indication that the First Accused was working with the RUF and anticipating their support in order to re-establish the AFRC/RUF Junta Government.
707. If this had not been the First Accused's intention then there is no logical explanation why he would have called a senior RUF member to make the announcement and allow him to say that both the AFRC forces and RUF controlled State House.
708. The Prosecution submits that this statement was also for the consumption of Mosquito and the other RUF leaders so they should know that the plan to re-establish a joint AFRC/RUF Government was being implemented and that the RUF should hurry to Freetown to join them.
709. Gibril Massaquoi was a former senior member of the RUF and member of the AFRC Supreme Council along with the Accused until his arrest in September 1997. After his release on 6 January from Pademba Road Prison he reported daily to State House where he spent about two to three hours each day and drove around Freetown with Steve Bio in a

¹⁰⁷⁸ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 109-115

¹⁰⁷⁹ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 117

¹⁰⁸⁰ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 122

vehicle given to him by the First Accused.¹⁰⁸¹ This is another indication of the First Accused again striving to work with the RUF.

710. On the second day that Gibril Massaquoi was released from prison he overheard a conversation in State House between the First Accused and Sam Bockarie where the First Accused was discussing with Sam Bockarie his need for reinforcements and ammunition because he was running out. Gibril Massaquoi and Steve Bio also spoke to Sam Bockarie on the issue of sending reinforcements.¹⁰⁸²
711. The next day Gibril Massaquoi heard the Second Accused tell the First Accused that he had spoken to Issa Sesay and Issa Sesay had promised him that Issa Sesay's men were moving to meet the First Accused's forces.¹⁰⁸³
712. Whilst the First Accused's faction were struggling to resist the Nigerians, TF1-167 heard the First Accused speaking to Sam Bockarie. Sam Bockarie told the First Accused to hold their positions and that if the Nigerians were to break through the First Accused was to burn down central Freetown and all important buildings.¹⁰⁸⁴ Through the BBC radio Sam Bockarie sent the same message, namely that if ECOMOG did not stop attacking their position central Freetown its important buildings would be burned down.¹⁰⁸⁵
713. During the second week after the SLA faction had been pushed out of State House by ECOMOG, the First Accused radioed Mosquito and told him that he was still awaiting reinforcements, that ECOMOG were beginning to penetrate and that he had heard about ceasefire talks with the government. Mosquito told the First Accused to ignore any ceasefire talks and to begin to burn some areas in Freetown, especially the important areas.¹⁰⁸⁶
714. Mosquito then announced over the BBC that he was reinforcing the commander in Freetown and had ordered that strategic positions including government buildings,

¹⁰⁸¹ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 5

¹⁰⁸² Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp. 8-10

¹⁰⁸³ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 9

¹⁰⁸⁴ Geroge Johnson, TF1-167, Transcript 16 September 2005, pp. 40-41

¹⁰⁸⁵ Geroge Johnson, TF1-167, Transcript 16 September 2005, p. 41

¹⁰⁸⁶ TF1-334, Transcript 14 June 2005, p. 49

- commercial buildings and banks should be burned down.¹⁰⁸⁷ Shortly thereafter the First Accused gave the order to burn Freetown as the troop retreated.¹⁰⁸⁸
715. During the third week as the troops were retreating at Shankardass the First Accused radioed Sam Bockarie and told him that the troop were now pulling out of Freetown and that they needed arms, ammunition and reinforcements. Mosquito agreed to send the reinforcements and set the meeting point at the Formex building.¹⁰⁸⁹ No reinforcements however were able to break through.¹⁰⁹⁰ Only SLA Rambo Red Goat was able to break through with about 50 reinforcements.¹⁰⁹¹
716. At Kissy Mental Hospital whilst the SLA faction was pulling out of Freetown the First Accused again contacted Sam Bockarie who told him to protect the politicians which they had freed from Pademba Road Prison so that they could be sent to him in Kailahun. The First Accused agreed to do this.¹⁰⁹²
717. At Allen Town during the retreat the First Accused again contacted Sam Bockarie and told him that Freetown was lost and that no reinforcements had reached them. Sam Bockarie told the First Accused to pull out of Freetown and not get trapped.¹⁰⁹³
718. Eventually the Accused and the SLA faction which had fled from Freetown met up at Benguema. An operation was planned at Benguema whereby a joint RUF and SLA force would ambush Guineans in the Hastings area. The ambush was carried out by the Third Accused and RUF Col. Rambo, whereby arms and ammunition was successfully captured and used as a G4 base under guard of SLAs and RUF.¹⁰⁹⁴
719. Later Issa Sesay, Morris Kallon and Superman came to meet the Accused at Benguema. The First Accused addressed the men and said that he was happy that Issa Sesay had come

¹⁰⁸⁷ TF1-334, Transcript 14 June 2005, p. 48

¹⁰⁸⁸ TF1-334, Transcript 14 June 2005, pp.53-54

¹⁰⁸⁹ George Johnson, TF1-167, Transcript 16 September 2005, pp. 49-51

¹⁰⁹⁰ TF1-334, Transcript 14 June 2005, p. 59

¹⁰⁹¹ TF1-334, Transcript 14 June 2005, pp. 56-59.

¹⁰⁹² George Johnson, TF1-167, Transcript 16 September 2005, p. 58

¹⁰⁹³ George Johnson, TF1-167, Transcript 16 September 2005, p. 58

¹⁰⁹⁴ TF1-334, Transcript 14 June 2005, pp. 107-108

to join the SLA and that a joint attack on Freetown should be planned. Issa Sesay was happy with the idea of a joint attack to retake Freetown.¹⁰⁹⁵

720. A two pronged joint attack on Freetown was planned and carried out. The first group were to force their way into Freetown through Hastings. The Second Accused led this attack which included TF1-167 and RUF Rambo. This attack failed.
721. The second group were to force their way through to Freetown using the peninsula route via Tombo.¹⁰⁹⁶ The First Accused, Second Accused, Morris Kallon and Superman were all part of this attack which also failed.¹⁰⁹⁷
722. After the failed attacks the Second Accused and other SLAs headed into the Westside Jungle in the Port Loko area where they were to form the Westside boys under the command of the Second Accused from at least the end of January 1999 to June 1999. The First and Third Accused pulled out to Makeni with RUF Issa Sesay, Morris Kallon and Rambo.¹⁰⁹⁸
723. It is the case of the Prosecution that the SLA and RUF had been working towards the reinstatement of the joint SLA/RUF Government since the AFRC was driven out of power during the intervention in February 1998.
724. The Prosecution case is that the common plan, purpose or design shared by the Accused with other members of the AFRC and members of the RUF existed continuously from the time that the RUF joined the AFRC to form the Junta in May 1997. During the Junta period, when the Junta controlled large parts of the country but was engaged in an armed conflict with ECOMOG and forces loyal to the Kabbah Government, the common aim was to use any means necessary to retain political power and control over the territory of Sierra Leone, including through the commission of crimes within the jurisdiction of the Special Court. During the post-intervention period from 13 February 1998, those sharing this common plan had suffered a severe reversal, having lost control of large parts of the country and having seen the AFRC and RUF forces initially fall into disarray. However, the common plan, purpose or design persisted, notwithstanding a few misunderstandings

¹⁰⁹⁵ TF1-334, Transcript 14 June 2005, pp. 108-109

¹⁰⁹⁶ George Johnson, TF1-167, Transcript 16 September 2005, pp. 60-62

¹⁰⁹⁷ George Johnson, TF1-167, Transcript 16 September 2005, p.61.

¹⁰⁹⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 62

and disagreements between some of the AFRC participants and RUF participants, and between participants within each group: namely to regain and retain political control over the territory of Sierra Leone for the Junta, by any means necessary. In the alternative, the Prosecution submits that if the Trial Chamber is not satisfied that the Accused and other members of the AFRC shared this common plan, purpose or design with members of the RUF, at the very least the evidence establishes beyond a reasonable doubt that the Accused shared this common plan, purpose or design with each other, and with other members of the AFRC.

X. JOINT CRIMINAL ENTERPRISE – POST-INTERVENTION PERIOD

725. The Prosecution submits that on the basis of the evidence presented in relation to the time period following the ECOMOG intervention of February 1998 that removed the AFRC/RUF Junta from power, the Trial Chamber should be satisfied beyond a reasonable doubt of the guilt of the three Accused for the crimes committed for the remainder of the period covered by the Indictment, pursuant to the theory of joint criminal enterprise. It is the Prosecution's case that after the Intervention, as set out in detail above, the AFRC and RUF factions continued to cooperate and plan joint ventures involving the commission of the crimes set out in the Indictment in their bid to regain power.

PLURALITY OF PERSONS

726. The participants in the joint criminal enterprise after the intervention included members of the AFRC, including Brima, Kamara and Kanu, and members of the RUF, including Issa Hassan Sesay, Morris Kallon and Augustine Gbao, as before. The key players in the enterprise following the Junta period 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 in the different locations appearing in the Indictment.

COMMON PLAN

727. The common aim of the three Accused, other AFRC members and RUF members was to use any means necessary to *regain* political power and control over the territory of Sierra Leone. Controlling the diamond wealth of the country as a source of revenue continued to be a primary focus. However, acts designed to terrorize the civilian population and collectively punish civilians for failing to support the Junta picked up pace. 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 of using the population to provide support to the parties to the plan.

728. 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 means chosen to consolidate and retain control of the population was to terrorize civilians into submission and punish those who failed to cooperate.
729. Following the intervention, during the three 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.¹⁰⁹⁹ 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.¹¹⁰⁰ 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.
730. 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.¹¹⁰¹ 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 could settle near the troops.¹¹⁰² Issa Sesay reinforced this order.¹¹⁰³ That very day civilians were

¹⁰⁹⁹ TF1-334, Transcript 17 May 2005, pp. 72-74.

¹¹⁰⁰ TF1-334, Transcript 17 May 2005, p. 87.

¹¹⁰¹ TF1-334, Transcript 17 May 2005, pp. 112-113.

¹¹⁰² TF1-334, Transcript 18 May 2005, pp. 3-6.

¹¹⁰³ TF1-334, Transcript 18 May 2005, p. 3.

pushed from Koidu and the burning of the town commenced.¹¹⁰⁴ Civilians were also pushed from other Kono towns, such as Tombodu and Yomandu.¹¹⁰⁵ 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.¹¹⁰⁶

731. A hierarchical and organized Junta military organization evolved after the Intervention which military organization defended the Kono territory. There were military supervisors,¹¹⁰⁷ battalion commanders, artillery commanders,¹¹⁰⁸ and a director of operations,¹¹⁰⁹ an operations commander,¹¹¹⁰ the chief of command - the Second Accused¹¹¹¹ - and a Sierra Leone Army Brigade.¹¹¹² Various battalions comprising both AFRC and RUF men were assigned to the villages of Kono, including Jagbwema Fiama,¹¹¹³ Tombodu,¹¹¹⁴ Bumpe,¹¹¹⁵ Sewafe,¹¹¹⁶ Yengema,¹¹¹⁷ Woama¹¹¹⁸ and Yomandu.¹¹¹⁹

732. 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

¹¹⁰⁴ TF1-334, Transcript 18 May 2005, p. 9.
¹¹⁰⁵ TF1-334, Transcript 20 May 2005, p. 4.
¹¹⁰⁶ TF1-334, Transcript 20 May 2005, pp. 5-7.
¹¹⁰⁷ Colonel Idrissa Kamara, aka Leatherboot; Colonel Abdul Sesay; Colonel Adams; Colonel Momoh Dorty and Colonel Ibrahim Bioh Sesay. See TF1-334, Transcript 19 May 2005, p. 28.
¹¹⁰⁸ Colonel Isaac Mongor (RUF) and Lieutenant Lagah (AFRC). See TF1-334, Transcript 19 May 2005, p. 36-37.
¹¹⁰⁹ RUF Rambo. See TF1-334, Transcript 19 May 2005, p. 34.
¹¹¹⁰ Hassan Papah Bangura. See TF1-334, Transcript 19 May 2005, p. 28 and Transcript 17 May 2005, p. 108.
¹¹¹¹ TF1-334, Transcript 19 May 2005, p. 28.
¹¹¹² See TF1-334, Transcript 19 May 2005, p. 37.
¹¹¹³ Under the command of Captain Junior. See TF1-334, Transcript 19 May 2005, pp. 17-21.
¹¹¹⁴ Under the command of Colonel Mohamed Savage, aka Mr Die. The Deputy was Staff Alhaji. See TF1-334, Transcript 19 May 2005, p. 21-23.
¹¹¹⁵ Under the command of Lieutenant Kallay. See TF1-334, Transcript 19 May 2005, pp. 23-24.
¹¹¹⁶ Under the command of Lieutenant Mosquito (AFRC). See Witness TF1-334, Transcript 19 May 2005, pp. 24-25.
¹¹¹⁷ Under the command of Lieutenant Tito. See TF1-334, Transcript 19 May 2005, pp. 25-26.
¹¹¹⁸ Under the command of Lieutenant Abubakar Kamara. See TF1-334, Transcript 19 May 2005, p. 26.
¹¹¹⁹ Under the command of Lieutenant Colonel Komba Gbundema (RUF). See TF1-334, Transcript 19 May 2005, p. 32-34.

troops, including those serving under the command of the Second Accused in Kono.¹¹²⁰
There were also radio communications between the two groups.¹¹²¹

733. The three Accused and their AFRC troops moved from Kono to Koinadugu District - first to Mansofinia,¹¹²² and then to Mongor Bendugu, where SAJ Musa and his men were stationed.¹¹²³ There was a brigade administration including the First Accused as the Chief in Command,¹¹²⁴ the Second Accused as the Deputy Chief in Command,¹¹²⁵ the Third Accused as the Chief of Staff,¹¹²⁶ an operation commander,¹¹²⁷ company commanders,¹¹²⁸ military supervisors,¹¹²⁹ an adjutant,¹¹³⁰ a brigade administrator,¹¹³¹ an intelligence officer,¹¹³² a political advisor¹¹³³ and task force commander.¹¹³⁴
734. The three Accused were ordered to establish a base in the North. Along with their troops they left Koinadugu in the Spring/Summer of 1998 and settled in Camp 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.¹¹³⁵ There was also a communication with Mosquito, in which Mosquito reiterated the position that the RUF and AFRC were brothers.¹¹³⁶
735. The Junta troops based at Camp Rosos moved to Colonel Eddie Town after a jet raid and suspected enemy movement at Batkanu.¹¹³⁷ On arrival at Colonel Eddie Town, the habit of securing the area by distributing companies to surrounding villages¹¹³⁸ was repeated. The

¹¹²⁰ TF1-334, Transcript 20 May 2005, pp. 44-50.

¹¹²¹ TF1-334, Transcript 18 May 2005, pp. 27-28.

¹¹²² TF1-334, Transcript 20 May 2005, pp. 57-83.

¹¹²³ TF1-334, Transcript 20 May 2005, p.84

¹¹²⁴ TF1-334, Transcript 20 May 2005, p. 88.

¹¹²⁵ TF1-334, Transcript 20 May 2005, p. 89.

¹¹²⁶ TF1-334, Transcript 20 May 2005, p. 92.

¹¹²⁷ TF1-334, Transcript 20 May 2005, p. 101.

¹¹²⁸ Captain Tito, Captain Foday Marah, aka Bulldoze, Captain Arthur and George Johnson, aka Junior Lion. See TF1-334, Transcript 20 May 2005, pp. 103-107.

¹¹²⁹ Including the Third Accused as acting military supervisor for Company A. See TF1-334, Transcript 23 May 2005, p26-27.

¹¹³⁰ Captain Charles. See TF1-334, Transcript 23 May 2005, p. 27.

¹¹³¹ Major FAT Sesay. See TF1-334, Transcript 23 May 2005, p. 32.

¹¹³² Captain Sammy. See TF1-334, Transcript 23 May 2005, p. 34.

¹¹³³ Coachy Borno. See TF1-334, Transcript 23 May 2005, p. 38.

¹¹³⁴ Captain Osman Sesay, aka Changabulanga. See TF1-334, Transcript 23 May 2005, p. 36.

¹¹³⁵ TF1-334, Transcript 24 May 2005, pp. 33-41.

¹¹³⁶ TF1-334, Transcript 24 May 2005, p. 56.

¹¹³⁷ TF1-334, Transcript 24 May 2005, pp. 71-72.

¹¹³⁸ TF1-334, Transcript 24 May 2005, pp. 87-89.

military hierarchy was again reorganized following the arrival of Commander 0-Five and his men¹¹³⁹ and again following the arrival of SAJ Musa.¹¹⁴⁰ Military operations to secure arms and ammunitions were conducted, to Kukuna¹¹⁴¹ and Mange Bureh.¹¹⁴² There were also radio communications between the First Accused in Colonel Eddie Town and senior RUF commanders, including Mosquito¹¹⁴³ and Issa Sesay and Morris Kallon.¹¹⁴⁴

736. The Junta troops left Colonel Eddie Town around December 1998 en route to Freetown.¹¹⁴⁵ 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 and third in command. 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.¹¹⁴⁶ On 6 January 1999, the three Accused led the invasion of Freetown.

737. 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 command were moving towards Freetown.¹¹⁴⁷ When the troop was in the jungle near

¹¹³⁹ TF1-334, Transcript 25 May 2005, pp. 40-48.

¹¹⁴⁰ TF1-334, Transcript 25 May 2005, pp. 55-56; TT 13 June 2005, pp. 3-26.

¹¹⁴¹ TF1-334, Transcript 25 May 2005, pp. 51-52.

¹¹⁴² TF1-334, Transcript 25 May 2005, pp. 52-53.

¹¹⁴³ TF1-334, Transcript 13 June 2005, pp. 46-48.

¹¹⁴⁴ TF1-334, Transcript 13 June 2005, pp. 28-29. See also TF1-184, Transcript 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.

¹¹⁴⁵ Witness TF1-334, Transcript 13 June 2005, p. 38.

¹¹⁴⁶ TF1-334, Transcript 13 June 2005, pp. 100-103.

¹¹⁴⁷ TF1-334, Transcript 13 June 2005, pp. 46-47.

York, Mosquito told the First Accused that he would send reinforcements.¹¹⁴⁸ 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.¹¹⁴⁹

738. 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.¹¹⁵⁰ 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.¹¹⁵¹ The First Accused ordered such burning to be carried out.¹¹⁵² 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.¹¹⁵³
739. The actions of the troops in defending their position of control over 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”.¹¹⁵⁴ Women were captured and used to satisfy the sexual demands of the Junta troops at State House.¹¹⁵⁵
740. 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

¹¹⁴⁸ TF1-334, Transcript 13 June 2005, pp. 88-89.

¹¹⁴⁹ TF1-334, Transcript 13 June 2005, pp. 91-92.

¹¹⁵⁰ TF1-334, Transcript 14 June 2005, p. 20.

¹¹⁵¹ George Johnson, TF1-167, Transcript 16 September 2005, pp. 40-41.

¹¹⁵² TF1-334, Transcript 14 June 2005, p. 53 & George Johnson, TF1-167, Transcript 16 September 2005, p. 42.

¹¹⁵³ George Johnson, TF1-167, Transcript 15 September 2005, pp. 59-61.

¹¹⁵⁴ George Johnson, TF1-167, Transcript 16 September 2005, pp 54-55 & Transcript 21 September 2005, p. 5.

¹¹⁵⁵ TF1-334, Transcript 14 June 2005, p. 25.

domestic work.¹¹⁵⁶ Throughout Port Loko District the pattern of making areas “fearful” was repeated on the order of the Second Accused.¹¹⁵⁷ 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.¹¹⁵⁸

PARTICIPATION OF THE ACCUSED IN THE COMMON PLAN

741. 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, but is not limited to, 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’.¹¹⁵⁹
- b. 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 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.¹¹⁶⁰ The AFRC troops attacked Karina, killing civilians and burning buildings.¹¹⁶¹ In Karina the Second Accused set fire to a house containing civilians.¹¹⁶²
- c. The First Accused chaired a meeting to discuss the invasion of Freetown. The Third

¹¹⁵⁶ TF1-334, Transcript 14 June 2005, p. 114-116; TF1-024, Transcript 7 March 2005, pp. 52-53.

¹¹⁵⁷ George Johnson, TF1-167, Transcript 16 September 2005, p. 65.

¹¹⁵⁸ George Johnson, TF1-167, Transcript 16 September 2005, pp. 74-78.

¹¹⁵⁹ TF1-033, Transcript 11 July 2005, pp. 13-14; Transcript 12 July 2005, pp. 34-38 and 56.

¹¹⁶⁰ George Johnson, TF1-167, Transcript 15 September 2005, p. 54.

¹¹⁶¹ TF1-184, Transcript 27 September 2005, p. 37; TF1-334, Transcript 23 May 2005, pp. 57-58.

¹¹⁶² George Johnson, TF1-167, Transcript 15 September 2005, pp. 55-56; TF1-334, Transcript 23 May 2005, pp. 66-67.

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.¹¹⁶³

- d. 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.¹¹⁶⁴
- e. 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.¹¹⁶⁵
- f. At Upgun the Third Accused ordered amputations to start and individually amputated the arms of two civilians as a demonstration of “short sleeve” amputation. His subordinates then amputated ten more civilians in his presence.¹¹⁶⁶
- g. 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.¹¹⁶⁷
- h. In Waterloo during the retreat from Freetown the Second Accused ordered the houses on the highway to be set on fire.¹¹⁶⁸ 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.¹¹⁶⁹ Also near Waterloo the Third Accused ordered a captive civilian to be beaten after she lit a cooking fire that produced smoke.¹¹⁷⁰

¹¹⁶³ George Johnson, TF1-167, Transcript 16 September 2005, pp. 16-17.

¹¹⁶⁴ George Johnson, TF1-167, Transcript 16 September 2005, p. 43.

¹¹⁶⁵ TF1-184, Transcript 27 September 2005, p. 65; Transcript 29 September 2005, pp. 70-73.

¹¹⁶⁶ TF1-334, Transcript 14 June 2005, pp. 68-70.

¹¹⁶⁷ George Johnson, TF1-167, Transcript 16 September 2005, pp. 53-54.

¹¹⁶⁸ TF1-334, Transcript 15 June 2005, pp. 11-12.

¹¹⁶⁹ TF1-085, Transcript 7 April 2005, p. 23.

¹¹⁷⁰ TF1-085, Transcript 7 April 2005, p. 28.

- i. At Newton the First Accused gave an order that every commander with a small child should give them basic military training.¹¹⁷¹
- j. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹¹⁷³ 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.¹¹⁷⁴
- k. In Kono, the Second Accused participated in and directed his troops to kill civilians and burn homes during the attack of Koidu Town.
- l. At Sumbuya the Third Accused ordered soldiers to go and “jah-jah”, meaning to loot.¹¹⁷⁵

SHARED INTENT

- 742. 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 regain control of the political and economic power of Sierra Leone and the participation of the Accused in those attacks as set out above.
- 743. The Prosecution submits that the only reasonable conclusion on the basis of the evidence as a whole is that the three Accused all shared the intent to perpetrate the crimes charged in the Indictment relating to the period after the ECOMOG intervention.

¹¹⁷¹ TF1-334, Transcript 15 June 2005, p. 15.

¹¹⁷² George Johnson, TF1-167, Transcript 16 September 2005, p. 65; TF1-334, Transcript 14 June 2005, pp. 66-67.

¹¹⁷³ TF1-023, Transcript 10 March 2005, pp. 36-37. See also TF1-334, Transcript 15 June 2005, pp. 20-21 who states that the Second Accused ordered men to “decorate” Mammah Town and to display executed civilians at Mammah Junction.

¹¹⁷⁴ George Johnson, TF1-167, Transcript 16 September 2005, pp. 65-66; TF1-334, Transcript 15 June 2005, p. 15.

¹¹⁷⁵ TF1-282, Transcript 13 April 2005, p. 21.

CRIMES AS A NATURAL AND FORESEEABLE CONSEQUENCE

744. Alternatively, based upon the evidence of the common design, it was foreseeable that the full extent of the crimes, even if not agreed upon, would be committed and the Accused, with that awareness, nevertheless acted in furtherance of the plan.

OTHER MODES OF LIABILITY

745. The responsibility of the three Accused pursuant to Article 6(1) and 6(3) of the Statute for crimes committed after the Junta period will be addressed by crime-base in the sections that follow.

XI. THE AFRC AS A MILITARY ORGANISATION

GENERAL OBSERVATIONS

746. In assessing the weight, if any, to be afforded to Maj. Gen. Prins's Expert Military Report it is important to analyse:

- i. the sources (both primary and secondary) in terms of reliability and accuracy which Maj. Gen. Prins relied upon throughout his report in reaching his conclusions and,
- ii. the depth and quality of his research and his expertise in certain specialised areas such as military doctrine.

SOURCES

Primary Sources

747. In compiling his report, Maj. Gen. Prins used six primary sources (three retired SLA officers and three serving SLA officers). All of these six officers gave opinion evidence, bar TRC-01, of the condition of the SLA from 1961 to the Coup in May 1997. There is no evidence that they spoke to Maj. Gen. Prins about factual matters on these issues.
748. None of these six officers were a part of the SLA faction with SAJ Musa in the jungle after the Intervention, and as such, were not in a position to observe first hand how the AFRC faction operated in the jungle under SAJ Musa after the Intervention. The information they provided during this period, was again, their opinion.
749. The main primary source, DSK-082, like most of the other primary sources, almost exclusively gave his personal opinions which the Court by its order dated 24 October 2006 held could not form a part of the expert report because they were the opinions of a person not classified as an expert before the Court.
750. On the basis that all of the information which Maj. Gen. Prins received from his primary sources in compiling his report are based on opinion and second hand information, as

regards both the state of the SLA from 1961 to May 1997 and the SLA faction in the jungle after the Intervention, the Prosecution submits that they should be given very little, if any weight, in respect of the parts of Maj. Gen. Prins's Report on which he seeks to rely as forming the basis of his own opinion.

Secondary Sources

751. For the most part Maj. Gen. Prins relied upon the opinions of others as set out in the Truth and Reconciliation Commission (TRC) Report or David Keen's book, *Conflict and Collusion in Sierra Leone*. This court has already ruled that all opinions of others referred to in Maj. Gen. Prins's report shall be disregarded.¹¹⁷⁶
752. Persons who recorded statements before the TRC did not record their statements under oath, their statements were not tested through cross-examination, and they were only asked questions which the commission was interested in finding answers to in terms of its mandate. That mandate was largely to create a historical record of events. It was certainly not focused on the operations of the SLA faction in the jungle under SAJ Musa after the Intervention. The Court has even recognised during the testimony of TRC-01 that the proceedings before the TRC were not to be confused with the Rules of Procedure and Evidence regulating the proceedings of this Court.¹¹⁷⁷
753. Keen, in his own book, states that, "not everyone was telling the truth or remembering events accurately...and that a different set of people would yield a different story...a book like this is a record of perceptions, interpretations and obfuscations as much as it is about facts."¹¹⁷⁸
754. With regard to the state of the SLA from 1961 to May 1997, Maj. Gen. Prins in his report relies almost exclusively on the opinions and views of people who gave evidence before the TRC and David Keen's book.
755. TRC-01 was called by the Defence as a witness of fact and not an expert. He gave evidence of the factual matters of which he was aware of, whilst serving as a senior officer

¹¹⁷⁶ Transcript 24 October 2006, p. 111.

¹¹⁷⁷ TRC-01, Transcript 16 October 2006, p. 96

¹¹⁷⁸ Maj. Gen. Prins, Transcript 19 October 2006, p. 108.

at the front, [REDACTED]

[REDACTED] The Defence did not challenge the evidence of TRC-01, who the Prosecution submits was a both credible and reliable witness. Significantly TRC-01 did not support Maj. Gen. Prins in his assessment of the state of the Sierra Leone Army prior to the Coup in 1997.

DEPTH AND QUALITY OF RESEARCH, CREDIBILITY AND EXPERTISE IN CERTAIN SPECIALISED AREAS SUCH AS MILITARY DOCTRINAL ISSUES

Depth and quality of research

756. It is the submission of the Prosecution that Maj. Gen. Prins's research was lacking both depth and quality. Apart from relying almost exclusively on opinions contained in the TRC Report, Keen's book, and others, who had little if any first hand knowledge of the events on which Maj. Gen. Prins was opining, there is little evidence to suggest that Maj. Gen. Prins, carried out sufficient independent research in compiling his report to enable his report to be of any significant weight.

757. For example, Maj. Gen. Prins, during his extensive research, had not even taken the time to discover the manner in which the TRC statements were recorded. His approach to his assignment seems to have been based on the one he adopted whilst carrying out his report concerning post-traumatic stress syndrome resulting from Srebrenica – namely an analysis of reports already written by others.¹¹⁷⁹

758. The Prosecution submits that this was a flawed methodology which led to over-reliance on the TRC report. A more reliable approach would have been to interview extensively those who were on the ground at the time and discover the facts from them, rather than relying almost exclusively on the works of others. Surprisingly, Maj. Gen. Prins did not consider it necessary to speak to people who had firsthand personal experience of the AFRC faction and how it worked.¹¹⁸⁰

¹¹⁷⁹ Maj. Gen. Prins, Transcript 19 October 2006, pp. 10-18.

¹¹⁸⁰ Maj. Gen. Prins, Transcript 19 October 2006, p. 72.

759. In addition, Maj. Gen. Prins, in writing his report, visited none of the places or battle sites referred to by Col. Iron in his report and completed his research without even leaving Freetown.
760. Apart from the limited use of reliable sources, Maj. Gen. Prins also reverted to using manifestly unreliable sources such as Wikipedia, an online dictionary which can be changed by any online user. This was demonstrated during cross-examination when the definition on 'irregular warfare', which he had footnoted in his report, had been changed.¹¹⁸¹
761. His knowledge garnered during his research, especially into the history of the conflict, which he underlined as being of importance and devoted a large part of his report to, in cross-examination seemed to be lacking.

Credibility as an Independent Expert Witness

762. The Prosecution also submits that both the credibility and reliability of Maj. Gen. Prins, as an independent expert witness, has been greatly brought into doubt through his apparent inflexibility to shift from his stated position, even when confronted with new evidence which, had he had known before, may have changed his findings.
763. For example:
- i. His reluctance to answer questions when they were directly put to him in areas which were well within the purview of a military expert, if those answers tended to contradict his report.¹¹⁸²
 - ii. His reluctance to accept the new evidence of TRC-01 and other Defence witnesses given under oath, which contradicted his own position and especially as they related to Col. Iron's 13 characteristics.¹¹⁸³
 - iii. His reluctance to accept that battlefield commissions could be awarded without the recipient receiving the requisite training.¹¹⁸⁴

¹¹⁸¹ Maj. Gen. Prins, Transcript 20 October 2006, pp. 69-70.

¹¹⁸² Maj. Gen. Prins, Transcript 24 October 2006, p. 53.

¹¹⁸³ Maj. Gen. Prins, Transcript 24 October 2006, pp. 57-60.

- iv. His reluctance to accept that, due to the exigencies of war time, it was often necessary for countries to reduce the time which it spent training recruits before sending them to the battle front.¹¹⁸⁵
- v. His reluctance to accept that a person, who was not personally present, could not describe or comment upon the situation as well as an eyewitness.¹¹⁸⁶
- vi. His reluctance to accept that the SLA faction, whilst it advanced from Colonel Eddie Town to Freetown, was an effective military organisation. This, despite its ability to defeat the ECOMOG troops en route and capture Freetown, and despite him not having an adequate explanation of how this was otherwise possible.¹¹⁸⁷
- vii. His intransigence on his use of absolutes in his report, such as *no* discipline, *no* training, *no* leadership, *no* hierarchy, and *no* working equipment, when faced with the evidence before the court which clearly indicated that all these existed at least to some degree.¹¹⁸⁸
- viii. In particular, his reluctance to accept that the SLA, during the war with the RUF, could not be overrun for a period of six years by the RUF when the SLA had no functioning equipment. Coming from an independent expert witness, this is nothing short of farcical.¹¹⁸⁹

Lack of Expertise in Military Doctrinal Issues

764. By his own admission, Maj. Gen. Prins was a hands-on soldier with limited academic experience.¹¹⁹⁰ His doctrinal experience broadly extended to coastguard duties in the Caribbean.¹¹⁹¹ His background was naval, with limited experience of land forces.¹¹⁹²

¹¹⁸⁴ Maj. Gen. Prins, Transcript 24 October 2006, pp. 34-36.

¹¹⁸⁵ Maj. Gen. Prins, Transcript 20 October 2006, pp. 11-12.

¹¹⁸⁶ Maj. Gen. Prins, Transcript 19 October 2006, pp. 73-82.

¹¹⁸⁷ Maj. Gen. Prins, Transcript 20 October 2006, p. 116.

¹¹⁸⁸ Maj. Gen. Prins, Transcript 20 October 2006, pp. 60-65.

¹¹⁸⁹ Maj. Gen. Prins, Transcript 20 October 2006, pp. 64-66.

¹¹⁹⁰ Maj. Gen. Prins, Transcript 19 October 2006, p. 37.

¹¹⁹¹ Maj. Gen. Prins, Transcript 19 October 2006, p. 36.

Even as a hands-on soldier, his operational duties only included one operational posting outside of the Netherlands.¹¹⁹³

765. His lack of in-depth knowledge concerning military doctrinal issues became apparent during cross-examination where it could be seen that:

- i. he had little knowledge of the historical evolution of the relationship of the linkage between strategic operational and tactical levels, where generally his only source of knowledge on these points was what Col. Iron had alluded to in his own report;¹¹⁹⁴
- ii. his over-reliance on NATO doctrine, which was largely inapplicable in the African context;
- iii. he relied on the Allied Joint Publications (“AJPs”), but was unaware that if a term is not defined in the AJPs then, according to those publications, the definition to be used is that found in the Oxford English Dictionary (11th Edition), e.g. discipline;¹¹⁹⁵
- iv. and his inability to accept, in the face of logical reasoning, that a political component was not a prerequisite to a military organisation having a strategy. For example, the Tamil Tigers.¹¹⁹⁶

CONCLUSION

766. For all the above general reasons, it is the submission of the Prosecution that Maj. Gen. Prins’s military report should be given no weight at all, or in the alternative very little weight.

¹¹⁹² Maj. Gen. Prins, Transcript 19 October 2006, pp. 41-43.

¹¹⁹³ Maj. Gen. Prins, Transcript 19 October 2006, p. 37.

¹¹⁹⁴ Maj. Gen. Prins, Transcript 24 October 2006, pp. 61-72.

¹¹⁹⁵ Maj. Gen. Prins, Transcript 24 October 2006, pp. 36-37.

¹¹⁹⁶ Maj. Gen. Prins, Transcript 24 October 2006, p. 75.

SPECIFIC OBSERVATIONS

767. It would seem that the defence based on the report of their military expert, Maj. Gen. Prins, and his evidence-in-chief, are taking the position that by the time of the 25 May 1997 military coup, the SLA was not worthy of being called a military force when war broke out (i.e. the RUF war in 1991).¹¹⁹⁷
768. In short, the position of the Defence regarding whether the AFRC faction in the jungle could be regarded as a military organisation, seems to be that the SLA was not worthy of being called an army when the war with the RUF came in 1991. Circumstances did not improve and, by the May 1997 coup, the SLA was still not worthy of being called an army.
769. As such, once the AFRC faction was driven into the jungle following the ECOMOG Intervention in mid-February 1998, it was not capable of being a military organisation as it had never been one previously.

THE SLA FROM 1961 UNTIL THE COUP IN 25 MAY 1997

770. This period of the SLA was not considered by Col. Iron as it was not a part of his mandate.
771. It is the submission of the Prosecution that for all the reasons mentioned above, Maj. Gen. Prins's opinion that the SLA was not an effective military organisation up to the May 1997 Coup can be rejected in its entirety.
772. Sweeping statements made by Maj. Gen. Prins, such as stating that the SLA had no discipline, no training, no leadership, no hierarchy, no organisation, no welfare system for the rank and file, no prospect, and no military command and control,¹¹⁹⁸ in the face of the evidence before this Trial Chamber, are clearly both inaccurate and incorrect.
773. It may be that the SLA, before the May 1997 coup, did not have a perfect military organisation when compared with western standards, but it certainly had a military organisation in the African context.

¹¹⁹⁷ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006.

¹¹⁹⁸ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, pp. 18947-18948, para. 139.

774. That military organisation was also effective within the African context. As Maj. Gen. Prins concedes, the primary objective of a military organisation is to fight and defeat its opponent – this is the most important measure of any military organisation. Although after nearly 6 years of war the SLA had not defeated the RUF, it had achieved some notable successes and had not itself been defeated.¹¹⁹⁹

775. The Prosecution assertion above is particularly supported by the evidence before this trial Chamber that,

- i. nearly all the former or serving SLAs (other ranks) received three to six months training of reasonable quality,¹²⁰⁰
- ii. nearly all of the former or serving SLAs put that training into practice during the six year war with the RUF,¹²⁰¹
- iii. the RUF were unable to militarily defeat the SLA over almost six years of war,
- iv. and the evidence of TRC-01, who was a senior commander at the battlefield from 1994 to 1996 during the war with the RUF and held senior staff positions. TRC-01 confirmed that there was both a span of command and effective command and control within the SLA during this period.¹²⁰²

¹¹⁹⁹ Maj. Gen. Prins, Transcript 24 October 2006, p. 81.

¹²⁰⁰ TF1-334 received three months training, Transcript 16 June 2005, p. 17; George Johnson, TF1-167 received three months training, Transcript 15 September 2005, p. 6; TF1-184 received nine months training, Transcript 26 September 2005, p. 78; DAB-023 received six months training, Transcript 31 July 2006, p. 10; DAB-018 received three months training, Transcript 7 September 2006, p. 52; DAB-095 received three months training, Transcript 20 September 2006, p. 4; DBK-037 received four months training, Transcript 3 October 2006, p. 75; DBK-005 received six months training, Transcript 5 October 2006, p. 30; DBK-012 received six months training, Transcript 5 October 2006, p. 74; DBK-129 received six months training, Transcript 9 October 2006, pp. 53-54; DBK-131 received six months training, Transcript 10 October 2006, p. 6; Accused Alex Tamba Brima, Transcript 5 June 2006, pp. 54-55.

¹²⁰¹ TF1-334, Transcript 16 June 2005, p. 17; TF1-184, Transcript 26 September 2005, p. 81; Accused Alex Tamba Brima, Transcript 28 June 2006, p. 29; DAB-018, Transcript 7 September 2006, pp. 49-50; DAB-095, Transcript 28 September 2006, pp. 4-5; DBK-005, Transcript 12 October 2006, p. 6; DBK-129, Transcript 9 October 2006, p. 56; DBK-131, Transcript 10 October 2006, p. 6.

¹²⁰² TRC-01, Transcript 16 October 2006, p. 113.

THE SLA FROM THE 25 MAY 1997 COUP UNTIL THE INTERVENTION CIRCA 13/14 FEBRUARY 1998

776. Once it is accepted that the SLA had an effective military organisation up to the 25 May 1997 coup, there is no evidence to suggest that the SLA remained other than an effective military organisation until the February 1998 Intervention.
777. After the May 1997 coup, the AFRC was able to drive ECOMOG out of Freetown and defeat them at Mammy Yoko. Even Defence witness DBK-012, in his evidence, stated that the AFRC forces would push back the advance of ECOMOG who would then seek a ceasefire before again attacking after having regrouped.¹²⁰³ It should not be forgotten that during this period, ECOMOG had far superior airpower to the AFRC faction, which should have given them a significant advantage in combat.
778. According to TF1-334, there was a military chain of command from Johnny Paul Koroma through to the brigade commanders in the field, and that this chain of command was respected.¹²⁰⁴ Even the concept of position superseding rank was recognised. For example, an honourable, despite being an 'other ranks' soldier, had the ability to command and control officers who were senior in rank to him due to his position.¹²⁰⁵ Discipline was maintained throughout the AFRC period with even 'other rank' honourables who were members of the Supreme Council surrendering to arrest.¹²⁰⁶
779. None of those in the chain of command, as indicated by TF1-334, were interviewed by Maj. Gen. Prins except for Brigadier Mani, and even then Maj. Gen. Prins did not discuss the chain of command with him during the Junta period.¹²⁰⁷ Maj. Gen. Prins spoke to no SLA officer or soldier who was actually apart of the AFRC or SLA during the Junta period.
780. If there was a non-functioning military organisation, with no effective command and control, how was it that the AFRC and RUF held out for over nine months against persistent pressure from ECOMOG (with superior air power), CDF and loyal Government

¹²⁰³ DBK-012, Transcript 6 October 2006, pp. 53-54.

¹²⁰⁴ TF1-334, Transcript 16 May 2005, pp. 89-101 and Transcript 17 May 2005, pp. 16-22.

¹²⁰⁵ DAB-018, Transcript 7 September 2006, p. 57; DBK-131, Transcript 26 October 2006, p. 25.

¹²⁰⁶ TF1-334, Transcript 17 June 2006, p. 4; Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 33-34.

¹²⁰⁷ Maj. Gen. Prins, Transcript 20 October 2006, p. 33.

forces? The evidence suggests that the AFRC put up heavy fighting for at least three to four days before being driven out of Freetown due to a lack of ammunition¹²⁰⁸ on the orders of Johnny Paul Koroma.¹²⁰⁹

781. In short, Maj. Gen. Prins cannot give any adequate explanation as to how the Junta was able to hold out for so long against hostile forces. The Prosecution submits that the only reasonable inference to be made is that, during the Junta period, the SLA remained an effective military organisation with effective command and control.

WAS THE AFRC FACTION A REGULAR OR IRREGULAR FORCE AFTER THE INTERVENTION?

782. It is not disputed, by either the Prosecution military expert (Col. Iron) or the Defence military expert (Maj. Gen. Prins), that the AFRC faction in the jungle was an irregular military force.¹²¹⁰ Maj. Gen. Prins also accepts that an irregular force could also be an organised force,¹²¹¹ and that an irregular force can also act in a structured and co-ordinated way.¹²¹²

783. The only objection that the Prosecution has to the findings of Maj. Gen. Prins is that the reasoning by which he came to this conclusion (although the right conclusion) was flawed due to his lack of military expertise in areas of doctrine.

784. With regard to distinction, Maj. Gen. Prins agreed that combat uniforms would need to be discarded after nine months in the jungle.¹²¹³ He could not comment upon whether there was a deliberate policy in the AFRC not to distinguish themselves.¹²¹⁴

785. Maj. Gen. Prins did not interview a single person who said that it was a deliberate policy in the AFRC to remain indistinguishable and did not see anything to suggest that such a

¹²⁰⁸ DBK-131, Transcript 26 October 2006, p. 26.

¹²⁰⁹ DAB-095, Transcript 20 September 2006, pp. 27-28.

¹²¹⁰ Col. Iron, TF1-301, Transcript 13 October 2005, pp. 83-84 & Maj. Gen. Prins, Transcript 17 October 2006, p. 68.

¹²¹¹ Maj. Gen. Prins, Transcript 20 October 2006, p. 95.

¹²¹² Maj. Gen. Prins, Transcript 20 October 2006, p. 75.

¹²¹³ Maj. Gen. Prins, Transcript 20 October 2006, p. 77.

¹²¹⁴ Maj. Gen. Prins, Transcript 20 October 2006, pp. 78-79.

policy existed.¹²¹⁵ Maj. Gen. Prins agreed that if the AFRC was stealing uniforms and putting them on it was at least trying to distinguish itself.¹²¹⁶

786. The evidence suggests that there was no deliberate policy to remain indistinguishable and that the AFRC faction tried to acquire and wear uniforms wherever possible because they regarded themselves as soldiers. Uniforms, along with arms and ammunition, were also stolen when the AFRC attacked ECOMOG positions.¹²¹⁷

THE AFRC FACTION IN THE JUNGLE AFTER THE INTERVENTION UNDER BOTH SAJ MUSA AND THE ACCUSED

787. Following the Intervention, the AFRC evolved into a purely military organisation. Its leadership in the jungle reflected the political hierarchy of the Junta Government, so that those SLAs or former SLAs who occupied senior political positions in government occupied similarly senior roles in the hierarchy of the military organisation.

788. The AFRC faction following the Intervention was a military organisation with effective command. Individual commanders, like the First, Second and Third Accused were *capable of exercising effective control* over subordinates within the organisation.

789. Prosecution expert witness Col. Iron is an officer in the British Army currently assigned as the United Kingdom's national liaison representative to NATO Headquarters Allied Command Transformation in North Virginia, USA, where he runs NATO's development of land doctrine. He was previously based in the UK running the British Army's doctrine centre. Iron's work in military doctrine covers the whole spectrum of military activity: command, organisation, operation and logistics, and he has been involved in the publication of numerous analyses on the subject.¹²¹⁸

790. Drawing upon his acknowledged expertise and experience in the development of British and NATO military doctrine, Col. Iron devised a methodology – four tests – for determining, from first principles, whether any group was a military organisation and

¹²¹⁵ Maj. Gen. Prins, Transcript 20 October 2006, p. 79.

¹²¹⁶ Maj. Gen. Prins, Transcript 20 October 2006, pp. 79-80.

¹²¹⁷ DBK-131, Transcript 26 October 2006, pp. 46-47.

¹²¹⁸ Exhibit P35, Curriculum of Colonel Richard Iron (OBE); Colonel Iron, Transcript 12 October 2005, pp. 4-6.

whether command in the group was effective.¹²¹⁹ He was extremely well placed to develop a methodology and draw a military judgement in providing his opinion on these issues of military organisation and command.¹²²⁰

791. As indicated above, Col. Iron, on account of his broad operational experience (including eight years of operational experience in Northern Ireland, the Falkland Islands, the Balkans and the Middle East) and, in particular, his academic credentials, the Prosecution submits was in a far better position, both as a matter of doctrine and experience in the field, to reach conclusions on the AFRC as a military organisation than Maj. Gen. Prins (whose background is discussed in greater detail above) who had little operational, and hardly any doctrinal, experience during his career as a more hands on soldier.
792. Col. Iron focused his analysis, in particular, on two periods of command of the AFRC faction: under SAJ Musa from Colonel Eddie Town to the Freetown peninsula in December 1998, and under the First Accused for the immediate advance on, invasion of and withdrawal from Freetown. In the paragraphs below, the Prosecution draws upon Col. Iron's factual analysis, and also relies substantially on evidence led from Prosecution witnesses relating to the AFRC campaigns in Bombali district and Freetown.¹²²¹
793. It is pertinent to note that Maj. Gen. Prins does not dispute Col. Iron's analysis of the AFRC faction's campaigns in either Bombali or Freetown. Nor does he dispute the battles which were fought during this campaign and, indeed, the *modus operandi* of the AFRC faction during such movements and battles.¹²²²
794. The AFRC faction consisted mostly of members or former members of the SLA. Following the withdrawal from Freetown in February 1998, and subsequent detention of

¹²¹⁹ Iron developed his methodology in conjunction with peers in the UK, and following consultations with academic and military colleagues, Transcript 12 October 2005, pp. 11-12, 14.

¹²²⁰ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005. The whole of the report was admitted in evidence, with the proviso that the Chamber would disregard any material which in their judgment went to the ultimate issue: Transcript 14 October 2005, p. 38. Earlier in the course of Colonel Iron's evidence, the Chamber had issued a ruling to the effect that he was not permitted to testify as to whether command in the AFRC faction was effective: Transcript 12 October 2005, pp. 42-43 and Transcript 13 October 2005, p. 2.

¹²²¹ The Prosecution will rely, in particular, upon the evidence of Prosecution witnesses TF1-334 and George Johnson, TF1-167, who were in the unique position of being part of the AFRC faction from its evolution into a military organisation on the withdrawal from Freetown in February 1998, through to the Freetown invasion in January 1999 and thereafter.

¹²²² Maj. Gen. Prins, Transcript 20 October 2006, pp. 101-102.

Johnny Paul Koroma in Buedu,¹²²³ SAJ Musa was the most senior of the surviving members of the AFRC political leadership in the jungle, and therefore leader of the AFRC faction.¹²²⁴

795. The AFRC divided after the withdrawal, with a group occupying Koidu Town under the Second Accused and ultimately RUF command,¹²²⁵ and the rest remaining with SAJ Musa in the north.¹²²⁶ Following the ECOMOG attack on Koidu Town in around April 1998 the group in Kono, at that point under the command of the First Accused,¹²²⁷ withdrew from Kono to Mansofinia.¹²²⁸ They met with SAJ Musa in Koinadugu District,¹²²⁹ and thereafter moved, on SAJ Musa's orders, to the Western Jungle where they set up a base at Rosos in Bombali District.¹²³⁰

796. Following an ECOMOG air raid, the group moved on from Rosos, around September 1998, to a location which became known as Major or Colonel Eddie Town.¹²³¹ There they were joined by SAJ Musa around late November or early December 1998.¹²³² SAJ Musa took up command of the AFRC faction in Eddie Town until his death in Benguema,¹²³³ when the First Accused took over command once again for the invasion of Freetown.¹²³⁴

¹²²³ TF1-046, Transcript 10 October 2005, p. 45; TF1-334, Transcript 17 June 2005, p. 44; George Johnson, TF1-167, Transcript 19 September 2005, p. 62.

¹²²⁴ TF1-334, Transcript 16 June 2005, p. 28; George Johnson, TF1-167, Transcript 19 September 2005, p. 61; TF1-184, Transcript 27 September 2005, p. 41, and Transcript 30 September 2005, p. 58.

¹²²⁵ TF1-334, Transcript 18 May 2005, pp. 21-24.

¹²²⁶ TF1-184, Transcript 27 September 2005, p. 5.

¹²²⁷ TF1-334, Transcript 19 May 2005, p. 8.

¹²²⁸ George Johnson, TF1-167, Transcript 15 September 2005, p. 44; TF1-334, Transcript 20 May 2005, p. 38.

¹²²⁹ George Johnson, TF1-167, Transcript 15 September 2005, p. 47; TF1-334, Transcript 20 May 2005, pp. 85-86; TF1-184, Transcript 29 September 2005, p. 29.

¹²³⁰ TF1-334, Transcript 23 May 2005, pp. 100-101; George Johnson, TF1-167, Transcript 15 September 2005, p. 60.

¹²³¹ TF1-334, Transcript 24 May 2005, pp. 71-74; George Johnson, TF1-167, Transcript 15 September 2005, p. 68.

¹²³² TF1-334, Transcript 25 May 2005, p. 54; George Johnson, TF1-167, Transcript 15 September 2005, pp. 78-79; TF1-153, Transcript 22 September 2005, p. 64; TF1-033, Transcript 11 July 2005, pp. 38-39; DAB-033, Transcript 25 September 2006, p. 59.

¹²³³ TF1-334, Transcript 25 May 2005, p. 55; George Johnson, TF1-167, Transcript 19 September 2005, p. 61; TF1-153, Transcript 23 September 2005, p. 45; TF1-033, Transcript 12 July 2005, p. 15.

¹²³⁴ TF1-334, Transcript 13 June 2006, p. 60; George Johnson, TF1-167, Transcript 16 September 2005, p. 11; TF1-184, Transcript 27 September 2005, p. 56; TF1-153, Transcript 22 September 2005, p. 94; TF1-033, Transcript 11 July 2005, p. 54.

797. In his report, Col. Iron opined that the AFRC faction could be seen as a military organisation with effective command and control in the context of the Sierra Leone war.¹²³⁵
798. Col. Iron devised four tests, which in large part needed to be possessed, to determine whether the AFRC faction in the jungle qualified as a military organization with effective command.¹²³⁶
799. The Prosecution submits that it is a fundamental misunderstanding by Maj. Gen. Prins to suggest that Col. Iron was opining whether the AFRC faction was a traditional military organisation. In only one of the four tests which he devised does Col. Iron refer to a traditional military organisation, and only then to assess whether the AFRC faction possessed the majority of the characteristics which are usually present in a traditional military organisation.
800. It is the case of the Prosecution that while in the jungle, the AFRC faction still qualified as a military organisation with effective command and control despite being an irregular force under Col. Iron's four tests.
801. It is significant to note that it was Col. Iron's opinion that the AFRC, as a military organisation, was probably the most "effective" in Sierra Leone prior to 6 January 1999 invasion.¹²³⁷ Even on the retreat from Freetown, the AFRC faction *still formed a military body with sufficient structure* to ensure that this was a fighting retreat.¹²³⁸
802. It is the Prosecution's submission that though the AFRC was not a *perfect* military organisation, it *was* a military organisation with a clearly recognisable military hierarchy and structure upon which a strong command capability was based. It had the majority of the functional characteristics of a military organisation, and it had internal coherence as a military organisation.¹²³⁹

¹²³⁵ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-7 – E-8, para. E6.

¹²³⁶ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, Part A, para. A3.

¹²³⁷ Colonel Iron, Transcript 13 October 2005, p. 65.

¹²³⁸ Colonel Iron, Transcript 13 October 2005, pp. 67-69. Emphasis added.

¹²³⁹ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-8, para. E6.2.

803. The Prosecution addresses each of Iron's four tests in the following paragraphs. These tests are as follows:

1. Did the group have a recognizable military hierarchy and structure;
2. Did it exhibit the characteristics of a traditional military organization;
3. Was there coherent linkage between strategic, operational and tactical levels; and
4. Was command effective?

TEST 1: DID THE AFRC FACTION HAVE A RECOGNISABLE MILITARY HIERARCHY AND STRUCTURE?

804. According to Col. Iron (and not disputed by Maj. Gen. Prins) there are three criteria in determining whether a group has a recognisable military hierarchy and structure: span of command, chain of command, and staff structure.¹²⁴⁰ Dealing with each three in turn,

a. The span of command:

805. This refers to the number of units, organisations, or sub-units at any one level of command that any one person might command. It is related to the chain of command (see next section). The larger the span of command, the fewer hierarchical levels are needed; smaller spans of command require more hierarchical levels.

806. The span of command is limited by the human brain's capacity to receive, store and process information. The larger the number of units under a single command, the more likely it is for a commander to be mentally overloaded and make inappropriate decisions or no decision at all.

807. Whilst the organisation is static (not moving) or conducting very simple operations, a commander may be able to cope with a wide span of command, with many sub-units. If the organisation is on the move or conducting complex operations then the span of command needs to be narrower, with fewer sub-units.

¹²⁴⁰ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, pp. B-2 – B-4, para. B3; Colonel Iron, Transcript 12 October 2005, pp. 16-18.

808. A workable span of command is essential to effective command. Too many sub-units limit a commander's ability to cope with rapidly changing situations. Too few sub-units create a cumbersome hierarchy which stifles initiative, is slow to respond to change, and becomes bureaucratic. For an organisation to be effective, each level of command should have a workable span of command.
809. At brigade level, the span of command initially consisted of four companies (later redesignated as battalions) which expanded over time to eight battalions in Colonel Eddie Town and for the advance to Freetown. This was a workable span of command while the Brigade was static or when operations were straightforward.¹²⁴¹ On complex operations, the AFRC Faction created an additional ad hoc span of command by appointing the Task Force Commander to command a specific element of the force. For example, in the attack to cross Orugu Bridge, there was a two battalion force to clear the road for the rest of the force to follow – this force was under a single commander with its own span of command.¹²⁴²
810. At the Brigade level, therefore, there is a workable span of command. Indeed, the AFRC was sufficiently sophisticated to adjust the span of command to suit the needs of the situation. This is not disputed by Maj. Gen. Prins.
811. Within each battalion there were a number of companies. Col. Iron stated in his report that battalions consisted of three to four companies, each with a company commander. This was disputed by Maj. Gen. Prins, who opined that there was only one span of command from the brigade to the battalion, that the company level did not exist, and that he had not found any evidence in the transcripts which had suggested otherwise.¹²⁴³ As such, this one span of command was insufficient for AFRC commanders to effectively command their organisation.
812. This view is not supported by the evidence. DBK-037 specifically stated that there were four companies and within each company there were three platoons.¹²⁴⁴ [REDACTED]

¹²⁴¹ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. B-2, fn. 3.

¹²⁴² George Johnson, TF1-167, Transcript 16 September 2005, pp. 15-16.

¹²⁴³ Maj. Gen. Prins, Transcript 20 October 2006, p. 110.

¹²⁴⁴ DBK-037, Transcript 4 October 2006, p. 67.

[REDACTED].¹²⁴⁵ This compares precisely with conventional armies where battalions have three or four companies, each of which consists of three to four platoons.

813. Even Maj. Gen. Prins agreed, when confronted with the above evidence, that it would give the AFRC faction a sufficient span of command.¹²⁴⁶

814. [REDACTED]
[REDACTED] it is even clearer that the AFRC faction had an adequate span of command at battalion level. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]¹²⁴⁷

[REDACTED]
[REDACTED]
[REDACTED]

816. It should also be borne in mind that the AFRC faction consisted mainly of former SLAs who had fought against the RUF and would have been used to establishing and operating workable span of commands throughout their military careers. The Prosecution submits that it would be natural for the AFRC faction to use this experience and adopt a manageable span of command while in the jungle, as shown by the above evidence.

817. The Prosecution therefore submits that, at each level of the AFRC hierarchy (brigade, battalion and company), there was a workable span of command which enabled commanders to effectively command the forces assigned to them.

b. The chain of command

818. The chain of command is the coherent linkage connecting one level of command to the next, i.e. from brigade to battalion and from battalion to company. To be effective it requires working command relationships where subordinates follow the orders of

¹²⁴⁵ DBK-131, Transcript 26 October 2006, p. 59.

¹²⁴⁶ Maj. Gen. Prins, Transcript 20 October 2006, pp. 108-113.

¹²⁴⁷ DBK-131, Transcript 26 October 2006, pp. 59-60.

superiors, and communications from one level to another, so that those orders can be transmitted to lower levels and reports transmitted back to higher levels.

819. Col. Iron found a working chain of command to be present in the AFRC faction. It functioned before the war,¹²⁴⁸ in Camp Rosos and Colonel Eddie Town,¹²⁴⁹ and during the advance from Colonel Eddie Town to Freetown.¹²⁵⁰ This does not seem to have been disputed by Maj. Gen. Prins.

820. It is the case of the Prosecution that a chain of command is established alongside the related span of command.

c. Staff

821. This is the generic name for those officers and other personnel who support and assist the commander.¹²⁵¹

822. Maj. Gen. Prins, in paragraphs 71 and 89 (conclusion) of his report, did not dispute that SAJ Musa established some kind of staff structure.¹²⁵²

823. Even Maj. Gen. Prins concedes, at paragraph 93 of his report, that the AFRC faction had the semblance of a military hierarchy and structure.¹²⁵³ Maj. Gen. Prins also agrees that if the new evidence put before him were to be believed, then there would be a measure of organisation and structure during the advance from Colonel Eddie Town to Freetown.¹²⁵⁴

824. Maj. Gen. Prins also agrees that if the new evidence put before him were to be believed then the AFRC faction would have been an effective force during its advance from Colonel Eddie Town to Freetown.¹²⁵⁵

¹²⁴⁸ TRC-01, 16 October 2006, p.113.

¹²⁴⁹ Col. Iron, TF1-301, Transcript 12 October 2005, p. 50.

¹²⁵⁰ DBK-131, Transcript 26 October 2006, p. 59.

¹²⁵¹ In the conflict in Sierra Leone, the equivalent of the G5 meant the staff branch responsible for looking after civilians – usually abducted civilians – in particular their welfare and taskings. Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, pp. B-2 – B-3, para. B3.4; Colonel Iron, Transcript 12 October 2005, p. 18 & TF1-334, Transcript 24 May 2005, pp. 23-24, 60 & Transcript 16 June 2005, p. 63.

¹²⁵² Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, pp. 18924, 18932.

¹²⁵³ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, p. 18932.

¹²⁵⁴ Maj. Gen. Prins, Transcript 20 October 2006, pp. 131-133.

¹²⁵⁵ Maj. Gen. Prins, Transcript 20 October 2006, p. 136.

825. Based on the above, the Prosecution submits that all three elements of Col. Iron's first test, on whether the group had a recognisable military hierarchy and structure, were met.
826. The Prosecution also submit that the evidence of the First Accused, the other ten to twelve Defence witnesses who were former or serving SLA with the AFRC faction in the jungle, and Prosecution insider witnesses further support the proposition that the AFRC faction had a recognisable military hierarchy and structure.
827. The AFRC had a clearly recognisable military hierarchy and structure, which was very similar to the conventional armies upon which it was modelled.¹²⁵⁶ The First Accused, in determining structure, rank system and ethos, showed his roots in the SLA,¹²⁵⁷ and the influence of that organisation may be seen in the evidence of the First Accused.
828. The First Accused testified that he knew the ranks and positions of individuals whom he claimed were members of the Supreme Council because most of them had been senior officers with whom he had served in the army.¹²⁵⁸
829. He knew what a brigade was and he knew what battalions were. He was keen to emphasise that the "only person" who commands a brigade in the Sierra Leone Army is a "colonel or a brigadier."¹²⁵⁹ He was able to testify, in cross-examination on behalf of the Second Accused, on the different ranks in the SLA hierarchy from private to major-general.¹²⁶⁰ He was less keen to show that he knew about appointments, but he obviously did, and provided this information when it suited him.¹²⁶¹
830. The First Accused was well aware of the principle that appointment superseded military rank. He testified, for example, that *Major* Johnny Paul Koroma, as Defence Minister,

¹²⁵⁶ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-2, para. E2.6, and pp. E-7 – E-8, paras. E6.1-E6.2; Colonel Iron, Transcript 12-13 October 2005.

¹²⁵⁷ Col. Iron, TF1-301, Transcript 12 October 2005, pp. 46-48.

¹²⁵⁸ Accused Alex Tamba Brima, Transcript 6 June 2005, p. 65.

¹²⁵⁹ This may explain partly his promotions of men under his command on the re-structuring of the troop at Mansofinia and Colonel Eddie Town. Accused Alex Tamba Brima, Transcript 12 June 2006, p. 71.

¹²⁶⁰ Accused Alex Tamba Brima, Transcript 20 June 2006, pp. 3-5.

¹²⁶¹ For example, when he was examined on the role of Task Force Commander given by SAJ Musa to George Johnson in Colonel Eddie Town. Accused Alex Tamba Brima, Transcript 13 June 2006, pp. 15-16. The emphasis on ranks was a demonstration of Brima's enthusiasm for a line of defence that he appeared to be pursuing, that because he was an 'other ranks' member of the SLA, he could not possibly have been in command in the bush. For example: Accused Alex Tamba Brima, Transcript 12 June 2006, p. 71. Transcript 20 June 2006, p. 21.

was the superior in hierarchy to *Colonel* SO Williams, the Chief of Army Staff.¹²⁶² The First Accused's accepted knowledge of military ranking is consistent with the evidence of Prosecution witnesses as to numerous promotions given by him in the course of his restructuring of the AFRC troop.¹²⁶³

831. When he joined the army, the First Accused worked full time as a soldier and received three months training when he was taught the parade ground drill, to salute superior officers, learned about muster parades, about military terminology, trained in the use of weapons, in field craft, tactics.¹²⁶⁴ He also learned, of course, about the chain of command in the army. That is, that orders given by those higher up the chain of command – senior ranks – had to be obeyed by the more junior ranks, and, in testifying, showed a keen awareness of the principle that orders of senior officers were there to be obeyed.¹²⁶⁵

832. The First Accused testified that, during training, he followed the commands and orders of his instructors and teachers.¹²⁶⁶ After training, he put into practice on the battlefield what he had been taught.¹²⁶⁷ Prior to the May 1997 Coup, he himself had the authority to give orders to those lower in the chain of command, such as privates when he was a lance-corporal.¹²⁶⁸

Military hierarchy and structure at Mansofinia

833. The First Accused set up a brigade structure in Mansofinia which consisted of a span of command of four units or companies, which later evolved to become battalions.¹²⁶⁹ The structure created at Mansofinia was essentially the same as the structure which lasted up to and including the invasion and withdrawal from Freetown, albeit with some refinements. The number of battalions and brigade staff (known in the AFRC as the “Brigade Administration”¹²⁷⁰) expanded with various changes in appointments.¹²⁷¹

¹²⁶² Accused Alex Tamba Brima, Transcript 4 July 2006, p. 19.

¹²⁶³ See paragraphs below.

¹²⁶⁴ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 16-19. Brima gave further examples of his facility with the terminology and practice of the traditional military during the course of his evidence: Transcript 13 June 2006, pp. 25-26.

¹²⁶⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 19-21. In particular: Transcript 28 June 2006, p. 21.

¹²⁶⁶ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 21.

¹²⁶⁷ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 22.

¹²⁶⁸ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 50.

¹²⁶⁹ TF1-334 testified that the companies became battalions at Colonel Eddie Town: Transcript 24 May 2005, p. 92.

¹²⁷⁰ TF1-334, Transcript 20 May 2005, pp. 90-91.

834. The First Accused appointed himself “Chief of Command” and “Head of the Brigade” and promoted himself to brigadier.¹²⁷² He appointed the Second Accused as Deputy Chief in Command, a member of the Brigade Administration and a brigadier.¹²⁷³ The Third Accused was appointed as Chief of Staff and was also a member of the Brigade Administration. He was not promoted by the First Accused, but remained a colonel.¹²⁷⁴ The First Accused appointed Hassan Bangura¹²⁷⁵ as the Operation Commander, and he too was a member of the Brigade Administration.¹²⁷⁶ The Operation Commander was subordinate to the Chief of Staff.¹²⁷⁷ There were four companies, each with commanders appointed at Mansofinia,¹²⁷⁸ and the commanders (save for Captain Arthur) were all promoted by the First Accused to the rank of captain.¹²⁷⁹ They were subordinate to the Operation Commander and the Chief of Staff.¹²⁸⁰ The Brigade Administration was, according to TF1-334, responsible for taking decisions in the brigade, for the “direct command” of the brigade.¹²⁸¹ Col. Iron testified that these appointments reflected the sort of appointments that are commonly made in the hierarchical structure of a “traditional” army.¹²⁸²

835. Col. Iron testified that the staff officers who supported the First Accused as Chief in Command, known collectively in the AFRC faction as the Brigade Administration, correlated to the staff in a conventional or traditional military organisation.¹²⁸³ For example, the First Accused appointed a Brigade Administrator, Major FAT Sesay,¹²⁸⁴ which correlates directly to the G1 in the conventional army;¹²⁸⁵ and [REDACTED]

¹²⁷¹ Col. Iron, Transcript 12 October 2005, pp. 47-48; Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-1 – E-2, para. E2.

¹²⁷² TF1-334, Transcript 20 May 2005, p. 88.

¹²⁷³ TF1-334, Transcript 20 May 2005, p. 89.

¹²⁷⁴ TF1-334, Transcript 20 May 2005, p. 92.

¹²⁷⁵ Commander A in TF1-334’s testimony.

¹²⁷⁶ TF1-334, Transcript 20 May 2005, p. 99.

¹²⁷⁷ As were the company commanders and the military (also known as company/battalion) supervisors. TF1-334, Transcript 20 May 2005, p. 101.

¹²⁷⁸ These appointments were altered at Camp Rosos. TF1-334, Transcript 20 May 2005, pp. 90-91.

¹²⁷⁹ TF1-334, Transcript 20 May 2005, pp. 102-106.

¹²⁸⁰ TF1-334, Transcript 20 May 2005, pp. 106-107; Col. Iron, Transcript 13 October 2005, pp. 26-27.

¹²⁸¹ TF1-334, Transcript 20 May 2005, p. 90.

¹²⁸² For example, the British or US Army. Colonel Iron’s experience was in the British, US and NATO practice. Col. Iron, TF1-301, Transcript 12 October 2005, p. 58 & Transcript 13 October 2005, pp. 5-6, 11-12.

¹²⁸³ Col. Iron, Transcript 13 October 2005, p. 3.

¹²⁸⁴ Also promoted in Mansofinia: TF1-334, Transcript 23 May 2005, p. 32.

¹²⁸⁵ Col. Iron, Transcript 13 October 2005, pp. 4-5.

██████████,¹²⁸⁶ which correlates to the G3 in a conventional army.¹²⁸⁷ Other positions also had their equivalents in staff branches of the conventional army. For example, the First Accused appointed a provost marshal.¹²⁸⁸ In a traditional army the provost marshal would support the G1 function.¹²⁸⁹

Colonel Eddie Town

836. On the group's arrival in Colonel Eddie Town, the First Accused changed the companies to battalions and promoted all four company commanders to the rank of major.¹²⁹⁰ Others were also promoted in Colonel Eddie Town.¹²⁹¹ The First Accused promoted Major Eddie to the rank of lieutenant-colonel and appointed him as Camp Commandant.¹²⁹² This is yet another position which correlates to a traditional army. In the traditional army, the Camp Commandant is responsible for maintaining the infrastructure of the camp, and reports to the G4 staff branch.¹²⁹³
837. Following the arrival of Commander 0-Five, The First Accused formed two new battalions, and made new appointments and a number of promotions.¹²⁹⁴
838. SAJ Musa restructured the group again on his arrival in Colonel Eddie Town in December 1998. He created, for example, the position of third-in-command, to which he appointed the Second Accused.¹²⁹⁵
839. SAJ Musa also came to Colonel Eddie Town with a further, additional battalion.¹²⁹⁶ He appointed Foday Bah Marah, aka Colonel Bulldoze, as the G4 Commander, responsible for securing arms and ammunition as well as being known as quartermaster following British Army tradition. Foday Bah Marah reported directly to the Operation

¹²⁸⁶ ██████████

¹²⁸⁷ Colonel Iron, Transcript 13 October 2005, pp. 4-5.

¹²⁸⁸ George Johnson, TF1-167, Transcript 15 September 2005, p. 48.

¹²⁸⁹ Col. Iron, Transcript 13 October 2005, pp. 4-5.

¹²⁹⁰ TF1-334, Transcript 24 May 2005, p. 92.

¹²⁹¹ For example, Captain Osman Sesay, the Task Force Commander, was promoted to the rank of major. See TF1-334, Transcript 24 May 2005, p. 92.

¹²⁹² TF1-334, Transcript 24 May 2005, p. 93.

¹²⁹³ Col. Iron, Transcript 13 October 2005, p. 17.

¹²⁹⁴ TF1-334, Transcript 25 May 2005, pp. 39-48.

¹²⁹⁵ TF1-334, Transcript 13 June 2005, p. 26. There is no equivalent position in a traditional army. Col. Iron, Transcript 13 October 2005, p. 102.

¹²⁹⁶ TF1-334, Transcript 13 June 2005, p. 10.

Commander.¹²⁹⁷ Col. Iron testified that this position correlated to the G4 staff branch in US and NATO nomenclature.¹²⁹⁸

Freetown

840. The First Accused appointed himself as Chief-in-Command for the advance to Freetown, with the Second Accused as second-in-command.¹²⁹⁹ The Third Accused was chief of staff.¹³⁰⁰ The First Accused promoted himself to the rank of lieutenant-general, the Second Accused to the rank of brigadier-general and the Third Accused to the rank of brigadier.¹³⁰¹ There was an Operation Commander, who was Commander 0-Five, promoted to colonel,¹³⁰² a Mission Commander, who was Woyoh, also promoted to colonel,¹³⁰³ and George Johnson was appointed to the position of task force commander and promoted to Lt. Colonel.¹³⁰⁴ There was still a Brigade Administration.¹³⁰⁵ Colonel FAT Sesay was the Brigade Administrator.¹³⁰⁶

The First Accused's Evidence

841. The First Accused himself testified to a clearly identified hierarchy established by SAJ Musa at Colonel Eddie Town.¹³⁰⁷ There was a second-in-command, Major FAT Sesay, an adjutant, Captain Eddie, and an OC military police, Captain King. There was a task force commander, an operation commander, and four company commanders appointed.¹³⁰⁸ Most of these appointments correlated to positions in the traditional army.¹³⁰⁹ He also testified to a clearly identified structure of movement on the march to Freetown: the "task force" team in the advance and a "back-up" team as reinforcement leaving Colonel Eddie Town in advance of the rest of the troop.¹³¹⁰ The rest of the troop would include the

¹²⁹⁷ TF1-334, Transcript 13 June 2005, pp. 16-17.

¹²⁹⁸ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. D-4, para. D2.6(k).

¹²⁹⁹ TF1-334, Transcript 13 June 2005, p. 60; George Johnson, Transcript 16 September 2005, pp. 11-13.

¹³⁰⁰ TF1-334, Transcript 13 June 2005, pp. 60-61.

¹³⁰¹ TF1-334, Transcript 13 June 2005, p. 59.

¹³⁰² TF1-334, Transcript 13 June 2005, p. 63.

¹³⁰³ TF1-334, Transcript 13 June 2005, p. 64.

¹³⁰⁴ TF1-334, Transcript 13 June 2005, p. 70.

¹³⁰⁵ TF1-334, Transcript 13 June 2005, p. 78.

¹³⁰⁶ TF1-334, Transcript 13 June 2005, p. 79.

¹³⁰⁷ Accused Alex Tamba Brima, Transcript 13 June 2006, pp. 6-11.

¹³⁰⁸ Accused Alex Tamba Brima, Transcript 13 June 2006, p. 11.

¹³⁰⁹ Col. Iron, Transcript 13 October 2005, p. 4.

¹³¹⁰ Accused Alex Tamba Brima, Transcript 13 June 2006, pp. 16-17.

“headquarters” team – including family members, a medical team or medical orderly, and the signallers – secured by a company at the rear.¹³¹¹

TEST 2: DID THE AFRC FACTION EXHIBIT THE CHARACTERISTICS OF A TRADITIONAL MILITARY ORGANISATION?

842. Col. Iron identified 13 characteristics *which help to define* a military organisation. Not all of these characteristics need to be present. The question required the application of military judgment. It was not, “is this a perfect military organisation?”, but rather “does this demonstrate sufficient characteristics of a military organisation to qualify as such?”¹³¹²

843. Col. Iron concluded that the majority of the 13 characteristics which help to define a military organisation were recognisable in the AFRC faction, although in different form. Importantly, they fulfilled the same *purpose* as traditional functions and were simply adapted to the particular circumstances of the AFRC in the jungle.¹³¹³

844. In essence Col. Iron’s characteristics can be reduced to 11 due to the circumstances and context in which the AFRC operated (as repair and maintenance, and fundraising and finance can be regarded as non-applicable). This was a position which Maj. Gen. Prins also agreed with.¹³¹⁴ The presence of the 13 characteristics is discussed below:

1. Intelligence

845. Both Col. Iron and Maj. Gen. Prins agreed that this characteristic was present within the AFRC faction.

2. Communications

846. Both Col. Iron and Maj. Gen. Prins agreed that this characteristic was present within the AFRC faction.

¹³¹¹ Accused Alex Tamba Brima, Transcript 13 June 2006, p. 18.

¹³¹² Colonel Iron, Transcript 12 October 2005, pp. 15-16; Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. B-1, para. B1.2, and pp. B-4 – B-5, para. 4.1.

¹³¹³ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-4, para. E3.2; Colonel Iron, Transcript 13 October 2005.

¹³¹⁴ Maj. Gen. Prins, Transcript 24 October 2006, pp. 48-49, 53-54.

3. Planning and Orders Process

847. There was a planning and orders process in the AFRC faction. The orders process was carried out orally.¹³¹⁵ TF1-334 testified on the command structure set up at Mansofinia. He said that the brigade administration was responsible for the direct command of the brigade.¹³¹⁶
848. TF1-334, and other Prosecution witnesses, also gave evidence of orders given by the First Accused and other members of the brigade administration. In Freetown, for example, at the Kissy Mental Home, the First Accused ordered burning, killing, and amputations.¹³¹⁷
849. Maj. Gen. Prins agrees that the planning and orders process was present at the start of the operation.¹³¹⁸ It is the case of the Prosecution that a planning and orders process remained throughout the operation.
850. According to Maj. Gen. Prins it was *impossible* for the overall commander to direct the battle or the moves of the force because he lacked communications system.¹³¹⁹ The Prosecution submits that it was possible for the overall commander to direct the battle or moves of the force and that, once again, the use of such an absolute by Maj. Gen. Prins is inaccurate and incorrect.
851. The Prosecution, in support of its contention, relies on the fact that as already discussed that there is evidence of at least a two, if not three-level span of command. This evidence shows that SAJ Musa would initially brief his whole troop at a muster parade of about 900 to 1,200 men. He would then brief his six battalion commanders. Each of his battalion commanders would then brief their three company commanders. Each company commander would brief about 35 men.¹³²⁰
852. Coupled with the use of runners in closely knit defensive positions, and at least nine radios spread between the various battalions and throughout the movement structure (advance,

¹³¹⁵ Colonel Iron, Transcript 13 October 2005, p.33; Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-3, para. E3.1.

¹³¹⁶ TF1-334, Transcript 20 May 2005, p. 90.

¹³¹⁷ TF1-334, Transcript 14 June 2005, p. 84. Evidence of orders by each of the Accused is addressed in later sections of the brief.

¹³¹⁸ Maj. Gen. Prins, Transcript 24 October 2006, pp. 16-17.

¹³¹⁹ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, p. 18939, para. 109.

¹³²⁰ Maj. Gen. Prins, Transcript 24 October 2006, pp. 19-25.

reinforcement, HQ and rear group)¹³²¹ during the advance from Colonel Eddie Town to Freetown, it is the case of the Prosecution that, according to the evidence, the planning and orders process continued throughout the operation.

853. Such engagements and battles fought by the AFRC faction from Colonel Eddie Town to Freetown, and the *modus operandi* of such operations, are fully explained in detail in Col. Iron's report. Such battle engagements included Mange, Lunsar, Masiaka, Allen Town, Freetown and the battles for the Congo River Crosses.¹³²² Significantly, Maj. Gen. Prins does not challenge any of Col. Iron's accounts of the above engagements. Other witnesses also gave evidence of successful engagements at Mile 38 and Benguema.¹³²³
854. The best evidence of the fact that the planning and orders process continued throughout the operation, is the fact that the AFRC faction managed to successfully advance from Colonel Eddie Town to Freetown, in at least three structured groups (advance, HQ and rear), whilst successfully defeating its enemies (ECOMOG and CDF and loyal SLAs). They successfully engaged in major battles at Benguema and other places where, as described in Col. Iron's report, some complex military planning and manoeuvres were both required and successfully carried out.
855. It is the submission of the Prosecution that, based on the evidence before this Trial Chamber, this characteristic was present throughout the operations of the AFRC faction, and that Maj. Gen. Prins statement that it was *impossible* for the for the overall commander to direct the battle or the moves of the force because he lacked communications system, should be rejected as being contrary to the evidence before this Court.

4. Lessons Learnt System & Doctrine Development

856. Both Col. Iron and Maj. Gen. Prins agreed that this characteristic was present within the AFRC faction.

¹³²¹ Maj. Gen. Prins, Transcript 24 October 2006, pp. 19-25.

¹³²² Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, pp. C-13 – D-14.

¹³²³ TF1-334, Transcript 13 June 2005, pp. 44, 50-51; TF1-184, Transcript 27 September 2005, pp. 46, 49; TF1-167, Transcript 16 September 2005, pp. 8-9; DAB-023, Transcript 31 July 2006, p. 75; DBK-131, Transcript 10 October 2006, pp. 79-84.

5. Disciplinary System

857. There was a strict military discipline system in the AFRC.¹³²⁴ TF1-334 testified that the First Accused gave a warning at Mansofinia that any soldier who attempted to run away would be shot on sight. Any civilians who attempted to run away would be shot. The law was “minus you plus you,” meaning that the operation would continue with or without you.¹³²⁵
858. There were laws prohibiting theft of “government property,” meaning arms, ammunition and medical equipment, and also the commission of rape during operations.¹³²⁶ In Major Eddie Town, Prosecution witness George Johnson testified that the First Accused passed laws against stealing “government property” which were written on a card. There were also rules against raping, and any fighter reluctant to go on an ambush was to be publicly flogged.¹³²⁷ In Rosos, TF1-334 testified that there was a “discipline order” in place governing the treatment of forced “wives”. The Mammy Queen was responsible for enforcing the order, under the ultimate control of the Third Accused.¹³²⁸
859. For the First Accused, even on his own evidence, discipline was important. He testified that the RUF were, in contrast to SLAs in the AFRC Junta, not disciplined because RUF personnel refused to be arrested for alleged crimes, whereas SLA honourables who were arrested, obeyed and listened to command, and allowed themselves to be arrested.¹³²⁹
860. There was, in the AFRC faction, a very well reinforced system of oversight in place through the appointments of provost marshal, task force commander, mission commander, battle field inspector, and battalion supervisors. Commanders were sent to the field to monitor the men.¹³³⁰ TF1-334 testified that the First Accused himself punished

¹³²⁴ Col. Iron, Transcript 13 October 2005, pp. 35-36; Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-3, para. E3.1.

¹³²⁵ TF1-334, Transcript 23 May 2005, p. 16; Transcript 14 June 2005, p. 90.

¹³²⁶ George Johnson - TF1-167 called this system of laws “jungle justice,” Transcript 15 September 2005, p. 49.

¹³²⁷ George Johnson, TF1-167, Transcript 15 September 2005, p. 78.

¹³²⁸ TF1-334, Transcript 24 May 2005, pp. 62-68.

¹³²⁹ Accused Alex Tamba Brima, Transcript 8 June 2005, p. 10.

¹³³⁰ TF1-334, Transcript 14 June 2006, p. 90.

indiscipline.¹³³¹ In Bombali district, civilians who had attempted to run away contrary to orders, were shot on the orders of the First Accused.¹³³²

861. George Johnson testified to his appointment as provost marshal in Mansofinia. He testified that this meant that he was in charge of discipline, to ensure that troops would abide by “jungle justice,” and make sure that operational orders were followed.¹³³³

862. In his capacity as provost marshal, George Johnson went on all operations, reported directly to the First or Second Accused and had 11 securities working for him.¹³³⁴ As task force commander in Freetown, George Johnson testified that he was to ensure that troops moved in the “right way” and that disciplinary action was taken where fighters disobeyed laws. He reported to the First Accused.¹³³⁵

863. The Prosecution submits that the three criteria identified by Maj. Gen. Prins as being required for a disciplinary system are too stringent and more applicable to a modern western force as opposed to an irregular force such as the AFRC faction that was fighting in the jungle.¹³³⁶

864. Even then, Maj. Gen. Prins’ criteria were in large part present within in the AFRC faction as will be analysed below.

865. Maj. Gen. Prins’ first criterion is that discipline has to be instilled in military training from the outset. As earlier mentioned, former SLAs formed the backbone of the SLA faction in the jungle. At least ten of these have given evidence before this court that, in both training and in the frontline against the RUF, they were taught to follow orders and that punishments would be likely if they failed to follow orders or were other wise in breach of any rules.¹³³⁷

¹³³¹ TF1-334, Transcript 14 June 2005, p. 95 (“A. On my arrival at the mental home the only thing that I saw was that Gullit shot Colonel Road Block. He shot him on his foot. Q. Do you know why this occurred? A. Yes. Q. Why? A. Gullit said that Colonel Road Block wanted to pass on information to Tina, the wife of SAJ Musa.”)

¹³³² TF1-334, Transcript 23 May 2005, pp. 55-56.

¹³³³ Move on the “right path:” George Johnson, Transcript 15 September 2005, pp. 48-49.

¹³³⁴ George Johnson, Transcript 15 September 2005, pp. 49-50.

¹³³⁵ George Johnson, Transcript 16 September 2005, pp. 20-21.

¹³³⁶ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, p. 18940, para. 114.

¹³³⁷ TF1-184, Transcript 30 September 2005, pp. 51-52; Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 19-21; DAB-018, Transcript 7 September 2006, p. 51; DAB-095, Transcript 28 September 2006, pp. 3-4; DBK-005, Transcript 12 October 2006, pp. 4-5; DAB-033, Transcript 25 September 2006, pp. 38-39; DBK-129, Transcript 18

866. TRC-01, [REDACTED] and whose evidence remained unchallenged, stated the following for the period 1991 to 1996 [REDACTED] [REDACTED] (a) that those who fell short of the normal disciplinary standards expected were ostracised from the training institutions and that disciplinary complaints did not change drastically from 1992 to 1996;¹³³⁸ (b) even towards the end of 1996 when resentment grew within the SLAs against the Kamajors, the SLAs kept their discipline and did not take the laws into their own hands because they were disciplined professional soldiers.¹³³⁹ It is the submission of the Prosecution that a Maj. Gen. Prins first criterion is met.
867. Maj. Gen. Prins' second criterion is that officers and non-commission officers ("NCO") need to lead by example and in a disciplined manner. The submission of the Prosecution is that not a single witness before this court has given any factual evidence that officers and NCOs in the AFRC faction did not lead by example and in a disciplined manner.
868. On the contrary, the success of the SLA prior to May 1997, in their war against the RUF, is an indication that the officers and NCOs did lead by example and in a disciplined manner. How, otherwise, could their success be accounted for?
869. Maj. Gen. Prins' third criterion is that the organisation needs to be organised in such a way that discipline can be maintained and enforced. This clearly existed in the case of the AFRC faction.¹³⁴⁰ As indicated above, rules were in place and those who did not follow them would be punished. There was a provost marshal, MPs, persons who investigated crimes, and a place where arrested persons could be placed under guard.¹³⁴¹ Maj. Gen. Prins agrees that there was a disciplinary system in place but not in the sense in which either he or Col. Iron know it.¹³⁴²
870. Notwithstanding the AFRC faction in large part fulfilling the over-stringent criteria as laid down by Maj. Gen. Prins, the Prosecution takes the view that a more appropriate way of

October 2006, p. 5; DBK-131, Transcript 26 October 2006, p. 9; DBK-117, Transcript 16 October 2006, pp. 31-32; TRC-01, Transcript 16 October 2006, p. 113.

¹³³⁸ TRC-01, Transcript 16 October 2006, p. 89.

¹³³⁹ TRC-01, Transcript 16 October 2006, p. 111.

¹³⁴⁰ DAB-033, Transcript 2 October 2006, p. 86.

¹³⁴¹ DBK-037, Transcript 4 October 2006, pp. 73-75.

¹³⁴² Maj. Gen. Prins, Transcript 24 October 2006, p. 33.

defining discipline is to refer to NATO's doctrine publications – the Allied Joint Publications (“AJP”), which were themselves cited as references by Maj. Gen. Prins.

871. In the AJP terminology, discipline is not defined. According to the AJP, if a word is not defined then the applicable definition is that provided in the Oxford English Dictionary (“OED”).¹³⁴³ The OED defines “discipline” as, “the practice of training people to obey rules or a code of behaviour; controlled behaviour resulting from such training.”¹³⁴⁴

872. It is the submission of the Prosecution that the AJP's definition of ‘discipline’ as reflected in the OED is the applicable disciplinary standard to apply to the AFRC faction. The evidence clearly shows that the AFRC faction in the jungle were trained to obey rules, if there was a suspicion that those rules had been broken there would be an investigation followed by the potential of punishment.

873. This was the system that was in place in the AFRC and it worked for them. Even Maj. Gen. Prins reluctantly agreed that, in a hypothetical situation of the disciplinary procedure based on the evidence brought before this court, there would at least be a limited form of disciplinary system, though not up to a standard of a traditional army.¹³⁴⁵

874. It is the case of the Prosecution that based on all the evidence before this Court, the AFRC faction exhibited the characteristic of a disciplinary system.

6. Recruiting and training

875. Both Col. Iron and Maj. Gen. Prins agreed that this characteristic was present within the AFRC faction.

7. System for Promotions and Appointments

876. The AFRC had a system for appointments and for promotions.¹³⁴⁶ The First Accused demonstrated during his testimony his knowledge of the system of promotions in the army.¹³⁴⁷ According to Prosecution witnesses, the First Accused made a series of

¹³⁴³ AAP-6(2004) - NATO Glossary of Terms, p. VII, para. 4.

¹³⁴⁴ *Oxford English Dictionary, 11th Edition.*

¹³⁴⁵ Maj. Gen. Prins, Transcript 24 October 2006, pp. 38-39.

¹³⁴⁶ Colonel Iron, Transcript 13 October 2005, pp. 39-40; Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, pp. E-3 – E-4, para. E3.1.

¹³⁴⁷ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 50-52.

appointments and promotions, in particular when he re-structured the AFRC group at Mansofinia, and at Colonel Eddie Town.

877. Maj. Gen. Prins concludes in his report that there was no system for promotions and appointments and that promotions were handed out at random.¹³⁴⁸ During his evidence, Maj. Gen. Prins explained what he meant by random as being “not merited.”¹³⁴⁹ Based on the evidence before this court it is clearly incorrect to say that promotions were handed out at random.

878. The evidence before this court clearly indicates that promotions and appointments were based on performance. Namely, if a soldier performed his task in the field well, then he could be promoted either in rank or be given a more senior appointment.¹³⁵⁰ Likewise, if he performed his task badly in the field then he could be either demoted in rank or removed from his appointment completely or given a less senior appointment.¹³⁵¹

879. Various Defence witnesses gave evidence about performance related promotions including: DBK-037¹³⁵² and DBK-131¹³⁵³ as well as Prosecution witnesses TF1-334¹³⁵⁴ and TF1-184.¹³⁵⁵

880. It is also relevant that when promotions were made, generally a senior ranked soldier was not superseded by another soldier who was junior in rank to him at an earlier point in time. This shows that some thought went into the system of promotions and that they were not purely handed out at random.¹³⁵⁶

881. The Prosecution submits that such promotions were battlefield promotions, which are based on the performance of the individual during combat for which no formal schooling is required.

¹³⁴⁸ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, p. 18944, para. 125.

¹³⁴⁹ Maj. Gen. Prins, Transcript 24 October 2006, pp. 42-43.

¹³⁵⁰ TF1-184, Transcript 30 September 2005, p. 76; DBK-037, Transcript 5 October 2006, p. 3.

¹³⁵¹ TF1-334, Transcript 16 May 2005, p. 19; DBK-037, Transcript 5 October 2006, p. 3.

¹³⁵² DBK-037, Transcript 5 October 2006, p. 3.

¹³⁵³ DBK-131, Transcript 10 October 2006, p. 41.

¹³⁵⁴ TF1-334, Transcript 25 May 2005, p. 34.

¹³⁵⁵ TF1-184, Transcript 30 September 2005, pp. 76-77.

¹³⁵⁶ DBK-131, Transcript 10 October 2006, pp. 26-29.

882. The Prosecution submits that, based on the evidence before this court, the characteristic of a system of promotions and appointments did exist within the AFRC faction on the basis of the performance in the field.

8. Logistics Supply

883. The Prosecution concedes that a logistic supply was not present within the AFRC faction, but points out that through its *modus operandi* the AFRC faction nearly always had sufficient logistics for their needs.

9. Repair and Maintenance of Equipment

884. The AFRC faction had no heavy equipment in the jungle and, as agreed by Maj. Gen. Prins, this characteristic was not applicable to the AFRC faction in the jungle.¹³⁵⁷ In essence if something broke they simply stole a new one.

10. Medical System

885. Both Col. Iron and Maj. Gen. Prins agreed that this characteristic was present within the AFRC faction.

11. Fundraising and Finance

886. As agreed by Maj. Gen. Prins, this characteristic was not applicable to the AFRC faction in the jungle.¹³⁵⁸ In essence, they had no need for money as they stole anything they needed.

12. Pay or Reward System for Soldiers

887. Soldiers in the AFRC faction were not paid. As mentioned in the section on '*fund raising and finance*' above, the AFRC faction had no need for money whilst they were in the jungle. According to the Prosecution, the system of pay as a means of reward was not applicable to the circumstances in which the AFRC faction found themselves.

888. There was, however, a non-monetary system of reward through which the soldiers within the AFRC faction could be rewarded. Such non-monetary means of reward were also

¹³⁵⁷ Maj. Gen. Prins, Transcript 24 October 2006, pp. 48-49.

¹³⁵⁸ Maj. Gen. Prins, Transcript 24 October 2006, pp. 53-54.

recognised by Maj. Gen. Prins as being available.¹³⁵⁹ One means was to allow looting, just as the Napoleonic armies had been rewarded after a long and bloody siege.¹³⁶⁰ ‘Operation Pay Yourself’ and similar authorised looting could therefore be seen as ones means of reward after a village was captured.

889. Other means of rewarding soldiers in the AFRC faction was through awarding promotions on the basis of performance and making appointments to more senior positions on the basis of performance.¹³⁶¹ Maj. Gen. Prins agreed that within the AFRC faction’s promotions and appointments could be regarded as non-monetary reward.¹³⁶²

890. The Prosecution accepts that there was no characteristic of payment, but both Col. Iron and Maj. Gen. Prins agreed that the other part of this characteristic, being a system of reward, was also present.¹³⁶³

891. This characteristic was therefore present in the AFRC faction at least in part. The other part was not applicable to the AFRC under the circumstances in which it was operating, i.e. its members had no need for money in the bush as they simply stole whatever they wanted or needed without having to pay for it.

13. Religious Welfare System

892. The AFRC did provide opportunities for religious worship, and, according to Col. Iron’s sources, for both Muslim and Christian prayer.¹³⁶⁴ The First Accused himself testified to the opportunity for prayer provided by SAJ Musa at a muster parade in Colonel Eddie Town.¹³⁶⁵

893. [REDACTED]

¹³⁵⁹ Maj. Gen. Prins, Transcript 24 October 2006, p. 54.

¹³⁶⁰ Maj. Gen. Prins, Transcript 24 October 2006, p. 54.

¹³⁶¹ Colonel Iron, Transcript 13 October 2005, p. 45; Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-4, para. E3.1.

¹³⁶² Maj. Gen. Prins, Transcript 24 October 2006, p. 55.

¹³⁶³ Maj. Gen. Prins, Transcript 24 October 2006, p. 55.

¹³⁶⁴ Colonel Iron, Transcript 13 October 2005, p. 46; Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-4, para. E3.1.

¹³⁶⁵ Accused Alex Tamba Brima, Transcript 13 June 2006, p. 12.

[REDACTED] ¹³⁶⁶
Father Mario was also available to look after the religious welfare of the troop.¹³⁶⁷

894. Even Maj. Gen. Prins agreed that, if the above system was in place, then there would be a religious welfare system.¹³⁶⁸

895. It is the case of the Prosecution that the religious welfare characteristic was present in the AFRC faction at least to the extent that it was sufficient for their needs.

Conclusion on Characteristics

896. Maj. Gen. Prins agreed that, of the 13 characteristics identified by Col. Iron as being indicators of whether a military organisation existed, only 11 were relevant in the case of the AFRC faction due to the context within it operated.

897. According to Col. Iron, and not disputed by Maj. Gen. Prins, it is sufficient that a majority of these characteristic be present in an organisation to qualify it as a military organisation. The degree to which the characteristic is present is not relevant as long as it is identified as being present.

898. The Prosecution submits that, out of the 11 characteristics, all, bar the logistical supply and pay characteristics, were present. Thus there are more than nine out of 11 of the characteristics, which amounts to an overwhelming majority of characteristics present.

899. Even Maj. Gen. Prins agreed that based upon the new evidence, seven and a half of the characteristics were present to some extent, and that a majority of the characteristics had been met although not in the sense of a traditional army.¹³⁶⁹

900. It is the case of the Prosecution that it is not trying to show that the AFRC was a traditional army, but that it was a military organisation. Since the AFRC possesses a majority of Col. Iron's characteristics, the Prosecution submits that it has passed the second test, which Col. Iron devised to see whether the AFRC qualified as a military organisation.

¹³⁶⁶ DAB-033, Transcript 2 October 2006, p. 86.

¹³⁶⁷ DBK-131, Transcript 10 October 2006, pp. 47-48.

¹³⁶⁸ Maj. Gen. Prins, Transcript 24 October 2006, pp. 55-57.

¹³⁶⁹ Maj. Gen. Prins, Transcript 24 October 2006, pp. 57-60.

TEST 3: WAS THERE COHERENT LINKAGE BETWEEN STRATEGIC, OPERATIONAL, AND TACTICAL LEVELS?

901. The goal of this question was to determine the internal coherence of the organisation. Military organisations look at conflict in three levels: the strategic level involves looking at the political goals or aims of the organisation; the operational level involves looking at the planning of major military campaigns to achieve political goals; the tactical level is the level at which actual battles are fought.
902. If the tactical activity on the ground was in support of the strategic and political goals of the organisation, then the organisation is internally coherent throughout.¹³⁷⁰ This, according to Col. Iron, was one of the most important tests to indicate not just the presence of military organisation, but also effectiveness of command throughout the organisation.¹³⁷¹
903. The AFRC faction demonstrated high levels of coherence between strategic, operational and tactical levels.¹³⁷² This may be seen in the evidence of Col. Iron, who mapped a connection between operational objectives, tactical activity, and strategic aims from his factual analysis of the AFRC faction's activities in timeframes between February 1998 and February 1999.
904. Drawing upon his sources,¹³⁷³ Col. Iron was able to infer, for example, the strategic aims of the AFRC faction in the period May to October 1998 - to establish the AFRC as an independent force for eventual counter-offensive. The connected operational objectives were, on Col. Iron's analysis, to create an operational area separate from the RUF, and to build up numerical and logistic strength of the force. Examples of tactical activity going to support the operational level objectives included establishing bases at Rosos, then Eddie

¹³⁷⁰ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, pp. B-8 – B-9, para. B5; Colonel Iron, Transcript 12 October 2005, p. 20.

¹³⁷¹ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-5, para. E4.1.

¹³⁷² Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-6, para. E4.5, and p. E-8, para. E6.1(c).

¹³⁷³

Town, establishing a training camp to train recruits, raiding ECOMOG garrisons to capture supplies, and creating publicity for the AFRC rather than the RUF.¹³⁷⁴

905. None of the strategic aims, operational objectives, or examples of tactical activities over the time periods, and as specified in Col. Iron's matrix in his report, have been challenged by Maj. Gen. Prins.¹³⁷⁵
906. There is no evidence to suggest that Col. Iron's inferences of the strategic objectives as contained in his matrix are incorrect. During his research, Maj. Gen. Prins also found no evidence to suggest that Col. Iron's inferences were incorrect.¹³⁷⁶ On the contrary, the evidence suggests that Col. Iron is correct in his inferences. For example, for the period February to April 1998, Maj. Gen. Prins, on numerous occasions, opined in his evidence that the initial aim of the AFRC faction was survival and hence it set up defensive positions.¹³⁷⁷
907. The only strategic objective which the Prosecution considers needs to be modified is that, running parallel to SAJ Musa's aim to come to Freetown to reinstate the army, was the strategic objective of the Accused, former AFRC council members, and the RUF to come to Freetown to reinstate the AFRC government.
908. On SAJ Musa's death, the strategic objective of the AFRC faction to come to Freetown to reinstate the army died with him, and thereafter, the only strategic objective was that held by the Accused, other former members of the AFRC government, and the RUF leadership to come to Freetown and reinstate the AFRC government.
909. An example of tactical activity supporting operational level objectives may be seen in the First Accused's orders prior to the operation in Karina that Karina should be "the number one point of demonstration" of the Junta forces.
910. In Maj. Gen. Prins' report, his main objection to there being any coherent linkage between strategic, operational, and tactical levels seems to lie in his view that no grand strategy

¹³⁷⁴ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-5 – E-6, para. E4.2-E4.3; Colonel Iron, Transcript 13 October 2005, pp 48-52.

¹³⁷⁵ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-5 – E-6.

¹³⁷⁶ Maj. Gen. Prins, Transcript 24 October 2006, p. 72.

¹³⁷⁷ Maj. Gen. Prins, Transcript 20 October 2006, p. 83.

level existed within the AFRC faction, and due to the lack of this element there could be no cohesion between strategic, operational, and tactical levels.

911. According to Maj. Gen. Prins' doctrinal definition of grand strategic level, because the AFRC faction's strategy was not being geared towards the needs of a state, and that this strategy was the sole responsibility of the government, the AFRC faction could not have a strategy.¹³⁷⁸
912. The case of the Prosecution is that Maj. Gen. Prins' conclusion that an organisation cannot have a strategy unless it represents part of a state and has a government is a flawed interpretation of military doctrine.
913. Maj. Gen. Prins agrees that doctrines are written by states, alliances, or other entities to reflect their own needs. So, for example, a NATO doctrine may not be suitable to other countries with different cultural, historical, and strategic needs.¹³⁷⁹ As such, Maj. Gen. Prins accepts that doctrine is flexible and reflects the need of each country, alliance, or other entity. A doctrine is therefore not exclusively a national phenomenon, but can be used for other organisations such as the AFRC, Tamil Tigers, etc.
914. Strategy, as a part of doctrine, is not defined in the AJP, so according to the AJP, the definition of strategy is that found in the OED.¹³⁸⁰ According to the OED, strategy is defined as, "1. a plan defined to achieve a particular long term aim, 2. the art of planning and directing military activity in a war or battle."¹³⁸¹
915. There is no mention of state or government in this definition of strategy, and even Maj. Gen. Prins agrees that strategy is achieving the ultimate aim which you want to accomplish.¹³⁸²
916. It is the case of the Prosecution that military organisations can have a strategy despite not having any political oversight, such as ZIPRA (Zimbabwe Peoples Revolutionary Army), the Tamil Tigers, etc. Maj. Gen. Prins agrees with this proposition.¹³⁸³

¹³⁷⁸ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, p. 18949.

¹³⁷⁹ Maj. Gen. Prins, Transcript 24 October 2006, pp. 64-66.

¹³⁸⁰ AAP-6(2004) - NATO Glossary of Terms, p. VII, para. 4.

¹³⁸¹ Oxford English Dictionary, 11th Edition under "strategy".

¹³⁸² Maj. Gen. Prins, Transcript 24 October 2006, pp. 67-68.

917. Maj. Gen. Prins also agrees that there is no doctrinal reason why an irregular force cannot have a strategy.¹³⁸⁴ Both the Prosecution and Defence accept that the AFRC faction in the jungle was an irregular force.¹³⁸⁵
918. The question then becomes what that strategy was, and the submission of the Prosecution is that the strategy is SAJ Musa's, which has been set out by Col. Iron in the matrix¹³⁸⁶ to his report based upon his own sources and strengthened by all the evidence which has now come before this Court.
919. According to Maj. Gen. Prins, coherence is only achieved if those strategic aims were articulated and communicated by SAJ Musa to his subordinate commanders. The case of the Prosecution is that there is an abundance of evidence before this court to show that SAJ Musa articulated his strategic objectives, not only to his subordinate commanders, but also regularly to his entire troop at muster parades.
920. The evidence shows that nearly every former SLA who was with SAJ Musa in the jungle heard SAJ Musa say that they were coming to Freetown in order to reinstate the national army.¹³⁸⁷
921. The Prosecution submission is that, in terms of military doctrine, there is no reason why an irregular force such as the AFRC cannot have a strategy which needs political oversight. This is a position which Maj. Gen. Prins agrees with.¹³⁸⁸
922. Once that strategy is articulated and communicated to the subordinate commanders (as it was in the case of the AFRC, especially through its adequate span and chain of command), the Prosecution submits that the third test of whether there was coherent linkage between strategic, operational and tactical levels has been satisfied in the case of the AFRC faction.

¹³⁸³ Maj. Gen. Prins, Transcript 24 October 2006, pp. 69, 74.

¹³⁸⁴ Maj. Gen. Prins, Transcript 24 October 2006, pp. 70-71.

¹³⁸⁵ Maj. Gen. Prins, Transcript 24 October 2006, p. 70.

¹³⁸⁶ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-5 – E-6.

¹³⁸⁷ DAB-023, Transcript 31 July 2006, p. 22; DAB-095, Transcript 20 September 2006, pp. 58-59; DAB-033, Transcript 25 September 2006, p. 89; DBK-037, Transcript 3 October 2006, p. 104; DBK-012, Transcript 6 October 2006, pp. 4, 82.

¹³⁸⁸ Maj. Gen. Prins, Transcript 24 October 2006, p. 75.

This is a proposition which Maj. Gen. Prins also agrees with from a hypothetical standpoint.¹³⁸⁹

923. The Prosecution submits that having passed three of the four tests devised by Col. Iron to qualify as a military organisation (albeit irregular and not in the traditional sense), the AFRC only needs to pass the fourth test of whether command was effective.

TEST 4: WAS COMMAND EFFECTIVE?

924. Col. Iron used a model of effective command encompassing three elements: decision-making (deciding what to do), leadership (getting your subordinates to do it), and control (supervising its achievement).¹³⁹⁰ He determined that the AFRC faction had a strong “command capability.”¹³⁹¹

Decision-making

925. In the AFRC faction, throughout the movement to the Freetown peninsula, decision-making was conducted in a rational, coherent way with orders being passed down from the command group.¹³⁹² The role of the Brigade Administration in decision making, and the orders process, has been addressed in the paragraphs above.¹³⁹³

Leadership

926. Iron testified that leadership is an intrinsic part of motivating a force. Military organisations have to provide powerful psychological motivators where, in particular,

¹³⁸⁹ Maj. Gen. Prins, Transcript 24 October 2006, p. 75.

¹³⁹⁰ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. B-9 – B-11; Col. Iron, Transcript 12 October 2005, p.21.

¹³⁹¹ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-7, para. E5.5, and p. E-8, para. E6.1(d). The whole of the report, including the paragraphs dealing with this issue were admitted, with the proviso that the Chamber would disregard any material which in their judgment went to the ultimate issue (Transcript 14 October 2005, p. 38). Earlier in the course of Col. Iron’s evidence, the Chamber had issued a ruling to the effect that he was not permitted to testify as to whether command in the AFRC faction was effective (Transcript 12 October 2005, pp. 42-43; Transcript 13 October 2005, p. 2).

¹³⁹² Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-6, para. E5.2; Colonel Iron, Transcript 13 October 2005, p. 63.

¹³⁹³ TF1-334, Transcript 23 May 2005, p. 16 & Transcript 14 June 2005, p. 90.

physiological motivators, like shelter and security, are suspended. Leadership may be provided through a combination of example, persuasion, and compulsion.¹³⁹⁴

927. In the AFRC, leadership was a very personal issue, with leaders leading personally and sharing the same dangers and conditions as their soldiers.¹³⁹⁵ In the example of the Freetown invasion, the First Accused, by deciding to attack Freetown following SAJ Musa's death, demonstrated leadership in providing the motivation the force needed.¹³⁹⁶ TF1-334 also testified to the First Accused's use of leadership by compulsion.¹³⁹⁷

Control

928. There are three aspects to control: direction, meaning communicating a decision once made; oversight, meaning the process of ensuring orders get implemented (oversight needs communications and reporting systems and to be backed by a disciplinary system); and coordination of subordinate activities.¹³⁹⁸

929. In the AFRC faction, there was strong direction provided by orders given face to face. There was much effort spent in creating a system of oversight. The battalion supervisors and the battlefield inspector all supported the commander's system of control, ensuring subordinates fulfilled their orders, and that the commander was informed of the progress of operations.

930. The AFRC coordinated the efforts of subordinate units through the personal presence of commanders. The appointments of taskforce commander and mission commander were created to enable such coordination of, for example, two or more battalions operating together on the same mission.¹³⁹⁹

¹³⁹⁴ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-6 – E-7, para. E5.3.

¹³⁹⁵ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-6 – E-7, para. E5.3; Colonel Iron, Transcript 13 October 2005, p. 64.

¹³⁹⁶ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-6 – E-7, para. E5.3; Colonel Iron, Transcript 13 October 2005, p. 64.

¹³⁹⁷ TF1-334, Transcript 23 May 2005, p. 16 & Transcript 14 June 2005, p. 90.

¹³⁹⁸ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-7, para. E5.4; Colonel Iron, Transcript 13 October 2005, pp. 62-63.

¹³⁹⁹ Exhibit P36, *Military Expert Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone*, by Col. Richard Iron, August 2005, p. E-7, para. E5.4; Colonel Iron, Transcript 13 October 2005, p. 64.

931. In short, Col. Iron concluded that the AFRC faction had a strong command capability. This conclusion by Col. Iron was not challenged by Maj. Gen. Prins, either in his report or in his evidence.

932. Based on the evidence before this court of how the AFRC faction operated in the jungle, and in particular how it managed to defeat its enemies and advance successfully from Colonel Eddie Town to Freetown and capture Freetown from ECOMOG, the Prosecution submits that the fourth test devised by Col. Iron, being that of having effective command, has been passed by the AFRC faction.

CONCLUSIONS

933. Having passed all four tests devised by Col. Iron, it is the case of the Prosecution that the Trial Chamber must accept Col. Iron's conclusion that the AFRC faction was a military organisation with effective command, and reject the findings of Maj. Gen. Prins in their entirety, without even considering the weaknesses in both Maj. Gen. Prins' sources and his own relative inexperience in military doctrinal issues.

934. In short, the AFRC faction was an irregular military organisation which had effective command.

935. The Prosecution further submits that based on the evidence of span of command and chain of command, and the manner in which the AFRC was structured (brigade, battalion and company) and moved, and though its *modus operandi*, it was also an organised force, albeit irregular. Maj. Gen. Prins also agrees that an irregular force can be both a structured and organised force.¹⁴⁰⁰

936. The Prosecution further submits that not only was the AFRC faction a military organisation, it was also an effective military organisation in the context of the Sierra Leone war.

937. One must not lose sight of the fact that, as agreed by Maj. Gen. Prins, at a time of war the overall objective of war is for one side to defeat the other side in the conflict. As agreed

¹⁴⁰⁰ Maj. Gen. Prins, Transcript 24 October 2006, pp. 76-77.

by Maj. Gen. Prins, if a military organisation is to be categorised as effective it simply needs to be better than its opponents.¹⁴⁰¹

938. On the basis that the AFRC was able to march from Colonel Eddie Town to Freetown, defeating its enemies on the way, and capture Freetown, the AFRC faction was better than its opponents. It can therefore be regarded as an effective, irregular military organisation. This proposition is also in large part agreed to by Maj. Gen. Prins.¹⁴⁰²

THE (NON) EXISTENCE OF A JOINT MILITARY OPERATIONAL STRUCTURE BETWEEN THE RUF AND AFRC

939. This issue is addressed by Maj. Gen. Prins in his report.¹⁴⁰³ The Prosecution does not consider this aspect of Maj. Gen. Prins's report as being relevant to its case.

940. It is not the case of the Prosecution that the AFRC and RUF had integrated command structures as addressed in the above parts of Maj. Gen. Prins's report.

941. It is the case of the Prosecution that the AFRC faction and RUF factions maintained their independent chains of command and worked together in trying to achieve the ultimate common objective of restoring the AFRC government. This is akin to how the allies operated during WWII, i.e. working together with separate chains of command with the ultimate shared objective of defeating Nazi Germany.

942. Even in Kono, after the Intervention when the Second Accused was in command of the AFRC faction and Superman was in command of the RUF faction, it is the case of the Prosecution that both these factions were working together with their separate chains of command. Decisions were made by the Second Accused and Superman, although the Prosecution accepts that Superman was superior to the Second Accused in Kono.

¹⁴⁰¹ Maj. Gen. Prins, Transcript 24 October 2006, pp. 81-82.

¹⁴⁰² Maj. Gen. Prins, Transcript 24 October 2006, pp. 81-82.

¹⁴⁰³ Exhibit D36, *Military Expert Report on the Armed Forces Revolutionary Council Faction*, by Maj. Gen. (retired) W.A.J. Prins, July 2006, pp. 18954-18965.

THE EFFECTIVENESS OF THE AFRC AS A MILITARY ORGANISATION

943. Col. Iron, in his testimony, stated that the AFRC was the most effective military organisation in Sierra Leone at the time of the invasion of Freetown. He supports this statement with descriptions of the battles the AFRC fought on their way to Freetown: Mange, Lunsar, Masiaka, Benguema, Jui Bridge, and Uppun Roundabout. In each of these battles the AFRC faction was victorious, against the regular and well equipped armies of Nigeria and Guinea supported by Nigerian fighter ground-attack aircraft.
944. It is the position of the Prosecution that the Defence has totally failed to explain this military success of the AFRC on the route to and attack on Freetown.
945. Although Maj. Gen. Prins stated in Court that he did not disagree with Col. Iron's detailed descriptions of the conduct of the AFRC faction's battles, he subsequently denied that the AFRC faction had had to fight en route to Freetown. He never explained this contradiction in his testimony. When presented with the evidence that had been given to the Court that battles had been fought by the AFRC (including evidence given by the First Accused¹⁴⁰⁴) he declined the opportunity to change his mind.
946. The only argument used in Maj. Gen. Prins's report to explain the AFRC faction's ability to attack and capture much of Freetown, was that they had used abducted civilians to swamp the ECOMOG defences, leaving ECOMOG no choice but to abandon their positions. There has been absolutely no evidence presented to the Court to support this assertion. Indeed, the evidence has pointed overwhelmingly to abducted civilians being held in the centre of the advance column with headquarter elements, behind the fighting elements of the force. Only after a position had been cleared of enemy were the headquarters and abducted civilians called forward.
947. It is the Prosecution's case that the military success of the AFRC faction was entirely due to its own high professional standards as a military organisation and the effective leadership of its senior command, within the context of an African conflict.

¹⁴⁰⁴ Accused Alex Tamba Brima, Transcript 14 June 2006.

XII. LAW APPLICABLE TO THE CHARGES IN THE INDICTMENT (I)

CRIMES UNDER ARTICLE 2 OF THE STATUTE – CONTEXTUAL ELEMENTS

948. This Trial Chamber has previously defined the contextual elements that must be proved in relation to any crime against humanity as follows: (a) there must be an attack; (b) the attack must be widespread or systematic; (c) the attack must be directed against any civilian population; (d) the acts of the accused must be part of the attack; (e) the accused must have knowledge that his acts constitute part of a widespread or systematic attack directed against a civilian population.¹⁴⁰⁵

a) The attack

949. The concept of “attack” must be distinguished from “armed conflict”.¹⁴⁰⁶ An attack is not limited to the use of armed force, but refers to a campaign, operation or course of conduct directed against a civilian population, and encompasses any mistreatment of the civilian population.¹⁴⁰⁷

b) Widespread or systematic nature of the attack

950. The attack must be *either* widespread *or* systematic, i.e. the requirement is disjunctive.¹⁴⁰⁸ As stated by this Trial Chamber, referring to the jurisprudence of the International Tribunals, the term “widespread” denotes “massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed to multiple victims,” while “systematic” is deemed to refer to “organized action following a regular pattern and

¹⁴⁰⁵ *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-473, “Decision on Motions for Judgment of Acquittal Pursuant to Rule 98”, 21 October 2005, para. 55; see also *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-469, “Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98” (*Brima*, Decision on Motion for Acquittal), 31 March 2006, para. 42.

¹⁴⁰⁶ *Brima*, Decision on Motion for Acquittal, para.42.

¹⁴⁰⁷ *Brima*, Decision on Motion for Acquittal, para.42; *Prosecutor v Limaj et al.*, IT-03-66-T, “Judgment”, Trial Chamber, 30 November 2005, para. 182.

¹⁴⁰⁸ *Brima*, Decision on Motion for Acquittal, para.42; *Kordic* Appeal Judgment, para. 94. The ICTY Appeals Chamber has stated: “the assessment of what constitutes a ‘widespread’ or ‘systematic’ attack is essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore ‘first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic’. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a ‘widespread’ or ‘systematic’ attack vis-à-vis this civilian population.” *Kunarac* Appeal Judgment, para. 95.

carried out pursuant to a pre-conceived plan or policy, whether formalized or not.”¹⁴⁰⁹ It is the attack itself and not the individual acts of the accused that must be widespread or systematic.¹⁴¹⁰ Thus, even a single act perpetrated in the context of a widespread or systematic attack upon civilian population can be sufficient to bestow individual criminal liability upon the perpetrator.¹⁴¹¹ When establishing that there was an attack against a particular civilian population, it is irrelevant whether the other side in a conflict also committed crimes against a civilian population.¹⁴¹²

c) Attack directed against a civilian population

951. This Trial Chamber has adopted the broader interpretation of the term “civilian population”¹⁴¹³ which includes not only acts committed against civilians in the strict sense, but also persons who have taken no active part in the hostilities, or are no longer doing so, including members of the armed forces who laid down their arms and persons placed *hors de combat* by sickness, wounds, detention or any other reason.¹⁴¹⁴

952. Such an interpretation is also consistent with recent jurisprudence.¹⁴¹⁵ The attacked population must be *predominantly* civilian so that the presence of non-civilians among it “does not change the civilian character of that population.”¹⁴¹⁶

953. The civilian population must be *primarily* targeted. This Trial Chamber indicated that in determining this element, such factors as the means and methods used in the course of the attack, the status and number of the victims, the nature of the crimes committed in course

¹⁴⁰⁹ *Brima*, Decision on Defence Motion for Acquittal, para.42; *Akayesu* Trial Judgment, para. 580; *Tadic* Trial Judgment, para. 648; *Norman* Decision on Motion for Acquittal, para. 56; *Blaskic* Appeal Judgment, para. 101.

¹⁴¹⁰ *Brima*, Decision on Defence Motion for Acquittal, para.42; *Blaskic* Appeal Judgment, para. 101.

¹⁴¹¹ *Brima*, Decision on Defence Motion for Acquittal, para.42; *Tadic* Trial Judgment, para. 649.

¹⁴¹² *Kunarac* Appeal Judgment, paras 87-88.

¹⁴¹³ *Brima*, Decision on Defence Motion for Acquittal, para.42; *Norman* Decision on Motion for Acquittal, para. 58.

¹⁴¹⁴ *Brima*, Decision on Defence Motion for Acquittal, para.42; see also *Prosecutor v. Blaskic*, Judgement, Trial Chamber, 3 March 2000, para. 214.

¹⁴¹⁵ See e.g. *Limaj* Trial Judgment, para. 186: “The terms “civilian population” must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as “civilian ” even if non-civilians are among it, as long as it is predominantly civilian. The presence within a population of members of resistance armed groups, or former combatants who have laid down their arms, does not as such alter its civilian nature. As a result, the definition of a “civilian” is expansive and includes individuals who at one time performed acts of resistance, as well as persons who were *hors de combat* when the crime was committed. Relevant to the determination whether the presence of soldiers within a civilian population deprives the population of its civilian character are the number of soldiers as well as whether they are on leave. There is no requirement that the victims are linked to any particular side of the conflict.”

¹⁴¹⁶ *Brima*, Decision on Defence Motion for Acquittal, para.42; *Norman* Decision on Motion for Acquittal, para. 57.

of the attack, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war, should be considered.¹⁴¹⁷ The use of the word “population” does not imply that the entire population of the geographical entity in which the attack took place were subjected to that attack. Rather, it must be shown that that a sufficient number of individuals were targeted, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.¹⁴¹⁸

d) Acts of the accused part of the attack

954. The acts of the accused need only form part of the attack, viewed objectively,¹⁴¹⁹ by their nature or consequences,¹⁴²⁰ and “all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random.”¹⁴²¹ The acts of the accused do not need to be committed in the midst of the attack. For instance, the *Kunarac* Trial Chamber found that a crime committed several months after, or several kilometres away from the main attack could still, if sufficiently connected otherwise, be part of that attack.¹⁴²² As set out by this Trial Chamber, reliable indicia of a nexus include the similarities between the perpetrator’s acts occurring within the attack; the nature of the events and circumstances surrounding the perpetrator’s acts; the temporal and geographic proximity of the perpetrator’s acts with the attack; and the nature and extent of the perpetrator’s knowledge of the attack when he commits the acts.¹⁴²³

¹⁴¹⁷ *Brima*, Decision on Defence Motion for Acquittal, para. 42.

¹⁴¹⁸ *Blaskic* Appeal Judgment, para. 109; *Kunarac* Appeal Judgment, para. 90; *Limaj* Trial Judgment, para. 187.

¹⁴¹⁹ *Limaj* Trial Judgment, para. 188.

¹⁴²⁰ *Prosecutor v. Radoslav Brđanin*, Judgement, Case No. IT-99-36-T, Trial Chamber II, 1 September 2004, para. 132.

¹⁴²¹ *Ibid.*

¹⁴²² *Prosecutor v. Radoslav Brđanin*, Judgement, Case No. IT-99-36-T, Trial Chamber II, 1 September 2004, para. 132.

¹⁴²³ *Brima*, Decision on Defence Motion for Acquittal, para.42.

e) *Knowledge that acts form part of the attack*

955. The *mens rea* element is satisfied if the accused had knowledge, or reason to know,¹⁴²⁴ of the general context in which his acts occurred and of the nexus between his acts and that context,¹⁴²⁵ in addition to the requisite *mens rea* for the underlying offence or offences with which he is charged.¹⁴²⁶ The accused need not have been aware of the details of the attack, neither does he need to approve of the context in which his acts occurred or to share the purpose or goal behind the attack.¹⁴²⁷ The accused needs only to have understood the “greater dimension of criminal conduct.”¹⁴²⁸ The accused’s motives are irrelevant,¹⁴²⁹ so that a crime against humanity may be committed for purely personal reasons.¹⁴³⁰ It is also irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim.¹⁴³¹

EVIDENTIARY BASIS

956. The Prosecution submits that the evidence adduced during the trial is such that it has been proven beyond reasonable doubt that the contextual elements are established with respect to the crimes against humanity alleged in the Indictment (Counts 3, 4, 7, 8, 11 and 13).

The attacks

957. The Prosecution has presented overwhelming evidence of numerous attacks conducted by the AFRC during the periods charged in the Indictment. These attacks spread throughout

¹⁴²⁴ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 8, lines 13-16.

¹⁴²⁵ *Kunarac* Appeal Judgment, para. 102.

¹⁴²⁶ *Brima*, Decision on Defence Motion for Acquittal, para. 42; *Kunarac* Appeal Judgment, para. 102. Trial Chamber I considered that the *mens rea* would be satisfied if the accused knew *or had reason to know* that his acts constituted part of a pattern of widespread or systematic crimes directed against a civilian population, *Prosecutor v. Sesay, Kallon, Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 8, lines 13-16.

¹⁴²⁷ *Brima*, Decision on Defence Motion for Acquittal, para. 42 (e); *Prosecutor v. Kordić & Čerkez*, Judgement, Case No. IT-95-14/2-A, App. Ch., 17 December 2004, para. 99. *Prosecutor v. Kunarac et al.*, Appeal Judgment, Case No. IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 103 (footnotes omitted). *Prosecutor v. Blaškić*, Appeal Judgment, Case No. IT-95-14-A, App. Ch., 29 July 2004, para. 124.

¹⁴²⁸ *Bagalishema* Trial Judgment, para. 94; *Limaj* Trial Judgment, para. 190.

¹⁴²⁹ *Tadić* Appeal Judgment, paras 248-272; *Kunarac* Appeal Judgment, para. 103.

¹⁴³⁰ *Prosecutor v. Kordić & Čerkez*, Judgement, Case No. IT-95-14/2-A, App. Ch., 17 December 2004, para. 99. *Prosecutor v. Kunarac et al.*, Appeal Judgment, Case No. IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 103 (footnotes omitted). *Prosecutor v. Blaškić*, Appeal Judgment, Case No. IT-95-14-A, App. Ch., 29 July 2004, para. 124.

¹⁴³¹ *Kunarac* Appeal Judgment, para. 103.

the territory of the Republic of Sierra Leone and included *inter alia* widespread acts of murder,¹⁴³² rape,¹⁴³³ sexual slavery, any other forms of sexual violence and other inhumane acts¹⁴³⁴ and abductions and forced labour.¹⁴³⁵ These attacks can reasonably be described as massive, frequent and large scale actions carried out collectively with considerable seriousness. The AFRC also conducted massive attacks against civilians in all major crime base locations, notably in Tongo Field,¹⁴³⁶ Kenema,¹⁴³⁷ Koidu Town,¹⁴³⁸ or in the Districts of Bo,¹⁴³⁹ Kono,¹⁴⁴⁰ Koinadugu, Bombali, Kailahun, and Port Loko.¹⁴⁴¹ During these attacks, civilians were arrested, abducted, forced to work,¹⁴⁴² beaten, tortured, raped,¹⁴⁴³ forced to become bush wives,¹⁴⁴⁴ mutilated and/or killed.¹⁴⁴⁵ The civilian population also had to endure looting and burning of their houses.¹⁴⁴⁶

Widespread or systematic attack

958. Although the attacks need only be widespread *or* systematic, the Prosecution has adduced evidence showing that both criteria are fulfilled in the present instance. The widespread nature has been established in the body of the entire evidence with respect to all major crime base locations, namely, Bo, Kenema, Kono, Kailahun, Koinadugu, Bombali, Port Loko and Freetown and the Western Area.¹⁴⁴⁷ These attacks had innumerable victims, while they were also systematically directed at civilians to eliminate any potential opposition or to take unlawful advantage of the population. In this frame, civilians were

¹⁴³² TF1-256, TF1-055, TF1-253, TF1-216, TF1-253, TF1-209, TF1-180, TF1-053, TF1-023, TF1-113, TF1-054, TF1-282, TF1-256, TF1-081, TF1-269, TF1-253, TF1-209, TF1-023, TF1-085, TF1-083, TF1-267, TF1-076, TF1-019, TF1-153, TF1-217, TF1-104, TF1-045, TF1-206.

¹⁴³⁴ TF1-282, TF1-023, TF1-085, TF1-083, Zainab Bangura.

¹⁴³⁵ TF1-282, TF1-256, TF1-334, TF1-081, 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, TF1-296, TF1-167.

¹⁴³⁶ TF1-062, Transcript 27 June 2005, pp. 8-9.

¹⁴³⁷ TF1-334, Transcript 17 May 2005, p. 74, TF1-045, 22 July 2005, p. 11; 19 July 2005, p. 82.

¹⁴³⁸ TF1-334, Transcript 17 May 2005, p. 103.

¹⁴³⁹ TF1-004, Transcript 23 June 2005, p. 13.

¹⁴⁴⁰ TF1-334, Transcript 17 May 2005, pp. 3-5.

¹⁴⁴¹ TF1-334, Transcript 15 June 2005, p. 34.

¹⁴⁴² DAB-086, Transcript 25 July 2006, p. 20.

¹⁴⁴³ TF1-033, Transcript 11 July 2005, p. 16; DAB-086, Transcript 25 July 2006, p. 23; DAB-090, Transcript.

¹⁴⁴⁴ TF1-133, Transcript 7 July 2005, pp. 89-90.

¹⁴⁴⁵ TF1-122, Transcript 24 June 2005, pp. 32-34, 104; TF1062, Transcript 27 June 2005, pp. 27-37; TF1-045, Transcript 19 July 2005, pp. 49-55.

¹⁴⁴⁶ TF1-004, Transcript 23 June 2005, p. 28; DAB-137, Transcript 2 October 2006, p. 128; DAB-087, Transcript 25

July 2006, p. 41.

¹⁴⁴⁷ See NGO Report, Exhibit P57, "No Peace without Justice, Sierra Leone Conflict Mapping Program", 9 March 2004.

attacked for having allegedly betrayed the Junta, for supposedly belonging to the Kamajors,¹⁴⁴⁸ for refusing to subject to forced mining.¹⁴⁴⁹ The order by Johnny Paul Koroma that Kono be a civilian 'no go' area and that *any* civilian who refused to join them should be executed,¹⁴⁵⁰ as well as the order given by the First Accused in Camp Rosos that captured civilians who were brought to the camp should be executed, constitute examples of the systematic nature of the attacks. Similarly, the order issued by the First Accused, before leaving Mansofinia, that *any* civilian who attempted to run away would be shot and *any* village which would resist an attack should be burnt, denotes the widespread and systematic nature of the attacks.¹⁴⁵¹ The standardized attacks in Bombali, as exemplified by the attack on Karina, are other striking examples of this systematic nature. The pattern consisted in attacking and burning the village. Operation 'Clear the Area', whereby all villages surrounding Rosos had to be burnt down, was undeniably systematic.¹⁴⁵² ■

■
 ■¹⁴⁵³ The Freetown invasion was another instance in which civilians were targeted on a large scale and according to a systematic pattern,¹⁴⁵⁴ including the killings of civilians hiding in mosques.¹⁴⁵⁵ ■

■¹⁴⁵⁶ The atrocities repeatedly committed in the Port Loko district by the "Westside Boys" against the civilian population also met both the

¹⁴⁴⁸ TF1-122, Transcript 24 June 2005, p. 35; TF1-122, Transcript 24 June 2005, pp. 32-49.

¹⁴⁴⁹ TF1-045, Transcript 19 July 2005, p. 55.

¹⁴⁵⁰ TF1-334, Transcript 17 May 2005, pp. 3-5.

¹⁴⁵¹ TF1-334, Transcript 23 May 2005, p. 17.

¹⁴⁵² TF1-334, Transcript 23 May 2005, p.

¹⁴⁵³ TF1-272, Transcript 4 July 2005, p. 52; TF1 310, Transcript 5 July 2005, p. 66; ■

Witness TF1-272, TT 4 July 2005, p. 46; Witness TF1-272, TT 4 July 2005, pp. 58-59; Witness TF1-272, TT 4 July 2005, p. 63; 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; During the retreat, the First Accused ordered that the hands be amputated of all those who were pointing out their position to ECOMOG; see TF1-184, Transcript 27 September 2005, pp. 80-82; the Third Accused, in the presence of the First and Second Accused ordered soldiers to go to the eastern part of Freetown and amputate up to 200 Civilians; see George Johnson, Transcript 16 September 2005, p. 54.

¹⁴⁵⁴ TF1-184 Transcript 27 September 2005, pp. 61-62; TF1-024, Transcript 7 March 2005, pp. 46-47.

¹⁴⁵⁵ TF1-334, Transcript 14 June 2005, pp. 88-89.

¹⁴⁵⁶ ■

requirements of a widespread and systematic character.¹⁴⁵⁷ Further, the evidence of women and girls being given as wives to commanders in all relevant Districts bears striking similarity. The Prosecution therefore submits that there is evidence of a remarkably consistent nature as to the crimes against humanity in all locations in which the Junta troops operated. The numerous attacks on civilians were clearly not random or committed by 'rogue elements', but rather according to systematic pattern.

The civilian population

959. The Prosecution does not dispute that the AFRC was fighting against other armed forces in the context of an armed conflict, and was therefore involved in combat against the ECOMOG and factions loyal to President Kabbah. However, the evidence of the Prosecution shows that civilian population was undoubtedly the primary object of the attacks described in the Indictment. The very purpose of these attacks was to terrorize the civilian population, to punish it for a supposed lack of support to the AFRC/RUF or for allegedly providing support to the Kabbah government.¹⁴⁵⁸ Another purpose was to take advantage of the civilian population of Sierra Leone, by forcing civilians to work and women to accomplish various chores, including marital tasks. These purposes ultimately aimed at furthering the common design of taking power over the territory of Sierra Leone.

Nexus

960. The Prosecution has proved beyond reasonable doubt that the acts charged against the three Accused clearly formed part of one or more of the attacks set out above. Indeed these acts of the Accused were not random and isolated but rather part of a scheme. Even if a single or limited number of acts can qualify as a crime against humanity according to the jurisprudence, the evidence demonstrates that the acts proffered against the Accused were numerous.

961. The Prosecution submits that in many instances the three Accused planned, instigated or ordered the attacks and equally planned, instigated or ordered acts committed during the attacks. This, in itself, shows that the acts of the Accused were not isolated but rather intrinsically part of the attacks. For instance, before leaving Mansofinia, the First Accused

¹⁴⁵⁷ TF1-334, Transcript 14 June 2005, p. 115.

¹⁴⁵⁸ TF1-083, Transcript 8 April.

issued orders that any civilian or soldier who attempted to run away would be shot on sight, that any village which repelled an attack would be burnt.¹⁴⁵⁹ The First Accused also ordered that all villages around camp Rosos be burnt,¹⁴⁶⁰ that Karina should be burnt,¹⁴⁶¹ that amputations be committed against civilians,¹⁴⁶² and that policemen be targeted and executed,¹⁴⁶³ to mention only a few examples. The Second Accused ordered notably to burn houses in Karina, with civilians locked inside,¹⁴⁶⁴ and gave orders regarding 'Operation Cut Hand'.¹⁴⁶⁵ The Third Accused, for example, called a muster parade of civilians, during the Freetown invasion, and made them carry out forced labour.¹⁴⁶⁶ He also ordered the execution of civilian Nigerians¹⁴⁶⁷ and that a child be buried alive.¹⁴⁶⁸

962. The Accused also directly committed a number of crimes during or in connection with these attacks.¹⁴⁶⁹

963. In addition, the acts perpetrated by the persons for which the Accused were responsible given their position of command, clearly formed part of one or more of the attacks pleaded and established by the Prosecution. The forced mining in Kono¹⁴⁷⁰ and Tongo,¹⁴⁷¹ the attack in Bo district,¹⁴⁷² the attacks of villages such as Karina in Bombali,¹⁴⁷³ the crimes committed at Camp Rosos,¹⁴⁷⁴ the killings at Colonel Eddie Town,¹⁴⁷⁵ the training of the child soldiers,¹⁴⁷⁶ the abduction of civilians,¹⁴⁷⁷ the atrocities committed during the

¹⁴⁵⁹ TF1-334, Transcript 23 May 2005, p. 17.

¹⁴⁶⁰ TF1-334, Transcript 23 May 2005, p. 105.

¹⁴⁶¹ TF1-334, Transcript 23 May 2005, p. 58.

¹⁴⁶² TF1-334, Transcript 23 May 2005, p. 58; Transcript 24 May 2005, pp. 5-12.

¹⁴⁶³ TF1-334, Transcript 13 June 2005, pp. 117-118.

¹⁴⁶⁴ TF1-334, Transcript 23 May 2005, p. 66.

¹⁴⁶⁵ TF1-153, Transcript 23 September 2005, p. 18; George Johnson, Transcript 16 September 2005, p. 53.

¹⁴⁶⁶ TF1-227, Transcript 11 April 2005, pp. 8-13.

¹⁴⁶⁷ Gibril Massaquoi, Transcript 7 October 2005, pp. 15-116.

¹⁴⁶⁸ TF1-085, Transcript 7 April 2005, pp. 23-24.

¹⁴⁶⁹ TF1-334, Transcript 23 May 2005, p. 69; 24 May 2005, pp.47-49; TF1-0024, Transcript 7 March 2005, pp. 46-47; George Johnson, Transcript 16 September 2005, p. 56.

¹⁴⁷⁰ TF1-153, Transcript 22 September 2005, pp. 22-23; DAB-059, Transcript 27 September 2006, p. 89.

¹⁴⁷¹ TF1-045, Transcript 19 July 2005, p. 39.

¹⁴⁷² TF1-334, Transcript 17 May 2005, pp. 2-8; Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11th August 1997.

¹⁴⁷³ TF1-334, Transcript 23 May 2005, pp.58, 65-74, 79-81.

¹⁴⁷⁴ TF1-334, Transcript 25 May 2005, pp. 62-68.

¹⁴⁷⁵ TF1-167, Transcript 15 September 2005, pp. 72-74.

¹⁴⁷⁶ TF1-334, Transcript 24 May 2005, p. 24, p. 62.

¹⁴⁷⁷ TF1 -167, Transcript 15 September 2005, p. 64.

Freetown invasion¹⁴⁷⁸ and by the Westside Boys¹⁴⁷⁹ constitute only examples of such acts committed under the Accused's command.

Mens rea

964. It is the Prosecution's view that the abundant evidence establish beyond reasonable doubt that the Accused knew – or at least had reason to know – that these acts constituted part of a pattern of widespread or systematic crimes directed against a civilian population. In fact, the evidence show that the Accused not only had knowledge of the attack(s) and of the crimes, but that the Accused actually planned, instigated or ordered such attacks *as well as* the underlying crimes. Therefore, it is submitted that the only reasonable inference is that the Accused indeed knew or were aware of the general context in which these crimes took place.

CRIMES UNDER ARTICLES 3 AND 4 OF THE STATUTE – GENERAL REQUIREMENTS

965. In the case of an armed conflict occurring in the territory of a High Contracting Party to the Geneva Conventions or Additional Protocol II, each Party to the conflict is bound to apply, as a minimum, the guarantees contained in Common Article 3 of the Geneva Conventions and Additional Protocol II.¹⁴⁸⁰ This Trial Chamber has taken judicial notice of the fact that “Sierra Leone declared itself to be a party to the Geneva Conventions with effect from 27 April 1961 and acceded to the Additional Protocol II to the Geneva Conventions on 21 October 1986.”¹⁴⁸¹ The Appeals Chamber confirmed in the CDF proceedings that it was correct to take judicial notice of the fact that an armed conflict took place on the territory of Sierra Leone from March 1991 to January 2002, a period that extends beyond that covered by the Indictment.¹⁴⁸² This Trial Chamber has also taken

¹⁴⁷⁸ TF1-184; TF1-167, TF1-033; Gibril Massaquoi; TF1-153; TF1-334, Transcript 14 June 2005, p. 89.

¹⁴⁷⁹ TF1 334, Transcript 15 June 2005, p. 31.

¹⁴⁸⁰ 1949 Geneva Conventions, Common Article 3 (1); Additional Protocol I to the 1949 Geneva Conventions, Article 1 (1).

¹⁴⁸¹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL 04-16-T-423 , “Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence” , 25 October 2005, para. 28.

¹⁴⁸² *Prosecutor v. Fofana*, SCSL-04-14-T-398, ‘Decision on Appeal against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence’, (“**Fofana Appeal Decision on Judicial Notice**”) Appeals Chamber, 16 May 2005, para. 40.

judicial notice of the fact that the CDF, RUF and AFRC were involved in armed conflict in Sierra Leone.¹⁴⁸³ The evidence presented before the Court confirms this fact.

966. The three Accused and all other members of the AFRC/RUF armed factions engaged in fighting within Sierra Leone were required to comply with international humanitarian law and the laws and customs governing the conduct of armed conflict, including Common Article 3 to the Geneva Conventions of 1949, and Additional Protocol II. Furthermore, the guarantees contained in these provisions that appear in the Statute of the Special Court form part of customary international law, as does their criminalisation.¹⁴⁸⁴

967. This Trial Chamber has previously defined the general requirements for a violation of Article 3 of the Statute as follows: a) the existence of an armed conflict whether internal or international, at the time the crimes were committed; b) the existence of a nexus between the armed conflict and the offence; c) the victims were not directly taking part in the hostilities at the time of the violation.¹⁴⁸⁵

The existence of an armed conflict whether internal or international

968. The Trial Chamber has taken judicial notice of the fact that the conflict in Sierra Leone occurred from March 1991 until January 2002.¹⁴⁸⁶ The Trial Chamber endorsed the definition set out by the Appeals Chamber in the *Tadić* case that “an armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state”.¹⁴⁸⁷ The Appeals Chamber of the Special Court has found that it is immaterial whether the armed conflict is internal or international in nature; “the Court

¹⁴⁸³ *Norman Judicial Notice Decision*, Annex 1 (H); *Fofana Appeal Decision on Judicial Notice*, para. 40.

¹⁴⁸⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge University Press, 2005, pp. 299-383 and 568-603.

¹⁴⁸⁵ *Prosecutor v. Brima, Kamara, Kanu*, “Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98”, SCSL-04-16-T-469, para. 44 (*Brima Decision on Motion for Acquittal*);

¹⁴⁸⁶ *Prosecutor v. Brima, Kamara, Kanu*, SCSL 04-16-T-423, “Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence”, 25 October 2005, Fact A., para. 23.

¹⁴⁸⁷ *Brima Decision on Motion for Acquittal*, para 44. *Prosecutor v Tadić*, IT-94-1, “Decision on Defence Motion for Interlocutory Appeal on Jurisdiction”, Appeals Chamber, 2 October 1995, para. 70. The ICTY Trial Chamber in the *Oric* case adopted the same definition, *Prosecutor v Oric*, IT-03-68-T, Transcript 8 June 2004, p. 8985.

need only be satisfied that an armed conflict existed and that the alleged violations were related to the armed conflict”.¹⁴⁸⁸

Nexus between the armed conflict and the alleged offence

969. A nexus between the acts of the accused and the armed conflict must be established. This does not require a showing that the offence was committed while fighting was actually taking place or at the scene of combat, or that it be part of a policy or practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of war or in the actual interest of a party to the conflict.¹⁴⁸⁹ It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict.¹⁴⁹⁰ This Trial Chamber has added, quoting the ICTY Appeals Chamber in *Kunarac*, that “the armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed”.¹⁴⁹¹

Victims not taking part in hostilities

970. As stated by this Trial Chamber, Common Article 3 protects persons taking no active part in hostilities at the time of the alleged violation, including members of the armed forces who have laid down their arms and those placed *hors de combat* by any other cause.¹⁴⁹² Additional Protocol II similarly protects all persons who do not take a direct part or who have ceased to take part in hostilities.¹⁴⁹³

¹⁴⁸⁸ *Prosecutor v. Fofana*, SCSL-2004-14-AR72(E), “Decision on Preliminary Motion on Lack of Jurisdiction *Materiae: Nature of the Armed Conflict*”, 25 May 2004, para. 25.

¹⁴⁸⁹ *Prosecutor v. Tadić*, IT-94-1-T, “Judgement”, Trial Chamber, 7 May 1997, para. 573; *Čelebići* Trial Judgment, paras. 194-195.

¹⁴⁹⁰ *Tadić* Jurisdiction Decision, Appeals Chamber, para. 70; *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Judgement”, Trial Chamber, 16 November 1998, paras 193-198.

¹⁴⁹¹ *Brima* Decision on Motion for Acquittal, para. 44.

¹⁴⁹² *Brima* Decision on Motion for Acquittal, para. 44; *Čelebići* Appeal Judgment, paras. 124, 150-152, 160-174, 419; *Norman* Decision on Motion for Acquittal, para. 70.

¹⁴⁹³ *Brima* Decision on Motion for Acquittal, para. 44; *Norman* Decision on Motion for Acquittal, para. 70. See *Akayesu* Trial Judgment, para. 629, “These phrases are so similar that, for the Chamber’s purposes, they may be treated as synonymous”.

Article 4 of the Statute

971. Like Article 3 of the Statute, Article 4 reflects the fundamental distinction drawn in international humanitarian law between civilians and the military and the absolute prohibition of attacks against the former.¹⁴⁹⁴ The Prosecution submits that the general requirements in relation to Article 3 apply.¹⁴⁹⁵

EVIDENTIARY BASIS

972. The Prosecution submits that the evidence adduced during the trial is such that it has been proven beyond reasonable doubt that the general requirements are established with respect to the crimes under Articles 3 and 4 of the Statute (Counts 1, 2, 5, 9, 10, 12, 14).

The existence of an armed conflict whether internal or international

973. Judicial notice has been taken of the existence of a conflict in Sierra Leone which the evidence has proved to be an armed conflict throughout the period of the Indictment.

Nexus between the armed conflict and the alleged offence

974. The Prosecution submits that there is overwhelming evidence that the acts of the three Accused were committed under the guise of the armed conflict taking place in Sierra Leone. The crimes were closely related to the hostilities, even when the hostilities were sometimes occurring in other parts of the territories. The conflict indeed played a substantial part in the three Accused ability to commit the crimes, as the Accused either held senior political positions during the Junta period or after the Intervention became senior military commanders with combatants under their authority and control, taking active part in the hostilities in Sierra Leone.¹⁴⁹⁶ The commission of the crimes was a result of the common goal of the AFRC/RUF to take control of Sierra Leone and retain power at all costs.

¹⁴⁹⁴ See Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, para. 16.

¹⁴⁹⁵ *Brima* Decision on Motion for Acquittal, para. 46.

¹⁴⁹⁶ TF1-184, Transcript 27 September 2005, p. 39, Transcript 29 September 2005, p. 69; TF1-334, Transcript 19 May 2005, p. 37; Transcript 20 May 2005, p. 88; Transcript 16 June 2005, p. 49.

Victims not taking part in hostilities

975. The evidence demonstrates that the victims of the crimes charged in the Indictment were persons not directly taking part in the hostilities at the time of the violations. The persons terrorized, killed (executed, burnt to death, hacked to death), outraged in their dignity, mutilated, looted or raped were civilian inhabitants of villages or towns who the AFRC/RUF attacked in order to gain or consolidate their control over Sierra Leone's territory.¹⁴⁹⁷ The evidence shows that members of the AFRC/RUF raped women,¹⁴⁹⁸ as that child soldiers were used in the fighting.¹⁴⁹⁹ That the AFRC was also involved in fighting against ECOMOG and factions loyal to President Kabbah does not detract from the fact that, as demonstrated by the evidence, the victims of the crimes charged in the Indictment under Articles 3 and 4 of the Statute were persons not taking part in hostilities at the time of the violation.

¹⁴⁹⁷ TF1-256, TF1-055, TF1-253, TF1-216, TF1-253, TF1-209, TF1-180, TF1-053, TF1-023, TF1-113, TF1-054, TF1-334, Transcript 17 May 2005, pp. 72-73, TF1-062, Transcript 27 June 2005, pp. 8-9, TF1-334, Transcript 17 May 2005, p. 74, TF1-045, 22 July 2005, p. 11; 19 July 2005, p. 82, TF1-334, Transcript 17 May 2005, p. 74, TF1-045, 22 July 2005, p. 11; 19 July 2005, p. 82, TF1-334, Transcript 17 May 2005, p. 103, TF1-004, Transcript 23 June 2005, p. 13, TF1-334, Transcript 17 May 2005, pp. 3-5, TF1-122, Transcript 24 June 2005, pp. 32-34, 104; TF1062, Transcript 27 June 2005, pp. 27-37; TF1-045, Transcript 19 July 2005, pp. 49-55, TF1-004, Transcript 23 June 2005, p. 28; DAB-137, Transcript 2 October 2006, p. 128; DAB-087, Transcript 25 July 2006, p. 41.

¹⁴⁹⁸ TF1-282, TF1-256, TF1-081, TF1-269, TF1-253, TF1-209, TF1-023, TF1-085, TF1-083, TF1-267, TF1-076, TF1-019, TF1-153, TF1-217, TF1-104, TF1-045, TF1-206, TF1-282, TF1-023, TF1-085, TF1-083, [REDACTED]

¹⁴⁹⁹ TF1-296, Transcript 4 October 2005, pp. 85, 92; Exhibit P 33, para. 43.

XIII. LAW APPLICABLE TO THE CHARGES IN THE INDICTMENT (II)

ELEMENTS OF CRIMES

Count 1 – Acts of Terrorism – Article 3(d) of the Statute

976. The ICTY Appeals Chamber has confirmed that customary international law imposed individual criminal liability for violations of the prohibition of terror against the civilian population as enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, from at least the period relevant to the Indictment in the case under consideration (1992-1994).¹⁵⁰⁰

977. This Trial Chamber has adopted the definition formulated by Trial Chamber I, based on Article 4(d) of Additional Protocol II and the ICRC Commentary, and taking into account the jurisprudence of the ICTY Trial Chamber in the *Galić* case.¹⁵⁰¹ Thus, the core elements of the crime of acts of terrorism are: (1) Acts or threats of violence directed against protected persons or their property;¹⁵⁰² (2) The offender wilfully made protected persons or their property the object of those acts and threats of violence; (3) The acts or threats of violence were committed with the primary purpose of spreading terror among protected persons.¹⁵⁰³

978. Trial Chamber I has also held that the proscriptive ambit of Protocol II in respect of acts of terrorism extends beyond acts or threats of violence committed against protected persons to “acts directed against installations which would cause victims terror as a side-effect”.¹⁵⁰⁴

¹⁵⁰⁰ *Prosecutor v Galić*, IT-98-29-A, “Judgement”, Appeals Chamber, 30 November 2006, (“*Galić Appeals Judgment*”), para. 98 (Judge Schomburg dissenting).

¹⁵⁰¹ *Prosecutor v. Galić*, IT-98-29-T, “Judgment”, Trial Chamber, 5 December 2003, para. 133.

¹⁵⁰² The ICTY Appeals Chamber has held that acts or threats of violence can comprise attacks or threats of attacks against the civilian population, and shall not be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts can vary, the primary concern being that they are committed with the specific intent to spread terror among the civilian population. *Galić Appeals Judgment*, para. 102.

¹⁵⁰³ *Brima* Decision on Motion for Acquittal, para. 49; *Norman* Decision on Motion for Acquittal, para. 112. See also *Galić Appeals Judgment*, para. 104: “The *mens rea* of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population is composed of the specific intent to spread terror among the civilian population.”

¹⁵⁰⁴ *Norman* Decision on Motion for Acquittal, para. 111, citing ICRC, Commentary on the Additional Protocols, 1375.

979. Whether or not unlawful acts do in fact spread terror among the civilian population can be proved either directly or inferentially. It can be demonstrated by evidence of the psychological state of civilians at the relevant time,¹⁵⁰⁵ including the civilian population's way of life during the period, and the short and long term psychological impact. However, since actual infliction of terror is not a constitutive legal element of the crime of terror, there is also no requirement to prove a causal connection between the unlawful acts of violence and the production of terror.¹⁵⁰⁶ Terror may be taken to connote extreme fear.¹⁵⁰⁷
980. "Primary purpose" signifies the *mens rea* of the crime. The Prosecution must prove not only that the accused accepted the likelihood that terror would result from the illegal acts – or, in other words, that he was aware of the possibility that terror would result - but that that was the result which he specifically intended.¹⁵⁰⁸ The term "primary" does not mean that the infliction of terror needed to be the only objective of the acts or threats of violence, but only that it was the principal aim.¹⁵⁰⁹
981. The evidentiary basis for the crimes charged in Counts 3 to 14 taken as a whole provides the evidentiary basis for the campaign to terrorise the civilian population in the various locations specified in the Indictment.
982. The Prosecution submits that the evidence establishes the legal requirements for acts of terrorism. There can be no doubt that campaigns of extreme violence and brutality were conducted by the AFRC willfully against civilians, with the primary purpose of terrorizing them in order to ultimately destroy all possible resistance.

Count 2 - Collective Punishments – Article 3(b) of the Statute

983. This Trial Chamber has endorsed the definition of Trial Chamber I which set out the core elements of collective punishments as follows: (1) a punishment imposed upon protected

¹⁵⁰⁵ W. Fenwick, 'Attacking the Enemy Civilian as a Punishable Offence', *Duke Journal of Comparative and International Law*, Vol. 7, 1997, 539 at 562.

¹⁵⁰⁶ *Galić* Trial Judgment, para. 134; *Galić* Appeals Judgment, para. 103 and 104: "actual terrorization of the civilian populations is not an element of the crime".

¹⁵⁰⁷ *Galić* Trial Judgment, para. 137.

¹⁵⁰⁸ *Galić* Trial Judgment, para. 136; See also Additional Protocol II to the Geneva Convention 12 August 1949, Article 13 para. 2.

¹⁵⁰⁹ *Prosecutor v. Vidoje Blagojević and Dragan Jokić, Judgement*, Case No. IT-02-60-T, Trial Chamber I, Sec. A, 17 January 2005, para. 591; see also *Galić* Appeals Judgment, para. 104.

persons for acts that they have not committed and (2) 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.¹⁵¹⁰

984. The prohibition of collective punishment should be understood in its widest sense,¹⁵¹¹ and concerns not only penalties imposed in the normal judicial process, but also any other kind of sanctions¹⁵¹² such as a fine imposed on the community at large for an act committed by one of its members, or destruction of houses in a village of which the offender is an inhabitant.¹⁵¹³ It is “virtually equivalent to prohibiting ‘reprisals’ against protected persons”.¹⁵¹⁴
985. The evidentiary basis for the crimes charged in Counts 3 to 14 taken as a whole provides the evidentiary basis for the collective punishments against the civilian population in the various locations specified in the Indictment.
986. The Prosecution submits that the evidence establishes the legal requirements for collective punishments. Civilian victims were punished arbitrarily by the AFRC because part of the population was, in the AFRC’s view, supposedly failing to support them. The perpetrators clearly intended to inflict such punishments on the civilian population. For instance, burning down Karina on the basis that it was President Kabbah’s home town clearly amounts to punishing people for acts for which they are not responsible. The Prosecution wishes to stress that the punishments inflicted in the present instance are equally unlawful when committed against civilians who might have indeed resisted against the AFRC/RUF.

Count 3 - Extermination as Crime against Humanity-Article 2(b) of the Statute

987. This Trial Chamber has adopted the following elements of extermination (in addition to the contextual elements for crimes against humanity): a) The perpetrator intentionally

¹⁵¹⁰ *Brima*, Decision on Defence Motion for Acquittal, para. 62; *Norman* Decision on Motion for Acquittal, para. 118.

¹⁵¹¹ *Norman* Decision on Motion for Acquittal, para. 117; Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para. 4536.

¹⁵¹² Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para. 4536.

¹⁵¹³ UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, 9.4, footnote 6.

¹⁵¹⁴ Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para 4536.

caused the death or destruction of one or more persons by any means including the infliction of conditions of life calculated to bring about the destruction of a numerically significant part of the population; b) the killing or destruction constituted part of a mass killing of members of a civilian population.¹⁵¹⁵

988. Regarding the first element, Trial Chamber I dropped the terms “numerically significant” and held that the first element existed when “[t]he accused killed one or more persons, including by inflicting conditions of life, calculated to bring about the destruction of part of a population”.¹⁵¹⁶ This approach accords better with customary international law.¹⁵¹⁷ The *mens rea* is satisfied if the accused intended to kill a large number of individuals or to inflict serious bodily harm in the reasonable knowledge that it was likely to cause death or in reckless disregard for human life, as in the case of murder.¹⁵¹⁸ According to this Trial Chamber and in line with the ICTR jurisprudence, a perpetrator can be guilty of a crime of extermination if he kills or destroys even only one individual as long as that killing is part of a mass killing event.¹⁵¹⁹ No specific discriminatory intent is required, unlike for the crime of Genocide.¹⁵²⁰
989. The Prosecution submits that the evidence regarding killings on a massive scale establishes the legal requirements for extermination as a crime against humanity. The circumstances of the killings demonstrate that the perpetrators intended to kill their victims and, in fact, a part of the population. Innumerable deaths of civilians resulted from –for example- executions, as well as from the destruction by fire of houses, villages and towns.

¹⁵¹⁵ *Brima*, Decision on Defence Motion for Acquittal, para. 73.

¹⁵¹⁶ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, pp. 16-17.

¹⁵¹⁷ *Stakic* Trial Judgment, para. 640: “This Trial Chamber does not find that the case-law provides support for the Defence submission that the killings must occur on a vast scale in a concentrated place over a short period. Such a claim does not follow from the requirement that the killings must be massive. Nor does the Trial Chamber believe that a specific minimum number of victims is required.” See also *Blagojevic and Jokic* Trial Judgment, para. 573: “any ... attempt to set a minimum number of victims in the abstract will ultimately prove unhelpful; the element of massive scale must be assessed on a case -by-case basis in light of the proven criminal conduct and all relevant factors”; see also generally *Blaskic* Trial Judgment, para. 207 *in fine*.

¹⁵¹⁸ *Stakic* Trial Judgment, para. 641. See also *Prosecutor v. Sesay, Kallon, Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 17.

¹⁵¹⁹ *Brima*, Decision on Defence Motion for Acquittal, para. 73; *Akayesu* Trial Judgment, paras 589-590.

¹⁵²⁰ *Brima*, Decision on Defence Motion for Acquittal, para. 73; *Krstic* Trial Judgment, paras 500.

Counts 4 and 5 - Murder

990. The elements of murder have been identified as follows by this Trial Chamber: the *actus reus* exists if (1) the victim is dead; (2) the perpetrator's acts or omission (or the individual for whose acts and omissions the accused bears criminal responsibility) caused the death of a person or persons; (3) the perpetrator (or the individual for whose acts and omissions the accused bears criminal responsibility) had the intention to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.¹⁵²¹
991. Regarding the first element above, "proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim's death can be inferred circumstantially from all of the evidence presented."¹⁵²²
992. The Prosecution submits that *mens rea* is satisfied if the perpetrator intends to kill or cause serious bodily harm in the reasonable knowledge that death would result *or in reckless disregard for human life*.¹⁵²³ It has been established in the jurisprudence of the International Tribunals that "the *mens rea* is not confined to cases where the accused has a direct intent to kill or to cause serious bodily harm, but also extends to cases where the accused has what is often referred to as an indirect intent."¹⁵²⁴ Therefore, "[t]he necessary mental state exists when the accused knows that it is *probable* that his act or omission will cause death."¹⁵²⁵
993. The core elements of the offence of murder in relation to both Articles 2 and 3 of the Statute are the same.¹⁵²⁶
994. The Prosecution submits that there is overwhelming evidence of killings establishing the legal requirements for both murder as a crime against humanity and murder as a violation of Common Article 3 of the Geneva Conventions. The only reasonable inference from the

¹⁵²¹ *Brima*, Decision on Motion for Acquittal, para. 74; *Strugar* Trial Judgment, paras. 235-236.

¹⁵²² *Krnjelac* Trial Judgment, para. 326.

¹⁵²³ *Blaskic* Trial Judgment, para. 152, 181; *Celebici* Trial Judgment, para. 439; *Ndindabahizi* Trial Judgment, para. 487.

¹⁵²⁴ *Strugar* Trial Judgment, para. 235.

¹⁵²⁵ *Ibid.*, para. 236.

¹⁵²⁶ *Brima* Decision on Motion for Acquittal, para. 77; *Norman* Decision on Motion for Acquittal, para. 72-73; *Kordić and Čerkez* Trial Judgment, para. 236; *Čelebići* Trial Judgment, para. 422; *Krnjelac* Trial Judgment, para. 323.

evidence is that the perpetrators intended to kill the civilian victims or acted in the reasonable knowledge that their acts would result in the deaths of the victims.

Count 6 – Rape as a Crime against Humanity –Article 2 (g) of the Statute

995. The elements of rape, as set out in *Kunarac*, were endorsed by Trial Chamber II as follows: ¹⁵²⁷ (1) the *actus reus* is constituted by the penetration, however slight (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object use by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (2) the sexual penetration was without the consent of the victim; (3) the perpetrator must have intended the penetration and must have known that it occurred without the consent of the victim. ¹⁵²⁸
996. As noted by this Trial Chamber, force or threat of force is not *per se* an element of rape, but may be evidence of non-consent. ¹⁵²⁹ The “...circumstances... that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive. That is to say, true consent will not be possible”. ¹⁵³⁰
997. Regarding the *mens rea*, the Prosecution submits that the appropriate standard is the one endorsed by Trial Chamber I, namely that the accused must have intended the penetration or acted in the *reasonable knowledge* that this was likely to occur, and knew or *had reason to know* that the victim did not consent. ¹⁵³¹
998. The Prosecution submits that the abundant evidence presented establishes beyond reasonable doubt that the legal requirements for rape as a crime against humanity are met. Raped women were often victims of multiple perpetrators. The only reasonable inference from the evidence is that the perpetrators had the required *mens rea*. In particular, there is no doubt that the perpetrators knew of the absence of consent of the victims.

¹⁵²⁷ *Kunarac* Appeal Judgment, para. 127.

¹⁵²⁸ *Brima* Decision on Motion for Acquittal, para. 106.

¹⁵²⁹ *Kunarac* Appeal Judgment para 129 – 130.

¹⁵³⁰ *Kunarac* Appeal Judgment para 130.

¹⁵³¹ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, pp. 21-22.

Count 7 - Sexual Slavery and any other form of Sexual Violence as a Crime against Humanity- Article 2(g) of the Statute

999. The elements of the crime of sexual slavery within the meaning of Article 2(g) of the Statute are: (1) the perpetrator 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 imposing on them a similar deprivation of liberty; (2) the perpetrator caused the victim(s) to engage in one or more acts of a sexual nature.¹⁵³²

1000. It is the status or condition of being enslaved which gives rise to sexual slavery, as opposed to other forms of sexual violence.¹⁵³³ The existence of multiple perpetrators is most likely to be the case in this crime.¹⁵³⁴

1001. Trial Chamber I has taken the view that the *mens rea* is not only established when the accused intended to exercise the act of sexual slavery, but also when the accused acted in the reasonable knowledge that this was likely to occur.¹⁵³⁵ The prosecution submits that this standard prevails and should be applied in the present instance.

1002. The crime of “any other form of sexual violence” is comprised of the following elements: (1) the perpetrator committed an act of a sexual nature against person(s) or, caused person(s) to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person(s) or another person, or by taking advantage of a coercive environment or such person(s)’ incapacity to give genuine consent. (2) Such conduct was of a gravity comparable to the acts referred to in Art 2(g) of the Statute, and (3) the perpetrator was aware of the factual circumstances that established the gravity of the conduct.¹⁵³⁶

¹⁵³² *Brima* Decision on Motion for Acquittal, para. 109.

¹⁵³³ Kelly Askin’s report to East-Timor, citing “Comfort Women Judgement of People’s Tribunal, para. 633 ; Special Rapporteur on rape, sexual slavery and slavery like practices during armed conflict, Update to final report UN Doc E/CN.4/Sub.2/2000/21 6 June 2000, para 50.

¹⁵³⁴ Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p.329. See also ICC Elements of Crimes, footnote 53.

¹⁵³⁵ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 22.

¹⁵³⁶ *Brima* Decision on Motion for Acquittal, para. 110; Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p. 332.

1003. Sexual violence is any act of a sexual nature committed under circumstances which are coercive.¹⁵³⁷ Thus, sexual violence may include rape, sexual slavery or molestation, sexual mutilation, forced marriage, and forced abortion as well as other gender related crimes.¹⁵³⁸ Sexual violence need not necessarily involve physical contact, and can thus include forced undressing and forced public nudity.¹⁵³⁹ In this context, coercive circumstances need not be evidenced by a show of physical force, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence.¹⁵⁴⁰

1004. Trial Chamber I has stated that for the *mens rea* to exist, it is sufficient that the accused acted in the reasonable knowledge that the act of sexual violence was likely to occur.¹⁵⁴¹

1005. The Prosecution submits that the evidence establishes beyond reasonable doubt the legal requirements for the crime against humanity of sexual slavery and of any other form of sexual violence. The acts described in the evidence shows a pattern according to which the perpetrators abducted and detained women to subject them to sexual acts. Very often, these women were the victims of multiple perpetrators. The evidence also demonstrates numerous acts of sexual violence that did not necessarily involve physical contact, such as various instances of forced undressing of women and men. The only possible inference from the evidence is that the perpetrators acted in the reasonable knowledge that the sexual slavery and other forms of sexual violence was likely to follow from their acts.

Count 8 - Other Inhumane Acts as Crime against Humanity – Article 2(i) of the Statute

1006. This Trial Chamber has found that to sustain a conviction for other inhumane acts, the Prosecution must prove that: (1) the act was of a gravity similar to the acts referred to in Article 2 a. to h. of the Statute; (2) the perpetrator inflicted great suffering or serious injury

¹⁵³⁷ *Musema* TCJ para 220; *Akayesu* Trial Judgment, para 688; The UN Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict also defined “sexual violence” as: “any violence, physical or psychological, carried out through sexual means or by targeting sexuality. Sexual violence covers both physical and psychological attacks directed at a person’s sexual characteristics, such as forcing a person to strip naked in public, mutilating a person’s genitals, or slicing off a woman’s breasts”, see UN Doc.E/CN.4/Sub.2/1998/13, 22 June 1998, para. 21.

¹⁵³⁸ *Kvočka* TCJ para 180, fn 343.

¹⁵³⁹ *Akayesu* TCJ para 688; *Kvočka* TCJ para 180.

¹⁵⁴⁰ *Akayesu* Trial Judgment, para. 688.

¹⁵⁴¹ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 22.

to body or to mental or physical health by means of an inhumane act; (3) the perpetrator was aware of the factual circumstances that established the character or gravity of the act.

¹⁵⁴²

1007. The category of “other inhumane acts” is a generic category which encompasses a series of criminal activities not explicitly enumerated.¹⁵⁴³ Whether an act is of sufficient seriousness to “rise to the level of inhumane acts should be determined on a case-by-case basis.”¹⁵⁴⁴ In this regard, there is no requirement that the suffering has long lasting effects, but the fact that the effects were long lasting will impact upon the determination of the seriousness of the act or omission.¹⁵⁴⁵

1008. As regards the *mens rea*, Trial Chamber I added that it is satisfied where the perpetrator, at the time of the act or omission, intended to inflict serious physical or mental suffering or to commit the inhumane act, or acted in the reasonable knowledge that this was likely to occur.¹⁵⁴⁶

1009. It is the Prosecution’s position that forced marriage falls under the category of “other inhumane acts”. The Prosecution submits that forced marriage consists of words or other conduct intended to confer a status of marriage by force or threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against the victim, or by taking advantage of a coercive environment, with the intention of conferring the status of marriage. These acts are distinct from sexual acts, in that they represent forcing a person into the appearance, the veneer of a conduct (i.e. marriage), by threat, physical assault or other coercion.¹⁵⁴⁷ Thus, forced marriage, even if it usually also involves sex, has its own distinctive features and is sufficiently serious to qualify as an inhumane act. Sexual slavery does not necessarily amount to forced marriage. Indeed, a sexual slave is not necessarily obliged to pretend that she is the wife of the perpetrator.¹⁵⁴⁸ Similarly, a victim of sexual violence is not necessarily obliged to

¹⁵⁴² *Brima* Decision on Motion for Acquittal, para. 174.

¹⁵⁴³ *Kayishema* TCJ para 149; *Blaskic* TCJ para 237; see also *Celebici* TCJ para 533.

¹⁵⁴⁴ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1&96-10, “Judgement and Sentence”, 21 May 1999, para.

151.

¹⁵⁴⁵ *Blagojevic and Jokic* Trial Judgment, para. 627.

¹⁵⁴⁶ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 23.

¹⁵⁴⁷ Status Conference, Transcript 8 March 2004, p. 27, para. 203.

¹⁵⁴⁸ Status Conference, Transcript 8 March 2004, p. 27, paras 207-208.

- perform all tasks attached to a marriage. In other words, forced marriage as an “inhumane act” can include sexual violence or slavery¹⁵⁴⁹ but it involves distinct elements as well.
1010. The question of the status of forced marriage as a crime under customary international law does not arise, as the crime charged is that of “other inhumane acts”, the customary law status of which is clearly established.¹⁵⁵⁰ The category of “other inhumane acts” is open-ended and has not been exhaustively enumerated. This is deliberate as “[a]n exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition”.¹⁵⁵¹
1011. The Prosecution submits that forced marriage is distinct from sexual slavery and sexual violence and reaches the same level of gravity as other crimes listed in Article 2 of the Statute. Should the Trial Chamber interpret the legal position differently, the acts of forced marriage that form part of the Indictment would be encompassed by Count 7 and also by Count 9 (outrages upon personal dignity) described below.
1012. The Prosecution submits that there is overwhelming evidence of a pattern of forced marriages perpetrated against a very large number of women. The acts described were of sufficient seriousness, in particular given the terrible circumstances and violent context, to constitute inhumane acts. The victims endured serious mental and physical suffering. The perpetrators intended to inflict such suffering or acted in the reasonable knowledge that this was likely to occur.

Count 9 - Outrages upon Personal Dignity - Article 3 (e) of the Statute

1013. This Trial Chamber has considered that, to secure a conviction, it must be proven that (1) the accused committed an outrage upon the human dignity of the victim; (2) the humiliation and degradation was so serious as to be generally considered as an outrage upon personal dignity; (3) the accused intentionally committed or participated in the act or omission and (4) that accused knew the act or omission could have that effect.¹⁵⁵²

¹⁵⁴⁹ See Report of the Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict E/CN.4/Sub.2/1998/13, paras 8 and 30.

¹⁵⁵⁰ *Blagojevic and Kokic* Trial Judgment, para. 624.

¹⁵⁵¹ *Kupreskic et al.* Trial Judgement, para. 563.

¹⁵⁵² *Brima* Decision on Motion for Acquittal, para. 115.

1014. As specified further by Trial Chamber I, guided by the Rome Statute,¹⁵⁵³ the first element is satisfied where “the accused humiliated, degraded or otherwise violated the dignity of one or more persons.”¹⁵⁵⁴
1015. As regards the *mens rea*, the Prosecution submits that it is sufficient that the accused acted deliberately, as opposed to accidentally.
1016. Regarding the fourth element, the Prosecution agrees that the phrase “the accused knew the act *could* have that effect”¹⁵⁵⁵ is preferable to the requirement articulated by Trial Chamber I, namely that the accused *intended* to humiliate, degrade or otherwise violate the dignity of the person or acted in the reasonable knowledge this was likely to occur.¹⁵⁵⁶ No specific intent on the part of the perpetrator to humiliate, ridicule or degrade the victims is required.¹⁵⁵⁷
1017. Although this crime is animated by contempt for the human dignity of another person, it is not necessary for the act directly to harm the physical or mental well-being of the victim.¹⁵⁵⁸
1018. The Prosecution refers to the evidence in relation to Counts 6-8 as establishing the legal requirements for the charge of outrages upon personal dignity.

Counts 10 and 11 – Physical Violence (Mutilation) – Article 3(a) of the Statute and Other Inhumane Acts - Article 2(i) of the Statute

1019. The core elements of the crime of violence to life, health and physical or mental well-being of persons, in particular mutilation are (1) the perpetrator subjected the victim to mutilation, in particular by permanently disfiguring the victim, or permanently disabling or removing an organ or appendage of the victim. (2) The perpetrator’s conduct caused the death or seriously endangered the physical or mental health of the victim. (3) The conduct

¹⁵⁵³ See the Elements of Crime of Article 8 (2) (c) (ii) of the ICC Statute.

¹⁵⁵⁴ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 23.

¹⁵⁵⁵ *Kunarac* Trial Judgment, para. 512; *Kunarac* Appeal Judgment paras 164-166; *Kvočka* Trial Judgment para. 168;

¹⁵⁵⁶ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 23.

¹⁵⁵⁷ *Alekovski*, Appeal Judgment, paras 27-28.

¹⁵⁵⁸ *Alekovski* Trial Judgment, para. 56 *ab initio*.

was neither justified by medical, dental or hospital treatment of the victim or carried out in victim(s)' interest.¹⁵⁵⁹

1020. The Prosecution submits that the second element above is superfluous and in fact has not been retained by Trial Chamber I.¹⁵⁶⁰

1021. The Prosecution submits that the *mens rea* is satisfied if "the accused intended to subject the person or persons to mutilation or acted in the reasonable knowledge that this was likely to occur."¹⁵⁶¹

1022. The requirements for inhumane acts have been set out above.

1023. The Prosecution submits that the abundant evidence presented establishes the legal requirements for both physical violence (mutilation) and other inhumane acts. The perpetrators mutilated civilians, by cutting their hands, arms or legs, thus endangering their physical and mental health. Many died as a result of these major injuries. Even if the reasonable knowledge that the mutilation was likely to occur is sufficient, the Prosecution submits that, in the present instance, the evidence demonstrates that the perpetrators intended to subject their victims to mutilation. The purpose of the mutilations was well-known: the AFRC/RUF intended to punish civilians for their supposed lack of support and their loyalty to the Kabbah government.

Count 12 - Child Recruitment - other serious violation of international humanitarian law -Article 4(c) of the Statute

1024. The Appeals Chamber has ruled that child recruitment was criminalized before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time frame relevant for the indictments. Therefore, the principles of legality and specificity are both upheld in the Indictment.¹⁵⁶²

¹⁵⁵⁹ *Brima* Decision on Motion for Acquittal, para. 172.

¹⁵⁶⁰ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 26.

¹⁵⁶¹ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 26.

¹⁵⁶² *Prosecutor v. Norman*, SCSL-04-14-AR72(E)-131, 'Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)', Appeals Chamber, 31 May 2004 (*Norman* Appeal Decision on Jurisdiction (Child Recruitment)) para.53 ; see also Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge University Press, 2005, pp. 482-488, 584.

1025. This Trial Chamber endorsed the elements of the crime as defined by Trial Chamber I:¹⁵⁶³ (1) The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities; (2) Such person or persons were under the age of 15 years; (3) The perpetrator knew or had reason to know that such person or persons were under the age of 15 years; (4) The conduct took place in the context of and was associated with an armed conflict; (5) The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.¹⁵⁶⁴

1026. The term “conscripting” children into the armed forces means “to compel to military service by conscription; to enlist compulsorily”. The term “conscription” is defined as “enrollment or enlistment of children”.¹⁵⁶⁵

1027. The term “enlist” is commonly defined as “to enroll on the “list” of a military body; to engage a soldier”.¹⁵⁶⁶ It suggests a child’s voluntary enrollment.¹⁵⁶⁷ As set out in the ICRC Commentary of Additional Protocol II: “The principle of non-recruitment also prohibits accepting voluntary enlistment”.¹⁵⁶⁸

1028. The phrase “using children to participate actively in hostilities” does not require any formal induction into a military unit. The criminal act is employing a child in hostilities regardless of the tasks the child is instructed to perform.¹⁵⁶⁹ Participation in hostilities must, however, be active, which entails, for example, arming a child and sending him into battle, but also using a child to transmit orders or military information, to transport

¹⁵⁶³ *Norman* Decision on Motion for Acquittal, para. 124.

¹⁵⁶⁴ *Norman* Decision on Motion for Acquittal, para. 124; see also International Criminal Court, Elements of Crimes, ICC-ASP/1/3, 9 September 2002, Article 8 (2) (e) (vii). See also *Brima* Decision on Motion for Acquittal, para. 194.

¹⁵⁶⁵ The Oxford English Dictionary, vol. II, p. 848.

¹⁵⁶⁶ The Oxford English Dictionary, vol. III, p. 191, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002. p. 377.

¹⁵⁶⁷ See also The American Heritage Dictionary of the English Language, 4th ed., 2002.

¹⁵⁶⁸ Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para. 4557; Article 51 of the Fourth Geneva Convention also forbids any pressure or propaganda aimed at securing “voluntary” enlistment.

¹⁵⁶⁹ Additional Protocol II to the Geneva Conventions of 12 August 1949, Art. 4 (3) (c), provides: “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”. This means they must not only not take part in combat, but also not take part in such activities as the obtaining and communication of militarily sensitive information and the transportation of munitions or other materiel, nor act as sentries or spies. See M. Happold, *Child Soldiers in International Law*, Manchester University Press, 2005, p. 67

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ammunition and food supplies, to carry on acts of sabotage or to guard bases.¹⁵⁷⁰ It also includes activities such as scouting, spying, and the use of children as decoys, couriers or at military checkpoints.¹⁵⁷¹ It is unnecessary to prove that a child was put into uniform, trained, subjected to military discipline, made to bear arms or subjected to any of the traditional means of marking an individual as a soldier rather than a civilian.

1029. Any volition or consent on the part of a child may not function as a justification or defence as children under the age of 15 are deemed not to have the capacity to consent to the activities envisaged under the provision. The *mens rea* requirement “would be met if it were established that the accused was willfully blind to the facts or circumstances that would bring his or her actions within the provisions of these offences.”¹⁵⁷² The mere belief that the victim is over a certain age limit is not a defence if the victim is in fact under it.¹⁵⁷³

1030. The Prosecution submits that the evidence establishes beyond reasonable doubt the legal requirements for the crime of child recruitment. Children under the age of 15 were involved in the war effort, trained for combat, armed and used during hostilities. The perpetrators knew or had least had reason to know that such children were under the age of 15.

Count 13 - Enslavement as Crime against Humanity-Article 2(c) of the Statute

1031. This Trial Chamber has defined the core elements of enslavement as follows : (1) the perpetrator exercised any or all of the powers attaching to the right of ownership over person(s), such as by purchasing, selling, lending, or bartering such person(s), or by

¹⁵⁷⁰ Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para. 4557; Article 51 of the Fourth Geneva Convention also forbids any pressure or propaganda aimed at securing “voluntary” enlistment.

¹⁵⁷¹ Draft Statute of the International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, Addendum, Part One, UN doc. A/CONF.183/2/Add. 1, 14 April 1998, p. 21, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p. 376.

¹⁵⁷² *Regina v. Finta*, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p. 379.

¹⁵⁷³ See for example, *Regina v. Prince*, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, pp. 379-381; the author, after having examined the national jurisprudence concludes that the bottom line is that the accused must have realised the possibility that the victim was under the age limit.

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imposing on them a similar deprivation of liberty. The Trial Chamber indicated that the “*mens rea* of the violation consists in the intentional exercise of such powers”.¹⁵⁷⁴ The *mens rea* element may also be met by the reasonable knowledge standard.¹⁵⁷⁵

1032. It is not necessary to prove that the accused intended to detain the victims under constant control for a prolonged period of time.¹⁵⁷⁶ Thus, the duration is not an element of the crime, and neither is the lack of consent of the victim. However, the lack of consent may be relevant to establish whether the accused exercised any or all of the powers attaching to the right of ownership. Circumstances which render it impossible to express consent may be sufficient to presume the absence of consent.¹⁵⁷⁷

1033. Relevant indicia to establish the elements of crime are the “control of someone’s movement, control of 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”.¹⁵⁷⁸

1034. The Prosecution submits that the abundant evidence presented establishes the legal requirements for enslavement as a crime against humanity. The perpetrators abducted and detained civilians, and/or forced them to mine or perform various other tasks. The perpetrators acted intentionally by deliberately depriving these civilians of their liberty.

Count 14 – Pillage – Article 3(f) of the Statute

1035. This Trial Chamber has defined the core elements of the crime of pillage as follows: (1) the perpetrator appropriated property. (2) the appropriation was without the consent of the owner. (3) the perpetrator intended to deprive the owner of the property.

1036. It has been established by both Trial Chambers that the property need not have been appropriated for private or personal use.¹⁵⁷⁹ Pillage extends to cases of organized and

¹⁵⁷⁴ *Brima* Decision on Motion for Acquittal, para. 209; *Kunarac* Appeals Chamber paras 116, 122.

¹⁵⁷⁵ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 31.

¹⁵⁷⁶ *Kunarac* Appeal Judgment paras 116-122.

¹⁵⁷⁷ *Kunarac* Appeal Judgment paras 120-121.

¹⁵⁷⁸ *Kunarac* Appeal Judgment para 119.

¹⁵⁷⁹ *Prosecutor v. Sesay, Kallon, Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 34; See *Brima* Decision on Motion for Acquittal, 242-243.

systematic seizure of property as well as acts of looting by individual soldiers for private gain.¹⁵⁸⁰ The protected property is not limited to civilian property and the offence includes cases where property is given to third persons and not only used by the perpetrator.¹⁵⁸¹

1037. Regarding the act of burning, the Prosecution submits that pillage under Article 3 of the Statute is derived from Article 4(2)(g) of Additional Protocol II to the Geneva Conventions. 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.”¹⁵⁸² 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.”¹⁵⁸³ 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. The focus of the offence is the loss to the victim who may no longer use or benefit from the property. In the aftermath of World War II, in the *H. Szabados* case, the accused was found guilty of pillage, that is the looting of personal belongings and other property of the civilians evicted from their home *prior to the destruction of the latter* under Article 440 of the French Code.¹⁵⁸⁴ Furthermore, both Australian and Canadian military manuals define pillage as including the destruction of enemy private or public property.¹⁵⁸⁵

¹⁵⁸⁰ *Norman* Decision on Motion for Acquittal, para. 102. See also *Čelebići* Trial Judgment, para. 591. It has been stated that “Pillage, also known as plunder or looting, is the same as stealing, which is an offence in peace or war. It must be distinguished from the lawful requisitioning of property for military, rather than private, purposes”. UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, 15.23.1.

¹⁵⁸¹ Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p.273, applying also to pp. 464-465.

¹⁵⁸² *Čelebići* Trial Judgment, para. 587.

¹⁵⁸³ *Prosecutor v Naletilic and Martinovic*, IT-98-34-T, “Judgment”, 31 March 2003, para. 612.

¹⁵⁸⁴ In UNWCC, *LRTWC*, vol. IX, pp. 60 ff.; 13 AD 261, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p. 279.

¹⁵⁸⁵ Australian Defence Force, *Law of Armed Conflicts-Commander’s Guide*, paras. 743 and 1224 and Office of the Judge Advocate, *The Law of Armed Conflict at the Operational and Tactical Level*, p. 12-8, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, pp. 279-280.

1038. The burning of civilian dwellings not justified by military necessity is recognized as a 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 the ICTY has a separate and distinct crime of “wanton destruction of cities, towns or villages, 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.
1039. The Prosecution notes that the acts charged as “burning” also fall within the scope of acts of terrorism charged under Count 1 and collective punishments under Count 2.
1040. The Prosecution submits that the overwhelming evidence of looting and burning establishes the legal requirements for pillage. The perpetrators unlawfully and often systematically appropriated property belonging to persons known to be taking no active part in hostilities without the consent of those persons with the intention to deprive them permanently of the property. The ruthless destruction of property through burning similarly fulfils the legal requirements for pillage.

XIV. THE FIRST ACCUSED'S ALIBIS

1041. In essence the defence of alibi arises when an accused claims to be somewhere else at the time when the crimes alleged are committed. Rule 67 (ii) (a) provides that as early as reasonably practical and in any event prior to the commencement of the trial the Defence shall notify the Prosecution of its intent to enter the defence of alibi.¹⁵⁸⁶ In so doing the Defence notification shall specify the place or places where the accused claims to have been present at the time of the alleged crimes and the names and addresses of witnesses and any other evidence on which the Accused intends to rely to establish this alibi.¹⁵⁸⁷
1042. The First Accused in his Defence Pre-trial Brief¹⁵⁸⁸ raises a partial alibi that he was placed under arrest by the RUF in Kailahun in mid-February and that he was also incarcerated until around 8 July 1998 whereupon he fled and stayed with family until October 1998. This partial alibi was clearly geared to excusing the First Accused from any liability during the period in Kono post-intervention through to the Bombali campaign which covered crime sites such as Karina.
1043. During his own evidence the First Accused gave far greater detail of his alibi than was disclosed in his Pre-Trial Brief. On motion by the Prosecution for relief in respect of violations of Rule 67 the Court found that the First Accused had failed to provide the notice as required in respect of Rule 67 A (ii) and was in breach of that Rule.¹⁵⁸⁹
1044. Accordingly the Trial Chamber made an order that the First Accused make the necessary disclosures in accordance with Rule 67 A (ii), namely the places where he claims to have been present at the times of the alleged crimes and the names and addresses of witnesses and any other evidence upon which the accused intends to rely in order to establish his

¹⁵⁸⁶ Rule 67, Rules of Procedure and Evidence, Special Court for Sierra Leone.

¹⁵⁸⁷ Ibid.

¹⁵⁸⁸ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-145, "Defence Pre Trial Brief for Tamba Alex Brima", 17 February 2005, para 28 (e).

¹⁵⁸⁹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-521, "Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67", 26 July 2006.

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alibi.¹⁵⁹⁰ The Defence for the First Accused on 3 August 2006 filed their alibi notice in compliance with the Court's order.¹⁵⁹¹ Tellingly it did not cover Freetown.

1045. In essence the First Accused has presented four separate alibis which break down as follows:

- a. From around mid-February 1998 until 8 July 1998 he was detained and incarcerated by the RUF in Kailahun
- b. From around 8 July he travelled as an escapee with Morris Kallon from Kailahun to Koidu Town where upon arrival (17 July) he escaped immediately to his village in Yarya
- c. He remained in his village Yarya for around three months before being arrested by Commander 0-Five and taken under arrest to Colonel Eddie Town
- d. Before the invasion of Freetown in January 1999 he escaped with the Third Accused and Woyoh from Goba Water and travelled with the Third Accused to Makeni where he remained with his family until the SLA faction had been driven out of Freetown towards the end of January 1999.

1046. It is the case of the Prosecution, just like many other parts of the First Accused's evidence, that he has lied in connection with his alleged alibis and that he has no alibi for the times when the crimes alleged against him in the Indictment were committed.

1047. On the contrary, it is the case of the Prosecution that the First Accused was either present when the crimes were committed or was in command of the troops who committed the crimes. As such, all the First Accused's defences of alibi must be rejected in their entirety.

1048. The Prosecution, based on all of the evidence before this Court, examines each of the First Accused's alibis in turn.

¹⁵⁹⁰ Ibid.

¹⁵⁹¹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-526, "Confidential Brima Defense Alibi Notice pursuant to Article 67 (A) (ii) of the Rules of Procedure and Evidence", 3 August 2006.

The First Accused first alibi (mid-February 1998 - 8 July 1998 detained and incarcerated by the RUF in Kailahun)

The Prosecution's position

1049. The Prosecution accepts that the First Accused was in Kailahun from around mid-February until the end of April or early May at the latest and thereafter he left Kailahun of his own free will, with the blessing of Sam Bockarie and the other RUF leaders in order to take logistics to the joint RUF/SLA force in Kono under the command of the Second Accused and Superman.¹⁵⁹²
1050. The Prosecution's case is that when the First Accused retreated from Kono to Kailahun in mid-February prior to the Intervention, he was captured by the RUF and stripped of the diamonds¹⁵⁹³ which he had stolen whilst monitoring mining operations as PLO 2 in Kono.¹⁵⁹⁴
1051. The Prosecution accepts that for a short period of time in either Kailahun or Buedu (but for no longer than a week) the First Accused may have been under house arrest. Thereafter however it is the case of the Prosecution that the First Accused was able to move around freely in Kailahun, was not stopped from leaving and even visited and ate with Sam Bockarie. Eventually the First Accused was sent by Sam Bockarie to cement the relationship between the RUF and the SLAs in Kono around the end of April/ beginning of May 1998.
1052. The Prosecution submits that this is another indication that the JCE between the SLAs and RUF was very much alive after the Intervention whilst the First Accused was in Kailahun with Sam Bockarie. It is also evidence of the First Accused and Sam Bockarie consolidating their relationship from the AFRC Junta days which would hold them in good stead during the eventual attack on Freetown in January 1999.

The First Accused's evidence in relation to, and in support of, his first alibi

1053. According to The First Accused's evidence, after the Intervention he tried to escape from Kono to Liberia with Major Paul Koroma, Lt. Kaloga Kamara, Lt. Jeff Kallon, Lt. Paul

¹⁵⁹² TF1-167, TF1-334, TF1-184, TF1-153.

¹⁵⁹³ Gibril Massaquoi, TF1-046, Transcript 11 October 2005, p.29

¹⁵⁹⁴ TF1-153, Transcript 22 September 2005, p. 19.

Levy, Staff Sgt. Moses Moseray, Cpl. Momoh Thorley, Sgt. Sankoh and Augustine Kobba.¹⁵⁹⁵ En route they were arrested by RUF Saddama and Senegalise,¹⁵⁹⁶ and they were taken to Moa Barracks in Daru and handed over by the RUF.¹⁵⁹⁷

1054. According to the First Accused, after handing him over, the RUF wanted him returned and launched an attack on Moa Barracks which was resisted by Major Fonti Kanu who was the SLA in command of the barracks.¹⁵⁹⁸

1055. Tellingly, not one of the persons who allegedly accompanied the First Accused to Moa Barracks gave evidence before this Court to support the First Accused's evidence, [REDACTED]
[REDACTED]¹⁵⁹⁹ Moreover, not a single witness in this trial (either Defence or Prosecution) testified to ever seeing the First Accused at Moa Barracks or ever hearing that he was there during this timeframe.

1056. The question arises as to why The RUF would want to capture the First Accused after the Intervention in mid-February when the AFRC and SLAs were at that time working together to recapture Koidu Town. Having been arrested by the RUF, it is unclear why would they take the First Accused to Moa Barracks and hand him over to the SLAs and then attack Moa Barracks demanding the return of the First Accused.

1057. None of this is believable, especially as according to the First Accused he was a lowly corporal with no command authority who never exercised any power in Freetown due to his severe illness.

1058. According to the First Accused after staying at Moa Barracks for three days he heard that Johnny Paul Koroma was in Kailahun and that Johnny Paul Koroma had requested his presence. He then travelled by vehicle to Kailahun with Fonti Kanu where he was

¹⁵⁹⁵ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 41-42.

¹⁵⁹⁶ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 43.

¹⁵⁹⁷ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 44.

¹⁵⁹⁸ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 45-48.

¹⁵⁹⁹ [REDACTED]

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immediately placed [REDACTED].¹⁶⁰⁰ This arrest was around late February 1998.¹⁶⁰¹

[REDACTED], according to the First Accused, they (presumably including Fonti Kanu) were stripped naked in front of the civilians and taken, on the orders of Sam Bockarie, [REDACTED]
[REDACTED]

1060. On Sam Bockarie's orders, [REDACTED] did not shoot the detainees (presumably including Fonti Kanu) and instead took them to the guardroom where they were locked up and after a while released when Sam Bockarie heard that Johnny Paul Koroma was coming to Kailahun.¹⁶⁰³

1061. Tellingly, during the cross-examination of [REDACTED] none of these accusations were ever put to him by the defence for the First Accused. If this really happened, it is unclear why they were not put to him. Likewise not a single Prosecution or Defence witness corroborates this story of the First Accused being arrested, stripped naked and taken for execution in Kailahun.

1062. Even Defence witness DAB-147 gave evidence that he saw Fonti Kanu in the villages around Daru during this time period rather than being under arrest.¹⁶⁰⁴ Defence witness DAB-018 gave evidence that Fonti Kanu was working with the RUF and was executed by Issa Sesay for betraying the RUF.¹⁶⁰⁵ This is contrary to what the First Accused claims.

1063. The First Accused further claims that after his release, he and Major Fonti Kanu, Paul Koroma, Capt. Hindolo Tyre, Staff Sgt. Moseray Cpl. Momoh Thorley, Sgt. Sankoh, Tamba Abu, Augustine Kobba and Capt. Foday Kallon all tried to escape to a neighbouring state.¹⁶⁰⁶

[REDACTED] None of the named persons have given evidence to support the First Accused's version of events. [REDACTED]

¹⁶⁰⁰ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 48-51.

¹⁶⁰¹ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 51.

¹⁶⁰² Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 50-53.

¹⁶⁰³ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 53-54.

¹⁶⁰⁴ DAB-147, Transcript 3 October 2006, pp. 51-52.

¹⁶⁰⁵ DAB-018, Transcript 7 September 2006, p.95.

¹⁶⁰⁶ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 55.

[REDACTED]

1065. According to the First Accused he and some of the others named above were arrested at Baillu crossing point by Issa Sesay and the RUF.¹⁶⁰⁷ The Prosecution accepts that the First Accused and some others were arrested at Baillu crossing point. This arrest however was whilst the First Accused was escaping from Kono with his stolen diamonds. It is the submission of the Prosecution that all earlier parts in this section about the First Accused's initial arrest can be rejected in their entirety as uncorroborated lies. The Prosecution also submits that [REDACTED] was present and that he had come to search the First Accused for the diamonds which the First Accused had stolen from Kono. These diamonds were found on the First Accused.¹⁶⁰⁸

1066. The Prosecution submits that the capture of the First Accused and the seizing of the First Accused's diamonds before he escaped with them to Guinea (where Baillu crossing point is located) was a wholly logical reason why the RUF wanted the First Accused arrested and searched.

1067. Otherwise the question arises as to why the RUF would be interested in finding a lowly corporal as the First Accused claimed he was. The First Accused essentially received the same treatment as Johnny Paul Koroma when the RUF heard that that he had diamonds in his possession,¹⁶⁰⁹ which the RUF needed in order to purchase arms and ammunition from Charles Taylor in Liberia and other sources.

1068. Again it is not believable that Issa Sesay would have ignored Sam Bockarie's order to kill the First Accused who was only a lowly corporal. The First Accused's own evidence gives no indication of any relationship of friendship with Issa Sesay during the AFRC regime and this so called kindness which the First Accused referred to is never explained.¹⁶¹⁰

1069. Sam Bockarie was the overall RUF commander and his men obeyed his orders especially in his home ground of Kailahun. TF1-045 executed Kamajors on Sam Bockarie's orders.

¹⁶⁰⁷ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 57.

¹⁶⁰⁸ [REDACTED]

¹⁶⁰⁹ TF1-045, Transcript 19 July 2005, pp. 98-99 and DAB-059, Transcript 27 September 2006, pp. 78-79.

¹⁶¹⁰ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 59.

Issa Sesay killed Fonti Kanu on Sam Bockarie's orders who was actually working for the RUF.¹⁶¹¹

1070. So feared was Sam Bockarie even by his own men that Mike Lamin, another senior RUF Commander, according to the First Accused, warned Issa Sesay not to go back to Bockarie because he (Issa Sesay) had not carried out Bockarie's order to kill the First Accused.¹⁶¹² It is just not believable that Issa Sesay would have refused to carry out Bockarie's order to kill the First Accused who was a lowly corporal. This is clearly yet another uncorroborated lie by the First Accused.

1071. According to the First Accused, after Issa Sesay had spared him from execution, he took him to Mike Lamin where he was kept under guard by [REDACTED] at Mike Lamin's house in Buedu. Three other SLAs were also kept in Mike Lamin's house in separate rooms.¹⁶¹³ According to the First Accused this happened around mid-March.¹⁶¹⁴

1072. DAB-059 who was listed as one of the First Accused's alibi witnesses for Kailahun gave an entirely different story about the First Accused's arrest. DAB-059 gave evidence that he accompanied Johnny Paul Koroma from Kono to Kailahun where he was met en route by Mike Lamin (according to the First Accused's evidence he had been imprisoned before Johnny Paul Koroma arrived).

1073. Thereafter according to the First Accused, he was placed in a dungeon (presumably at Lamin's House) with Major Fonti Kanu and Hindolo Tyre.¹⁶¹⁵ During this period he was taken out and interrogated by Rashid Sandy; they were returned to the dungeon and after about a week interrogated by Sheku Coomber. Thereafter he was returned to the dungeon where he stayed for about a week.¹⁶¹⁶

1074. According to the evidence of DAB-059 after he arrived with Johnny Paul Koroma and Johnny Paul Koroma met Mosquito, Mike Lamin followed the orders and arrested the First Accused at Giema Road with his (the First Accused's) escort.¹⁶¹⁷

¹⁶¹¹ DAB-018, Transcript 7 September 2006, p. 95.

¹⁶¹² Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 59-61.

¹⁶¹³ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 59-61.

¹⁶¹⁴ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 59-61.

¹⁶¹⁵ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 61-62.

¹⁶¹⁶ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 63-64.

¹⁶¹⁷ DAB-059, Transcript 27 September 2006, pp.71-72, and Transcript 2 October 2006, p. 17.

1075. This wholly contradicts the First Accused's evidence that he was arrested by Issa Sesay at Baillu crossing and the Prosecution submits that this does not support the First Accused's version of his arrest or earlier detention. This is a significant discrepancy from his own alibi witness.
1076. No witness at trial has supported the First Accused's version of him being in jail before the arrival of Johnny Paul Koroma. Once more, these are uncorroborated lies made by the First Accused.
1077. The First Accused gave evidence that after about a week after he was interrogated for a second time, he along with Fonti Kanu and Hindolo Trye were taken from the dungeon and to Sam Bockarie's house.¹⁶¹⁸ At Sam Bockarie's house the First Accused found Johnny Paul Koroma, Sam Bockarie, Sheku Coomber, Rashid Sandy, and Johnny Paul Koroma's wife, children and guards. There he witnessed Mike Lamin order the arrest of Johnny Paul Koroma.¹⁶¹⁹
1078. Yet again, the First Accused's evidence of this incident is contradicted by the evidence of his own alibi witness DAB-059. DAB-059, who also claims to have witnessed the arrest of Johnny Paul Koroma, does not mention that the First Accused is present. Furthermore, contrary to the First Accused's version of events, it is Mosquito who orders Johnny Paul Koroma to be taken under control and not Mike Lamin.¹⁶²⁰
1079. The Prosecution submits that both the First Accused and DAB-059 are lying in respect of Johnny Paul Koroma's arrest and that neither of them was present when Johnny Paul Koroma was arrested at Mosquito's house.
1080. According to the evidence it is also well known that Johnny Paul Koroma reached Kailahun by the end of February and was under detention by mid-March at the latest.¹⁶²¹
1081. According to the First Accused's evidence, as soon as Johnny Paul Koroma is humiliated, the First Accused is returned to the dungeon.¹⁶²² [REDACTED]

¹⁶¹⁸ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 61-64.

¹⁶¹⁹ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 66-67.

¹⁶²⁰ DAB-059, Transcript 27 September 2006, p.78.

¹⁶²¹ TF1-334, Transcript 17 June 2005, p. 44

¹⁶²² Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 79-80.

[REDACTED]
[REDACTED] ¹⁶²³.

1082. [REDACTED]
[REDACTED] This is because there is no evidence whatsoever that Johnny Paul Koroma's wife and children were ever placed in a dungeon. Furthermore, evidence suggests that Johnny Paul Koroma's wife was searched by Issa Sesay and not by SBUs and certainly not in front of the witness as he claims. ¹⁶²⁴

1083. [REDACTED]
[REDACTED]
[REDACTED] ¹⁶²⁵.

1084. On the basis that Johnny Paul Koroma was humiliated by no later than mid-March, the First Accused's alibi of being in the dungeon as [REDACTED] at most only takes the First Accused to the end of March/start of April 1998. DAB-059 cannot remember when he left Kailahun but believes it was April or May 1998, ¹⁶²⁶ and under cross-examination by the Third Accused testified that he was in Kono between February to April 1998. ¹⁶²⁷

1085. [REDACTED]
[REDACTED] it is well known that Johnny Paul Koroma reached Kailahun by the end of February having stayed only a few days in Kono. Clearly DAB-059 cannot be safely relied upon for his timings.

1086. The Prosecution, however, submits that the evidence of DAB-059 should be rejected in its entirety so far as it relates to the First Accused and his detention in Buedu. Firstly, it does not corroborate the First Accused's own evidence of what happened to him on reaching Kailahun or on the arrest of Johnny Paul Koroma. Secondly, it is simply unbelievable to think that a person could receive 1,000 lashes and then 5 days later without

¹⁶²³ DAB-059, Transcript 2 October 2006, p.21.

¹⁶²⁴ TF1-045, Transcript 19 July 2005, pp. 96-97.

¹⁶²⁵ DAB-059, Transcript 27 September 2006, p. 81.

¹⁶²⁶ DAB-059, Transcript 27 September 2006, p. 83.

¹⁶²⁷ DAB-059, Transcript 27 September 2006, p. 87.

receiving any medical treatment jump out of a dungeon to find a jungle.¹⁶²⁸ This is not believable.

1087. Furthermore, it is unclear how Sam Bockarie, after delivering 1,000 lashes to [REDACTED] [REDACTED], could praise him as a true revolutionary.¹⁶²⁹ Clearly DAB-059 is lying.

1088. Yet another example of the inconsistencies between the First Accused's own testimony and DAB-059 is that the First Accused says his family house was burnt before he left Kono for Kailahun,¹⁶³⁰ yet DAB-059 says that Superman burnt the First Accused's family house after DAB-059 returned from Kailahun having left the First Accused [REDACTED] [REDACTED].¹⁶³¹

1089. After being placed in the dungeon following the arrest of Johnny Paul Koroma, the First Accused makes no mention of either [REDACTED] or Johnny Paul Koroma's wife being in the dungeon with him. According to the First Accused, he stayed some time in the dungeon before staying at Mike Lamin's house until June.¹⁶³² None of the First Accused's evidence is corroborated by any alibi or other witness.

1090. Thereafter according to the First Accused, he was taken by Mike Lamin and two other SLAs (Sgt. Kamara and Staff Sgt. Moses Moseray) from Buedu to Kailahun Town, where they were all placed together until July.¹⁶³³ None of the First Accused's evidence is corroborated by any alibi or other witness.

1091. In essence, the First Accused has only one alibi witness for his period of detention in Kailahun and even if he is to be believed, [REDACTED] in a dungeon for about five days after Johnny Paul Koroma's humiliation. As such the First Accused has no alibi witness from April 1998 onwards.

¹⁶²⁸ DAB-059, Transcript 27 September 2006, p. 81 and Transcript 2 October 2006, p. 24.

¹⁶²⁹ DAB-059, Transcript 2 October 2006, p. 24.

¹⁶³⁰ Accused Alex Tamba Brima, Transcript 5 July 2006, p. 65.

¹⁶³¹ DAB-059, Transcript 27 September 2006, p. 82.

¹⁶³² Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 67-69, and Transcript 4 July 2006, p. 76.

¹⁶³³ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 74.

1092. The First Accused continues to lie in his evidence when he testified that while he was allegedly detained in Kailahun. Mike Lamin killed Fonti Kanu.¹⁶³⁴ This is contradicted by a number of his own Defence witnesses who say that Issa Sesay killed Fonti Kanu.¹⁶³⁵
1093. The only other alibi witnesses who gave evidence on behalf of the First Accused for Kailahun only saw him there on one occasion. He was seen by DAB-142 not in a dungeon but sitting in a group of 4 or 5 men. The First Accused told her that he was arrested and she did not think that he was free.¹⁶³⁶ According to DAB-142, the First Accused was arrested and taken to Buedu.¹⁶³⁷ DAB-142 would therefore have seen the First Accused for the first and last time in Kailahun Town before he was taken to Buedu where allegedly [REDACTED] joined the First Accused in the dungeon after Johnny Paul Koroma's humiliation.
1094. The Prosecution submits that even if this witness can be relied upon, she only gives the First Accused an alibi for one day in Kailahun before he is taken to Buedu. There is no indication on which date she saw the First Accused.
1095. As such she provides no alibi for him for the crucial months of May and June. Indeed, if believed, her evidence would be consistent with the Prosecution case theory that the First Accused was under detention in Kailahun for a very short period after his arrival in mid-February.
1096. Even DAB-018, who heard that the First Accused was detained in Kailahun, does not see him and cannot say when the First Accused was detained.¹⁶³⁸ Again this is not inconsistent with the Prosecution case of the First Accused being briefly detained in either mid-February or early March.
1097. DAB-018 however is not able to give any accurate times throughout his evidence and certainly cannot be relied on to bolster the First Accused's alibi, especially as he did not even see him. The Prosecution submits that the fact that DAB-018 did not mention in his

¹⁶³⁴ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 74

¹⁶³⁵ DAB-018, Transcript 7 September 2006, p. 95.

¹⁶³⁶ DAB-142, Transcript 19 September 2006, pp. 30-32.

¹⁶³⁷ DAB-142, Transcript 19 September 2006, p. 18.

¹⁶³⁸ DAB-018, Transcript 7 September 2006, pp. 29-30.

summary that he saw the First Accused in Kailahun is a clear indication that DAB-018 is lying about this aspect of his evidence as regards the First Accused's detention there.¹⁶³⁹

1098. In essence the First Accused only has two alibi witnesses for his presence in Kailahun. Even if the testimony of DAB-059 is taken at its highest, it only gives the First Accused an alibi up to the start of April for about five days, whilst DAB-142 only gives him an alibi for one day at an unknown time, but most likely shortly after Johnny Paul Koroma's arrival in Kailahun around the end of February or mid-March.

1099. The Prosecution submits that the First Accused has no alibi evidence to rely on in the months of May, June and July in Kailahun District. The Prosecution submits that this is an entirely fabricated alibi and that by the end of April 1998 the First Accused had returned willingly to Kono in order to take logistics to the joint RUF/SLA force that were based there in agreement with Mosquito.¹⁶⁴⁰

The First Accused's second alibi (escape from Kailahun to Kono and onwards to Yarya)

Prosecution's position

1100. The case of the Prosecution is that the First Accused returned voluntarily from Kailahun to Kono around the end of April or beginning of May 1998, whereupon he took over command of the SLA troops based in Kono from the Second Accused.¹⁶⁴¹

1101. When the First Accused arrived in Kono at around the end of April or beginning of May, he gathered the SLA troops in Kono and led them to Mansofinia. On the orders of SAJ Musa the First Accused led his SLA troop from Mansofinia through Bombali in May and June 1998 in order to find a base camp.¹⁶⁴²

1102. It is the case of the Prosecution that at no time did the First Accused travel to Kono with Morris Kallon and the RUF as an escapee in July 1998 and then, on virtually the same day of his arrival at Koidu, escape to his home town of Yarya.

¹⁶³⁹ DAB-018, Transcript 7 September 2006, p. 95.

¹⁶⁴⁰ TF1-334, Transcript 20 May 2005, pp. 40, 50-51.

¹⁶⁴¹ TF1-334, Transcript 19 May 2005, pp. 7-8.

¹⁶⁴² TF1-334, Transcript 20 May 2005, pp. 83, 88 & Transcript 23 May 2005, pp.16-109.

1103. The Prosecution accepts that the First Accused may have passed through Yarya with his troop on the way to Mansofinia and passed back through Yarya en route from Mansofinia to Bombali. The Accused however did not spend any significant period of time in Yarya as he alleges.

1104. Around the end of June, the First Accused and the troop which he commanded, including the Second and Third Accused in senior command positions, had found a base camp known at Camp Rosos.¹⁶⁴³

The First Accused's evidence in relation to, and in support of, his second alibi

1105. According to the First Accused he told RUF leader Morris Kallon that he planned to escape from Kailahun and asked if he could go with him to Kono. According to the First Accused Kallon agreed.¹⁶⁴⁴

1106. The Prosecution submits that this is not credible. There is no reasonable explanation why a senior RUF leader would take the First Accused, who he hardly knew and was under arrest, to Kono with him and risk incurring the wrath of Sam Bockarie. It seems that Kallon was not only prepared to run the risk of helping the First Accused to escape, but also assist in the escape of some of the First Accused's SLA comrades and civilians, none of whom he knew.

1107. The First Accused's explanation was that Kallon favoured him because, because his brother Jeff Kallon, was a former friend and squad mate of the First Accused.¹⁶⁴⁵ There is no corroborative evidence about such friendship, nor did the First Accused in his own evidence indicate that he had any kind of friendly relationship with Morris Kallon during the Junta period. There is no logical reason why Kallon would risk his own neck for the First Accused. Based on the First Accused's continued lies under oath, the Prosecution submits that this can be regarded as yet another lie on the part of the First Accused.

1108. Furthermore, if the First Accused truly wanted to escape surely he would have asked Morris Kallon to assist him to escape, as Jeff Kallon had, to either Liberia or Guinea,

¹⁶⁴³ TF1-334, Transcript 17 June 2005, p. 72 & TF1-167, Transcript 15 September 2005, p. 60.

¹⁶⁴⁴ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 74-75.

¹⁶⁴⁵ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 74-75.

locations which were both closer and not under RUF control. It makes little sense to “escape” from the RUF in Kailahun back to an RUF controlled area in Kono.

1109. According to the First Accused, Cpl. Gobsowah, Staff Sgt. Moses Moseray and a lady named Ester accompanied the First Accused when he “escaped” from Kailahun to Kono.¹⁶⁴⁶ None of these named individuals have come forward to corroborate the First Accused’s story and provide him with an alibi.
1110. According to the First Accused the trip took three days.¹⁶⁴⁷ Bearing in mind the radio connection which existed between Sam Bockarie in Kailahun and Superman in Kono,¹⁶⁴⁸ it is inconceivable that the First Accused would not have been arrested immediately on his arrival in Kono.
1111. Morris Kallon, most probably, had a radio man with him, so Bockarie or Superman would have immediately communicated with Kallon and told him to arrest the First Accused en route to Kono.
1112. If the First Accused was a lowly insignificant corporal as he claims without any authority, there is no logical explanation why Sam Bockarie would even know that he was missing or be concerned about his escape once Bockarie had taken the First Accused’s diamond. Neither is there a reasonable rationale why Kallon would tip the First Accused off that Bockarie had told Superman to arrest him when they arrived in Kailahun.
1113. This flies in the face of the First Accused’s own evidence where he insists that he did not have any good relations with the RUF. It would therefore be an incredible series of events for Issa Sesay to first fail to carry out Sam Bockarie’s order to kill the First Accused when he captured him with the diamond at Baillu crossing, and then for Morris Kallon, another senior RUF leader, to defie both Bockarie and Superman in favour of this lowly corporal who he hardly knew.

¹⁶⁴⁶ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 77.

¹⁶⁴⁷ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 77-78.

¹⁶⁴⁸ TF1-334, Transcript 18 May 2005, pp. 24-25.

1114. According to the First Accused on arriving in Kono that very night, he escaped from Kono to Yarya right under the noses of the RUF with his friend Singateh.¹⁶⁴⁹ Yet again this escape story is absolutely implausible.

1115. For instance, how would the First Accused know that Singateh was still in Koidu, that he still had a car, that he wanted to leave Koidu as well and that they would be able to pass through RUF roadblocks despite Sam Bockarie announcing over the RUF radio network that he wanted the First Accused arrested? This radio message would have been monitored and listened to at all RUF check points.

1116. Not only is this story fanciful, but tellingly, none of the persons who accompanied the First Accused from Kono to Yarya have corroborated this story or given him an alibi. For instance, the First Accused, according to his own evidence, went from Kono to Yarya with Singateh, Staff Sgt. Moses Moseray, Sgt. Kamara, and some of his relatives including his aunt (father's sister), her children and his uncle (mother's brother), yet not a single one of these persons have given evidence in support of the First Accused's version of events.

1117. In essence, the First Accused does not have an alibi or other corroborative evidence for his alleged escape from Kailahun on 8 July 1998 to Kono, then Yarya on 19 July 1997, nor is this portion of his alibi specified in his Defence Pre-Trial Brief.

1118. The Prosecution submits that this alibi, like the first alibi, is a lie and should be rejected in its entirety.

The First Accused's third alibi (Yarya, arrest by Commander 0-Five and move under arrest to Colonel Eddie Town)

Prosecution's position

1119. It is the case of the Prosecution that the First Accused was not based in Yarya for a three-month period from July to September 1998. It is the case of the Prosecution that the First Accused had set up base in Camp Rosos by July 1998, having led his troop during May and June through the Bombali district, committing and ordering his troops to commit numerous crimes on the way, as specified in the Indictment, for example at Karina.

¹⁶⁴⁹ Accused Alex Tamba Brima, Transcript 12 June 2006, p. 18

1120. It is the case of the Prosecution that from 18 July until September, the First Accused was either in command of the SLAs at Camp Rosos or Colonel Eddie Town until the arrival of SAJ Musa at Colonel Eddie Town in late November early December 1998.

The First Accused's evidence in relation to, and in support of, his third alibi

1121. The evidence of the First Accused is that when he reached Yarya he was taken to where his family was hiding, including his brother Komba and his aunt Kanka Finda,¹⁶⁵⁰ and that he remained in Yarya from July to September 1998.¹⁶⁵¹

1122. According to the First Accused, Commander 0-Five, who had been sent by SAJ Musa from Kurubonla to arrest him, found him hiding in Yarya in the evening. Commander 0-Five had about 110 men with him. On finding the First Accused, Commander 0-Five radioed SAJ Musa who told Commander 0-Five to take the First Accused on patrol. SAJ Musa had declared in Kabala that all former honourables were to be arrested.¹⁶⁵²

1123. The First Accused has produced two alibi witnesses for the Yarya period, but even without reference to them, it is clear that the First Accused is lying within the context of his own evidence.

1124. Firstly, the First Accused suggested the reason why Commander 0-Five had come to arrest him was because he was an honourable.¹⁶⁵³ The First Accused however, throughout his evidence, denied that he was ever an honourable. If this were true, there is no logical reason why Commander 0-Five would arrest him on account of him being an honourable.

1125. Furthermore, if SAJ Musa had sent Commander 0-Five to arrest the First Accused, it remains unclear why SAJ Musa did not tell Commander 0-Five to bring back the First Accused back to him in Koinadugu. There is no reasonable explanation why SAJ Musa would tell Commander 0-Five to take the First Accused on patrol when, according to nearly all the evidence (both Defence and Prosecution), SAJ Musa had specifically sent Commander 0-Five as an advance party (according to the Prosecution to join the First Accused and according to the Defence to join FAT Sesay).

¹⁶⁵⁰ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 66-68

¹⁶⁵¹ Accused Alex Tamba Brima, Transcript 12 June 2006, p. 42

¹⁶⁵² Accused Alex Tamba Brima, Transcript 12 June 2006, pp. 42-48.

¹⁶⁵³ Accused Alex Tamba Brima, Transcript 12 June 2006, p. 48.

1126. The First Accused also claims that ██████████¹⁶⁵⁴ was one of his guards when he was arrested at Yarya. However, when ██████████ gave evidence as a Defence witness, he did not even remember the First Accused being captured as he went through Yarya with Commander 0-Five. The first he heard of the First Accused's arrest was when Commander 0-Five told him about it at Colonel Eddie Town.¹⁶⁵⁵

1127. It is inconceivable that one of the soldiers who was guarding the First Accused from the time of his arrest at Yarya would not have remembered the First Accused's arrest, especially as an arrest of a high profile Honourable would have been one of the more memorable moments on his patrol. It is clear that the First Accused is lying and that he was never arrested by Commander 0-Five at Yarya.

1128. The Prosecution further examines the three specific alibi witnesses who gave evidence that the First Accused was in Yarya. The first witness DAB-156 did not see the soldier that was arrested as they passed through Yarya. She was only told later that it was Tamba Brima.¹⁶⁵⁶

1129. This witness later said she saw those who were arrested in a pit in Colonel Eddie Town. The witness gives no adequate explanation as to why she wanted to see the arrested people, none of whom she knew before.¹⁶⁵⁷ There is also evidence before this Court that the Accused were kept in a house at Colonel Eddie Town,¹⁶⁵⁸ rather than a pit.

1130. This witness is clearly lying, as indeed are all those other Defence witnesses who gave evidence that they saw the Accused under arrest in Colonel Eddie Town. This is evident from the fact that none of them can get their stories straight when asked about how and where the Accused were detained. The clear inference for these different stories is that, because none of the Defence witnesses saw the Accused under arrest in Colonel Eddie Town, they have all independently had to make up in what circumstances they saw the Accused under arrest.

¹⁶⁵⁴ Witness DBK-012.

¹⁶⁵⁵ DBK-012, Transcript 9 October 2006, pp. 12-13.

¹⁶⁵⁶ DAB-156, Transcript 29 September 2006, pp. 51-52.

¹⁶⁵⁷ DAB-156, Transcript 29 September 2006, p. 55 and pp. 80-81.

¹⁶⁵⁸ Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 115-116 and Transcript 22 June 2006, pp. 76-77

1131. DAB-156 gave evidence that she moved with the prisoners and that she was present when SAJ Musa was killed but she could not remember if he was given milk to drink or on what he was carried.¹⁶⁵⁹ It is extremely doubtful that this witness was present when SAJ Musa was killed or that she was even nearby at the time. She mentions being present when SAJ Musa was buried but does not mention about the Accused escaping at that time.¹⁶⁶⁰
1132. The witness claims she was with the Accused when SAJ Musa died but cannot corroborate the First Accused story that they were at the drill shell.¹⁶⁶¹ The witness is clearly lying with regard to the presence of herself and the detainees at Benguema and as such she cannot be regarded as a reliable witness.
1133. Furthermore, DAB-156 fails to corroborate the Accused's story of escaping at Goba Water as she says that she last saw the prisoners at Waterloo, which is before Goba Water.¹⁶⁶² Initially, she remembered that Alabama was close to SAJ Musa and then immediately, after realising her mistake in contradicting the First Accused (who described Alabama as SAJ Musa's cook), corrected herself in the same sentence. The lie is obvious.¹⁶⁶³
1134. DAB-111 in his evidence states that Komba was shot on his foot by a person he (Komba) was calling Junior¹⁶⁶⁴ and asking Junior not to kill him. This is clearly a lie. This witness deliberately tried to tie the incident into Junior Lion (George Johnson – TF1-167), however George Johnson was only referred to as Junior Lion in 1999 and in 1998 was known only as Lion.¹⁶⁶⁵
1135. Furthermore, this witness gives a great deal of evidence which is not in his summary but which is in his nephew's summary, located few summaries above his in the Defence disclosure. Tellingly, his nephew gave evidence a few days later and it is the case of the

¹⁶⁵⁹ DAB-156, Transcript 29 September 2006, p. 82 and p. 90.

¹⁶⁶⁰ DAB-156, Transcript 29 September 2006, p. 82.

¹⁶⁶¹ DAB-156, Transcript 29 September 2006, p. 89

¹⁶⁶² DAB-156, Transcript 29 September 2006, pp. 83-84.

¹⁶⁶³ DAB-156, Transcript 29 September 2006, p. 83.

¹⁶⁶⁴ DAB-111. Transcript 27 September 2006, p. 24.

¹⁶⁶⁵ George Johnson, TF1-167, Transcript 21 September 2005, p. 73.

Prosecution that they agreed the evidence which they would give before this Court beforehand.¹⁶⁶⁶

1136. Additional evidence that the witness is lying can be found when he says that when the First Accused arrived in Yarya, he told the witness that he heard that his brother had been shot.¹⁶⁶⁷ According to the First Accused's own evidence, he would not have been in a position to know that his brother had been shot as he had only the day before travelled from Kailahun, where he had been detained, to Kono, and immediately onwards to Yarya.

1137. DAB-111 also says that when the First Accused arrived he was not with other soldiers.¹⁶⁶⁸ This clearly contradicts the First Accused's own evidence that he travelled to Yarya with Singateh, Staff Sgt. Moses Moseray, Sgt. Kamara, and some of his relatives including his aunt, her children and his uncle.

1138. The witness cannot say when the First Accused arrived and when he left. He did not personally see the arrest of the First Accused and only heard about it. He does not know how many men arrested the First Accused.¹⁶⁶⁹ The witness gave evidence that the First Accused remained in Yarya for about two months until his arrest. Significantly, it is not stated in the witness's summary that the witness knew the First Accused remained in Yarya for two months.

1139. Being an alibi witness, this information ought to have been the most important aspect of the witness's evidence and should have been contained in his summary. The fact that it was not contained in the witness's summary provided to the Prosecution, coupled with the other unexplainable evidence as indicated above, is a clear indication that this witness is lying on this most crucial of points.

1140. In addition, this witness is in no position to act as an alibi witness as he only saw the First Accused on his arrival and heard about his arrest. It is the position of the Prosecution that this witness by his own admission was a close friend of the First Accused's father,¹⁶⁷⁰ was

¹⁶⁶⁶ DAB-111, Transcript 27 September 2006, pp. 41-42. and DAB-109, Transcript, 28 September 2006, pp. 91-92

¹⁶⁶⁷ DAB-111, Transcript 27 September 2006, p. 20.

¹⁶⁶⁸ DAB-111, Transcript 27 September 2006, pp. 36-37.

¹⁶⁶⁹ DAB-111, Transcript 27 September 2006, pp. 45-46.

¹⁶⁷⁰ DAB-111, Transcript 27 September 2006, p. 19.

close to the family and may have even owed his life to Komba Brima,¹⁶⁷¹ and on that basis came to lie on behalf of the First Accused.

1141. The witness cannot even tell which month the war came to Yarya in 1998. He can only say that it came in 1998. The Prosecution submits that this witness cannot either be believed or relied upon in respect of the whereabouts of the First Accused between the months of July and September.

1142. The third and final alibi witness for Yarya was DAB-109, [REDACTED]. According to DAB-109, he was stripped naked with others including Komba before Komba was pulled out of the group.¹⁶⁷² This directly contradicts DAB-111 concerning the events surrounding the shooting of Komba Brima in Yarya.

1143. According to DAB-111, Komba was surrounded and then shot.¹⁶⁷³ DAB-111 does not in his evidence mention that Komba was made to strip naked or even that Komba himself was naked before being pulled out of the group and shot. DAB-109 gave evidence that the elder Tamba Brima was with them when Komba was shot.¹⁶⁷⁴ Again DAB-111 does not mention the presence of the elder Tamba Brima in the group when Komba is shot. This according, to the Prosecution, is a significant omission.

1144. DAB-109 admits that he did not see Komba shot.¹⁶⁷⁵ According to the witness despite being over 30 minutes away he could still hear Komba say "Junior Lion, you've shot me". As with his uncle, this is a clear indication that witness DAB-109 is lying because George Johnson was not known as Junior Lion in 1998. Furthermore it would not have been possible for DAB-109 from the distance where he was to hear what Komba was saying.

1145. It is the case of the Prosecution that DAB-109 was not present when Komba was shot and that he has fabricated this story with [REDACTED] (even then their versions differ in material respects).

1146. DAB-109 gave evidence that he was with Komba and the First Accused in the bush. This contradicts the First Accused's own evidence, who said that he had gone to his farm.

¹⁶⁷¹ DAB-111, Transcript 27 September 2006, p. 22.

¹⁶⁷² DAB-109, Transcript 28 September 2006, pp. 80-81 and p. 102.

¹⁶⁷³ DAB-111, Transcript 27 September 2006, pp. 23-24.

¹⁶⁷⁴ DAB-109, Transcript 28 September 2006, p. 94.

¹⁶⁷⁵ DAB-109, Transcript 28 September 2006, pp. 97-99.

1147. The evidence which DAB-109 gives about the arrest of the First Accused is also contradictory to the evidence of the First Accused. According to DAB-109 there were only two men in uniform and four men in total and none of them were armed when the First Accused was taken away.¹⁶⁷⁶
1148. Witness DAB-109 claims to have been with the First Accused when he was taken away but according to the Prosecution this is not possible as his version of the events of the arrest differs so dramatically from the First Accused's.¹⁶⁷⁷ The Prosecution submits that both the First Accused and the witness have such a different version of events because both are lying and that the First Accused was never arrested in Yarya by Commander 0-Five.
1149. With regard to the timeframe, the witness can only say the First Accused was present in the rainy season for at least a month and a half. He did not see the First Accused each day and this is only half the period that the First Accused claims to have been in Yarya.
1150. It is the case of the Prosecution that DAB-111 and DAB-109's evidence concerning the stay of the First Accused in Yarya in the rainy season of 1998 is wholly false. This can be seen in the numerous inconsistencies between the evidence of DAB-111, DAB-109 and the First Accused's own evidence regarding his stay and arrest at Yarya.
1151. DAB-111 lied on behalf of the First Accused out of loyalty to the First Accused's father and brother Komba and he encouraged [REDACTED] DAB-109 to also lie on the First Accused's behalf, having agreed their stories in advance. DAB-109 lied at the behest of DAB-111 due to [REDACTED] [REDACTED] the position of influence and authority which DAB-111 holds in Yarya.
1152. According to the First Accused, he was then taken under arrest from Yarya to Colonel Eddie Town by Commander 0-Five. This journey, according to the First Accused, took between 10 to 12 days on foot.¹⁶⁷⁸
1153. The Prosecution would at this stage point to the unbelievable nature of the First Accused's alibi based on his allegedly severe health problems. According to the First

¹⁶⁷⁶ DAB-109, Transcript 28 September 2006, p. 87.

¹⁶⁷⁷ DAB-109, Transcript 28 September 2006, p. 105.

¹⁶⁷⁸ Accused Alex Tamba Brima, Transcript 12 July 2006, p. 51.

Accused's own evidence, he was so unwell during the Junta period that he was in and out of hospital, could not perform his role as PLO2, had to be accompanied on one of his trips to Kono with a medical orderly and was too unwell to fight at the Intervention.¹⁶⁷⁹

1154. If the First Accused was as unwell as alleged in his evidence, it is the case of the Prosecution that he would not have been able to survive the treatment and hardship which he had to endure from the start of his first alibi until his escape at Goba Water.

1155. In essence, from Kono the First Accused was captured and forced to march three days to Moa Barracks; in Kailahun he was stripped, beaten, threatened to be shot, interrogated, and kept in a dungeon for weeks on end in constant fear of being shot. During his "escape" from Kailahun he had to march for about three days; he then stayed in Yarya for around three months before being marched for approx 10 to 12 days to Colonel Eddie Town.

1156. At Colonel Eddie Town he was put out in the sun by George Johnson and maltreated. The First Accused underwent all this physical maltreatment and mental strain for almost 10 months with no evidence of medical treatment, yet was still well enough to have made an escape at Goba Water en route to Freetown and arrive safely and apparently well in Makeni. There is no evidence to suggest that he was unwell when he arrived in Makeni.

1157. The Prosecution submits that the truth of the matter is that the First Accused did not suffer from any major ill health throughout the period of the Indictment and that his alibis are unbelievable when faced with overwhelming reliable Prosecution evidence to the contrary.

1158. The First Accused is lying about his alibis, for which there has been hardly any witness support, just as he has lied throughout other large parts of his evidence.

The First Accused's fourth alibi (escape from Goba Water and onwards)

1159. The First Accused's fourth alibi is that before the Invasion of Freetown in January 1999, he escaped with the Third Accused and Woyoh from Goba Water and travelled with the

¹⁶⁷⁹ Accused Alex Tamba Brima, Transcript, 6 June 2006, pp. 57-59 and Transcript 6 June 2006, pp. 59-60 and Transcript, 8 June 2006, pp. 23-24.

Third Accused to Makeni, where he remained with his family until the SLA faction had been driven out of Freetown towards the end of January 1999.

Prosecution's position

1160. The fourth alibi of the First Accused's absence from Freetown during the Invasion is not supported by a single witness, either Prosecution or Defence. No alibi witness has been produced in respect of this fourth alibi.
1161. On the contrary, it was not supported by the Third Accused who the Trial Chamber found through his Defence attorneys, "has stated that he does not intend to rely of that particular piece of evidence"¹⁶⁸⁰ (i.e. that the Third Accused was present in another place during the January 1999 Freetown invasion). Not even a single family member who the First Accused allegedly stayed with in Makeni gave evidence in support of the First Accused's alibi.
1162. As for the First Accused alleging that he escaped with Woyoh, this was clearly a lie by the Accused who when remembering that Woyoh was a part of the Freetown invasion, immediately sought to distance himself from saying Woyoh by alleging that only the Third Accused accompanied him the whole way to Makeni and stayed with him and his family.
1163. There is no doubt that Woyoh took part in the Invasion of Freetown and indeed was killed there. There is evidence from both the Prosecution witnesses and Defence witnesses on this point.¹⁶⁸¹ Furthermore it would not make sense for Woyoh to escape at Goba Water and then return to take part in the invasion of Freetown. What was the need for him to escape?
1164. It is a classic example of the First Accused being caught in his own web of lies which he had spun during nearly three weeks of evidence-in-chief, followed by another week in cross-examination. After a while it became impossible for the Accused to remember what lies he had told earlier in his evidence.

¹⁶⁸⁰ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-521, "Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67", 26 July 2006, para. 26

¹⁶⁸¹ TF1-334, Transcript, 14 June 2005, pp. 4-6 and Transcript 16 June 2005, p. 99; DSK-113, Transcript, 12 October 2006, pp. 118-119; DSK-103, Transcript, 12 October 2006, p. 108; DBK-005, Transcript, 5 October 2006, p. 58.; DBK-131, Transcript, 26 October 2006, p. 54

1165. Another example is according to his early evidence, he and the other Accused were never honourables, yet (later in his evidence) according to him, he joined the other honourables under arrest at Colonel Eddie Town i.e. the Second and Third Accused along with Woyoh and Abdul Sesay.¹⁶⁸² By implication he therefore accepts that all the Accused were honourables.
1166. It is also significant that during cross-examination of Prosecution witnesses not a single Defence lawyer suggested that the First Accused escaped at Goba Water, nor was it ever suggested that the First Accused was not present in Freetown at the time of the Invasion because he was elsewhere.
1167. This defence of alibi for the Freetown invasion is not mentioned in the First Accused's Pre-trial Brief despite him inadequately alluding to alibis for other areas. It is clear that the idea of pleading alibi for Freetown only occurred to the Accused after the Prosecution case was closed and all the Prosecution evidence had been heard.
1168. This defence of alibi for Freetown by the First Accused has been used by him as a last ditch desperate attempt to avoid liability for the atrocities committed in Freetown in the face of overwhelming Prosecution evidence that the First Accused was present in Freetown and was in command of the troops during the Freetown Invasion.
1169. In the face of reliable identification evidence from Prosecution witnesses, who had known the First Accused from before the conflict and in one case, grew up with him and who have not been discredited during cross-examination, there can be no doubt that the First Accused was present during the Freetown Invasion.
1170. The Prosecution submits that the only inference that can be drawn from the First Accused claiming not to be in Freetown is that he was in command of the SLA faction in Freetown and was responsible for the atrocities as charged in the Indictment either personally or through soldiers under his command.
1171. This completely unsupported Freetown alibi is a desperate attempt to avoid liability on his part for the atrocities committed in Freetown.

The First Accused's evidence in relation to, and in support of, his fourth alibi

¹⁶⁸² Accused Alex Tamba Brima, Transcript, 5 July 2006, p. 34

1172. None of the Defence witnesses support the First Accused's alibi that he was elsewhere when the crimes were committed. Instead, they simply say that they did not see the First Accused in Freetown or that he was not there. Crucially, none of them say where he actually was or who he was with at the time of the Freetown Invasion or indeed say they were with him. As such, the First Accused's defence for Freetown is not one of alibi (as no witnesses have supported it), but rather an assertion the Prosecution cannot prove he was there.
1173. The issue is therefore whether the Prosecution witnesses are to be believed over the Defence witnesses on whether the Accused was present or not in Freetown during the Invasion in January 1999.
1174. In respect of the question of identification of the Accused at Freetown during the January 1999 Invasion and the reliability of Prosecution witnesses over Defence witnesses, please refer to section *XIX. Crimes During the Invasion, Occupation and Retreat From Freetown* and section *IV. Defences* (in particular mistaken identity).
1175. The key to showing that both the First Accused and his Defence witnesses, who claim the First Accused was under arrest from Colonel Eddie Town to Freetown, are lying can best be shown by the fact that in their respective evidence they either contradict each other or the First Accused himself in material aspects of the First Accused's evidence. If the First Accused and his witnesses were all telling the truth then there should be little if any contradictions over key elements of their testimony.
1176. Some specific examples of material contradictions between the First Accused's own evidence and Defence witnesses many of whom do not support the First Accused in respect of certain significant parts of his evidence and show that the First Accused is lying are set out below.
1177. The First Accused gave evidence that he was severely unwell during the Junta period and was too unwell to fight after the Intervention. No witness in this trial (either Defence or Prosecution has suggested that the First Accused was too unwell to perform his duties as a PLO or to fight).

1178. DAB-085 () was a crime-base witness for () in Koinadugu. According to the evidence of the First Accused, none of the Accused took part in the overthrow of Kabbah's Government. DAB-085 gave contradictory evidence that whilst he was in Freetown in 1997 he heard that all of the Accused were a part of the AFRC Coup.¹⁶⁸³
1179. DAB-079 () was a crime-base witness for Kabala and Koinadugu. The First Accused gave evidence that neither he nor the Third Accused were coup makers and that neither of them were involved in the Freetown Invasion of 1999. DAB-079 gave evidence to the contrary. He stated that the First Accused, referring to him as Gullit, was a coup maker, and that both Gullit and Five-Five (the Third Accused) were part of the Freetown Invasion.¹⁶⁸⁴
1180. This witness (DAB-079) was a (), who ought to have information about the conflict, was largely unchallenged in his evidence by the Prosecution and the Prosecution submits that this witness who had no reason to lie ought to be given weight by the Trial Chamber.
1181. DAB-025 () was a crime-base witness for () in Kono. The evidence of the First Accused was that he was a lowly corporal and due to his rank was not in a command position. This is contradicted by DAB-025 who gave evidence that Alex Tamba Brima, Ibrahim Bazy Kamara and Five-Five were all big men in the military.¹⁶⁸⁵
1182. DAB-023 () was a former SLA insider. According to the First Accused it was FAT Sesay who handed over the muster parade at Colonel Eddie Town to SAJ Musa. The evidence of DAB-023, however, is that George Johnson handed over the muster parade.¹⁶⁸⁶ The Prosecution submits that this is a too significant event for the First Accused and DAB-023 to differ on.
1183. DAB-023 also refers to Honourable Bazy in his evidence whereas the First Accused in his own evidence denies that Bazy was an honourable. The First Accused claims that TF1-184 was SAJ Musa's cook whilst DAB-023 gives evidence that TF1-184 was one of

¹⁶⁸³ DAB-085, Transcript, 20 July 2006, p.52

¹⁶⁸⁴ DAB-079, Transcript, 28 July 2006, p. 62, 68-69.

¹⁶⁸⁵ DAB-025, Transcript, 28 July 2006, p. 112

¹⁶⁸⁶ DAB-023, Transcript, 31 July 2006, p. 63

SAJ Musa's bodyguards. Furthermore DAB-023 does not seem to mention when he last saw the Accused under arrest.

1184. It is the case of the Prosecution that DAB-023 has lied throughout his entire testimony. This is no better illustrated than when he was confronted with his statement, which for Kono dealt almost entirely with being [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁶⁸⁷

1185. DAB-023 also claims that SLA Jackie Pallo was [REDACTED] in Kono in 1997/1998,¹⁶⁸⁸ which is contradicted by the more reliable Defence witness DAB-063 (see below) who gave evidence that SLA Jackie Pallo was killed in around 1994/1995.¹⁶⁸⁹

1186. DAB-023 is present at Goba Water but does not mention any escape by any of the Accused. According to DAB-023, Commander 0-Five led the attack on Freetown after SAJ Musa's death. This contradicts numerous other Defence witnesses who say that it was FAT Sesay who led the attack on Freetown. The case of the Prosecution is that DAB-023's testimony is based on lies and should be rejected in its entirety.

1187. DAB-063 ([REDACTED]) An SLA insider based in Kenema and Kailahun did not support the First Accused in large parts of his evidence. Despite spending a reasonable period of time in Kailahun after the Intervention, he did not mention either seeing or hearing about the First Accused. He heard that all the Accused took part in the overthrow of the Kabbah Government and were referred to as honourables; he heard that the Third Accused was an Honourable and that the First and Second Accused were members of the Supreme Council and knew that the First Accused was also known as Gullit.¹⁶⁹⁰

1188. Witness DAB-063 [REDACTED] throughout the period of the Intervention and would know who were honourables, who were members of the Supreme Council and part of the AFRC Government. This witness was not challenged in respects of these parts of his evidence by either the Defence or Prosecution. He is a

¹⁶⁸⁷ DAB-023, Transcript, 3 August 2006, pp. 60-62

¹⁶⁸⁸ DAB-023, Transcript, 31 July 2006, p. 30

¹⁶⁸⁹ DAB-063, Transcript, 2 August 2006, p. 67

¹⁶⁹⁰ DAB-063 Transcript, 2 August 2006, p. 60, 61-62

witness who exposes the First Accused as a liar and according to the Prosecution the Chamber should give weight to his evidence.

1189. DAB-039 (██████████), a Defence crime-base witness from Kono refers to Alex Tamba Brima being in Kono - a name and nickname the First Accused denied in his evidence.¹⁶⁹¹
1190. DAB-018 (██████████) a former SLA insider stated that Honourable Adams was in Kailahun and was being tortured. However, according to the First Accused Adams is one of the honourables who is under arrest with the First and the other Accused at Colonel Eddie Town.¹⁶⁹²
1191. DAB-018's description of life in Kailahun also contradicts that of the First Accused. According to the First Accused, he and other SLAs were under detention and were not treated well by the RUF. According to DAB-018, the SLAs had freedom of movement in Buedu because Mosquito loved them and even allowed them to lodge at his own house.¹⁶⁹³
1192. DAB-018 is not a part of the advance on Freetown so he is not in position to comment upon what actually happened in Freetown.
1193. DAB-131 (██████████) who is a crime-base witness for Kono stated that prior to the Intervention the First Accused was based in Masingbi Road with his troops in around January and February 1998. This witness also testified that the First Accused was PLO 2 and that it was no secret that the First Accused was a big man.¹⁶⁹⁴
1194. This evidence entirely contradicts the First Accused's own evidence in respect of Kono prior to the Intervention. According to the First Accused, he only made three short trips to Kono before the Intervention in respect of his biological mother, marriage and health reasons.¹⁶⁹⁵ According to the First Accused, he was not based there for long periods and certainly not as a commander or a big man. Once again the First Accused's own evidence is contradicted by his own witnesses.

¹⁶⁹¹ DAB-018, Transcript, 7 September 2006, p. 67

¹⁶⁹² DAB-018, Transcript 7 September 2006, p. 28.

¹⁶⁹³ DAB-018, Transcript 7 September 2006, p. 29.

¹⁶⁹⁴ DAB-131, Transcript, 13 September 2006, p. 79

¹⁶⁹⁵ Accused Alex Tamba Brima, Transcript, 8 June 2006, p. 20 and Transcript, 3 July 2006, p. 88 and Transcript, 8 August 2006, pp. 21-22.

1195. DAB-042 was a crime-base witness for Kono who gave evidence that the Third Accused, prior to the Intervention, came regularly to Koidu and addressed dignitaries at Koidu Town Hall.¹⁶⁹⁶ This witness also gave evidence that the Third Accused was regarded as a big man who came with guards to Koidu town.¹⁶⁹⁷ This clearly contradicts the First Accused's own evidence of all three Accused holding lowly insignificant positions during the period of the AFRC Government.
1196. If the Third Accused was a lowly 'other ranks' soldier after the Coup, with no power or authority, on what basis could he address meetings of the local dignitaries in Koidu Town including the Mammy Queen and be regarded as a big man. It is clear from the Defence's own witnesses that all the Accused held important positions of authority throughout the period of the AFRC Government.
1197. DAB-096 ([REDACTED]) confirms that TF1-184 was SAJ Musa's Chief Security Officer. This witness allegedly attended the First Accused's wedding in Kono on the invitation of DAB-095, but DAB-095 in his own evidence denies being at this wedding.¹⁶⁹⁸ DAB-096 in his evidence states that he last saw the Accused at Waterloo,¹⁶⁹⁹ which fails to corroborate the First Accused story that he escaped at Goba Water just after Benguema.¹⁷⁰⁰
1198. This witness was not an SLA and was for no apparent reason following the troop. He remained unarmed and with the families despite the SLA being short of manpower. The Prosecution submits that this witness is lying about the three Accused being under arrest from Colonel Eddie Town until he last saw them at Waterloo¹⁷⁰¹ and that his evidence should be rejected so far as it relates to the advance from Colonel Eddie Town to Freetown.
1199. DAB-095 ([REDACTED]) - The Prosecution submits that this witness's evidence can be rejected in its entirety without even reference to the First Accused's own evidence. Quite incredibly, after the Intervention his evidence is that he did not know who

¹⁶⁹⁶ DAB-042, Transcript, 15 September 2006, p. 96

¹⁶⁹⁷ DAB-042, Transcript, 15 September 2006, p. 96

¹⁶⁹⁸ DAB-095, Transcript, 28 September 2006, p. 47

¹⁶⁹⁹ DAB-095, Transcript, 28 September 2006, p. 64, 75

¹⁷⁰⁰ Accused Alex Tamba Brima, Transcript, 15 June 2006, pp. 27-28

¹⁷⁰¹ DAB-096, Transcript, 25 September 2006, pp. 9-10

SAJ Musa was. He only knew him as a soldier who had a rank.¹⁷⁰² For someone who was based in State House from the Coup until the Intervention this statement is not believable.¹⁷⁰³

1200. According to witness DAB-095 Commander 0-Five, Eddie and George Johnson were the advance team which SAJ sent ahead.¹⁷⁰⁴ This entirely contradicts the First Accused who said that Commander 0-Five arrested him and took him to Colonel Eddie Town where FAT Sesay was in command. According to DAB-095, FAT Sesay travelled with SAJ Musa to Colonel Eddie Town and he carried FAT Sesay's bag.¹⁷⁰⁵

1201. Again for a person who has never met the prisoners before, he gives no reason why he would go along to see them. His description of the detainees being in a house with iron bars on the window¹⁷⁰⁶ is also at variance with other witnesses who allegedly saw the Accused in jail at Colonel Eddie Town.

1202. Once more, according to DAB-095, he left the detainees at Waterloo¹⁷⁰⁷ when he went to Benguema and never saw them again which totally contradicts the First Accused's evidence of being at Benguema when SAJ Musa died.

1203. According to DAB-095's evidence Colonel Eddie led the advance into Freetown. This witness was carried in a stretcher to Freetown so he was not even in a position to see what was going on at State House. It is the case of the Prosecution that the evidence of this witness can be rejected in its entirety at least in the areas where it relates to the post-Intervention period in Kono and the testimony that the Accused were under arrest from Colonel Eddie Town and did not play a role in the Freetown invasion on the basis that a large part of DAB-095's evidence is founded on lies.

1204. DAB-033 ([REDACTED]) again contradicted both the First Accused's and other Defence witnesses' evidence in material respects. For instance, according to DAB-033, FAT Sesay led the advance party,¹⁷⁰⁸ yet according to DAB-095

¹⁷⁰² DAB-095, Transcript, 20 September 2006, p. 26

¹⁷⁰³ DAB-095, Transcript, 20 September 2006, p. 16

¹⁷⁰⁴ DAB-095, Transcript, 20 September 2006, pp. 56-58

¹⁷⁰⁵ DAB-095, Transcript, 28 September 2006, pp. 41-42

¹⁷⁰⁶ DAB-095, Transcript, 20 September 2006, pp. 61-62

¹⁷⁰⁷ DAB-095, Transcript, 28 September 2006, pp. 64, 75

¹⁷⁰⁸ DAB-033, Transcript, 25 September 2006, pp. 55-56

- Commander 0-Five led the advance party. According to DAB-033, there were three parties i.e. FAT Sesay's, Commander 0-Five's, and SAJ Musa's, yet no other witness gives evidence to this effect.¹⁷⁰⁹
1205. He also mentioned that SAJ Musa received a radio call en route to Colonel Eddie Town from George Johnson saying that he (George Johnson) has arrested the AFRC honourables such as the Accused.¹⁷¹⁰ The First Accused denied that he and the other Accused's were ever honourables. DAB-033 also gives evidence that the detainees escaped at Benguema,¹⁷¹¹ yet according to the First Accused's own evidence he and the Third Accused did not escape until after Benguema, at Goba Water.
1206. DAB-033 also lied under oath at least four times when he said that he did not see the detainees again after Benguema until he finally admitted, when confronted by the Defence for the Second Accused, that he saw them later at Makeni.¹⁷¹²
1207. It is the case of the Prosecution that the evidence of witness DAB-033 can be rejected in its entirety at least in the areas where it relates to the post-Intervention period in Kono and the parts about the Accused being under arrest from Colonel Eddie Town and not playing a role in the Freetown invasion on the basis that a large part of DAB-033's evidence is founded on lies.
1208. DBK-005 ([REDACTED]) was a former SLA who again contradicts the First Accused's evidence. According to DBK-005 the Accused were all honourables with securities and as such were important men.¹⁷¹³ According to DBK-005, all of the Accused were also members of the AFRC Government Supreme Council prior to the Intervention.¹⁷¹⁴ According to the First Accused he was neither an honourable, nor a member of the AFRC Supreme Council and was not an important person prior to the Intervention.
1209. It is the case of the Prosecution that it has proved through its witnesses that from Bombali to Camp Rosos the First Accused was in command of the troop, which under his orders

¹⁷⁰⁹ DAB-033, Transcript, 25 September 2006, pp. 55-57

¹⁷¹⁰ DAB-033, Transcript, 25 September 2006, p. 59

¹⁷¹¹ DAB-033, Transcript, 25 September 2006, p. 68

¹⁷¹² DAB-033, Transcript, 2 October 2006, pp. 35-36

¹⁷¹³ DBK-005, Transcript, 12 October 2006, pp. 17-18

¹⁷¹⁴ DBK-005, Transcript, 12 October 2006, pp. 18-19

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committed numerous atrocities in villages throughout the Bombali District as set out in this Indictment including, in particular, Karina, the birth place of President Kabbah.

1210. It is the case of the Prosecution that all of the First Accused's alleged alibis should be rejected in their entirety as lies.

XV. CRIMES IN KONO FROM 14 FEBRUARY UNTIL 30 JUNE 1998

EVIDENCE OF AFRC AND RUF WORKING TOGETHER IN KONO DISTRICT BETWEEN MID FEBRUARY AND MAY 1998

1211. Though it is not explicitly stated by the Defence, it can be presumed that a component of the Defence case is that the Accused, specifically the Second and Third Accused, were not present in Kono District during the relevant period of the Indictment.
1212. Even if this premise of the Defence were to be believed, it is the Prosecutions position that, even if the Accused were absent from Kono District during the relevant periods of the Indictment, all the Accused would not be absolved from liability under the theory of joint criminal enterprise.
1213. It is the Prosecution's position that the Accused, specifically the Second Accused, and for short periods the Third Accused, were present in Kono District during the relevant periods of the Indictment and responsible for the allegations charged there in.
1214. The Prosecution accepts that the First Accused left Kono for Kailahun around the time of the Intervention and returned to Kono in around the end of April or beginning of May at the latest, but that through his working with the RUF in Kailahun, as evidenced by him bringing logistics to the joint SLA/RUF forced based in Kono,¹⁷¹⁵ he still has liability under the theory of JCE.

Prosecution and Defence evidence

1215. Johnny Paul Koroma ordered that Sewafe should be burned because it was a suspected Kamajor stronghold. Sewafe is in Kono District about 22-23 miles from Koidu.¹⁷¹⁶ The Sierra Leone Army and the Revolutionary United Front did the burning. The senior commanders were present.¹⁷¹⁷

¹⁷¹⁵ TF1-334, Transcript 20 May 2005, p. 44, 50-51.

¹⁷¹⁶ TF1-334, Transcript 17 May 2005, p. 93

¹⁷¹⁷ TF1-334, Transcript 17 May 2005, p. 94

1216. At Bumpé, TF1-334 saw Issa Sesay, SAJ Musa and Johnny Paul Koroma. Johnny Paul Koroma was in command. When he left, Issa Sesay was the village commander.¹⁷¹⁸ Issa Sesay said that everyone should advance to capture Koidu Town. [REDACTED]
[REDACTED] Those involved, included [REDACTED]
[REDACTED], Col. Komba Gbundema of the Revolutionary United Front, Superman and other members of the Sierra Leone Army.¹⁷¹⁹ When Koidu Town was captured, Superman was the overall commander at that time.¹⁷²⁰
1217. On their way to Kono, the troops fought against the Kamajors and gained control of Koidu. The troops were led by Superman.¹⁷²¹ Superman was in complete control of Kono and the Second Accused was his second in command (2IC).¹⁷²²
1218. While in Koidu Town, the Second Accused's securities were in charge of collecting arms and ammunition and bringing it back to Superman. At this time, the Second Accused was the head of G4 and second in command to Superman.¹⁷²³
1219. During this time period, Mosquito was based in Kailahun.¹⁷²⁴ Mosquito stated that he was sending ammunition for the RUF and SLA in Kono and that both the SLA and RUF should clear Koidu Geiya so that they could be received.¹⁷²⁵ Mosquito had also stated that both the RUF and SLA should completely breakdown Sewafe Bridge so that ECOMOG forces shouldn't have a way to enter Koidu. This happened around May 1998.¹⁷²⁶
1220. While in Kono, TF1-334 knew about the RUF and SLA working together.¹⁷²⁷ There had been a cordial relationship between the RUF and SLA. If there were operations, they were joint operations and the command structure was clear to everyone.¹⁷²⁸
1221. There were various battalions assigned to various villages in Kono. TF1-334 and [REDACTED]
[REDACTED] would go on patrols to the areas where the commanders were based.¹⁷²⁹

¹⁷¹⁸ TF1-334, Transcript 17 May 2005, pp. 99-100

¹⁷¹⁹ TF1-334, Transcript 17 May 2005, p. 101

¹⁷²⁰ TF1-334, Transcript 17 May 2005, p. 102

¹⁷²¹ TF1-167, Transcript 15 September 2005, p. 32

¹⁷²² TF1-167, Transcript 15 September 2005, p. 32

¹⁷²³ TF1-167, Transcript 15 September 2005, p. 43

¹⁷²⁴ TF1-334, Transcript 18 May 2005, p. 25

¹⁷²⁵ TF1-334, Transcript 18 May 2005, p. 29

¹⁷²⁶ TF1-334, Transcript 18 May 2005, pp. 33-34

¹⁷²⁷ TF1-334, Transcript 19 May 2005, p. 6

¹⁷²⁸ TF1-334, Transcript 19 May 2005, p. 30

1222. SLA Capt. Junior, the Chief Security Officer to Col. Foday Kallay, alias Command One, was deployed to Jagbwema Fiama.¹⁷³⁰ He had SLAs and RUF under his command. The numbers were not stable, depending on a particular attack.¹⁷³¹
1223. SLA Col. Mohamed Savage was the battalion commander in Tombodu.¹⁷³² He had 80 men, mixed RUF and SLA, but mostly SLA. His deputy was Staff Alhaji, who was a Staff Sgt. in the SLA. Mohammed Savage recommended Staff Alhaji for promotion to lieutenant. The Second Accused promoted Mohamed Savage from corporal to lieutenant.¹⁷³³
1224. SLA Lt. Kallay, was the battalion commander at Bumpe. He had 70 men.¹⁷³⁴ Most were SLAs, but he did have some RUFs. He was subordinate to the operations commander.¹⁷³⁵ The Second Accused promoted Lt. Kallay from 'other ranks' to lieutenant.¹⁷³⁶
1225. Lt. Mosquito (SLA) was the battalion commander for Sewafe. He had 70 men.¹⁷³⁷ Most were SLAs but he did have some RUFs. The Second Accused promoted Lt. Mosquito from 'other ranks' to lieutenant.¹⁷³⁸
1226. SLA Lt. Tito was the battalion commander in Yengema. He was an SLA and freed from prison at the time of the Coup. He had 60 men, mostly SLA with some RUF.¹⁷³⁹ The Second Accused promoted Tito to lieutenant.¹⁷⁴⁰
1227. Lt. Abu Bakarr Kamara was the battalion commander at Woama. He was an SLA. He had 60 men. Most were SLA but he had some RUF as well. The Second Accused promoted Lt. Bakarr from 'other ranks' to lieutenant.¹⁷⁴¹
1228. The SLAs based at the headquarters at Masingbi Road included the Second Accused,¹⁷⁴² [REDACTED], George Johnson and Junior Sheriff.¹⁷⁴³

¹⁷²⁹ TF1-334, Transcript 19 May 2005, p. 16

¹⁷³⁰ TF1-334, Transcript 19 May 2005, p. 16

¹⁷³¹ TF1-334, Transcript 19 May 2005, p. 18

¹⁷³² TF1-334, Transcript 19 May 2005, p. 21

¹⁷³³ TF1-334, Transcript 19 May 2005, p. 50

¹⁷³⁴ TF1-334, Transcript 19 May 2005, p. 23

¹⁷³⁵ TF1-334, Transcript 19 May 2005, p. 24

¹⁷³⁶ TF1-334, Transcript 19 May 2005, p. 50

¹⁷³⁷ TF1-334, Transcript 19 May 2005, p. 24

¹⁷³⁸ TF1-334, Transcript 19 May 2005, p. 51

¹⁷³⁹ TF1-334, Transcript 19 May 2005, p. 25

¹⁷⁴⁰ TF1-334, Transcript 19 May 2005, p. 50

¹⁷⁴¹ TF1-334, Transcript 19 May 2005, p. 51

1229. Komba Gbundema was deployed at Yamandu.¹⁷⁴⁴ He was subordinate to Superman.¹⁷⁴⁵ He had mostly RUF troops, but had some SLAs, including Ector Bob Lahai.¹⁷⁴⁶
1230. RUF Rambo was Lt. Col. and subordinate to Superman. When Superman became director of operations for the SLA and RUF, RUF Rambo became the acting operations commander for the RUF.¹⁷⁴⁷
1231. The burning in Tombodu was organized; it was a joint RUF and SLA force.¹⁷⁴⁸
1232. After the Koidu Geiya operation, TF1-334 returned to Koidu Town and saw the Second Accused and the troops under his command burning Masingbi Road.¹⁷⁴⁹ During the Koidu Geiya operation, Mosquito called and said that he would send troops, both SLA and RUF and they should capture the town and take the money to Kailahun.¹⁷⁵⁰
1233. TF1-334, along with Col. Mongor (RUF military commander), the Second Accused (SLA commander), [REDACTED] (Operations commander) and other SLA and RUF broke Sewafe Bridge, pursuant to Mosquito's orders.¹⁷⁵¹
1234. When DAB-095 went to Koidu Town, they had met the RUF and soldiers there. The group that went ahead had already captured Koidu Town and the capture had been achieved by a joint force of SLA/RUF.¹⁷⁵² This evidence supports the Prosecution case.
1235. During the two months that DAB-095 was in Koidu Town, he did not see George Johnson, aka Junior Lion, nor SLA Hassan Papah Bangura, aka Bomblast.¹⁷⁵³ This is either a lie, as a number of Defence witnesses speak of seeing George Johnson in Koidu Town especially at Masingbi Road or it may be that the witness did not go to Masingbi Road or the areas where George Johnson was present.

¹⁷⁴² TF1-334, Transcript 19 May 2005, p. 26

¹⁷⁴³ TF1-334, Transcript 19 May 2005, p. 27

¹⁷⁴⁴ TF1-334, Transcript 19 May 2005, p. 32

¹⁷⁴⁵ TF1-334, Transcript 19 May 2005, p. 33

¹⁷⁴⁶ TF1-334, Transcript 19 May 2005, p. 35

¹⁷⁴⁷ TF1-334, Transcript 19 May 2005, p. 34

¹⁷⁴⁸ TF1-334, Transcript 20 May 2005, p. 16

¹⁷⁴⁹ TF1-334, Transcript 20 May 2005, p. 31

¹⁷⁵⁰ TF1-334, Transcript 20 May 2005, p. 49

¹⁷⁵¹ TF1-334, Transcript 20 May 2005, p. 51

¹⁷⁵² DAB-095, Transcript 28 September 2006, p. 21

¹⁷⁵³ DAB-095, Transcript 28 September 2006, p. 28

1236. When the SLAs were disarmed, only those SLAs that were willing to fight alongside the RUF were allowed to have weapons. There was no SLA commander to obey. Everyone was obeying the RUF.¹⁷⁵⁴ This is clearly a lie. There is abundant Prosecution evidence that the SLA had commanders in Kono and in particular, the Second Accused. It may be that some SLAs were forced to fight with the RUF, but this was probably because after the Intervention they found themselves in the areas which had been put under the responsibility of RUF dominated battalions.

1237. DAB-095 has forgotten that SLA Mohamed Savage and some SLAs established a base in Tombodu Town. DAB-095 heard about Savage in Kono though he had never been there. The witness knew that Savage was in Tombodu carrying out atrocities.¹⁷⁵⁵ This again supports the Prosecution case.

1238. There were some areas where the People's Army occupied but there were some areas where they mixed up SLAs/RUF. In Tombodu they were mixed as well as in Yengema and Sewafe Bridge and even Koidu Town.¹⁷⁵⁶ This again supports the Prosecution evidence.

1239. DAB-095's knowledge in respect of Kono is restricted to a few very limited areas in Kono and he is only able to speak about Tombodu where he knew that Savage had a mixed battalion under his command and that it was People's Army and the SLAs who were there. This evidence regarding Tombodu Town supports the Prosecution case that it was a mixed force at Tombodu under the command of Savage who the evidence shows was an SLA.

1240. The only other area in Kono which DAB-095 gave evidence about, was Sewafe where he again supported the Prosecution case of a mixed force of SLAs, RUF and People's Army at Sewafe. They were the blocking force for the bridge. DAB-095 also does not know (and does not deny that) if the SLAs had their own chain of command in Kono.¹⁷⁵⁷

¹⁷⁵⁴ DAB-095, Transcript 20 September 2006, p. 44

¹⁷⁵⁵ DAB-095, Transcript 28 September 2006, pp. 33-34

¹⁷⁵⁶ DAB-095, Transcript 28 September 2006, p. 34

¹⁷⁵⁷ DAB-095, Transcript 28 September 2006, pp. 34-35

1241. DAB-095 did not see any SLA partake in any burning. He did not see anything happen other than houses being burnt.¹⁷⁵⁸ Such an observation casts severe doubt on the credibility of this witness, especially his total denial of seeing or hearing that the Second Accused was in command of SLAs in Kono. The Prosecution submits that this witness should be given very little weight as he is clearly being very selective with the truth.

1242. DAB-018 testified that there were no SLAs again, that everyone had subdued themselves to the RUF.¹⁷⁵⁹ He further testifies that after the Intervention the SLAs and RUF were not in friendship in Kono. Everyone was a rebel. There was the People's Army, it was not the SLA. DAB-095 does not know what the People's Army is.¹⁷⁶⁰ The People's army is clearly a mixed force of SLAs and RUF as alluded to in the Prosecution case who were working together to achieve a common objective.

1243. DAB-023's evidence is again restricted to Koidu Town. However, he did not see any SLAs at Masingbi Road. If there were soldiers there, he did not know it. It is the submission of the Prosecution that if this witness was based in Koidu Town, it is not believable that he would not know that there were SLA soldiers in Masingbi Road. In addition to Prosecution witnesses, Defence witnesses have also given evidence that they saw SLAs in Masingbi Road.¹⁷⁶¹

1244. When DBK-117 arrived in Kono, [REDACTED], including George Johnson, aka Junior Lion, Bobby, Staff Alhaji, Salami Savage, who is Mr. Die and Papah Bomblast. He met a lot of RUFs in Kono as well. The SLAs had no direct command. They were taking command from the RUF. Superman was the overall commander in Kono and Morris Kallon was his deputy. In Kono, DBK-117 was [REDACTED] at Masingbi Road in Koidu Town. The RUF were all over Koidu Town.¹⁷⁶²

1245. DBK-117 says that it is not true that SLAs were working together with the RUF during the relevant time period in Kono. There were no SLAs at that time. [REDACTED] [REDACTED] [REDACTED]. DBK-117 also testified that it was a lie that the

¹⁷⁵⁸ DAB-095, Transcript 20 September 2006, pp. 47-48

¹⁷⁵⁹ DAB-018, Transcript 7 September 2006, p. 12

¹⁷⁶⁰ DAB-018, Transcript 7 September 2006, pp. 13-14

¹⁷⁶¹ DAB-023, Transcript 3 August 2006, pp. 69-70

¹⁷⁶² DBK-117, Transcript 16 October 2006, pp. 114-116

atrocities that he attributed to the RUF in Kono were carried out by both SLAs and RUF.¹⁷⁶³

1246. DBK-117 went to Tombodu and Staff Alhaji was the commander and Savage was the deputy. Regarding whether both Savage and Staff Alhaji were SLAs, DBK-117 says that they were all People's Army because they were subject to the RUF. DBK-117 went to Bumpe. The commander that he knew there was Capt. Komba Gbundema, not Lt. Kallay. DBK-117 also went to Sewafe, where Lt. Mosquito was in command. DBK-117 did not go to Yengema, Woama or Yamadu. All the places that DBK-117 mentioned did not have SLAs they were all People's Army.¹⁷⁶⁴

1247. Even if the name which DBK-117 knew the RUF/SLAs under was Peoples Army, it is still clear that the SLAs and RUF under the guise of People's Army were still working together. The Prosecution, however, submits that DBK-117 is lying when he says that there were no SLA commanders. Savage and Staff Alhaji were both commanders and the evidence as a whole clearly shows that they were SLA. The SLAs that DBK-117 knew about were with SAJ Musa. Everyone else was People's Army.¹⁷⁶⁵ This is not believable.

1248. DAB-033 testified that it is not correct that the SLAs had their headquarters at Masingbi Road.¹⁷⁶⁶ In the face of the abundance of Prosecution evidence to the contrary, this is not believable. DAB-033 did not go to Tombodu Town but heard about Savage being under the RUF. When it was put to DAB-033 that Savage was a commander of a mixed SLA/RUF battalion based at Tombodu, he did not know who had been controlling. He knew that Savage was a commander.¹⁷⁶⁷

1249. DAB-059 testified that between February and April of 1998 there were joint operations conducted by the SLAs and RUF.¹⁷⁶⁸

¹⁷⁶³ DBK-117, Transcript 16 October 2006, pp. 33-36

¹⁷⁶⁴ DBK-117, Transcript 16 October 2006, pp. 36-38

¹⁷⁶⁵ DBK-117, Transcript 16 October 2006, p. 42

¹⁷⁶⁶ DAB-033, Transcript 2 October 2006, p. 75

¹⁷⁶⁷ DAB-033, Transcript 2 October 2006, pp. 77-78

¹⁷⁶⁸ DAB-059, Transcript 27 September 2006, pp. 92-93

ANALYSIS

1250. The evidence of the Defence witnesses as it relates to Kono District in this section should be dismissed in its entirety. The Defence witnesses in this section not only contradict the evidence of the Prosecution witnesses, which is to be expected, but also contradict each other in significant respects. In contrast, the Prosecution witnesses in this area are very consistent.
1251. The case of the Prosecution is that there may well have been tension and an uneasy relationship between the SLAs and RUF in Kono especially as the more professional soldiers of the SLA did not want to subject themselves to the command of the less disciplined guerrilla fighters of the RUF. However, notwithstanding this tension, the Prosecution submits that it has produced overwhelming evidence to show that the two factions still worked together in defending Kono through two separate chains of command. Joint operations were carried out and when the SLA eventually pulled out of Kono under the First Accused in early to mid-May it was not on account of any open warfare with the RUF. The First Accused even took RUF radio operator Alfred Brown with him.
1252. Both Defence and Prosecution crime-base witnesses also overwhelmingly support the Prosecution case that the SLA and RUF were working jointly in Kono.
1253. TF1-074 was in Dumbadu for two months when the RUF and AFRC attacked there.¹⁷⁶⁹ AFRC and RUF attacked Dumbadu and put villages under their control; some were in full combat and others were in civilian clothes but armed.¹⁷⁷⁰ TF1-074 was in Bayawanu when he was captured by Armed Forces Revolutionary Council and Revolutionary United Front forces.¹⁷⁷¹ TF1-074 and his brother, after being captured, were taken to Wordu and forced to carry looted property.¹⁷⁷²
1254. Komba Gbundema was in charge of both the RUF and the AFRC. Soldiers were trained in Benguema. Rebels and soldiers were trained in the bush in Kailahun by an AFRC man, CO Plato.¹⁷⁷³

¹⁷⁶⁹ TF1-074, Transcript 5 July 2005, p. 9

¹⁷⁷⁰ TF1-074, Transcript 5 July 2005, p. 11

¹⁷⁷¹ TF1-074, Transcript 5 July 2005, pp. 11-12

¹⁷⁷² TF1-074, Transcript 5 July 2005, p. 13

¹⁷⁷³ TF1-074, Transcript 5 July 2005, p. 54

1255. There was a battalion of AFRC and RUF at Kayima.¹⁷⁷⁴
1256. TF1-074 was marked on his chest with both the Armed Forces Revolutionary Council and the Revolutionary United Front by an AFRC man called Bangalie.¹⁷⁷⁵
1257. TF1-217 was in Koidu Town in February 1998, when Juntas and rebels attacked and committed crimes such as looting, stabbing and raping.¹⁷⁷⁶ Rebels were RUF fighters and Juntas were breakaway soldiers that fought against the government.¹⁷⁷⁷
1258. The group that attacked Yardu Sandu were AFRC. AFRC were a group of mixed soldiers, soldiers and rebels mixed together. The rebels had come to town and joined the soldiers because they were the owners of the government.¹⁷⁷⁸
1259. DAB-042 testified that he had heard that Johnny Paul Koroma, with a force of SLAs and RUF had forced the Kamajors and ECOMOG out of Koidu Town.¹⁷⁷⁹
1260. DBK-126 was on the way to Koidu Town when she was captured by Bravo and taken to Masingbi Road in Koidu Town, [REDACTED]. The chief was George Johnson, aka Junior Lion.¹⁷⁸⁰
1261. DAB-115 testified that the troops under the command of Staff Alhaji were a combination of rebels and SLA soldiers from the AFRC.¹⁷⁸¹
1262. DAB-126 testified that Col. Oldshaw was an RUF and that he was in charge of the SLAs in Kayima.¹⁷⁸²
1263. DAB-131 testified that in March of 1998 Johnny Paul Koroma dislodged the Kamajors from Koidu Town and that his forces consisted of AFRC soldiers and the RUF. DAB-131

¹⁷⁷⁴ TF1-074, Transcript 5 July 2005, p. 28

¹⁷⁷⁵ TF1-074, Transcript 5 July 2005, pp. 17-20; Exhibit P27, Photograph of the witness's chest bearing the markings AFRC/RUF, 5 July 2005

¹⁷⁷⁶ TF1-217, Transcript 17 October 2005, pp. 4-5

¹⁷⁷⁷ TF1-217, Transcript 17 October 2005, p. 9

¹⁷⁷⁸ TF1-019, Transcript 30 June 2005, p. 95

¹⁷⁷⁹ DAB-042, Transcript 15 September 2006, p. 94

¹⁷⁸⁰ DBK-126, Transcript 25 October 2006, p. 32

¹⁷⁸¹ DAB-115, Transcript, 4 September 2006, p. 82

¹⁷⁸² DAB-126, Transcript, 15 September 2006, p. 7

does not know if Johnny Paul Koroma ordered the burning of Koidu Town in February/March 1998.¹⁷⁸³

1264. The Prosecution submits that for the most part the Defence witnesses corroborate the evidence of the Prosecution witnesses who testify to a mixed force of SLA/RUF and of SLA placement in Koidu Town. Specifically the testimony of DBK-126 clearly places the SLA at Masingbi Road.
1265. Though her evidence can be considered suspect in other areas, as far as it relates to SLA presence in Kono during the relevant time period, it can be relied upon. It is the case of the Prosecution that DBK-126 was, in fact, the Second Accused's cook in Kono instead of George Johnson's cook as she claimed. She has simply substituted George Johnson for the Second Accused in her evidence. This is logical and easy for her to do bearing in mind that George Johnson was the Second Accused's Chief Security Officer, whilst the Second Accused was in Kono and as such she would have been able to witness both of their movements.
1266. There are several Defence witnesses who state that those who attacked them were RUF based upon the fact that there was mixed clothing among the attackers. However, a constant thread among mixed forces of SLA/RUF has been that of mixed clothing, be it partial combats versus full combats or partial combats versus civilian clothes.
1267. It is the case of the Prosecution that the SLAs that fled from Freetown after the Intervention mostly wore uniforms but that as time passed by in the bush their uniforms would suffer from wear and tear. Without replacement uniforms they would continue to wear the part of their uniforms that was still viable but augment it with whatever other clothing was available. A basis for wearing even only part of a uniform as opposed to wearing completely civilian clothes would be to maintain their continued sense of identity as soldiers.

¹⁷⁸³ DAB-131, Transcript 14 September 2006, pp. 68-69

PRESENCE OF THE SECOND ACCUSED IN KONO DISTRICT AND COMMAND RESPONSIBILITY

Prosecution Evidence

1268. The Prosecution submits that through its witnesses it has adduced overwhelming evidence to show that the Second Accused was present in Kono. It is pertinent that the two key insider military witnesses (TF1-334 and George Johnson, TF1-167) who identify the Second Accused as being present in Kono worked closely with him and knew him well. George Johnson had been the Second Accused's Chief of Security (CSO) since the Intervention and continued to be so in Kono.

1269. [REDACTED]

[REDACTED]. Significantly, the credibility and reliability of TF1-334 and George Johnson - TF1-167 was not seriously challenged by the Second Accused with respect to the Second Accused's presence or position of command whilst in Kono.

1270. According to George Johnson - TF1-167, the troops were under the command of Superman and deputized by the Second Accused.¹⁷⁸⁴ On their way to Kono, the troops fought against the Kamajors and gained control of Koidu. The troops were led by Superman.¹⁷⁸⁵ Superman was in complete control of Kono and the Second Accused was his second in command (2IC).¹⁷⁸⁶ In Kono, the troops were divided into battalions and were under the overall command of Dennis Mingo, who was deputized by the Second Accused.¹⁷⁸⁷

1271. The Second Accused was in Koidu upon the return of TF1-334. The Second Accused was the most senior Sierra Leone Army commander and superior to [REDACTED].¹⁷⁸⁸ The Second Accused was the most senior Armed Forces Revolutionary Council Supreme Council member and from that time orders were being received from the Second Accused

¹⁷⁸⁴ TF1-167, Transcript 15 September 2005, p. 31

¹⁷⁸⁵ TF1-167, Transcript 15 September 2005, p. 32

¹⁷⁸⁶ TF1-167, Transcript 15 September 2005, p. 32

¹⁷⁸⁷ TF1-167, Transcript 15 September 2005, p. 38

¹⁷⁸⁸ TF1-334, Transcript 18 May 2005, p. 21

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through the operations commander.¹⁷⁸⁹ TF1-334 would meet with the Second Accused and the operation commander ([REDACTED]) and it was the Second Accused that gave orders.¹⁷⁹⁰

1272. Superman was superior to the Second Accused in Kono. Whenever an operation was to take place, Superman would call the Second Accused and the operation commander would go to Superman at Dabundeh Street.¹⁷⁹¹ The head of the SLA brigade was the Second Accused until the arrival of the First Accused.¹⁷⁹²

1273. There were operations in Kono District. Superman, [REDACTED] and the Second Accused planned the operations.¹⁷⁹³

1274. The First Accused came as an advisor for both the Sierra Leone Army and the Revolutionary United Front. He took command from the Second Accused. He immediately became the Sierra Leone Army commander and the second man in Koidu.¹⁷⁹⁴

Defence Evidence

1275. Though not specifically stated, the theme that runs through the vast majority of the Defence evidence in this area is that the Accused, specifically the Second Accused was not present in Kono during the relevant time period. The inherent flaw in this argument is that while the majority of the witnesses, including many, so called, Defence insiders state that they did not see the Accused, including the Second Accused, in Kono during the relevant time period, they could not place the Accused in any other location. Additionally, the Prosecution submits that where the Defence witnesses did not see the Accused in Kono, it does not preclude the Prosecution evidence that the Accused were in fact there. Also a lot of the so called Defence insider testimony suffers from lack of credibility as already submitted in the analysis of the prior section.

¹⁷⁸⁹ TF1-334, Transcript 18 May 2005, p. 22

¹⁷⁹⁰ TF1-334, Transcript 18 May 2005, p. 23

¹⁷⁹¹ TF1-334, Transcript 18 May 2005, p. 24

¹⁷⁹² TF1-334, Transcript 19 May 2005, p. 37

¹⁷⁹³ TF1-334, Transcript 19 May 2005, p. 4

¹⁷⁹⁴ TF1-334, Transcript 19 May 2005, p. 8

1276. The Prosecution case, on the other hand, relies upon witnesses that would have had close access to the Accused based upon their positions. As it relates to the Second Accused, the Prosecution relies upon George Johnson - TF1-167, who served as CSO to the Second Accused and would have been with him while serving in that capacity, including in Kono District. In fact, the testimony of Defence witness DBK-126 places TF1-167 in Kono and at Masingbi Road. Defence witness DBK-117 also places TF1-167 in Kono as well.

1277. It would be illogical to presume that as a CSO, TF1-167 would be in an area without the person that he was charged with protecting. Likewise with TF1-334, [REDACTED]

[REDACTED] he would be in a better position to give evidence concerning the location and movements of the Accused based upon the position he held.

1278. As a whole, in relation to this section, the Prosecutions evidence should be given more weight than the Defence evidence, especially since it is far more consistent than the Defence evidence.

THE CRIMES CHARGED

INDIVIDUAL CRIMINAL RESPONSIBILITY – KONO

JOINT CRIMINAL ENTERPRISE

1279. For all crimes committed as mentioned below, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were within the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation. Liability pursuant to the theory of joint criminal enterprise for the period after the ECOMOG Intervention has been analysed above and this analysis applies to the crime base of Kono.

INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 6(1)**Kamara***Planning, Instigating or otherwise Aiding and Abetting*

1280. It is clear from the evidence that the Second Accused was present in Kono District at the time these killings occurred. The Prosecution evidence regarding the Second Accused's presence in Koidu is consistent and confirmed by various witnesses (TF1-167¹⁷⁹⁵, TF1-334¹⁷⁹⁶). The Defence evidence is not necessarily in contradiction to the Prosecution evidence. Many witnesses testified that they did not see the Second Accused in Kono District (DAB-018¹⁷⁹⁷, DAB-023¹⁷⁹⁸, DAB-059¹⁷⁹⁹, DAB-095¹⁸⁰⁰) or that they did not know if he was based there (DAB-107¹⁸⁰¹, DAB-039¹⁸⁰²), but offered no alternative as to where the Second Accused was. Consequently, their evidence does not mean that the Second Accused was not in Kono and the only reasonable conclusion on the evidence is that the Second Accused was there.

1281. Indeed, the Second Accused was the second in command in Kono and as such he was involved in planning and designing¹⁸⁰³ the operations and crimes committed in Kono District. During these attacks, villages were burnt¹⁸⁰⁴ and unlawful killings,¹⁸⁰⁵ sexual violence,¹⁸⁰⁶ forced labour and physical violence occurred.¹⁸⁰⁷ These attacks were carried out partly with the use of child soldiers.¹⁸⁰⁸ The Second Accused intended that the crimes committed would occur, or was aware of the substantial likelihood of the occurrence of all

¹⁷⁹⁵ TF1-167, Transcript 15 September 2005, p. 31

¹⁷⁹⁶ TF1-334, Transcript 18 May 2005, p. 21

¹⁷⁹⁷ DAB-018, Transcript 7 September 2006, p. 45

¹⁷⁹⁸ DAB-023, Transcript 31 July 2006, p. 105

¹⁷⁹⁹ DAB-059, Transcript 2 October 2006, p. 26

¹⁸⁰⁰ DAB-095, Transcript 28 September 2006, p. 29

¹⁸⁰¹ DAB-107, Transcript 8 September 2006, pp. 79-80

¹⁸⁰² DAB-039, Transcript 5 September 2006, p. 90

¹⁸⁰³ TF1-334, Transcript 18 May 2005, p. 4 and 24

¹⁸⁰⁴ TF1-334, Transcript 18 May 2005, p. 5.

¹⁸⁰⁵ TF1-334, TF1-217, TF1-206, DSK-103 for Koidu Town; TF1-079, TF1-072, TF1-216, TF1-167, DAB-023, DAB-098 for Tombodu; TF1-216, DAB-114 for Paema; TF1-019 for Yardu Sandu; TF1-072 for Wordu; TF1-217 for Penduma; TF1-206 for Bomboafuidu, TF1-334 fro Koidu Geiya.

¹⁸⁰⁶ For example witness: TF1-217, TF1-334, TF1-217, TF1-019, TF1-133, TF1-198. This evidence was not challenged.

¹⁸⁰⁷ Physical Violence: TF1-216, TF1-076, TF1-072, DAB-108, DAB-098, DAB-114. Abductions and Forced Labour: TF1-076, DAB-107, DAB-098, FT1-072, TF1-074.

¹⁸⁰⁸ Child Soldiers: TF1-334.

these crimes. This may be inferred from the Second Accused's position of command, his participation in the planning of the attacks and the fact he was given situation reports about ongoing operations in the field, demonstrating that he was well informed about the crimes in the field. By these acts, the Second Accused is liable for planning and instigating the crimes charged.

1282. Alternatively, the Second Accused is liable for aiding and abetting all of the crimes charged through his presence on the ground, his position of authority and his active support for the operations. The criminal acts were so widespread (for example killings committed by Savage in Tombodu,¹⁸⁰⁹ a subordinate of the Second Accused whom he promoted¹⁸¹⁰) that the only possible inference, in view of his command position, is that the Second Accused actively encouraged these acts or was aware that he was assisting the perpetrators in the commission of the crimes.

Ordering

1283. The evidence shows that the Second Accused gave direct order to burn houses, especially in the area of Masingbi Road.¹⁸¹¹ There is further evidence that the Second Accused ordered attacks in Kono,¹⁸¹² and in view of the systematic pattern of the crimes in Kono and other districts, coupled with his position as a commander, it may be inferred that he gave orders for all of the crimes charged in Kono. He intended to bring the commission of these crimes about, or was aware of the substantial likelihood that they would occur based on his orders.

SUPERIOR RESPONSIBILITY UNDER ARTICLE 6(3)

1284. The Prosecution submits that in the light of all the evidence, coupled with the high level of authority possessed by the Second Accused during the attack and occupation of the villages in the Kono District, the Second Accused bears responsibility pursuant to Article 6(3) of the Statute for the crimes committed during this period.

¹⁸⁰⁹ TF1-216, Transcript 27 June 2005, pp. 92-93, TF1-334, Transcript 18 May 2005, p. 14.

¹⁸¹⁰ TF1-334, Transcript 18 May 2005, p. 50.

¹⁸¹¹ TF1-334, Transcript 18 May 2005, p. 7.

¹⁸¹² TF1-334, Transcript 18 May 2005, p. 23.

1285. The Prosecution submits that the evidence demonstrates that there was a superior subordinate relationship between the Second Accused and the perpetrators, who in most cases were carrying out the orders of the Accused, resulting in the commission of the crimes as charged.

1286. Based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Accused or at least in their presence, the Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so. The Prosecution submits that so notorious were the crimes committed by SLA Savage in Tombodu Town that it would not have been possible for the Second Accused not to have been aware of these crimes especially as the evidence shows that the Second Accused even visited Tombodu Town.

1287. As the key commander in the field, the Second Accused clearly had the material ability to prevent offences or to punish those subordinates responsible for committing crimes. The necessary and reasonable measures to do so were at the disposal of the Second Accused, however, far from putting any such procedures into effect, he himself gave orders for, and actively encouraged, killings, physical and sexual violence and the burning of villages amounting to a campaign of terrorism.

COUNTS 1 – 2

1288. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNTS 3-5 UNLAWFUL KILLINGS

1289. Johnny Paul Koroma said that Kono should be a civilian no-go area, meaning that civilians that were not part of the troop movement should not be allowed to be in the area. He ordered that they clear them and to execute those who were not ready to join the

movement. He said that the civilians should not go anywhere where they would be able to give information about the troop's current location.¹⁸¹³

Koidu – Prosecution Evidence

1290. The returning people told TF1-217 that ECOMOG was not in Koidu town, that it was still occupied by rebel and Junta soldiers and that the rebels and Juntas had killed some of the civilians.¹⁸¹⁴ One boy told TF1-206 that members of Johnny Paul Koroma's convoy had demanded food from people in Koidu Town and had shot and killed in Koidu Town.¹⁸¹⁵

1291. It is not in dispute that there were killings in Koidu Town. The defence claims, through DAB-025, that the RUF was responsible for the killings in Koidu Town. However, Defence witness DSK-103 stated that he saw the attackers and that they were wearing military uniforms. This ties in more with the Prosecution case that the SLAs, or in the alternative a mixed SLA/RUF force, committed the killings in Koidu Town.

Tombodu – Prosecution Evidence

1292. TF1-076 was in Tombodu in 1998 when Johnny Paul Koroma was in the area. TF1-076 fled to Foendor with her sister, her sister's husband and uncle because at the time Johnny Paul Koroma was in the area and the rebels were killing people.¹⁸¹⁶

1293. The friends of TF1-072 came looking for him and then they ran away. Savage ordered the soldiers to take their guns. The soldiers shot at the witness's friends and TF1-072 saw one man fall.¹⁸¹⁷

1294. After the people were put in the house, the soldier came back and reported to Staff Alhaji that 53 people were inside the house. TF1-216 heard Staff Alhaji give the command that the house where the civilians had been taken should be set on fire.¹⁸¹⁸

1295. At Tombodu, George Johnson - TF1-167 met Savage, the battalion commander, who had already killed a lot of people thrown in a pit, more than 150 corpses, all civilians, killed

¹⁸¹³ TF1-334, Transcript 18 May 2005, p. 3

¹⁸¹⁴ TF1-217, Transcript 17 October 2005, pp. 13-14

¹⁸¹⁵ TF1-206, Transcript 28 June 2005, p. 82

¹⁸¹⁶ TF1-076, Transcript 27 June 2005, p. 102

¹⁸¹⁷ TF1-072, Transcript 1 July 2005, p. 20

¹⁸¹⁸ TF1-216, Transcript 27 June 2005, pp. 92-93

with machetes. Going up the court barri from the pit, there were about five other dead bodies on the floor.¹⁸¹⁹

1296. Mohamed Savage took 15 other civilians and put them in a room and set the house ablaze. He set the blaze himself.¹⁸²⁰ Savage, together with one of his soldiers, an SLA called Guitar Boy started to behead the remaining people. There were about 47 people who were beheaded and thrown into the pit.¹⁸²¹

Tombodu – Defence Evidence

1297. When Savage sent out food finding missions, the ‘RSMT’ captured civilians to carry the food to Tombodu Town. When the civilians arrived, Savage would kill them.¹⁸²² Savage hacked an old woman to death with a cutlass when she came in searching for food.¹⁸²³ Savage also killed 47 people in Tombodu who were arrested by the ‘RSMT’ on a food finding mission and forced to carry food items on their head.¹⁸²⁴

1298. On another occasion the ‘RSMT’ captured 44 people on a food finding mission. Savage passed orders to ‘RSMT’, Alhaji and Lt. Mohammed to lock the 44 people up in a house. Savage then set the house on fire, killing everyone inside.¹⁸²⁵

1299. In Tombodu Town there was Savage Pit One and Savage Pit Two. Savage took 17 people close to the pit and shot them. They then fell into the pit.¹⁸²⁶ Savage Pit One and Savage Pit Two were called that because it was the place where Savage killed people.¹⁸²⁷

1300. [REDACTED]. He further testified that Savage became mad after he had killed an old woman. That old woman was the last person that Savage had killed. He explained a dream he had in which the old woman he killed had appeared to him. The next day Savage took a gun and started shooting in the town.¹⁸²⁸

¹⁸¹⁹ TF1-167, Transcript 15 September 2005, p. 45

¹⁸²⁰ TF1-334, Transcript 20 May 2005, p. 14

¹⁸²¹ TF1-334, Transcript 20 May 2005, p. 15

¹⁸²² DAB-023, Transcript 31 July 2006, p. 45

¹⁸²³ DAB-023, Transcript 31 July 2006, p. 45

¹⁸²⁴ DAB-023, Transcript 31 July 2006, pp. 45-46

¹⁸²⁵ DAB-023, Transcript 31 July 2006, pp. 49-50

¹⁸²⁶ DAB-023, Transcript 31 July 2006, p. 50

¹⁸²⁷ DAB-023, Transcript 31 July 2006, p. 52

¹⁸²⁸ DAB-023, Transcript 31 July 2006, pp. 51-52

1301. DAB-098 met a rebel called Wounded, who was under the command of Savage. Savage ordered Wounded to put a baby in a pit latrine.¹⁸²⁹ Officer Med killed a woman by crushing her head with a stone. Her body was taken to Savage Pit in Tombodu Town.¹⁸³⁰ Savage and his men were scattered in all the villages close to Tombodu Town. Savage was their leader.¹⁸³¹
1302. DAB-098 testified that Savage was the leader of the group of rebels that caught people, put them in the house of Pa Hardy and burnt it down while they were still inside.¹⁸³²
1303. DAB-108 testified that he was part of a group of 15 people from an original group of 58 that were spared by Savage due to the pleadings of a soldier named Victor Teh. The remainder of the group were put in Monument House and burnt.¹⁸³³ Victor Teh was a soldier and Savage was his boss.¹⁸³⁴
1304. There is no dispute that killings took place in Tombodu Town. There is also no dispute that these killings were committed by Savage or those under his command.
1305. The Prosecution contends that Savage and those under his command were SLAs, or in the alternative a mixed SLA/RUF mixed force. Defence witness DAB-108 clearly states that there were soldiers under Savages command as opposed to solely RUF.
1306. The Defence contention is that Savage was operating independently of any organization or in the alternative was mentally unstable at the time the crimes were committed and thus cannot be attributed to any organization. However, Defence witness DAB-023 clearly states that Savage went “mad” only after killing his last victim, so this particular phase of the Defence argument can be easily dispensed with.

¹⁸²⁹ DAB-098, Transcript 4 September 2006, p. 27

¹⁸³⁰ DAB-098, Transcript 4 September 2006, p. 29

¹⁸³¹ DAB-098, Transcript 4 September 2006, pp. 43-44

¹⁸³² DAB-098, Transcript 4 September 2006, p. 33

¹⁸³³ DAB-108, Transcript 5 September 2006, p. 113

¹⁸³⁴ DAB-108, Transcript 5 September 2006, p. 114

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Penduma – Prosecution Evidence

1307. Once everyone was captured by the Junta soldiers, the civilians were divided up into groups. Pregnant women, children and suckling mothers were in one group, women in a second group and men in a third group.¹⁸³⁵
1308. Staff Alhaji ordered that the first line of men be placed in a house. They were placed there and the house was set on fire. TF1-217 did not see the men placed in the house but knew that they were burned alive because he heard their screaming and saw the flames.¹⁸³⁶
1309. Staff Alhaji turned to the next line of men and had one of his boys bring a bag full of knives, which the boy emptied on the ground. The Junta soldiers picked up the knives, took the men behind a school and slit their throats. Two men attempted to run but they were shot. TF1-217 knew their throats had been slit because when he fled the village with his children he saw the men.¹⁸³⁷ TF1-217's wife was killed by Junior and a member of the Sierra Leone Army called Tamba Joe (T Joe).¹⁸³⁸
1310. Extensive evidence has been led that Staff Alhaji was an SLA working with SLA Savage in Tombodu Town and the surrounding areas.
1311. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

COUNTS 6-9 SEXUAL VIOLENCE

Koidu Town – Prosecution Evidence

1312. TF1-217 was in Koidu Town in February 1998. Juntas and rebels were there as well, committing atrocities including rapes.¹⁸³⁹
1313. TF1-334 and the troops captured civilians, especially strong men, young women and children aged 8-12. The women, especially the beautiful ones were under the full control

¹⁸³⁵ TF1-217, Transcript 17 October 2005, p. 19

¹⁸³⁶ TF1-217, Transcript 17 October 2005, p. 20

¹⁸³⁷ TF1-217, Transcript 17 October 2005, pp. 21-22

¹⁸³⁸ TF1-217, Transcript 17 October 2005, p. 23

¹⁸³⁹ TF1-217, Transcript 17 October 2005, pp. 4-5

of the commanders and became their wives and cooked for the soldier.¹⁸⁴⁰ They were unmarried and they were captives. The women were used sexually.¹⁸⁴¹ The women were engaged with the troops in sexual intercourse.¹⁸⁴²

1314. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted

Yawando – Prosecution Evidence

1315. Soldiers saw that TF1-198 and another woman had rice. The soldiers told TF1-198 to bring out the rice or else they would be beaten. The soldier removed TF1-198's lappa from around her waist. He said that he wanted to rape TF1-198. TF1-198 told the soldier that she was pregnant and begged him not to rape her. The soldier took a large stick and inserted it into TF1-198's anus/innards.¹⁸⁴³ The same rebel who flogged TF1-198 is the same one who later inserted the stick into her anus/innards.¹⁸⁴⁴

1316. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

Woronbiai – Prosecution Evidence

1317. Mohammed the Killer told TF1-133 that Cobra was her husband.¹⁸⁴⁵ TF1-133 refused to marry Cobra and Mohammed the Killer said that she was to be killed.¹⁸⁴⁶ Mohammed the Killer cut TF1-133 on the buttocks with a bayonet because she refused to accept Cobra as a husband.¹⁸⁴⁷

1318. The other women who were captured with TF1-133 were all given to men as wives.¹⁸⁴⁸ The other wife of TF1-133's husband was given to a rebel named Kamba. Bamba Jalloh

¹⁸⁴⁰ TF1-334, Transcript 20 May 2005, p. 5

¹⁸⁴¹ TF1-334, Transcript 20 May 2005, p. 6

¹⁸⁴² TF1-334, Transcript 20 May 2005, p. 7

¹⁸⁴³ TF1-198, Transcript 28 June 2005, pp. 11-12. See also p. 23, where translation issues were raised.

¹⁸⁴⁴ TF1-198, Transcript 28 June 2005, p. 36. See also p. 23, where translation issues were raised

¹⁸⁴⁵ TF1-133, Transcript 7 July 2005, p. 89

¹⁸⁴⁶ TF1-133, Transcript 7 July 2005, p. 89

¹⁸⁴⁷ TF1-133, Transcript 7 July 2005, pp. 89-90

¹⁸⁴⁸ TF1-133, Transcript 7 July 2005, pp. 90-91

was given to a Mende rebel named Yubao.¹⁸⁴⁹ The women who were given as wives were forced to have sex with their husbands.¹⁸⁵⁰

1319. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

Tombodu – Prosecution Evidence

1320. A rebel with a Tupac t-shirt took TF1-076 and said he was going to have sex with her. The rebel then gathered TF1-076's skirt and pants and used a knife to tear them. The rebel was still carrying his gun and pulled his pants down, pulled out his penis and penetrated her. TF1-076 bled a lot and became unconscious.¹⁸⁵¹

1321. Again, while there is no dispute that there was sexual violence in Tombodu during the relevant time period, the Prosecution relies on its evidence that Savage was the SLA Battalion commander in Tombodu subordinate to the Second Accused.

Bomboafuidu – Prosecution Evidence

1322. The rebels told the people to undress. A young boy, aged 12-14, dressed in combat and armed with a gun told TF1-206 to undress.¹⁸⁵²

1323. The rebels took seven women out of the line and laid them down and opened their legs.¹⁸⁵³ The rebels picked out seven civilians to have sex with the women. TF1-206 was among the seven chosen. TF1-206 and the others had sex with the women while the rebels stood by watching and laughing.¹⁸⁵⁴ The seven men selected by the rebels were forced to have sex with the women.¹⁸⁵⁵

1324. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

¹⁸⁴⁹ TF1-133, Transcript 7 July 2005, p. 91

¹⁸⁵⁰ TF1-133, Transcript 7 July 2005, pp. 91-92

¹⁸⁵¹ TF1-076, Transcript 27 June 2005, pp. 104-106

¹⁸⁵² TF1-206, Transcript 28 June 2005, p. 92

¹⁸⁵³ TF1-206, Transcript 28 June 2005, p. 95

¹⁸⁵⁴ TF1-206, Transcript 28 June 2005, p. 96

¹⁸⁵⁵ TF1-206, Transcript 29 June 2005, pp. 12-13

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COUNTS 10-11 PHYSICAL VIOLENCE

Tombodu – Prosecution Evidence

1325. Staff Alhaji told five civilians that they were going to bring a message to President Kabbah. Staff Alhaji said that they would not be killed but that soldiers would cut off both of their hands. Staff Alhaji passed the order to Rambo and his soldiers who cut off the hands of TF1-216 and the others with a cutlass.¹⁸⁵⁶ TF1-216's hands were amputated on 14 April 1998. After the amputations TF1-216 and the others went to the ECOMOG base at Lebanon, Koikwema. Three of the five civilians died on the way.¹⁸⁵⁷
1326. TF1-076 knew that the people that attacked Tombodu were rebels because at that time they were killing people and cutting off their hands. Two of the rebels carried guns while the third rebel had a cutlass. One of the rebels was in a combat trousers and a shirt and the others were in plain clothes.¹⁸⁵⁸ The rebels captured TF1-076 and her sister's husband and flogged him.¹⁸⁵⁹
1327. TF1-072 was slapped with the flat side of a cutlass but was not cut.¹⁸⁶⁰ Savage told TF1-072 that he was lying and cut him with the cutlass on the upper right calf. TF1-072 was also wounded on the left calf.¹⁸⁶¹ When TF1-072 complained about his treatment he was stabbed in the rib area with a bayonet by Little Mosquito.¹⁸⁶²
1328. Savage informed the civilians that he was going to cut off their hands. The civilians, including TF1-072 were tied up and laid on the ground.¹⁸⁶³ Little Mosquito put straw mattresses on them and set them on fire.¹⁸⁶⁴ TF1-072 was burned on his right shoulder and was able to kick the mattress away.¹⁸⁶⁵ Savage kicked TF1-072 in the head and caused permanent vision loss. TF1-072 was also flogged.¹⁸⁶⁶ TF1-072 sustained vision loss when

¹⁸⁵⁶ TF1-216, Transcript 27 June 2005, pp. 93-94

¹⁸⁵⁷ TF1-216, Transcript 27 June 2005, pp. 94-95

¹⁸⁵⁸ TF1-076, Transcript 27 June 2005, pp. 103-104

¹⁸⁵⁹ TF1-076, Transcript 27 June 2005, pp. 104-105

¹⁸⁶⁰ TF1-072, Transcript 1 July 2005, pp. 38-39

¹⁸⁶¹ TF1-072, Transcript 1 July 2005, p. 15

¹⁸⁶² TF1-072, Transcript 1 July 2005, p. 16

¹⁸⁶³ TF1-072, Transcript 1 July 2005, pp. 16-17

¹⁸⁶⁴ TF1-072, Transcript 1 July 2005, p. 14

¹⁸⁶⁵ TF1-072, Transcript 1 July 2005, p. 17

¹⁸⁶⁶ TF1-072, Transcript 1 July 2005, p. 18

he was struck in the face with the flat side of a cutlass.¹⁸⁶⁷ Savage cut TF1-072's hand. TF1-072 has a scar on his right hand and his fingers are mangled.¹⁸⁶⁸

1329. TF1-334 went to Tombodu when Mohamed Savage sent word that some civilians had come singing as they had alleged that ECOMOG had captured the ground.¹⁸⁶⁹ It was in fact Mohamed Savage and his men wearing ECOMOG uniforms.¹⁸⁷⁰ There were approximately 78 civilians. Mohamed Savage was chopping hands. About 15 people were amputated, mostly men. He told them to tell ECOMOG that Mohamed Savage was in Tombodu and that this was a warning for other civilians.¹⁸⁷¹

Penduma/Manikala – Prosecution Evidence

1330. While in Penduma, TF1-217 was with his daughter when he came across a Mr. Mohamed Kamara. Mr. Kamara's arm had been amputated. Mr. Kamara told TF1-217 that Staff Alhaji had amputated his arm and that this occurred in a village called Manikala, near Tombodu.¹⁸⁷²

1331. Staff Alhaji pointed to TF1-217 and ordered him to be tied up. Staff Alhaji proceeded to amputate two people's hands before he approached TF1-217. He asked TF1-217 for his watch. TF1-217 couldn't take the watch off and Staff Alhaji cut the watch off and cut TF1-217's forearm.¹⁸⁷³ Staff Alhaji told TF1-217 to place his hand on the ground. TF1-217 removed his hand before Staff Alhaji could cut it. Staff Alhaji hit TF1-217 in the head with the cutlass, causing a gash/scar. Staff Alhaji then chopped TF1-217 hand 11 times before it was amputated.¹⁸⁷⁴

1332. The Prosecution relies on the evidence that Staff Alhaji was an SLA under the command of Savage.

1333. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

¹⁸⁶⁷ TF1-072, Transcript 1 July 2005, p. 39

¹⁸⁶⁸ TF1-072, Transcript 1 July 2005, p. 19

¹⁸⁶⁹ TF1-334, Transcript 20 May 2005, p. 12

¹⁸⁷⁰ TF1-334, Transcript 20 May 2005, p. 12

¹⁸⁷¹ TF1-334, Transcript 20 May 2005, p. 13

¹⁸⁷² TF1-217, Transcript 17 October 2005, p. 16

¹⁸⁷³ TF1-217, Transcript 17 October 2005, pp. 23-24

¹⁸⁷⁴ TF1-217, Transcript 17 October 2005, p. 25

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Yawando – Prosecution Evidence

1334. Soldiers cut TF1-198 and tied her hands behind her back.¹⁸⁷⁵ While following the soldier that had looted from them the husband of TF1-198 was told to stop following or he would be shot. The soldier cut a whip with a cutlass and hit TF1-198's husband in the head numerous times.¹⁸⁷⁶ The man who flogged TF1-198's husband was called Lansana: one of Staff Alhaji's men.¹⁸⁷⁷ TF1-198 and her husband were flogged in Yawando bush.¹⁸⁷⁸

1335. The Prosecution relies on the evidence that Staff Alhaji was an SLA under the command of Savage.

1336. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

Bomboafuidu – Prosecution Evidence

1337. The rebels chopped off the hand of a man named Musa.¹⁸⁷⁹ The rebels then amputated the hand of TF1-206. The rebel said that the amputation had not gone well so he did it again.¹⁸⁸⁰ The hand of TF1-206 was not completely severed by the first blow of the cutlass. When the rebel raised the cutlass again, TF1-206 blocked the cutlass in mid-air. The rebel chopped TF1-206 on the back with the cutlass and then struck TF1-206's right hand again.¹⁸⁸¹ Both of TF1-206's hands are intact but no longer function.¹⁸⁸²

1338. TF1-206 saw other people that had been amputated. Mussa Marrah (two hands and two ears), Adama (one hand amputated and one hand cut, not severed), Alfa (one hand and both ears severed), Alfa Kabia (both hand amputated), Ibrahim (one hand severed), Mohammed Kanu Santigie Borbor (hands mutilated, Abdul Kargbo (hand chopped), Pa Osman (hand chopped) Abdul Rahan and Sorie Dabo (hand chopped), Sahr Lebbie (hand amputated) and Idrissa Gborie (hand amputated)¹⁸⁸³

¹⁸⁷⁵ TF1-198, Transcript 28 June 2005, pp. 8-9

¹⁸⁷⁶ TF1-198, Transcript 28 June 2005, p. 9

¹⁸⁷⁷ TF1-198, Transcript 28 June 2005, p. 18

¹⁸⁷⁸ TF1-198, Transcript 28 June 2005, p. 22

¹⁸⁷⁹ TF1-206, Transcript 28 June 2005, p. 98

¹⁸⁸⁰ TF1-206, Transcript 28 June 2005, p. 98

¹⁸⁸¹ TF1-206, Transcript 28 June 2005, pp. 99-100

¹⁸⁸² TF1-206, Transcript 28 June 2005, pp. 100, 108

¹⁸⁸³ TF1-206, Transcript 28 June 2005, pp. 102-104

1339. During the amputations, the commander was on the veranda. The rebels would always ask his permission before doing anything.¹⁸⁸⁴

1340. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

COUNT 12 USE OF CHILD SOLDIERS

Tombodu – Prosecution Evidence

1341. Children were trained in the SBU-Small Boys Unit. They stayed with the various commanders and were used to amputate people in Kono. It happened in the presence of TF1-334. The small boys were designed to amputate.¹⁸⁸⁵

Tombodu – Defence Evidence

1342. While DBK-117 was involved in patrols the RUF had children as soldiers among them and called them SBUs.¹⁸⁸⁶

Bomboafuidu – Prosecution Evidence

1343. TF1-206 saw more than 6 small boys with the rebels. The boys wore combat uniforms or combat uniforms with jeans and carried guns.¹⁸⁸⁷

1344. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted

ANALYSIS

1345. There is no dispute that there were child soldiers in Kono during the relevant time period. The evidence reflects that both the RUF and SLAs used child soldiers in Kono.

1346. Both the Prosecution and Defence experts agree that both the SLA and RUF used child soldiers throughout the conflict.

¹⁸⁸⁴ TF1-206, Transcript 28 June 2005, p. 104

¹⁸⁸⁵ TF1-334, Transcript 20 May 2005, p. 6

¹⁸⁸⁶ DBK-117, Transcript 16 October 2006, p. 34

¹⁸⁸⁷ TF1-206, Transcript 28 June 2005, p. 105

COUNTS 13 ABDUCTIONS AND FORCED LABOUR (ENSLAVEMENT)

Tombodu – Prosecution Evidence

1347. Three rebels came and captured TF1-076 and her sister's husband.¹⁸⁸⁸ In Tombodu there were 14 captured civilians. One of the soldiers saluted and called "Mr. Savage, sir". He said that they had brought him luggage and captives.¹⁸⁸⁹

1348. There is no dispute as to abductions and the use of forced labour.

1349. The evidence shows that Savage was an SLA and that he was appointed battalion by the Second Accused. Even if Savage's troops were a mixed RUF /SLA battalion Savage was still be under the command of the Second Accused who appointed him to that position.

Gbaima – Prosecution Evidence

1350. TF1-072 and his friend climbed a hill past Gbaima looking for bush yams when they encountered seven men dressed as soldiers and one man who had a rope tied around his waist. The man with the rope tied around his waist was not wearing a soldier uniform and one of the soldiers held the end of the rope.¹⁸⁹⁰

1351. TF1-072 and his friend were taken into Gbaima where they saw property and bundles. TF1-072, his friend and the man that was tied around the waist were untied and given luggage to carry. They travelled with the luggage to Tombodu.¹⁸⁹¹ Between Tombodu and Gbaima they met two people foraging for food. The soldiers told the two men that they should come with them. The soldiers placed some luggage on their heads and continued towards Tombodu.¹⁸⁹²

1352. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted

¹⁸⁸⁸ TF1-076, Transcript 27 June 2005, p. 103

¹⁸⁸⁹ TF1-072, Transcript 1 July 2005, p. 14

¹⁸⁹⁰ TF1-072, Transcript 1 July 2005, p. 7

¹⁸⁹¹ TF1-072, Transcript 1 July 2005, p. 9

¹⁸⁹² TF1-072, Transcript 1 July 2005, p. 10

Dewadu – Prosecution Evidence

1353. When soldiers had finished looting the village and placing the items outside, they told the young men in the group of civilians they had placed on the veranda to take the things that they were going to Gandorhun.¹⁸⁹³ The civilians were forced to carry the looted items.¹⁸⁹⁴

1354. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

Bayawandu – Prosecution Evidence

1355. TF1-074 was in Bayawandu when he was captured by Armed Forces Revolutionary Council and Revolutionary United Front forces.¹⁸⁹⁵ After being captured, TF1-074 and his brother after being captured, were taken to Wordu and forced to carry looted property.¹⁸⁹⁶

1356. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

Koidu Town – Prosecution Evidence

1357. TF1-334 and the other troops captured civilians, especially strong men, young women and children 8-12. The men were used to carry our food and some were trained.¹⁸⁹⁷ The women were responsible for the cooking while the men carried the wood and pounded the rice for the troops based in Kono.¹⁸⁹⁸

1358. The Prosecution submits that the evidence clearly shows that both the SLAs and the RUF were using forced labour both individually and collectively whilst working as one.

¹⁸⁹³ TF1-198, Transcript 28 June 2005, p. 6

¹⁸⁹⁴ TF1-198, Transcript 28 June 2005, p. 22

¹⁸⁹⁵ TF1-074, Transcript 5 July 2005, pp. 11-12

¹⁸⁹⁶ TF1-074, Transcript 5 July 2005, p. 13

¹⁸⁹⁷ TF1-334, Transcript 20 May 2005, p. 5

¹⁸⁹⁸ TF1-334, Transcript 20 May 2005, p. 34

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COUNTS 14 LOOTING AND BURNING

Koidu Town – Prosecution Evidence

1359. TF1-217 was in Koidu Town in February 1998. Juntas and rebels were there as well, committing atrocities including looting.¹⁸⁹⁹ When TF1-217 returned to Koidu Town, he saw Juntas and rebels burning houses.¹⁹⁰⁰ Lt. T, a soldier in the Sierra Leone Army, and his boys were burning houses, including the house of TF1-217.¹⁹⁰¹ TF1-217 only saw Lt. T when houses were being burned in Koidu Town. Soldiers told TF1-217 that they were led by Akim Sesay.¹⁹⁰²
1360. Johnny Paul Koroma stated that since Kono was a civilian no go area all the surrounding houses should be burnt down so that no civilian could settle in Koidu Town.¹⁹⁰³
1361. On return from the Koidu Geiya, Masingbi road was burnt down. The Second Accused monitored it.¹⁹⁰⁴ After Johnny Paul Koroma had left, the Second Accused gave an order to attack ECOMOG and burn houses, especially in the area of Masingbi Road.¹⁹⁰⁵ TF1-334 was present when the order was given and participated in the burning of the houses.¹⁹⁰⁶
1362. Both Prosecution and Defence witnesses agree that there was burning in Koidu Town. Prosecution evidence is that the burning was done by the SLAs or those under their command while the Defence evidence purports that the burning was committed by the RUF.
1363. The Prosecution submits that according to all the evidence both the RUF and SLAs either independently or whilst working together were burning civilian property in Koidu Town.
1364. As it relates to the issue of looting in Koidu Town, Defence witness DAB-096 states that the looting in Koidu Town was done by both SLAs and RUF and that it was done under the auspices of 'Operation Pay Yourself'. The evidence clearly shows that, as for burning,

¹⁸⁹⁹ TF1-217, Transcript 17 October 2005, pp. 4-5

¹⁹⁰⁰ TF1-217, Transcript 17 October 2005, p. 7

¹⁹⁰¹ TF1-217, Transcript 17 October 2005, p. 9

¹⁹⁰² TF1-217, Transcript 17 October 2005, p. 52

¹⁹⁰³ TF1-334, Transcript 18 May 2005, p. 6

¹⁹⁰⁴ TF1-334, Transcript 19 May 2005, p. 10

¹⁹⁰⁵ TF1-334, Transcript 20 May 2005, p. 7

¹⁹⁰⁶ TF1-334, Transcript 20 May 2005, p. 8

looting was also carried out either independently by both the RUF and SLAs or by both of them acting together.

Bomboafuidu – Prosecution Evidence

1365. A rebel told TF1-206 to give him his watch. He complied. That rebel also took TF1-206's bag while another rebel put on his boots.¹⁹⁰⁷ From the veranda, TF1-206 saw more than 200 soldiers going into houses and bringing out valuables such as clothes, tapes, shoes and anything else of value.¹⁹⁰⁸

1366. The Prosecution evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.

Paema Town – Prosecution Evidence

1367. At the time of the ECOMOG Intervention a group of soldiers came to Paema Town. The soldiers began taking people's property saying it was "Operation Pay Yourself." The soldiers stated that Operation Pay Yourself was because TF1-216 and others had voted for President Kabbah and that any property should be taken from them. More than one soldier used the term 'Operation Pay Yourself.' The soldiers left after taking the property.¹⁹⁰⁹

1368. It is undisputed that looting and burning took place in Paema. The Prosecution submits that Savage was an SLA appointed by the Second Accused to be the battalion commander of Tombody area which also encompassed nearby villages such as Paema. As such SLAs under the Second Accused are responsible for the crimes or both SLA and RUF working together under the joint command of Superman and Bazzy are responsible for these crimes.

Sewafe – Prosecution Evidence

1369. Johnny Paul Koroma ordered that Sewafe should be burned because it was a suspected Kamajor stronghold.¹⁹¹⁰

¹⁹⁰⁷ TF1-206, Transcript 28 June 2005, p. 89

¹⁹⁰⁸ TF1-206, Transcript 28 June 2005, p. 90

¹⁹⁰⁹ TF1-216, Transcript 27 June 2005, pp. 79-80

¹⁹¹⁰ TF1-334, Transcript 17 May 2005, p. 93

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1370. DAB-122 corroborates the Prosecution position that the SLAs burned down Sewafe. The strength of this evidence lies in the fact that it was unchallenged and volunteered through DAB-122.

Others – Prosecution Evidence

1371. Other villages that were burned included, Tombodu, Yengema, Bumpe,¹⁹¹¹ Jagbwema Fiama and Yomandu.¹⁹¹²

¹⁹¹¹ TF1-334, Transcript 20 May 2005, p. 8

¹⁹¹² TF1-334, Transcript 20 May 2005, p. 9

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XVI. CRIMES IN KAILAHUN FROM 14 FEBRUARY 1998 UNTIL 30 JUNE 1998

JOINT CRIMINAL ENTERPRISE

1372. For all crimes committed as mentioned below occurring after the ECOMOG intervention, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were within the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation. Liability pursuant to the theory of joint criminal enterprise for this period has been analysed above and this analysis applies to the crime base of Kailahun.

COUNTS 1 – 2

1373. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNT 3-5 UNLAWFUL KILLINGS

1374. Revolutionary United Front fighters as well as SLA members were present in Kailahun District in the period of 14 February to 30 June 1998. The members of the two factions used to work and train together.¹⁹¹³ Following the orders of the RUF Commander Sam Bockarie alias Mosquito, RUF and SLA members went from village to village, abducting people and checking whether they were Kamajors. Approximately 67 captured individuals accused to be Kamajors were summoned and executed.¹⁹¹⁴ The persons that killed the abducted civilians were RUF and AFRC/SLA.¹⁹¹⁵

1375. The Prosecution submits that further evidence of killings was given by Prosecution witness TF1-122, who learned from conversation with displaced persons from Segbwema in the District of Kailahun that the AFRC and RUF had attacked and overrun Segbwema,

¹⁹¹³ TF1-113, Transcript 18 July 2005, pp. 80 - 81

¹⁹¹⁴ TF1-113, Transcript 18 July 2005, pp. 84-85 and pp. 90, 119-120

¹⁹¹⁵ TF1-113, Transcript 18 July 2005, pp. 115-116

killing civilians and capturing many able-bodied women who were then forced to carry the AFRC and RUF loot to their headquarters in Kailahun.¹⁹¹⁶

1376. Evidence of unlawful killings in Kailahun was also provided in the testimony of Defence witnesses, mainly Defence witness DAB-140, who albeit not present in Buedu during the killings of the 67 civilians, heard that Mosquito had given such an order and that these civilians were killed.¹⁹¹⁷ Moreover, this witness testified that his own daughter was left for dead and thrown in a pit with three other corpses.¹⁹¹⁸ This witness heard of many more killings in Buedu committed by Mosquito and his men, including two civilians who refused to carry iron sheets for the rebels.¹⁹¹⁹

1377. In addition, Defence witness DAB-142 saw the corpses of the civilians accused of being Kamajors, and knows that Mosquito gave the order for their killing,¹⁹²⁰ and witness DAB-147 was present when Sam Bockarie alias Mosquito killed the alleged Kamajors.¹⁹²¹

COUNTS 6 – 9 RAPE AND SEXUAL VIOLENCE

1378. Prosecution witness TF1-114 testified that [REDACTED]
[REDACTED]
[REDACTED] No Junta commander ever stopped the practice nor did anything to prevent these attacks.¹⁹²² The evidence of [REDACTED] is also that forced marriage was practiced in Kailahun.¹⁹²³

1379. The Prosecution submits that reports of rape in Kailahun in late 1998, after ‘Operation Spare No Soul’ was declared by the RUF, were led in evidence. Targets that were to be captured and taken control of were identified in the Kailahun axis, including Segbwema, Daru and Bunumbu. Witness TF1-045 testified about the killing of civilians, raping of

¹⁹¹⁶ TF1-122, Transcript 24 June 2005, pp. 76-77

¹⁹¹⁷ DAB-140, Transcript 19 September 2006, p. 94-95

¹⁹¹⁸ DAB-140, Transcript 19 September 2006, pp. 81-83

¹⁹¹⁹ DAB-140, Transcript 19 September 2006, pp. 84-86

¹⁹²⁰ DAB-142, Transcript 19 September 2006, p. 35-36

¹⁹²¹ DAB-147, Transcript 3 October 2006, p. 47

¹⁹²² TF1-114, Transcript 14 July 2005, pp. 128-131

¹⁹²³ [REDACTED], Transcripts 3 2005, pp. 14.-16 and 4 October 2005, p. 38.

women and looting and burning of houses.¹⁹²⁴

1380. [REDACTED]

[REDACTED] The Prosecution notes that this evidence is also relevant to establishing the widespread and systematic nature of the attack by the Junta forces upon the civilian population.

1381. Defence witness DAB-140 also testified that his 12-year-old daughter was raped and thrown in a pit and left for dead by the rebels in Kailahun. Witness saw three more corpses put into the pit which he was told were also raped.¹⁹²⁸ Wives of the residents of Buedu Town were abducted from their homes at night by Mosquito's men and taken away never to be seen again.¹⁹²⁹ Another Defence witness, DAB-142, was herself a victim of sexual violence and was forced, against her wish, to be the wife of the Paramount Chief in Buedu.¹⁹³⁰

COUNT 13 ABDUCTIONS AND FORCED LABOUR

1382. The evidence led by the Prosecution 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.¹⁹³¹

1383. The Prosecution submits that there is evidence of the movement of the rebels from village to village, capturing people and checking them for Kamajors. On the orders of Sam Bockarie alias Mosquito, captured civilians, among which children, arrived in Kailahun

¹⁹²⁴ TF1-045, TT 22 July 2005, pp. 22-25.

¹⁹²⁵ TF1-081, Transcript 4 July 2005, Closed session, p. 29.

¹⁹²⁶ TF1-081, Transcript 4 July 2005, Closed session, pp. 10-11.

¹⁹²⁷ TF1-081, Transcript 4 July 2005, Closed session, p. 17 and Exhibit P25 – Under seal.

¹⁹²⁸ DAB-140, Transcript 19 September 2006, p. 81-83

¹⁹²⁹ DAB-140, Transcript 19 September 2006, p. 86

¹⁹³⁰ DAB-142, Transcript 19 September 2006, p. 20-21

¹⁹³¹ TF1-113, Transcript 18 July 2005, p. 86; Zainab Bangura, Transcript 3 October 2005, pp. 34-36.

District and were witnessed carrying loads.¹⁹³²

1384. Prosecution witness TF1-114 also testified that civilians were forced to work in Kailahun district, constructing roads, on farms and carrying loads for commanders.¹⁹³³ [REDACTED]

[REDACTED] [REDACTED] [REDACTED] When TF1-114 raised his concerns that the human rights of these civilians were violated by forcing them to work without pay, he was told that the civilians are there to do government work. In fact, the witness himself was forced to work for no pay.¹⁹³⁴

1385. The Prosecution charge of abductions and forced labour committed in Kailahun is supported by the testimony of Defence witnesses. Defence witness DAB-140 testified of being subjected to forced labour during the period of February to June 1998 by Mosquito in Kailahun.¹⁹³⁵ During his ordeal DAB-140 was forced into submission and obedience by threats of death and beating, as well as burning of the town.¹⁹³⁶ DAB-140 also testified that civilians had to carry corrugated iron sheets to Liberia, and would be killed if they refused to do so.¹⁹³⁷

1386. Defence witness DAB-142 testified about the abducted people she saw brought by the RUF and SLA soldiers on their arrival in Kailahun after the ECOMOG Intervention in Freetown,¹⁹³⁸ while DAB-135 was forced to go to Kailahun with the rebels, carrying loads for them and was made to do other arduous work, while being given very little food.¹⁹³⁹ This witness also gave evidence of the killing, abductions and burning he witnessed on his way to Kailahun.¹⁹⁴⁰ Further evidence of killings, abductions, forced labour and burning was given by Defence witness DAB-131.¹⁹⁴¹

1387. The only Defence witness who denied hearing of or witnessing killings, rapes and forced marriages of civilians is DAB-143, who none the less gave evidence of being subjected to

¹⁹³² TF1-113, Transcript 18 July 2005, pp. 70-71, 86.

¹⁹³³ TF1-114, Transcript 14 July 2005, pp. 129-130

¹⁹³⁴ TF1-114, Transcript 18 July 2005, p. 60 and pp. 19-20

¹⁹³⁵ DAB-140, Transcript 19 September 2006, pp. 69-70

¹⁹³⁶ DAB-140, Transcript 19 September 2006, pp. 90-92.

¹⁹³⁷ DAB-140, Transcript 19 September 2006, pp. 85-86

¹⁹³⁸ DAB-142, Transcript 19 September 2006, p. 29

¹⁹³⁹ DAB-135, Transcript 11 September 2006, pp. 47-49

¹⁹⁴⁰ DAB-135, Transcript 11 September 2006, pp. 49-50

¹⁹⁴¹ DAB-131, Transcript 14 September 2006, p. 44

forced labour.¹⁹⁴²

COUNT 14 LOOTING AND BURNING

1388. The Prosecution notes that Kailahun District has not been pleaded as part of Count 14.

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.¹⁹⁴³

1389. The repetition of the 'Operation Pay Yourself' in various parts of Sierra Leone, coupled with Johnny Paul Koroma's announcement and subsequent orders indicate that it can be inferred that the First Accused had knowledge of the Junta troop's involvement in looting. Equally, it is submitted that it was reasonably foreseeable that looting would be carried out by Junta soldiers in the jungle.

1390. This evidence is relevant to prove that the AFRC were terrorising the civilian population and collectively punishing the civilian population for supporting others or failing to provide sufficient support to them (AFRC).

ROLE OF THE ACCUSED

Brima

1391. The First Accused Alex Tamba Brima claims that he was under arrest by the RUF in Kailahun from February to July 1998,¹⁹⁴⁴ and that Kailahun District was under RUF control, particularly that of Mosquito.¹⁹⁴⁵

1392. Prosecution witness TF1-334 testified that at a meeting called at 55 spot he heard the explanation of the First Accused about what had occurred in Kailahun, in which the First Accused informed the other SLA commanders that although he and Johnny Paul Koroma

¹⁹⁴² DAB-143, Transcript 19 September 2006, p.57

¹⁹⁴³ TF1-045, Transcript 19 July 2005, pp. 82-83 and 21 July 2005, p. 37.

¹⁹⁴⁴ Accused Alex Tamba Brima, Transcript 12 June 2006, p. 24

¹⁹⁴⁵ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 50.

were under threat and beaten by Mosquito, he had used a problem in Koidu he heard of, as an excuse to leave Kailahun and come down to Kono.¹⁹⁴⁶

1393. The First Accused also informed the SLA commanders including the Second Accused, that Mosquito had taken away his diamonds.¹⁹⁴⁷ TF1-334 denied that at a second meeting held at Mongor Bendugu around May 1998 the First Accused explained that he and Johnny Paul Koroma had been detained from March 1998 to July 1998 by Mosquito in Kailahun. Rather, the First Accused said that Johnny Paul Koroma was under duress in Kailahun.¹⁹⁴⁸

1394. TF1-334 also gave evidence that the First Accused came to Kono from Kailahun around mid-May 1998 bringing rice and alcohol,¹⁹⁴⁹ as well as that the First Accused was in Mansofinia at around the end of May 1998.¹⁹⁵⁰

1395. As mentioned earlier in this brief the Prosecution accepts that the First Accused was under detention for a short period of time in mid February 1998 when the diamonds he was trying to steal were forcefully taken from him by the RUF. Thereafter it is the case of the Prosecution that the First Accused was a free man in Kailahun enjoying cordial relations with the RUF leadership in Kailahun. If his position was otherwise it would not have been possible for him to arrive in Kono with logistics from Mosquito for the joint RUF /SLA force based in Kono.

1396. As mentioned earlier in this brief the First Accused has lied throughout large parts of his evidence and his evidence of being detained and maltreated in Kailahun by the RUF from mid-February to July should be rejected in its entirety. There is overwhelming credible Prosecution evidence that the First Accused arrived in Kono by end of April or early May at the latest.¹⁹⁵¹ The only reasonable inference is that the First Accused was still working with the RUF in Kailahun. There is no other way that he could have left Kailahun with logistics which were to be given to the joint SLA/ RUF forces in Kono.

¹⁹⁴⁶ TF1-334, Transcript 19 May 2005, p. 14.

¹⁹⁴⁷ TF1-334, Transcript 19 May 2005, pp. 12-15

¹⁹⁴⁸ TF1-334, Transcript 17 June 2005, pp. 45-46

¹⁹⁴⁹ TF1-334, Transcript 20 May 2005, p. 27 and p. 51

¹⁹⁵⁰ TF1-334, Transcript 17 June 2005, p. 52

¹⁹⁵¹ TF1-334, Transcript of 19 May 2005, pp. 7-8, Transcript of 17 June 2005 pp. 46-47, Transcript of 20 May 2005, p.27.

Kamara

1397. Although the Second Accused was not physically present when the crimes were committed in Kailahun District, during the relevant period the Second Accused held a significant position in the AFRC/RUF Junta and remained in a leadership and/or command position within the AFRC after the Intervention.
1398. The Second Accused was the most senior SLA commander in Kono in the period after the Intervention in Freetown in 1998 and was directly below RUF leader Denis Mingo, aka Superman.¹⁹⁵² On the arrival of the First Accused around the end of April early May the Second Accused became second in command to the First Accused in the SLA chain of command in Kono.¹⁹⁵³ The Second Accused through his contacts with Superman and the radio communications from Sam Bockarie in Kailahun knew full well that the SLAs and RUF were working with the RUF in Kailahun to achieve common aims. In fact, Kailahun was the supply line to Kono.
1399. Furthermore, Prosecution witness TF1-334 testified that he personally witnessed two communications between Superman and the Second Accused in Kono and Sam Bockarie in Kailahun, during which Mosquito informed them that he is sending arms and ammunitions to the RUF and SLA in Kono, and gave several orders for attacks including one on the Sewafe Bridge.¹⁹⁵⁴
1400. These arms and ammunition were collected by a joint RUF/SLA force¹⁹⁵⁵ and a joint SLA/RUF force in compliance with Mosquito's orders attempted to make the Sewafe Bridge impassable.¹⁹⁵⁶ There is overwhelming evidence that the SLAs and RUF were acting jointly in Kailahun and throughout Sierra Leone immediately after the Intervention.
1401. For example, the RUF and SLA factions established strategic defensive positions in furtherance of their joint plan which was made just after the Intervention and articulated by SAJ Musa at Kabala with the RUF leadership¹⁹⁵⁷ and later announced by Johnny Paul Koroma at Makeni. This plan was to make a stronghold in the diamond rich Kono area

¹⁹⁵² TF1-334, Transcript 18 May 2005, pp. 21-24

¹⁹⁵³ TF1-334, Transcript of 19 May 2005, p. 8.

¹⁹⁵⁴ TF1-334, Transcript 18 May 2005, pp. 29-33

¹⁹⁵⁵ TF1-334, Transcript 20 May 2005, 44-47.

¹⁹⁵⁶ TF1-334, Transcript 20 May 2005, 51-53.

¹⁹⁵⁷ TF1-334, Transcript 17 May 2005, pp. 82-83.

from which mineral they would be able to fund their movement.¹⁹⁵⁸

1402. Thus, after the Intervention, the Second Accused and Superman were in command of establishing and maintaining defensive positions around Kono to protect it from any ECOMOG advance from the West¹⁹⁵⁹ whilst SAJ Musa was based in the Koinadugu axis in order to protect Kono from any ECOMOG advance from the North. The defensive position adopted in Kono also led to securing Kailahun and ensured that the Kailahun to Kono supply line was kept open.
1403. Although the RUF and SLA after the Intervention worked under two separate chains of command, akin to how the allies worked during WWII, the evidence shows that there is no doubt that they continued to work together notwithstanding an initial leadership struggle between Sam Bockarie and Johnny Paul Koroma once Johnny Paul Koroma reached Kailahun.
1404. After the Intervention the evidence suggests that there may also have been antagonism between the two factions especially when Johnny Paul Koroma ordered that in the jungle the SLAs were to take orders from the RUF. The Prosecution submits, however, that this difficulty was overcome through the use of two separate chains of command whereby the SLA soldiers did not have to take orders from the RUF.¹⁹⁶⁰ The joint planning instead was done at the SLA/RUF leadership level and passed down through the respective chains of command by their respective commanders.
1405. A prime example of the operation of the above scenario was in Kono after the Intervention where the Second Accused represented the SLAs as the SLA commander in meetings with Superman and Superman as RUF commander represented the RUF. Following such meetings between the two commanders joint operations were planned and organized and orders for these were passed down by each commander through his respective chain of command.

¹⁹⁵⁸ TF1-334, Transcript 17 May 2005, p. 87.

¹⁹⁵⁹ TF1-334, Transcript 18 May 2005, p. 21.

¹⁹⁶⁰ TF1-167, Transcript 15 September 2005, p. 33.

Kanu

1406. The Prosecution submits that during the period following the ECOMOG Intervention the Third Accused continued to hold a senior leadership position as evidenced by him being used by SAJ Musa to shuttle back and forth between Koinadugu District and Kono acting as an information bridge between the two factions in Koinadugu and Kono. Further evidence of the senior leadership position which the Third Accused held is his appointment by the First Accused as Chief of Staff in Mansofinia shortly after the SLAs had withdrawn from Kono.
1407. 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 unlawful killings, rapes and abductions which were committed by members of the AFRC/RUF in the District of Kailahun.

CONCLUSION

1408. The Prosecution submits that the SLAs and RUF continued to work together after the Intervention with the shared intent of returning to Freetown and reinstating the Junta.
1409. This JCE continued in Kailahun after the Intervention and as such the Accused are all liable for the aforementioned crimes in Kailahun (unlawful killings, rape and sexual violence, physical violence, abductions and forced labour the use of child soldiers and looting and burning) on account of these crimes being a part of the JCE or there commission was a reasonably foreseeable consequence of the JCE.
1410. The crimes of physical violence and looting and burning although not specifically charged in the Indictment for Kailahun are relied upon as evidence for the crimes of Terrorism (Count 1) and Collective Punishment (Count 2).

**XVII. CRIMES IN KOINADUGU FROM 14 FEBRUARY UNTIL 30 SEPTEMBER
1998****JOINT CRIMINAL ENTERPRISE**

1411. For all crimes committed as mentioned below occurring after the ECOMOG intervention, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were within the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation. Liability pursuant to the theory of joint criminal enterprise for this period has been analysed above and this analysis applies to the crime base of Koinadugu.

INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 6(1)*Planning, Instigating, Ordering or otherwise Aiding and Abetting*

1412. The Prosecution submits that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu. These crimes followed a consistent pattern and included killings, burning and sexual violence as had systematically occurred in other districts as the SLA/RUF forces attacked civilians for either supporting ECOMG or failing to support them. In particular, in the village of Yiffin, there is evidence that all three Accused were present and the First Accused gave a direct order for the village to be burnt.¹⁹⁶¹ The attacks on Yiffin and other villages, all in close proximity to each other, were carefully designed and organized by the three Accused, who intended that the crimes charged would occur, or were aware of the substantial likelihood of the occurrence of all of these crimes. Moreover, these acts or threats of violence were committed with the primary purpose of spreading terror amongst civilians and punishing them collectively for their failure to support the AFRC/RUF. As witness TF1-310 testified, an order was made for everyone in the village to be killed since

¹⁹⁶¹ TF1-153 testified that the Second Accused was one of the commanders and TF1-033 also testified that all three Accused entered Yiffin with the troops, TF1-153, Transcript 22 September 2005, p. 32; TF1-033, Transcript 11 July 2005, pp. 15-16.

the Chief had called ECOMOG.¹⁹⁶² “Operation Pay Yourself” was written on the wall of a house in Yiffin,¹⁹⁶³ inciting troops to loot the property of civilians and as a sinister reminder of the policies in force that the three Accused were actively implementing.

1413. In addition, the Accused prompted others to commit these offences and are therefore liable for instigating. Alternatively, the Accused are liable for aiding and abetting the crimes, as there can be no doubt that they were aware of the fact that their actions or omissions would assist the direct perpetrators in the commission of the crimes. Similarly, the Accused knew that it was a policy to eliminate all opposition to the AFRC/RUF and actively encouraged this policy.

SUPERIOR RESPONSIBILITY UNDER ARTICLE 6(3)

1414. The Prosecution submits that, due to the evidence mentioned in the Bombali section, the three Accused were respectively first, second and third in command from Mansofinia to Bombali and that Yiffin was attacked by the Accused on the way to Camp Rosos. During the attack on Yiffin the Accused bore superior criminal responsibility under Article 6(3) of the Statute for planning, instigating, ordering and aiding and abetting the attacks and all the crimes committed by their subordinates in the village of Yiffin as mentioned below.

1415. The Prosecution submits that the evidence shows that there was a superior-subordinate relationship between the Accused and the perpetrators, who in most cases were carrying out the orders of the Accused, which resulted in the commission of the crimes in Yiffin. Based on the fact that in most cases the orders to commit crimes were given to the Accused’s subordinates by them or in their presence, for instance to kill collaborators, burn villages, to amputate the arms of civilians, the Accused either knew or at the very least had reason to know that the subordinate was about to commit the offence or had done so.

1416. The Accused, despite being in a position to take necessary and reasonable measures to prevent or punish the perpetrators, failed to do so. The obvious reason being that the perpetrators were acting on the orders of the Accused (either express or implied).

¹⁹⁶² TF1-310, Transcript 5 July 2005, p. 70.

¹⁹⁶³ DAB-092, Transcript 8 September 2006, p. 36.

1417. Furthermore, as the evidence of the crimes mentioned below clearly demonstrates, the Accused, in some cases, all incur personal liability for some of the crimes which they physically committed themselves.

EVIDENCE THAT THE ACCUSED LED THE ADVANCE PARTY FROM MANSOFINIA TO FIND A BASE CAMP IN THE NORTH PURSUANT TO SAJ MUSA'S ORDERS

Kurubonla

1418. In around mid-February 1998, after the Intervention, SAJ Musa initially remained in the Koinadugu District, with the Third Accused, whilst Johnny Paul Koroma went to Kailahun. The Second Accused had gone to Kono with Superman. Around April/May, the First Accused returned to Kono from Kailahun, taking over command of the Second Accused. The First Accused then led the SLA troops out of Kono to Mansofinia.

1419. At Kurubonla, SAJ Musa held a muster parade¹⁹⁶⁴ attended by the Third Accused as well as Colonel Tee and STF commander Bropleh.¹⁹⁶⁵ He told the troops that they should regroup and fight back against ECOMOG to Freetown.¹⁹⁶⁶ Later, the First Accused arrived through Mansofinia.¹⁹⁶⁷ TF1-184 described the First Accused as the senior man of the group that arrived.¹⁹⁶⁸ SAJ Musa told the First Accused that Brigadier Mani had gone to the north and instructed the First Accused, and the troops he had, to find Brigadier Mani and set up a base in the north.¹⁹⁶⁹ SAJ Musa instructed the Third Accused to join the group, with some extra manpower.¹⁹⁷⁰ The First Accused later radioed telling Brigadier Mani to tell him that he was looking for him.¹⁹⁷¹

¹⁹⁶⁴ TF1-184, Transcript 27 September 2005, pp. 12-14 and DAB-095, Transcript 20 September 2006, p. 48.

¹⁹⁶⁵ TF1-184, Transcript 27 September 2005, pp. 12-14; TF1-334, Transcript 16 June 2005, pp. 76-77; DAB-096, Transcript 18 September 2006, p. 102; DBK-131, Transcript 10 October 2006, pp. 30-31.

¹⁹⁶⁶ TF1-184, Transcript 27 September 2005, p. 15; DAB-033, Transcript 25 September 2006, p. 90.

¹⁹⁶⁷ TF1-184, Transcript 29 September 2005, p. 29.

¹⁹⁶⁸ TF1-184, Transcript 27 September 2005, p. 20-21.

¹⁹⁶⁹ TF1-334, Transcript 20 May 2005, p. 86 and TF1-184, Transcript 29 September 2005, p. 29 and TF1-167, Transcript 15 September 2005, pp. 47-48; Transcript 19 September 2005, p. 44. [REDACTED]

[REDACTED] TF1-153, Transcript 22 September 2005, p. 57. DBK-012 testified that he moved with Brigadier Mani to Batkanu in Bombali District, Transcript 5 October 2006, p. 98. This corroborates TF1-334's evidence of Brigadier Mani's position. When DBK-012 returned to Kurubonla later, he testified that he heard that SAJ Musa sent an advance team to the north to find a base, Transcript 5 October 2006, p. 105.

¹⁹⁷⁰ TF1-184, Transcript 27 September 2005, pp. 20-21 and TF1-334, Transcript 20 May 2005, pp. 85-86.

¹⁹⁷¹ TF1-334, Transcript 24 May 2005, pp. 40-41.

1420. The Prosecution submits that the evidence of Defence Witnesses relating to the advance party to the north should not be believed for the following reasons: (a) DAB-033 stated that the commanders of the advance party to the north were FAT Sesay, George Johnson and Eddie.¹⁹⁷² The advance party had already left when DAB-033 arrived in Kurubonla, and he was only told.¹⁹⁷³ DAB-095 contradicts this evidence and that of the First Accused¹⁹⁷⁴ when he states that Eddie was the commander of the advance team, and that he left with George Johnson and Commander 0-Five.¹⁹⁷⁵ [REDACTED] is lying on his behalf; (b) DBK-012 testified that he did not see the First or Second Accused in Kurubonla,¹⁹⁷⁶ It is the Prosecution case that the First and Second Accused were not in Kurubonla when DBK-012 was there, as he left Mongo Bendugu for the north,¹⁹⁷⁷ and did not return to Kurubonla until after the First and Second Accused had been sent to find a base.¹⁹⁷⁸ The Prosecution further submits that DBK-012 lied in claiming that he heard that FAT Sesay was the first in command of the advance troops that SAJ Musa sent, [REDACTED]¹⁹⁷⁹ and also because an attorney of the Second Accused represented and helped him out of Pademba Road Prison,¹⁹⁸⁰ (c) DAB-156 lied when she denied that the Accused were in Kurubonla when she was there and denied their being commanders of the advance troops,¹⁹⁸¹ saying that George Johnson led the group.¹⁹⁸² She testified that she came to Kurubonla with George Johnson and that George Johnson then left with the advance team from Kurubonla,¹⁹⁸³ yet George Johnson never went to Kurubonla. He stayed in Mansofinia while the First and Second Accused went to Kurubonla;¹⁹⁸⁴ (d) DBK-037 lied when he testified that SAJ Musa appointed FAT Sesay to head the advance

¹⁹⁷² DAB-033, Transcript 25 September 2006, pp. 55-56.

¹⁹⁷³ DAB-033, Transcript 2 October 2006, pp. 79-80.

¹⁹⁷⁴ Accused Alex Tamba Brima, Transcript 13 June 2006, pp. 6-7.

¹⁹⁷⁵ DAB-095, Transcript 20 September 2006, p. 56-58.

¹⁹⁷⁶ DBK-012, Transcript 5 October 2006, p. 103 and Transcript 9 October 2006, pp. 11-12.

¹⁹⁷⁷ DBK-012, Transcript 5 October 2006, pp. 95-96.

¹⁹⁷⁸ DBK-012, Transcript 5 October 2006, p. 105.

¹⁹⁷⁹ DBK-012, Transcript 18 October 2006, pp. 84-85.

¹⁹⁸⁰ DBK-012, Transcript 18 October 2006, p. 83.

¹⁹⁸¹ DAB-156, Transcript 29 September 2006, pp. 78-79.

¹⁹⁸² DAB-156, Transcript 29 September 2006, p. 49.

¹⁹⁸³ DAB-156, Transcript 29 September 2006, p. 46, 50.

¹⁹⁸⁴ TF1-167, Transcript 15 September 2005, pp. 47-48.

team.¹⁹⁸⁵ There is an abundance of evidence that FAT Sesay was the brigade administrative officer,¹⁹⁸⁶ and not a commander of any advance team; (e) The Prosecution submits that DAB-033, DAB-095, and DBK-012 all arrived in Kurubonla after the team had left, and just heard about it and the commanders when they arrived.¹⁹⁸⁷ DAB-156 only heard about the advance team from her “husband” at the time, and then did not know about the commanders.¹⁹⁸⁸ DBK-037 testified that he was in Kurubonla at the time, and did go with the advance team.¹⁹⁸⁹ However, he testified that they left straight from Kurubonla to the north,¹⁹⁹⁰ though there is an abundance of evidence that they left from Mansofinia.¹⁹⁹¹

1421. TF1-184 was with SAJ Musa the entire period in Koinadugu District.¹⁹⁹² He testified that it was the First and Second Accused that came to meet SAJ Musa from Mansofinia, and SAJ Musa ordered them to find a base.¹⁹⁹³ TF1-334 was part of the group that came up from Mansofinia and was present when SAJ Musa ordered the Accused to move to the north.¹⁹⁹⁴ TF1-167 also testified that the First and Second Accused met SAJ Musa who ordered them to find a base.¹⁹⁹⁵ TF1-334 and TF1-167 were both part of the advance team that left.¹⁹⁹⁶ Since these witnesses were present and held positions close to the Accused, their testimony should be given more weight than the testimony of the Defence witnesses whose knowledge came from hearsay.

¹⁹⁸⁵ DBK-037, Transcript 3 October 2006, p. 94.

¹⁹⁸⁶ TF1-334, Transcript 23 May 2005, p. 32 and TF1-046, Transcript 7 October 2005, p. 115 and TF1-184, Transcript 27 September 2005, pp. 58-59 and TF1-167, Transcript 15 September 2005, p. 41. This is corroborated by DAB-095, Transcript 20 September 2006, pp. 55-56.

¹⁹⁸⁷ DAB-033, Transcript 25 September 2006, p. 56; DAB-095, Transcript 20 September 2006, pp. 56-58

¹⁹⁸⁸ DAB-156, Transcript 29 September 2006, pp. 78-79.

¹⁹⁸⁹ DBK-037, Transcript 3 October 2006, pp. 94-95.

¹⁹⁹⁰ DBK-037, Transcript 4 October 2006, p. 69.

¹⁹⁹¹ TF1-334, Transcript 23 May 2005, p. 39 and TF1-167, Transcript 15 September 2005, p. 51.

¹⁹⁹² It should be noted that DAB-096 testified that he saw Alabama in Kurubonla during this time, DAB-096, Transcript 18 September 2006, pp. 102-103.

¹⁹⁹³ TF1-184, Transcript 27 September 2005, pp. 19-21.

¹⁹⁹⁴ TF1-334, Transcript 20 May 2005, pp. 86-87.

¹⁹⁹⁵ TF1-167, Transcript 15 September 2005, pp. 47-48.

¹⁹⁹⁶ TF1-334, Transcript 23 May 2005, p. 39 and TF1-167, Transcript 15 September 2005, p. 51. A number of Defence witnesses also put TF1-167 in the advance team including DAB-033, Transcript 25 September 2006, pp. 55-56; DAB-095, Transcript 20 September 2006, pp. 56-58; DAB-156, Transcript 29 September 2006, p. 49; DBK-131, Transcript 10 October 2006, p. 44.

Yiffin

1422. When the Accused left Kurubonla they returned to Mansofinia and set off for the North via Yiffin. Around April 1998, the First Accused moved from Yarya into Yiffin with the Second and Third Accused and other troops under their command.¹⁹⁹⁷ TF1-153 testified that one of the commanders in Yiffin was Bazy.¹⁹⁹⁸ When they arrived in Yiffin, the First Accused ordered that the town be burnt and civilians killed.¹⁹⁹⁹ DAB-090 testified that he did not hear of the three Accused as the ones responsible for the attack on Yiffin.²⁰⁰⁰ However, during the first attack, this witness had left the village.²⁰⁰¹
1423. TF1-153 testified that about 90% of the attackers were uniformed AFRC soldiers.²⁰⁰² TF1-310 testified that she saw a soldier in military uniform during the attack.²⁰⁰³ DAB-092 testified that the attackers were a mixed force of RUF and SLAs.²⁰⁰⁴ DAB-090 and DAB-086 testified that the rebels that attacked Yiffin were wearing both civilian clothes and military combats.²⁰⁰⁵ DAB-087 testified that he did not see SLA soldiers with the rebels who attacked Yiffin.²⁰⁰⁶ However, when they came to town, this witness ran and hid in the bush so would not have been in a position to see anything.²⁰⁰⁷
1424. Numerous crimes were committed throughout Yiffin, including killing.²⁰⁰⁸ DAB-086 testified that when he returned to town, he found that people had been killed.²⁰⁰⁹ He testified that he saw more than thirty people dead.²⁰¹⁰ DAB-090 found two corpses when he returned, including his child.²⁰¹¹ DAB-092 also testified to finding corpses in Yiffin when he returned from hiding.²⁰¹²

¹⁹⁹⁷ TF1-033, Transcript 11 July 2005, pp. 15-16.

¹⁹⁹⁸ TF1-153, Transcript 22 September 2005, p. 32.

¹⁹⁹⁹ TF1-033, Transcript 11 July 2005, pp. 15-16.

²⁰⁰⁰ DAB-090, Transcript 24 July 2006, pp. 106-107.

²⁰⁰¹ DAB-090, Transcript 24 July 2006, p. 75.

²⁰⁰² TF1-153, Transcript 22 September 2005, pp. 32-33

²⁰⁰³ TF1-310, Transcript 5 July 2005, pp. 65-66.

²⁰⁰⁴ DAB-092, Transcript 8 September 2006, p. 35.

²⁰⁰⁵ DAB-090, Transcript 24 July 2006, p. 77 and DAB-086, Transcript 25 July 2006, p. 7.

²⁰⁰⁶ DAB-087, Transcript 25 July 2006, pp. 65-66.

²⁰⁰⁷ DAB-087, Transcript 25 July 2006, p. 42.

²⁰⁰⁸ TF1-033, Transcript 11 July 2005, p. 16.

²⁰⁰⁹ DAB-086, Transcript 25 July 2006, p. 16.

²⁰¹⁰ DAB-086, Transcript 25 July 2006, p. 20.

²⁰¹¹ DAB-090, Transcript 24 July 2006, p. 80-81.

²⁰¹² DAB-092, Transcript 8 September 2006, p. 33.

1425. TF1-310 testified that she was returning from her farm to Yiffin when she heard gunshots. She met a man in military uniform who told her and others to enter a house. The man said he was there to protect them.²⁰¹³ When there were many people in the house, they were all shot at through the windows.²⁰¹⁴ When the shooting was done, the house and those inside were torched.²⁰¹⁵

1426. DAB-087 testified that when he returned to the village, he found people burnt inside a thatch house by the rebels.²⁰¹⁶ Later, when the loyal SLAs finally took the skeletons out to bury them, the witness counted 24 people in the house.²⁰¹⁷

1427. TF1-310 testified that when she escaped, she overheard someone ordering that everyone be killed since the chief of Yiffin had called ECOMOG.²⁰¹⁸ DAB-087 corroborates this story. He testified that the chief sent a message to ECOMOG when word arrived that the rebels had burned Kulaya.²⁰¹⁹

1428. [REDACTED]
[REDACTED]
[REDACTED].²⁰²⁰ This is the same tactic that TF1-310 described.²⁰²¹

1429. Looting occurred during the attack on Yiffin.²⁰²² TF1-153 described how soldiers looted the shop of a handicapped man called Stevo, under Operation Pay Yourself.²⁰²³ [REDACTED]

[REDACTED]²⁰²⁴

²⁰¹³ TF1-310, Transcript 5 July 2005, p. 66. *See also* Exhibit P57, No Peace Without Justice Report, 10 March 2004, p. 174.

²⁰¹⁴ TF1-310, Transcript 5 July 2005, p. 74.

²⁰¹⁵ TF1-310, Transcript 5 July 2005, Closed session, pp. 70-71.

²⁰¹⁶ DAB-087, Transcript 25 July 2006, p. 47.

²⁰¹⁷ DAB-087, Transcript 25 July 2006, p. 65.

²⁰¹⁸ TF1-310, Transcript 5 July 2005, Closed session, p. 70.

²⁰¹⁹ DAB-087, Transcript 25 July 2006, p. 43.

²⁰²⁰ TF1-272, Transcript 4 July 2005, p. 52.

²⁰²¹ TF1-310, Transcript 5 July 2005, p. 66.

²⁰²² DAB-086, Transcript 25 July 2006, p. 22.

²⁰²³ TF1-153, Transcript 22 September 2005, p. 33.

²⁰²⁴ Exhibit D25 [confidential and under seal].

DAB-092 testified that his shop was burned.²⁰²⁵ DAB-092 also testified that he saw the words, “Operation Pay Yourself” written on the wall of a house in town.²⁰²⁶

1430. The houses in Yiffin were burnt.²⁰²⁷ DAB-090 testified that he witnessed a rebel boy in military combats set fire to a house with a torch.²⁰²⁸ It was the “younger ones” that set the houses on fire. They were wearing military uniforms.²⁰²⁹

1431. DAB-087 testified that when he returned to Yiffin, he found that only five houses in the town were *not* burnt.²⁰³⁰ DAB-090 testified that the only two buildings spared from burning were the mosque and the church.²⁰³¹ DAB-086 testified that when he saw smoke from the hills surrounding the town. When he returned, he found all their houses had been burnt. The EU assisted them with rebuilding 133 houses in Yiffin.²⁰³²

1432. DAB-087 testified that before the Yiffin attack, a small village called Kulaya was burnt.²⁰³³

1433. Rapes occurred during the attack on Yiffin.²⁰³⁴ TF1-153 was staying with the Chief of Yiffin when the attack occurred.²⁰³⁵ He was present when a woman complained to the chief about soldiers raping her three children. The chief brought the complaint to the attention of Bazy.²⁰³⁶

1434. A number of Defence witnesses testified that the people responsible for the attack on Yiffin included a rebel called High Firing.²⁰³⁷ It is the submission of the Prosecution that there was a second attack on Yiffin. The first attack is described above, and was led by the Accused. The Second attack was committed by High Firing, who stayed in the region. As is clear from DAB-090’s testimony, most of the crimes were committed during the first

²⁰²⁵ DAB-092, Transcript 8 September 2006, pp. 30-32.

²⁰²⁶ DAB-092, Transcript 8 September 2006, p. 36.

²⁰²⁷ TF1-033, Transcript 11 July 2005, p. 16.

²⁰²⁸ DAB-090, Transcript 24 July 2006, p. 78.

²⁰²⁹ DAB-090, Transcript 24 July 2006, pp. 111-112.

²⁰³⁰ DAB-087, Transcript 25 July 2006, pp. 47-48.

²⁰³¹ DAB-090, Transcript 24 July 2006, p. 84.

²⁰³² DAB-086, Transcript 25 July 2006, p. 16-17.

²⁰³³ DAB-087, Transcript 25 July 2006, p. 41.

²⁰³⁴ TF1-033, Transcript 11 July 2005, p. 16; DAB-086, Transcript 25 July 2006, p. 23; DAB-090, Transcript 24 July 2006, p. 109.

²⁰³⁵ TF1-153, Transcript 22 September 2005, p. 32.

²⁰³⁶ TF1-153, Transcript 22 September 2005, p. 33.

²⁰³⁷ DAB-086, Transcript 25 July 2006, p. 17; DAB-087, Transcript 25 July 2006, p. 54; DAB-090, Transcript 24 July 2006, p. 79; DAB-092, Transcript 8 September 2006, p. 32.

attack. He testified that by the second attack, there were no houses left to burn, and the corpses were remnants of the first attack because everyone was too afraid to return to town and bury them.²⁰³⁸

1435. After the second attack, civilians were forced to farm for the soldiers in town and the surrounding area.²⁰³⁹

1436. The Prosecution submits that the evidence proves beyond a reasonable doubt that the First attack in Yiffin and the crimes committed in the above mentioned attack were committed by the SLA faction under the command of all three Accused whilst en route to find a base camp pursuant to SAJ Musa's orders.

KOINADUGU AFTER THE DEPARTURE OF THE ACCUSED TO FIND A BASE IN THE NORTH

1437. Superman came to Kurubonla.²⁰⁴⁰ SAJ Musa initially detained Superman and his men.²⁰⁴¹ Superman came to Kurubonla to organize a combined operation with the SLAs.²⁰⁴² After Superman arrived, the SLAs and RUF would organize joint patrols.²⁰⁴³ DBK-012 testified that he returned with Brigadier Mani to Kurubonla and rejoined SAJ Musa.²⁰⁴⁴

1438. Crimes were committed in Kurubonla by both SLA/RUF. TF1-133 testified that she was abducted in Kumala, and brought to Kurubonla by Brigadier Mani's men.²⁰⁴⁵ In Kurubonla, TF1-133 learned that Savage, Komba Gbundema, and Superman were there.²⁰⁴⁶ TF1-133 testified that abducted women were forced to be wives of the soldiers.²⁰⁴⁷ This witness said that when a woman was captured, the captor would rape the woman and bring her back to the camp. The woman would then be given to another man and forced to be his wife. At that point, no other man could have sex with her. The

²⁰³⁸ DAB-090, Transcript 24 July 2006, pp. 89-90.

²⁰³⁹ DAB-086, Transcript 25 July 2006, p. 20; DAB-087, Transcript 25 July 2006, p. 49.

²⁰⁴⁰ TF1-184, Transcript 27 September 2005, p. 18 and DAB-095, Transcript 20 September 2006, p. 52.

²⁰⁴¹ TF1-184, Transcript 27 September 2005, p. 18.

²⁰⁴² DAB-095, Transcript 20 September 2006, p. 52.

²⁰⁴³ DAB-095, Transcript 20 September 2006, pp. 52-54.

²⁰⁴⁴ DBK-012, Transcript 5 October 2006, p. 103.

²⁰⁴⁵ TF1-133, Transcript 7 July 2005, pp. 92-93.

²⁰⁴⁶ TF1-133, Transcript 7 July 2005, pp. 93-95.

²⁰⁴⁷ TF1-133, Transcript 7 July 2005, pp. 90-92.

soldier would be the woman's "sole owner."²⁰⁴⁸ The woman who was forced to be the wife of a soldier would have to cook, and when that was done, the soldier would have sex with the woman.²⁰⁴⁹ TF1-133 testified that Mani had children as bodyguards.²⁰⁵⁰ Women and children abductees were kept in Kurubonla.²⁰⁵¹ Children captured in Kurubonla were also forced to do work for the soldiers.²⁰⁵² When Superman left SAJ Musa, he left behind Komba Gbundema.²⁰⁵³

Mongo Bendugu

1439. The troops under SAJ Musa attacked Mongo Bendugu again, and captured arms and ammunition.²⁰⁵⁴ It was a joint SLA/RUF operation.²⁰⁵⁵ After taking Mongo Bendugu, SAJ Musa radioed the First Accused and told him about the attack, the captured arms and ammunition and his plans to attack Kabala by pretending that they were going to surrender.²⁰⁵⁶ The evidence below suggests that SAJ Musa carried out the attacks in the manner as mentioned in his radio conversation i.e. by pretending to surrender which gives weight to the fact that TF1-334 was actually with the First Accused when he overheard this radio conversation between SAJ Musa and the First Accused whilst at Colonel Eddie Town.²⁰⁵⁷

1440. TF1-209 was told that amputations occurred in Mongo. The rebels also told her that in Mongo, they would slit open pregnant women's bellies.²⁰⁵⁸

Kabala 2

1441. When Superman returned to Mongo Bendugu, there was a plan to attack Kabala²⁰⁵⁹ as ECOMOG were based there. DAB-089 testified that when the rebels came through

²⁰⁴⁸ TF1-133, Transcript 7 July 2005, pp. 97-101.

²⁰⁴⁹ TF1-133, Transcript 7 July 2005, p. 98.

²⁰⁵⁰ TF1-133, Transcript 7 July 2005, p. 96.

²⁰⁵¹ TF1-133, Transcript 7 July 2005, p. 96.

²⁰⁵² TF1-133, Transcript 7 July 2005, p. 102.

²⁰⁵³ TF1-184, Transcript 27 September 2005, p. 18.

²⁰⁵⁴ TF1-184, Transcript 27 September 2005, p. 21 and DAB-023, Transcript 31 July 2006, p. 57 and DBK-012, Transcript 5 October 2006, p. 104.

²⁰⁵⁵ DBK-129, Transcript 9 October 2006, pp. 75-76 and DAB-083, Transcript 21 July 2006, p. 29-30.

²⁰⁵⁶ TF1-334, Transcript 24 May 2005, pp. 42-45.

²⁰⁵⁷ TF1-334, Transcript 24 May 2005, pp.33-36.

²⁰⁵⁸ TF1-209, Transcript 7 July 2005, pp. 40-41.

²⁰⁵⁹ TF1-184, Transcript 27 September 2005, p. 21.

Bambukoro, they told people that they were going to Kabala to surrender.²⁰⁶⁰ Similarly, DAB-091 was told that the soldiers going through Yomadugu were heading to Kabala to surrender.²⁰⁶¹ The attack on Kabala was a joint operation of SLAs and RUF.²⁰⁶² The leaders of these groups were SAJ Musa and Superman.²⁰⁶³

1442. The attack on Kabala occurred in late July 1998.²⁰⁶⁴ They came to town saying they had come to surrender. Others came behind them and shooting started.²⁰⁶⁵ TF1-334 described a radio call that SAJ Musa made to the First Accused in which he laid out this very plan of attack. SAJ Musa told the First Accused that his plan to attack Kabala involved pretending they would surrender.²⁰⁶⁶ The First Accused also attempted to use this tactic to attack Gbinti in Port Loko District, but did not after learning about the ECOMOG strength there.²⁰⁶⁷ This evidence again suggests that the First Accused adopted SAJ Musa's plan of pretending to surrender as a means of attack based on his radio conversation with SAJ Musa. Since TF1-334 overheard this radio conversation whilst he was in Camp Rosos with the First Accused it gives further weight to the evidence of TF1-334 that he was actually with the First Accused at Camp Rosos who was in a command position whilst talking to SAJ Musa over the radio. It totally undermines the First Accused alibi that he was either under detention in Kailahun or in Yarya during this time frame, i.e. end of June to September 1998.²⁰⁶⁸

1443. DAB-077 heard about this tactic used in Sekunia.²⁰⁶⁹ This strategy was also used in a later attack on Mongo Bendugu.²⁰⁷⁰ The use of the shared tactic suggests that communications between the SLA forces was quite widespread and strategies were shared between groups.

²⁰⁶⁰ DAB-089, Transcript 24 July 2006, p. 45.

²⁰⁶¹ DAB-091, Transcript 24 July 2006, pp. 6-7.

²⁰⁶² DAB-083, Transcript 21 July 2006, p. 33.

²⁰⁶³ DAB-083, Transcript 21 July 2006, pp. 35-36 and DAB-091, Transcript 24 July 2006, pp. 9-10.

²⁰⁶⁴ TF1-147, Transcript 13 July 2005, p. 7 and Exhibit P57, No Peace Without Justice Report, 10 March 2004, p. 177.

²⁰⁶⁵ TF1-147, Transcript 13 July 2005, p. 7.

²⁰⁶⁶ TF1-334, Transcript 24 May 2005, p. 44.

²⁰⁶⁷ TF1-334, Transcript 24 May 2005, pp. 46-49.

²⁰⁶⁸ TF1-334, Transcript 24 May 2005, pp. 33-36.

²⁰⁶⁹ DAB-077, Transcript 19 July 2006, p. 69.

²⁰⁷⁰ Exhibit P57, "No Peace Without Justice Report," 10 March 2004, p. 178.

1444. The rebels then stayed in Kabala for four to five days before being repelled.²⁰⁷¹ After the attack on Kabala, TF1-147 returned to the town and saw houses burnt, and some still on fire. TF1-147's own house was looted during the attack.²⁰⁷² DAB-083 also received information about people being abducted and beaten.²⁰⁷³ DAB-091 testified that he heard from abductees that they were abducted on the way to Kabala and forced to carry loads there.²⁰⁷⁴ DAB-083 received information that the SLA/RUF soldiers were raping civilians.²⁰⁷⁵

Koinadugu Town

1445. When the troops were pushed from Kabala, they settled in Koinadugu Town.²⁰⁷⁶ They came from Mongo Bendugu.²⁰⁷⁷ DAB-081 testified that Koinadugu Town was attacked by a joint SLA/RUF force headed by SAJ Musa and Superman.²⁰⁷⁸ TF1-209 testified that the attack on Koinadugu Town happened in August 1998.²⁰⁷⁹ She described this group as wearing both combat fatigues and civilian clothes.²⁰⁸⁰ TF1-209 was told that those who attacked her farm were under the command of Superman and SAJ Musa.²⁰⁸¹

1446. There was a mixed force of SLA and RUF working together in Koinadugu Town. DAB-083 testified that SAJ Musa and Superman were based there,²⁰⁸² and that before the infighting, the RUF and SLA were working together.²⁰⁸³ DAB-033 testified that both Superman's RUF and SAJ Musa's SLAs were working together as a team in Koinadugu Town.²⁰⁸⁴ DAB-023 also testified that SAJ Musa was working with Superman and the RUF in Koinadugu, before the infight.²⁰⁸⁵ DBK-131 testified that the RUF and SLA were

²⁰⁷¹ TF1-147, Transcript 13 July 2005, pp. 8-9. DAB-083 also says that the shooting in Kabala lasted four days, Transcript 21 July 2006, p. 33. DAB-089 heard that government soldiers dislodged the "gunmen" after five days, DAB-089 Transcript 24 July 2006, pp. 47-48. DAB-079, Transcript 28 July 2006, pp. 22-26.

²⁰⁷² TF1-147, Transcript 13 July 2005, pp. 9-10.

²⁰⁷³ DAB-083, Transcript 21 July 2006, pp. 35-36.

²⁰⁷⁴ DAB-091, Transcript 24 July 2006, pp. 8-9.

²⁰⁷⁵ DAB-083, Transcript 21 July 2006, p. 36.

²⁰⁷⁶ TF1-184, Transcript 27 September 2005, p. 22 and DBK-131, Transcript 10 October 2006, p. 35.

²⁰⁷⁷ TF1-209, Transcript 7 July 2005, p. 59.

²⁰⁷⁸ DAB-081, Transcript 20 July 2006, p. 82.

²⁰⁷⁹ TF1-209, Transcript 7 July 2005, pp. 29, 63.

²⁰⁸⁰ TF1-209, Transcript 7 July 2005, pp. 29-30.

²⁰⁸¹ TF1-209, Transcript 7 July 2005, p. 32.

²⁰⁸² DAB-083, Transcript 21 July 2006, p. 41.

²⁰⁸³ DAB-083, Transcript 21 July 2006, pp. 57-58.

²⁰⁸⁴ DAB-033, Transcript 2 October 2006, p. 84. See also DAB-079, Transcript 28 July 2006, pp. 32-33.

²⁰⁸⁵ DAB-023, Transcript 3 August 2006, p. 87.

living together in Koinadugu Town and were jointly defending against ECOMOG and CDF.²⁰⁸⁶ DAB-089 testified that the people he met in Koinadugu Town after he was captured were SLA soldiers under the command of SAJ Musa. The troops there were mixed civilian and combat dress.²⁰⁸⁷ He was later told by the rebel he was working for that the two leaders were SAJ Musa and Superman.²⁰⁸⁸ DAB-081 testified that the RUF and SLA could go to each others' part of town, and were working in commonality.²⁰⁸⁹ Before the infight, the SLA and RUF used to share food and ammunition.²⁰⁹⁰

1447. Crimes were committed in Koinadugu Town and the surrounding areas. TF1-153 testified that as he moved from Yiraia to Koinadugu Town, he saw dead bodies on the roadside, with bullet wounds. He was told that Superman had killed these people.²⁰⁹¹ While attempting to hide at a family farm, TF1-209 witnessed an attack on the farm by what she describes as the Junta. At the farm the Junta killed people, including her husband and child.²⁰⁹² When she tried to get a hold of her child, she was hit with a cutlass.²⁰⁹³ DAB-081 testified that the RUF in Koinadugu Town killed over ten people by beating them with machetes and sticks.²⁰⁹⁴ DAB-083 saw the bodies of a suckling mother and her child on the ground when he returned to Koinadugu Town after Superman had left.²⁰⁹⁵

1448. Rapes occurred in Koinadugu Town and the surrounding areas. TF1-209 testified that her farm was attacked by the Junta, who then raped people.²⁰⁹⁶ During the attack on TF1-209's family farm, she was raped by two rebels even though she was pregnant.²⁰⁹⁷ She was raped in her husband's presence, while he was beaten.²⁰⁹⁸ She said that other women were raped by the same people, including children as young as nine and ten years old.²⁰⁹⁹ TF1-209 was told by the rebels who raped her that other pregnant women had their bellies

²⁰⁸⁶ DBK-131, Transcript 26 October 2006, pp. 36-37.

²⁰⁸⁷ DAB-089, Transcript 24 July 2006, pp. 64-66.

²⁰⁸⁸ DAB-089, Transcript 24 July 2006, p. 55.

²⁰⁸⁹ DAB-081, Transcript 21 July 2006, p. 13.

²⁰⁹⁰ DAB-081, Transcript 21 July 2006, p. 12.

²⁰⁹¹ TF1-153, Transcript 22 September 2005, pp. 51-52.

²⁰⁹² TF1-209, Transcript 7 July 2005, p. 31.

²⁰⁹³ TF1-209, Transcript 7 July 2005, pp. 31, 70-71.

²⁰⁹⁴ DAB-081, Transcript 20 July 2006, p. 99.

²⁰⁹⁵ DAB-083, Transcript 21 July 2006, p. 46.

²⁰⁹⁶ TF1-209, Transcript 7 July 2005, p. 31.

²⁰⁹⁷ TF1-209, Transcript 7 July 2005, pp. 31-32.

²⁰⁹⁸ TF1-209, Transcript 7 July 2005, p. 33.

²⁰⁹⁹ TF1-209, Transcript 7 July 2005, pp. 33-34.

slit so that the rebels could see the gender of the baby. They also told her that some women were forcefully initiated into Bondo.²¹⁰⁰

1449. TF1-209 was abducted and brought to her captor's house. There she cooked and did laundry for him. He made her his wife.²¹⁰¹ During her time in the bush, she was forced to be the wife of two different men, one with SAJ Musa's group and the other with Superman's group.²¹⁰²

1450. Abductions and forced labour were rampant in Koinadugu Town and the surrounding areas. The rebels took TF1-209's rice and groundnut and made her and other abductees carry them to Koinadugu Town.²¹⁰³ DAB-089 was abducted in Bambukoro and forced to carry loads to Koinadugu Town.²¹⁰⁴ While in Koinadugu Town, he had to carry loads, log wood, and make food for the soldiers.²¹⁰⁵ DAB-081 was abducted by an RUF in Koinadugu Town along with his wife.²¹⁰⁶ He described how during his abduction, he became a slave.²¹⁰⁷ As a slave, he had to work, search for food, carry loads, and build huts for the soldiers.²¹⁰⁸ He testified that other villagers were forced to work for the SLA doing the same kind of work, but were treated less harshly.²¹⁰⁹ However, harsh treatment is not an element of enslavement. The simple fact that they were enslaved is enough to fulfil the elements of that crime.

1451. The SLA/RUF forces kept close track of their abducted civilians. When TF1-209 arrived in Koinadugu Town, she and other captives were taken to the MP office where the names of the abducted civilians were written down so no one could go missing. The MP boss was wearing a uniform.²¹¹⁰ DAB-082 was abducted from his farm by men in civilian clothes.²¹¹¹ They took him to the boss, SAJ Musa in Koinadugu Town, who sent the

²¹⁰⁰ TF1-209, Transcript 7 July 2005, pp. 34-35.

²¹⁰¹ TF1-209, Transcript 7 July 2005, p. 38.

²¹⁰² TF1-209, Transcript 7 July 2005, pp. 47-48, 52.

²¹⁰³ TF1-209, Transcript 7 July 2005, pp. 36.

²¹⁰⁴ DAB-089, Transcript 24 July 2006, pp. 44, 50-51.

²¹⁰⁵ DAB-089, Transcript 24 July 2006, p. 54-55.

²¹⁰⁶ DAB-081, Transcript 20 July 2006, pp. 82, 84.

²¹⁰⁷ DAB-081, Transcript 20 July 2006, p. 85.

²¹⁰⁸ DAB-081, Transcript 20 July 2006, pp. 89-90.

²¹⁰⁹ DAB-081, Transcript 21 July 2006, p. 10.

²¹¹⁰ TF1-209, Transcript 7 July 2005, pp. 37-38.

²¹¹¹ DAB-082, Transcript 21 July 2006, p. 67.

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witness to the MP Officer.²¹¹² The next day, he had to go on food finding missions.²¹¹³ When DAB-089 arrived in Koinadugu Town, he was brought to a commander who carved 'RUF' in his chest and forehead so he couldn't escape.²¹¹⁴

1452. DBK-131 testified that no civilians were subjected to forced labour in Koinadugu Town. He said that they were all voluntary.²¹¹⁵ Considering the overwhelming evidence to the contrary from both Prosecution and Defence witnesses, this evidence cannot be believed.

1453. DAB-096 testified that he moved with SAJ Musa from Kurubonla to Koinadugu Town. He said that there were no civilian abductees with them.²¹¹⁶ He also testified that they stayed in Koinadugu Town for one day.²¹¹⁷ He denied that SAJ Musa stayed in Koinadugu Town for a month with Superman.²¹¹⁸ Considering the amount of evidence, from both Prosecution and Defence witnesses, to the contrary, his testimony on this matter cannot be believed.

1454. In Koinadugu Town, abducted civilians were trained to fight.²¹¹⁹ TF1-184 was an instructor and trained the civilians how to handle weapons.²¹²⁰ Both the SLAs and the RUF recruited young boys and girls to fight. They were between 14 and 18 years old.²¹²¹ They were trained by the RUF and SLA.²¹²² DBK-131 testified that the training base was at the school in Koinadugu Town.²¹²³

1455. SAJ Musa ordered 0-Five to search for the First Accused.²¹²⁴ The First Accused radioed SAJ Musa during this time.²¹²⁵ SAJ Musa informed the First Accused that he had sent 0-Five to Colonel Eddie Town, and that this should become an SLA defensive.²¹²⁶ The First Accused planned their arrival with SAJ Musa, setting up a meeting place for 0-Five at

²¹¹² DAB-082, Transcript 21 July 2006, pp. 70-71.

²¹¹³ DAB-082, Transcript 21 July 2006, p. 72-73.

²¹¹⁴ DAB-089, Transcript 24 July 2006, p. 51-54.

²¹¹⁵ DBK-131, Transcript 26 October 2006, p. 37.

²¹¹⁶ DAB-096, Transcript 18 September 2006, pp. 106-107.

²¹¹⁷ DAB-096, Transcript 18 September 2006, p. 108.

²¹¹⁸ DAB-096, Transcript 25 September 2006, p. 22.

²¹¹⁹ TF1-184, Transcript 27 September 2005, p. 22 and TF1-094, Transcript 13 July 2005, pp. 32-33.

²¹²⁰ TF1-184, Transcript 29 September 2005, pp. 33-34.

²¹²¹ DAB-081, Transcript 21 July 2006, p. 3.

²¹²² DAB-081, Transcript 21 July 2006, p. 15.

²¹²³ DBK-131, Transcript 10 October 2006, pp. 37-38.

²¹²⁴ TF1-184, Transcript 27 September 2005, pp. 25-26 and TF1-153, Transcript 22 September 2005, p. 61.

²¹²⁵ TF1-334, Transcript 24 May 2005, pp. 89-90.

²¹²⁶ TF1-334, Transcript 24 May 2005, p. 91.

Gbendembu.²¹²⁷ Again this belies the First Accused's alibi that he was detained on his arrest at Colonel Eddie Town.

1456. DAB-096 testified that it was George Johnson that called SAJ Musa.²¹²⁸ It is highly doubtful that DAB-096 was even with them at Koinadugu Town, especially as he testified that they were only there for one day.²¹²⁹

1457. Two weeks after 0-Five left Koinadugu, he radioed back to SAJ Musa explaining where the First Accused was based.²¹³⁰ TF1-153 stayed with SAJ Musa in Koinadugu and heard this radio communication.²¹³¹

Areas Around Koinadugu Town

Bumbunkura

1458. TF1-094 testified about an attack at Bumbunkura in August 1998.²¹³² She described the attackers as both rebels and soldiers wearing uniforms.²¹³³ Her parents were killed in a house and she was captured by an SLA.²¹³⁴ At this time, the witness was in Class 2 and had not reached puberty.²¹³⁵ She also testified about other civilians from Bumbunkura that were captured and forced to work for the SLAs and RUF. Anyone who refused was killed or beaten.²¹³⁶

Bambukoro

1459. It is the submission of the Prosecution that Bumbunkura and Bambukoro are two different villages very near to each other. DAB-088 testified about an attack on Bambukoro. He says that those that attacked him were RUF.²¹³⁷ However, he also testified that the attackers wore mixed clothing, some in civilian clothes and some in

²¹²⁷ TF1-334, Transcript 24 May 2005, p. 95.

²¹²⁸ DAB-096, Transcript 18 September 2006, p. 109.

²¹²⁹ DAB-096, Transcript 18 September 2006, p. 108.

²¹³⁰ TF1-153, Transcript 22 September 2005, p. 61 and DAB-023, Transcript 31 July 2006, p. 59.

²¹³¹ TF1-153, Transcript 22 September 2005, p. 57.

²¹³² TF1-094, Transcript 13 July 2005, pp. 25, 47.

²¹³³ TF1-094, Transcript 13 July 2005, p. 26.

²¹³⁴ TF1-094, Transcript 13 July 2005, pp. 27-28.

²¹³⁵ TF1-094, Transcript 13 July 2005, p. 28.

²¹³⁶ TF1-094, Transcript 13 July 2005, p. 32.

²¹³⁷ DAB-088, Transcript 24 July 2006, pp. 32-33.

military fatigues.²¹³⁸ When the witness was captured, he was told that the rebels' commanders were Superman and SAJ Musa, and that they were based in Koinadugu Town.²¹³⁹ DAB-089 testified that the people who captured him were in civilian clothes, with the exception of their commander, who wore a combat shirt.²¹⁴⁰

1460. The rebels burnt DAB-088's hut and took all his rice.²¹⁴¹ During the first attack, the soldiers captured two of DAB-088's wives and made them carry loads.²¹⁴² During a later attack, the witness himself was abducted.²¹⁴³ The rebels forced him to carry a mattress to Yomadugu. The witness escaped four days later.²¹⁴⁴ DAB-089 heard that people were being captured by gunmen.²¹⁴⁵ When he later came to town, he and other civilians were forced to carry loads to Koinadugu Town.²¹⁴⁶ When DAB-088's wives were captured, they were also raped in the bush.²¹⁴⁷ The witness' uncle's wife was also raped.²¹⁴⁸ DAB-089 heard that three women had been captured and raped.²¹⁴⁹ When the rebels came the first time, they killed DAB-088's children.²¹⁵⁰ DAB-088 testified that he found nine corpses, including his two children, in town.²¹⁵¹ DAB-089 testified that nine people were killed, including children.²¹⁵²

Yomadugu

1461. In Yomadugu, there was a mixed force of SLA and RUF working together. DAB-088 described the force there as mixed rebels and soldiers.²¹⁵³ TF1-094 described some SLA commanders in Yomadugu and testified that abductees worked for both the SLA and RUF

²¹³⁸ DAB-088, Transcript 24 July 2006, p. 23.

²¹³⁹ DAB-088, Transcript 24 July 2006, p. 29.

²¹⁴⁰ DAB-089, Transcript 24 July 2006, p. 51.

²¹⁴¹ DAB-088, Transcript 24 July 2006, p. 24.

²¹⁴² DAB-088, Transcript 24 July 2006, pp. 23-24.

²¹⁴³ DAB-088, Transcript 24 July 2006, p. 25.

²¹⁴⁴ DAB-088, Transcript 24 July 2006, pp. 26-27.

²¹⁴⁵ DAB-089, Transcript 24 July 2006, p. 48.

²¹⁴⁶ DAB-089, Transcript 24 July 2006, pp. 50-51.

²¹⁴⁷ DAB-088, Transcript 24 July 2006, pp. 24-25.

²¹⁴⁸ DAB-088, Transcript 24 July 2006, p. 31.

²¹⁴⁹ DAB-089, Transcript 24 July 2006, p. 57.

²¹⁵⁰ DAB-088, Transcript 24 July 2006, pp. 23-24.

²¹⁵¹ DAB-088, Transcript 24 July 2006, p. 41.

²¹⁵² DAB-089, Transcript 24 July 2006, p. 57.

²¹⁵³ DAB-088, Transcript 24 July 2006, p. 40.

forces there.²¹⁵⁴ The rebels who captured DAB-088 told him that their commanders were Superman and SAJ Musa, both of whom were based in Koinadugu Town.²¹⁵⁵

1462. Forced labour and slavery was widespread in Yomadugu. Civilians captured from neighbouring villages would be brought to Yomadugu. DAB-088 was forced to carry loads from Bambukoro to Yomadugu.²¹⁵⁶ He said that the only civilians in Yomadugu were captives from other areas. Everyone who was captured would be stripped and given nothing more than a loin cloth for clothing. The houses were full of people, and the witness described it as “slavery.”²¹⁵⁷ TF1-094 testified that those who refused to work were beaten or killed.²¹⁵⁸

1463. After being captured in Bumbunkura, TF1-094 was taken to Yomadugu by the SLA that had abducted her. There, she was raped, and made into her captor’s wife.²¹⁵⁹ As his wife, she had to do laundry for him and others.²¹⁶⁰ At this time, witness was in Class 2 and had not reached her menstrual period.²¹⁶¹

1464. TF1-094 testified that she was trained to fight by an SLA. Many civilians were trained to fight, including her brother.²¹⁶² At this time, she was still a young girl.²¹⁶³

1465. When DAB-091 returned to Yomadugu after the rebels left, he found the entire village was burnt down.²¹⁶⁴

Yiraia

1466. TF1-153 was in Yiraia when Komba Gbundema attacked the village. Komba Gbundema was under the command of Superman.²¹⁶⁵ Komba Gbundema and his three soldiers raped the women TF1-153 was staying with, including a little girl with epilepsy.²¹⁶⁶ Everyone

²¹⁵⁴ TF1-094, Transcript 13 July 2005, pp. 30-32.

²¹⁵⁵ DAB-088, Transcript 24 July 2006, p. 29.

²¹⁵⁶ DAB-088, Transcript 24 July 2006, pp. 26-27.

²¹⁵⁷ DAB-088, Transcript 24 July 2006, pp. 40-41.

²¹⁵⁸ TF1-094, Transcript 13 July 2005, p. 32.

²¹⁵⁹ TF1-094, Transcript 13 July 2005, pp. 28-29.

²¹⁶⁰ TF1-094, Transcript 13 July 2005, p. 29.

²¹⁶¹ TF1-094, Transcript 13 July 2005, pp. 28, 48.

²¹⁶² TF1-094, Transcript 13 July 2005, pp. 32-34.

²¹⁶³ TF1-094, Transcript 13 July 2005, pp. 48-49.

²¹⁶⁴ DAB-091, Transcript 24 July 2006, p. 10.

²¹⁶⁵ TF1-153, Transcript 22 September 2005, p. 43.

²¹⁶⁶ TF1-153, Transcript 22 September 2005, p. 47.

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was prevented from moving.²¹⁶⁷ They were then forced to carry loads for the soldiers to Koinadugu Town.²¹⁶⁸ Enroute, TF1-153 testified that he saw many corpses with bullet wounds.²¹⁶⁹

Infighting at Koinadugu Town

1467. An infight broke out between the SLAs and RUF in Koinadugu Town.²¹⁷⁰ An RUF soldier shot a boy at the training facilities, so SAJ Musa shot the RUF soldier.²¹⁷¹ The Prosecution submits that this is further evidence of the joint training of civilians and children by both the RUF and SLA at Koinadugu village as alluded to earlier. Superman retaliated by capturing the ammunition and attacking the SLAs.²¹⁷²

1468. Due to the infight, SAJ Musa ordered the SLAs to leave Koinadugu.²¹⁷³ They moved to a village called Tumania, where they stayed for two weeks.²¹⁷⁴ During this time, the First Accused radioed SAJ Musa and SAJ Musa informed him of the infight with the RUF. SAJ Musa told him that he was coming to Colonel Eddie Town.²¹⁷⁵ After this call, SAJ Musa and the troops left Koinadugu District to join the First Accused in Colonel Eddie Town.²¹⁷⁶ DAB-033 claimed that SAJ Musa did not leave Koinadugu Town due to infighting.²¹⁷⁷ This position is simply not believable considering the overwhelming evidence by both Prosecution and Defence witnesses of the split between them at Koinadugu Town.

²¹⁶⁷ TF1-153, Transcript 22 September 2005, p. 43.

²¹⁶⁸ TF1-153, Transcript 22 September 2005, pp. 50-51.

²¹⁶⁹ TF1-153, Transcript 22 September 2005, p. 51.

²¹⁷⁰ TF1-184, Transcript 29 September 2005, pp. 95-96 and TF1-167, Transcript 19 September 2005, p. 61 and DAB-083, Transcript 21 July 2006, p. 42.

²¹⁷¹ TF1-184, Transcript 27 September 2005, pp. 22-23 and DAB-081, Transcript 20 July 2006, p. 98 and DBK-131, Transcript 26 October 2006, p. 37.

²¹⁷² TF1-184, Transcript 27 September 2005, p. 24 and Transcript 29 September 2005, pp. 95-96. [REDACTED]

[REDACTED]. See Transcript 7 July 2005, pp. 76-77. See also DAB-081, Transcript 20 July 2006, p. 107. DBK-131, Transcript 10 October 2006, p. 38.

²¹⁷³ TF1-153, Transcript 22 September 2005, p. 63 and TF1-209, Transcript 7 July 2005, p. 59.

²¹⁷⁴ TF1-184, Transcript 27 September 2005, p. 24 and TF1-094, Transcript 13 July 2005, p. 36 and TF1-153, Transcript 22 September 2005, pp. 63-64 and DBK-131, Transcript 10 October 2006, pp. 40-41.

²¹⁷⁵ TF1-334 witnessed the call in Colonel Eddie Town, Transcript 25 May 2005, p. 54. TF1-184 witnessed the same call in Tumania, Transcript 27 September 2005, p. 27.

²¹⁷⁶ TF1-184, Transcript 27 September 2005, p. 27.

²¹⁷⁷ DAB-033, Transcript 2 October 2006, pp. 84-85.

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Fadugu

1469. DAB-085 was living in Fadugu after the Intervention.²¹⁷⁸ He testified that a group of soldiers came through Fadugu, some wearing uniforms and some without.²¹⁷⁹ DAB-085's child was one of the soldiers retreating through Fadugu from Freetown.²¹⁸⁰ His child and the soldiers he spoke to tell the witness that they were carrying out Operation Pay Yourself.²¹⁸¹ DAB-078 testified that the people coming through Fadugu after the Intervention were dressed in soldier uniforms.²¹⁸² DAB-077 also testified that there were both SLA soldiers and people in civilian clothes moving through Fadugu directly after the Intervention.²¹⁸³

1470. On 22 May 1998, Fadugu was attacked by men wearing military uniform.²¹⁸⁴ DAB-077 testified that after the attack he saw "RUF heading for FT" written on a house.²¹⁸⁵ He said that he heard it was Komba Gbundema who led the attack.²¹⁸⁶ DAB-078 was told that the commander of the troops was Captain Ishmael,²¹⁸⁷ an SLA soldier.²¹⁸⁸ It is the submission of the Prosecution that this is evidence of a joint SLA/RUF attack.

1471. Killings took place during this attack. DAB-078 testified that there were people killed by the soldiers that went through Fadugu after the Intervention.²¹⁸⁹ He witnessed as his captors beat his friend with a stick until he died.²¹⁹⁰ The friend was cut open, his intestines removed, and used as a checkpoint.²¹⁹¹ Two men were also shot.²¹⁹² The witness later heard about two women killed by the attackers.²¹⁹³ People were abducted

²¹⁷⁸ DAB-085, Transcript 20 July 2006, pp. 12-13.

²¹⁷⁹ DAB-085, Transcript 20 July 2006, p. 14.

²¹⁸⁰ DAB-085, Transcript 20 July 2006, p. 14.

²¹⁸¹ DAB-085, Transcript 20 July 2006, p. 16.

²¹⁸² DAB-078, Transcript 6 September 2006, pp. 9-10.

²¹⁸³ DAB-077, Transcript 19 July 2006, pp. 99-100.

²¹⁸⁴ DAB-078, Transcript 6 September 2006, pp. 9-10.

²¹⁸⁵ DAB-077, Transcript 19 July 2006, pp. 87-88.

²¹⁸⁶ DAB-077, Transcript 19 July 2006, p. 92, 104.

²¹⁸⁷ DAB-078, Transcript 6 September 2006, p. 22.

²¹⁸⁸ DAB-078, Transcript 6 September 2006, p. 54.

²¹⁸⁹ DAB-078, Transcript 6 September 2006, p. 53.

²¹⁹⁰ DAB-078, Transcript 6 September 2006, pp. 14-15.

²¹⁹¹ DAB-078, Transcript 6 September 2006, p. 17.

²¹⁹² DAB-078, Transcript 6 September 2006, p. 18.

²¹⁹³ DAB-078, Transcript 6 September 2006, p. 23.

during the May attack on Fadugu.²¹⁹⁴ DAB-078 testified that he was abducted and forced to carry luggage to Kanikay.²¹⁹⁵ He was abducted along with 15 other civilians.²¹⁹⁶

1472. [REDACTED]
[REDACTED]
[REDACTED]²¹⁹⁷

1473. A number of Defence witnesses testified that ECOMOG drove out the retreating soldiers a few weeks after the Intervention.²¹⁹⁸ Defence witnesses further testified about atrocities committed by ECOMOG from February to September 1998.²¹⁹⁹ It is the submission of the Prosecution that these acts are irrelevant to the indictment. ECOMOG has not been indicted, and any crimes that may have been committed by them do not relieve the Accused of their own criminal responsibility. It is well established in international criminal law that *tu quoque* is not a valid defence. Furthermore, any crimes that may have been committed by ECOMOG in the relevant time period and location, are not the particular crimes that the Accused are charged with. The Accused are responsible for their own crimes, and anything that ECOMOG has or has not done is irrelevant to the charges in the Indictment.

1474. Fadugu was attacked again on 11 September 1998. The attackers called it 'Operation Die'.²²⁰⁰ Numerous witnesses testified that Savage was the commander of this attack.²²⁰¹ DAB-078 was told that a few days after the attack on Fadugu, Savage held a meeting and introduced himself as the commander for the attack.²²⁰² Savage wore military trousers,²²⁰³ and was an SLA soldier.²²⁰⁴ DAB-077 testified that it was only the RUF that attacked

²¹⁹⁴ DAB-077, Transcript 19 July 2006, p. 92.

²¹⁹⁵ DAB-078, Transcript 6 September 2006, p. 18-19.

²¹⁹⁶ DAB-078, Transcript 6 September 2006, p. 54.

²¹⁹⁷ TF1-272, Transcript 4 July 2005, pp. 60-61.

²¹⁹⁸ DAB-085, Transcript 20 July 2006, p. 17 and DAB-078, Transcript 6 September 2006, p. 25-26 and DAB-084, Transcript 8 September 2006, pp. 10-11 and DAB-077, Transcript 19 July 2006, pp. 57-64.

²¹⁹⁹ DAB-085, Transcript 20 July 2006, pp. 26-38 and DAB-078, Transcript 6 September 2006, p. 28-34.

²²⁰⁰ Exhibit P57, "No Peace without Justice Report," 10 March 2004, p. 177.

²²⁰¹ DAB-085, Transcript 20 July 2006, p. 41; DAB-078, Transcript 6 September 2006, pp. 40-41; DAB-084, Transcript 8 September 2006, pp. 6-7.

²²⁰² DAB-078, Transcript 6 September 2006, p. 40.

²²⁰³ DAB-078, Transcript 6 September 2006, p. 42.

²²⁰⁴ DAB-078, Transcript 6 September 2006, p. 57.

Fadugu,²²⁰⁵ but this is hard to believe considering the numerous witnesses, including Defence witnesses, that testified that Savage led the attack. There is also significant evidence that Savage was SLA, including from the First Accused.²²⁰⁶ The Prosecution submits that the fact that Savage is again operating with SLAs in September 1998 in the Koinadugu District is clear evidence that Savage was an SLA from the Intervention, remained so in Tombodu Town in Kono and continued to be so in Koinadugu District where he was attempting to link up with Brigadier Man's group

1475. There were killings during this attack on Fadugu. TF1-078 testified that Savage killed a boy who looted a house, because the boy was not authorized to loot.²²⁰⁷ DAB-084 testified that Savage and his boys would kill people.²²⁰⁸ DAB-085 testified that the Paramount Chief was burnt to death and the house burnt.²²⁰⁹ [REDACTED]

[REDACTED].²²¹⁰ DAB-077 also testified that the Paramount Chief was burnt in his house.²²¹¹ Later, when an RUF called CO Stone came, he told DAB-077 that the Paramount Chief was killed because he did not stop ECOMOG from deploying there. This is an example of punishment for not supporting the rebel groups.

1476. TF1-078 said that Bobby Nengor shot a man, but the bullet just cut the man's right ear.²²¹²

1477. DAB-085 testified that houses were burnt during this attack.²²¹³ DAB-078 testified that about 30 houses were burnt in the attack.²²¹⁴ DAB-084 testified that Savage and his boys burned thatch houses.²²¹⁵ DAB-085 left Fadugu for Kakarima, a nearby village. There he witnessed burnt houses and looted property. This was done by the rebels, under the

²²⁰⁵ DAB-077, Transcript 19 July 2006, p. 108.

²²⁰⁶ Accused Alex Tamba Brima, 22 June 2006, pp. 10-11; TF1-334, Transcript 19 May 2005, p. 21; TF1-133, Transcript 7 July 2005, p. 104; DAB-018,; DAB-023, Transcript 31 July 2006, p. 36.

²²⁰⁷ DAB-078, Transcript 6 September 2006, p. 43.

²²⁰⁸ DAB-084, Transcript 8 September 2006, p. 14.

²²⁰⁹ DAB-085, Transcript 20 July 2006, p. 39.

²²¹⁰ DAB-078, Transcript 6 September 2006, p. 36 and Exhibit D24, under seal.

²²¹¹ DAB-077, Transcript 19 July 2006, p. 93.

²²¹² DAB-078, Transcript 6 September 2006, p. 44-45.

²²¹³ DAB-085, Transcript 20 July 2006, pp. 54-55.

²²¹⁴ DAB-078, Transcript 6 September 2006, p. 38.

²²¹⁵ DAB-084, Transcript 8 September 2006, p. 14.

control of Savage. DAB-085 testified that the rebels under Savage were the people who had been “going burning and doing bad things.”²²¹⁶

1478. DAB-078 entered a house and found four men, two in soldier uniform and two in civilian clothes, raping his niece. The witness for forced to watch all of them rape the girl. The girl bled to death.²²¹⁷ DAB-078 also testified that Savage took his uncle’s wife by force.²²¹⁸

1479. TF1-199 testified about his abduction in Bombali District by a mixed RUF/AFRC force. They brought him and other abductees through Fadugu. During the attack on Fadugu, the soldiers shot civilians.²²¹⁹ Houses were burnt, and people were abducted.²²²⁰

1480. The abducted girls and women were raped in rooms.²²²¹ The civilians were divided among the commanders and forced to carry loads as they marched.²²²² Then they all marched up to Bafodia, burning houses in the villages they passed through.²²²³

Kabala 3

1481. DAB-079 testified that there were numerous attacks on Kabala by joint RUF/SLA forces.²²²⁴ Civilians were killed during these attacks.²²²⁵

1482. TF1-180 testified that after he was trained to fight in Makeni, The First and Third Accused ordered him and other trained children to attack Kabala.²²²⁶ At the time, TF1-180 was twelve years old.²²²⁷

1483. TF1-158 was another child soldier who was trained.²²²⁸ Savage ordered that he and other children attack Kabala.²²²⁹ The attack was unsuccessful and many of the children soldiers were killed.²²³⁰

²²¹⁶ DAB-085, Transcript 20 July 2006, pp. 40-42.

²²¹⁷ DAB-078, Transcript 6 September 2006, pp. 39-40.

²²¹⁸ DAB-078, Transcript 6 September 2006, p. 42.

²²¹⁹ TF1-199, Transcript 6 October 2005, pp. 77-78.

²²²⁰ TF1-199, Transcript 6 October 2005, p. 79.

²²²¹ TF1-199, Transcript 6 October 2005, p. 79-80.

²²²² TF1-199, Transcript 6 October 2005, p. 80-81.

²²²³ TF1-199, Transcript 6 October 2005, p. 81.

²²²⁴ DAB-079, Transcript 28 July 2006, pp. 27-28, 31, 39.

²²²⁵ DAB-079, Transcript 28 July 2006, pp. 60-61.

²²²⁶ TF1-180, Transcript 8 July 2005, p. 9-16.

²²²⁷ TF1-180, Transcript 8 July 2005, p. 4.

²²²⁸ TF1-158, Transcript 26 July 2005, pp. 39-40, 44.

1484. TF1-199 was twelve years old²²³¹ when Savage ordered them to attack Kabala.²²³² The forces attacking were mixed AFRC and RUF soldiers.²²³³ They were able to overtake Kabala and captured ECOMOG and government soldiers. These prisoners were executed.²²³⁴ During the attack, houses were burnt, there were amputations, and civilians were killed.²²³⁵

The Radio Communications

1485. Shortly after the attack on Karina, the troops under the command of the First Accused lost their radio man.²²³⁶ However, they were still able to listen to their remaining radio, and so were kept informed of the movements and activities of the SLA troops in Koinadugu District.²²³⁷ Radio communication was lost shortly after the attack on Mongo Bendugu. The troops in Camp Rosos regained a microphone for the radio after a raid on Batkanu. The First Accused immediately radioed SAJ Musa.²²³⁸ At this time, SAJ Musa would have still been in Koinadugu Town.

1486. It is the submission of the Prosecution that the plans to make the base in the north were made before the radio was lost. Therefore, both groups – the First Accused’s and SAJ Musa’s – were working toward a common goal in Koinadugu District and Bombali District. Even without a microphone, the Accused were able to listen to the radio, and so were kept informed about the happenings in Koinadugu District. The Prosecution submits that the Accused showed their support for the actions of their fellow SLAs in Koinadugu District by immediately reuniting with them later in Colonel Eddie Town.

1487. A list of the villages where the crimes were committed, and the nature of those crimes committed by the Accused based on the evidence set out earlier in this section follows:

²²²⁹ TF1-158, Transcript 26 July 2005, pp. 44-45.

²²³⁰ TF1-158, Transcript 26 July 2005, p. 45.

²²³¹ TF1-199, Transcript 6 October 2005, pp. 67-68.

²²³² TF1-199, Transcript 6 October 2005, pp. 86-87.

²²³³ TF1-199, Transcript 6 October 2005, p. 87.

²²³⁴ TF1-199, Transcript 6 October 2005, p. 88.

²²³⁵ TF1-199, Transcript 6 October 2005, p. 88.

²²³⁶ TF1-334, Transcript 23 May 2005, pp. 79-80.

²²³⁷ TF1-334, Transcript 23 May 2005, p. 81.

²²³⁸ TF1-334, Transcript 24 May 2005, pp. 31-34.

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COUNTS 1 – 2: TERRORISM AND COLLECTIVE PUNISHMENTS

1488. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNTS 3 – 5: UNLAWFUL KILLINGS

1489. At Kabala, Yiffin, Kurubonla, Koinadugu Town, Fadugu (May and September 1998 attacks), Bambukoro, Yomadugu, Bambunkura

COUNTS 6 – 9: SEXUAL VIOLENCE

1490. At Kabala, Yiffin, Kurubonla, Koinadugu Town, Fadugu (May and September 1998 attacks), Kumula, Bambukoro, Yomadugu, Yiraia, Bafodia

COUNTS 10 -11: PHYSICAL VIOLENCE

1491. At Kabala, Yiffin, Kurubonla, Koinadugu Town, Fadugu (May and September 1998 attacks), Mongo Bendugu, Woronbia, Yomadugu, Bambunkura

COUNT 12: USE OF CHILD SOLDIERS

1492. Throughout the Koinadugu area but in particular at Kabala, Koinadugu Town, Yomadugu, Bafodia

COUNT 13: ABDUCTIONS AND FORCED LABOUR

1493. At Kabala, Yiffin, Kurubonla, Koinadugu Town, Fadugu (May and September 1998 attacks), Mongo Bendugu, Woronbia, Kumula, Bambukoro, Yomadugu, Bambunkura, Yiraia, Serekolia.

COUNT 14: LOOTING AND BURNING

1494. At Kabala, Yiffin, Kurubonla, Koinadugu Town, Fadugu (May and September 1998 attacks), Mongo Bendugu, Kroo Town. Bambukoro, Bafodia.

XVIII. CRIMES IN BOMBALI FROM 1 MAY 1998 UNTIL 30 NOVEMBER 1998

1495. TF1-334 testified that the First Accused stated that Karina was a strategic point because there were Mandingos and it was the hometown of President Kabbah, and that Karina should be a place that should be the number one point of demonstration of the Junta forces, especially his own brigade.²²³⁹
1496. The First Accused further said that everyone should take part in a demonstration wherein Karina should be burnt down and, if possible, strong men captured. The First Accused also stated that amputation should take place in Karina.²²⁴⁰
1497. It is the case of the Prosecution that all the Accused, and in particular the First Accused, planned, ordered, instigated and otherwise aided and abetted the attack on Karina, Bornoya, Mateboi and Mandaha and the crimes which were committed therein as charged in the Indictment.
1498. TF1-334 gives compelling evidence about how Karina was attacked pursuant to the orders of the First Accused and how all the accused personally participated in the attack.²²⁴¹ Much of this evidence is corroborated by TF1-167²²⁴² and other insider witnesses such as TF1-033.²²⁴³
1499. It is highly significant that the First Accused knew the village was undefended and deliberately moved to where the advance party was located on hearing this news before launching the attack.²²⁴⁴
1500. It is crucial for the Trial Chamber to appreciate that Bornoya, Karina, Mandaha and Mateboi were villages all in extremely close proximity to each other so one attack on one village was followed almost immediately by an attack on one of the other villages.

²²³⁹ TF1-334, Transcript 23 May 2005, pp. 57-58.

²²⁴⁰ TF1-334, Transcript 23 May 2005, p. 58

²²⁴¹ TF1-334, Transcript 23 May 2005, pp. 56-77.

²²⁴² TF1-167, Transcript 15 September 2005, p. 51-58.

²²⁴³ TF1-033, Transcript 11 July 2005, pp. 18-21.

²²⁴⁴ TF1-334, Transcript 23 May 2005, p. 61 to 66

INDIVIDUAL CRIMINAL RESPONSIBILITY -BOMBALI**JOINT CRIMINAL ENTERPRISE**

1501. For all crimes committed as mentioned below occurring after the ECOMOG Intervention in February 1998 until the withdrawal from Freetown in January 1999, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were within the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation. Liability pursuant to the theory of joint criminal enterprise for this period has been analysed above and this analysis applies to the crime base of Bombali.

INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 6(1)**Brima**

1502. *Planning, Instigating or otherwise Aiding and Abetting*

1503. It is clear from the evidence that villages in the Bombali District, in particular Karina, were targeted as strategic points, Karina being the hometown of President Kabbah. The First Accused wished to use Karina as an example of the power of his forces.²²⁴⁵ The attacks on Karina and other villages (including Bornoya, Mateboi and Mandaha, all in close proximity to each other, as well as the area around Camp Rosos) were carefully designed and organized by the First Accused, who intended that murder, extermination, acts of sexual violence, mutilations, use of child soldiers, forced labour, and looting and burning would occur, or was aware of the substantial likelihood of the occurrence of all of these crimes. This may be inferred from his statements prior to the attacks as well as his active participation in them.

1504. In addition, the First Accused prompted others, through inflammatory statements and active encouragement to participate in the planned unlawful acts. The First Accused urged everyone to participate in the burning of Karina and to capture strong men in addition to

²²⁴⁵ TF1-334, Transcript 23 May 2005, p. 57

stating that amputations should take place.²²⁴⁶ There is evidence that the First Accused and his troops were reported to be causing trouble, in particular in Karina, by burning houses, amputating hands and carrying out killings.²²⁴⁷ By these actions, the First Accused is liable for instigating the crimes charged.

1505. Alternatively, the First Accused is liable for aiding and abetting all of the crimes charged through his presence on the ground, his position of authority and his active support for the operations. The criminal acts were so widespread that the only possible inference, in view of his command position, is that the First Accused actively encouraged these acts or was aware that he was assisting the perpetrators in the commission of crimes.

Ordering

1506. The evidence demonstrates that the First Accused gave direct orders for the burning of Karina, the capture of men for forced labour, and for acts of physical violence including amputations.²²⁴⁸ In view of the compelling evidence that Karina was attacked pursuant to the orders of the First Accused,²²⁴⁹ and his position of authority in relation to the attack, it may reasonably be inferred that the First Accused ordered all of the crimes committed in Karina and surrounding villages in Bombali. He intended to bring about the commission of these crimes, or was aware of the substantial likelihood that they would occur based on his express or implied orders in relation to the Karina attack. The same is true for the attack on Bornoya which was carried out by SLAs under the command of the Accused. Similarly, in the attack on Mateboi, Adama Cut Hand returned with many amputated hands and was seen by the First and Second Accused.²²⁵⁰ This is evidence of mutilations resulting from the First Accused's orders.

1507. Upon arrival at Camp Rosos, the First Accused gave a direct order to kill civilians²²⁵¹ which was carried out.²²⁵² He also ordered 'Operation Clear the Area' whereby all

²²⁴⁶ TF1-334, Transcript 23 May 2005, p. 58

²²⁴⁷ TF1-153, Transcript 22 September 2005, p. 76

²²⁴⁸ TF1-334, Transcript 23 May 2005, p. 58

²²⁴⁹ TF1-334 and TF1-167, Transcript 15 September 2005, p. 53

²²⁵⁰ TF1-167, Transcript 15 September 2005, pp. 61-62

²²⁵¹ TF1-334, Transcript 23 May 2005, p. 104

²²⁵² TF1-334, Transcript 24 May 2005, pp. 3-5

villages around Rosos should be burnt down and items looted.²²⁵³ At Gbomsamba he ordered amputations.²²⁵⁴

Committing

1508. The evidence shows that the First Accused shot an imam and ten others at the mosque in Karina.²²⁵⁵ As such he is liable for committing murder. He is also liable for extermination on the basis that his act formed part of a mass killing of civilians as part of a systematic attack involving killings in village after village in Bombali as the troop advanced.

Kamara

Planning, Instigating or otherwise Aiding and Abetting

1509. The evidence demonstrates that the Second Accused was present when the order was given to burn down Karina and kill its inhabitants²²⁵⁶ and on the basis of all the evidence it may be inferred that he assisted in the planning phase. The Second Accused was present in Karina and saw bodies, and witnessed his security guard carrying out killings.²²⁵⁷ In view of the widespread nature of the acts of murder, extermination, sexual violence, mutilations, use of child soldiers, forced labour, and looting and burning, and the Second Accused's presence in Karina, coupled with his position of authority, it may reasonably be inferred that he prompted or encouraged these acts. It may also be inferred from these facts that the Second Accused intended such acts or was aware of the substantial likelihood that they would be committed, or at least knew that he was assisting the perpetrators in the commission of the crimes. On the basis that the crimes in Karina were part of a consistent pattern of conduct by the SLA as they moved through Bombali to find a base camp, the Second Accused is liable for planning, instigating or aiding and abetting the crimes charged in the Bombali District. The pattern continued in and around Camp Rosos where the Second Accused was second in command. He was present when the

²²⁵³ TF1-334, Transcript 23 May 2005, p. 105

²²⁵⁴ TF1-334, Transcript 24 May 2005, pp. 5-12

²²⁵⁵ TF1-334, Transcript 23 May 2005, p. 69

²²⁵⁶ TF1-167, Transcript 15 September 2005, p. 53 and TF1-334, Transcript 23 May 2005, pp. 57-60.

²²⁵⁷ TF1-167, Transcript 15 September 2005, pp. 56-57

order was given to make Camp Rosos a civilian 'no go area',²²⁵⁸ and as second in command he assisted in putting this order into effect.

Committing

1510. In Karina, the Second Accused set a house alight with five girls inside, ignoring their pleas for their lives.²²⁵⁹ As such he is liable for committing murder. He is also liable for extermination on the basis that his act formed part of a mass killing of civilians as part of a systematic attack involving killings in village after village in Bombali as the troop advanced.

Kanu

Planning, Instigating or otherwise Aiding and Abetting

1511. The evidence demonstrates that the Third Accused was present when the order was given to burn down Karina and kill its inhabitants²²⁶⁰ and on the basis of all the evidence it may be inferred that he assisted in the planning phase. The Third Accused helped to lead the group to Bornoya where numerous people were killed.²²⁶¹ He similarly led the group to Gbinti and pursuant to the order of the First Accused, Gbinti was looted and burnt down. The Third Accused reported the success of the operation to the First Accused.²²⁶²

1512. In view of the widespread nature of the acts of murder, extermination, sexual violence, mutilations, use of child soldiers, forced labour, and looting and burning, and the Third Accused's presence in various villages, coupled with his position of authority, it may reasonably be inferred that he prompted or encouraged these acts. It may also be inferred from these facts that the Third Accused intended such acts or was aware of the substantial likelihood that they would be committed, or at least knew that he was assisting the perpetrators in the commission of the crimes. On the basis that the crimes in these villages were part of a consistent pattern of conduct by the SLA as they moved through Bombali to find a base camp, the Third Accused is liable for planning, instigating or aiding and

²²⁵⁸ TF1-334, Transcript 23 May 2005, p. 104.

²²⁵⁹ TF1-334, Transcript 23 May 2005, p. 66

²²⁶⁰ TF1-167, Transcript 15 September 2005, p. 53 and TF1-334, Transcript 23 May 2005, pp. 57-60.

²²⁶¹ TF1-158, Transcript 26 July 2005, p. 32

²²⁶² TF1-334, Transcript 24 May 2005, pp. 47-49

abetting the crimes charged in the Bombali District. The pattern continued in and around Camp Rosos where the Third Accused was third in command. He was present when the order was given to make Camp Rosos a civilian 'no go area'²²⁶³ and as third in command he assisted in putting this order into effect. In particular, at Camp Rosos, the Third Accused was in charge of training child soldiers²²⁶⁴ and in addition, he was in total control of the women at the camp.²²⁶⁵

SUPERIOR RESPONSIBILITY UNDER ARTICLE 6(3)

1513. The Prosecution submits that in the light of all the evidence, coupled with the high level of authority possessed by the three Accused as respectively first, second and third in command from Mansofinia to Bombali, all three accused bear responsibility pursuant to Article 6(3) of the Statute for the crimes committed during this period.

1514. The Prosecution submits that the evidence demonstrates that there was a superior subordinate relationship between the three Accused and the perpetrators, who in most cases were carrying out the orders of the Accused, resulting in the commission of the crimes as charged.

1515. Based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Accused or at least in their presence, the Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so, especially since on many occasions the Accused were personally present in the village while the crimes were being carried out.

1516. As the key commanders in the field, the three Accused clearly had the material ability to prevent offences or to punish those subordinates responsible for committing crimes. The necessary and reasonable measures to do so were at the disposal of the three Accused, however, far from putting any such procedures into effect, the three Accused themselves gave orders for, and actively encouraged, killings, physical and sexual violence and the burning of villages amounting to a campaign of terrorism.

²²⁶³ TF1-334, Transcript 23 May 2005, p. 104.

²²⁶⁴ TF1-334, Transcript 24 May 2005, p. 24

²²⁶⁵ TF1-334, Transcript 24 May 2005, p. 62

COUNTS 1 – 2

1517. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNTS 3-5 UNLAWFUL KILLINGSKarina – Prosecution Evidence

1518. TF1-167 testified that before entering Karina, the First Accused ordered that the village must be burned down and people killed since it was the home town of Ahmed Tejan Kabbah. The Second and Third Accused, along with others were present when the First Accused gave the order.²²⁶⁶

1519. TF1-167 entered Karina with the Second Accused and saw a lot of dead bodies. He also saw Cyborg, a security to the Second Accused throw children (aged between 5-10 from two storey houses. TF1-176 also saw plenty of dead bodies in a mosque. The male adults were killed with gunshots. The mosque was attacked by Halaji Kamanad, aka Gunboot.²²⁶⁷

1520. TF1-334 testified that in Karina he, along with the Second Accused, went to a house where there were five young girls inside. The Second Accused said to close the doors and put the place on fire. The girls inside pleaded not to kill them. The Second Accused refused and set the house on fire. The Second Accused, TF1-334 and the CSO of the Second Accused set the house ablaze with the doors closed.²²⁶⁸

1521. While moving into Karina Town TF1-334 saw soldiers taking children from their mothers and throwing them into the fire.²²⁶⁹

1522. TF1-334 met with the First Accused at a mosque where the First Accused shot the imam in front of him. The First Accused then shot the other people in the mosque. There were 11 in total.²²⁷⁰

²²⁶⁶ George Johnson, TF1-167, Transcript 15 September 2005, p. 53,54.

²²⁶⁷ George Johnson, TF1-167, Transcript 15 September 2005, pp. 56-57

²²⁶⁸ TF1-334, Transcript 23 May 2005, p. 66

²²⁶⁹ TF1-334, Transcript 23 May 2005, p. 67

1523. The Accused's involvement in the attack on Karina is also corroborated by TF1-184 who was told about the attack and the atrocities committed there by troops under the command of the First Accused, when TF1-184 reached Colonel Eddie Town with SAJ Musa.²²⁷¹ TF1-033, who was personally present, also corroborates this attack on Karina by the Accused and troops under their command and the atrocities committed in Karina and other villages in Bombali District mentioned below.²²⁷²
1524. TF1-055 was in Karina in his residence in Karina when he heard people shouting "They've Come."²²⁷³ A short while later TF1-055 saw a "heavy population" come in. Some were holding ammunition, guns and other weapons.²²⁷⁴
1525. After the first group of armed men passed, a second armed group came. The second group gathered the people in the town, including TF1-055's relatives.²²⁷⁵
1526. TF1-055 heard the sound of heavy fighting. After the noise died down, he went outside and saw many dead bodies outside his compound.²²⁷⁶ TF1-055 went to the mosque where he saw the body of his elder brother, two of his brothers colleagues and a woman.²²⁷⁷ TF1-055 states that after the fighters left Karina, they went to a local village and killed many people along the way.²²⁷⁸
1527. DBK-089 was in Karina in May of 1998 and was not an eyewitness to the attack. After hiding in the bush he returned to find 7 dead bodies that were cut, lying by the side of the road. They were cut by a cutlass.²²⁷⁹ He does not know if anyone was killed in the mosque.²²⁸⁰
1528. DBK-095 testifies that Karina is made up of several towns or villages. He states that Waridala is part of Karina, as well as Foday Soria. There are 16 towns under Karina, including Moribia and Manjoro. There are mosques in Waridala, Foday Soria, and

²²⁷⁰ TF1-334, Transcript 23 May 2005, p. 69

²²⁷¹ TF 1-184 Transcript 27th September 2005 pp 37,39

²²⁷² TF1-033 Transcript 11th July 2005 pp 87-91

²²⁷³ TF1-055, Transcript 12 July 2005, p. 132

²²⁷⁴ TF1-055, Transcript 12 July 2005, p. 133

²²⁷⁵ TF1-055, Transcript 12 July 2005, p. 133

²²⁷⁶ TF1-055, Transcript 10 July 2005, pp. 132, 134

²²⁷⁷ TF1-055, Transcript 12 July 2005, p. 135

²²⁷⁸ TF1-055, Transcript 12 July 2005, p. 136, 137

²²⁷⁹ DBK-089, Transcript 14 July 2006, pp. 10-12

²²⁸⁰ DBK-089, Transcript 14 July 2006, pp. 18-19

Manjoro. Foday Soria and Moribia have wassies.²²⁸¹ There is however only one mosque in Karina Town.²²⁸² DBK-095 was not an eyewitness to the attack.

1529. DBK-126 has testified that there was no attack on Karina and that the troops she was with had only passed through it. She also testifies that the three Accused were not with her and the troop. She states that they did not enter Karina.²²⁸³ DBK-126 is clearly lying on this aspect of her evidence. The Second Accused was present based on the evidence on the two insider witnesses. Furthermore, this witness has already pleaded guilty to contempt of court for intimidating Prosecution witnesses who gave unfavourable evidence against the Accused. DBK-126 therefore has a motive to lie in order to protect the Accused.

1530. It is the case of the Prosecution that there were killings that took place in Karina. For the most part this is not disputed by the Defence witnesses. Though DBK-126 testified that there was no attack on Karina, she is clearly contradicted by other Defence witnesses.

1531. Prosecution witnesses, in particular TF1-334 and TF1-167, mention killings that take place at the mosque in Karina. This is corroborated by TF1-055. It is the case the Prosecution that killings did take place in a mosque in Karina. Indeed, DBK 095 states that there are several mosques in Karina proper. The terms Karina and Karina Town have been used interchangeably. Even DBK-094 refers to only one Mosque in Karina as opposed to Karina Town. It is entirely logical that the Prosecution witnesses would be referring to Karina proper as opposed to Karina Town.

1532. It is telling that not a single Defence insider witness claims to have passed through Karina when it was attacked and that they mostly claim that they came across the Accused under arrest in Colonel Eddie Town. As such, not a single Defence insider witness is in a position to say that he did not see any of the Accused in Karina or the other villages in Bombali District when they were attacked. This contrasts sharply with the Prosecution insider witnesses who were part of such attacks and saw the Accused physically present in Karina and other attacked villages in this District.

²²⁸¹ DBK-095, Transcript 17 July 2006, pp. 97-99

²²⁸² DBK-095, Transcript 17 July 2006, p. 99

²²⁸³ DBK-126, Transcript 25 October 2006, pp. 37, 38

Bornoja – Prosecution Evidence

1533. TF1-158 lived in Bornoja in May 1998 when soldiers with guns appeared at the mosque.²²⁸⁴ Among the leaders of the group included the First and Third Accused.²²⁸⁵ He witnessed two boys slitting a pregnant woman named Isatta Mansaray's stomach open.²²⁸⁶
1534. TF1-156 testified that ten people were killed and eight were hacked to death with machetes in Bornoja.²²⁸⁷ In villages near Bornoja there were killings. TF1-156's sister, along with two other people was killed in Madogbo. Women were killed in Dariya. TF1-156's brother was kidnapped in Bornoja and killed in Karina.²²⁸⁸
1535. TF1-157 testified that when Bornoja was attacked by soldiers and rebels that that had killed six people in town.²²⁸⁹ He testified that they killed his uncle, his uncle's two children, another woman and a young boy.²²⁹⁰
1536. DBK-085 testified that one of the first people he saw during the attack on Bornoja was Adama Cut Hand and that there were 15 men behind her.²²⁹¹ The Prosecution has already brought overwhelming evidence that Adama Cut Hand was an SLA.²²⁹²
1537. DBK-085 testified that Adama Cut Hand captured and killed his younger brother. It is pertinent to note that this contradicts DBK-126 who said Adama was with her and did not pass through these villages in Bombali.²²⁹³ Again this clearly shows that DBK-126 is lying.
1538. There is no dispute that there were killings which took place in Bornoja. The issue comes down to one of credibility. Defence witness DBK-085's credibility can be put into issue on several fronts that will be addressed in other sections, but suffice it to say that when he contradicts himself as to the manner of death of his brother, his evidence should be given little to no weight.

²²⁸⁴ TF1-158, Transcript 26 July 2005, p. 30

²²⁸⁵ TF1-158, Transcript 26 July 2005, p. 32

²²⁸⁶ TF1-158, Transcript 26 July 2005, pp. 35

²²⁸⁷ TF1-156, Transcript 26 September 2005, pp. 35-38

²²⁸⁸ TF1-156, Transcript 26 September 2005, pp. 42-48

²²⁸⁹ TF1-157, Transcript 22 July 2005, p. 58

²²⁹⁰ TF1-157, Transcript 22 July 2005, pp. 59-60

²²⁹¹ DBK-085, Transcript 10 July 2006, p. 14

²²⁹² TF1-094, Transcript 13 July 2005, pp. 37-38; TF1-158, Transcript 26 July 2005, pp. 32-34; TF1-167, Transcript 15 September 2005, pp. 61-62; TF1-157, Transcript 27 July 2005, p. 90-92.

²²⁹³ DBK-126, Transcript 25 October 2006, pp. 38-39.

1539. In contrast, the Prosecution evidence is fairly consistent on the number and type of killings that occurred in Bornoya during the relevant time period. It is the case of the Prosecution, as shown by the evidence as with Karina, the attack on Bornoya was carried out by SLAs under the command of the Accused.

Mateboi – Prosecution Evidence

1540. TF1-157 testified that they left for Mateboi and that on the way there was a town where they killed many people.²²⁹⁴ TF1-157 did not see any of the killings, but believes they were killed by the advance team who was travelling ahead of witness's group.²²⁹⁵

1541. TF1-167 testified that at Mateboi the First Accused sent a team to have the civilians join the forces at Camp Rosos. The attempt failed. Another team was sent under the command of Arthur. They came back with many amputated arms and the head of the chief of the village. This was done by Adama Cut Hand a Sierra Leone Army Soldier. When she returned from Mateboi she was wearing a necklace made with human hands. TF1-167 did not go on the operation but he, along with the first and Second Accused saw her.²²⁹⁶ The Prosecution submits that that this attack was planned and ordered by the First Accused and was carried out by SLAs as again is evidenced by the presence of Adama Cut Hand.²²⁹⁷

1542. DBK-126 testifies that Mateboi was never attacked. She testifies that they were only passing by and that they never attacked a single village or position.²²⁹⁸ Again, as indicated earlier, DBK-126 is clearly lying in this aspect of her evidence in order to protect the Second Accused.

1543. DBK-126 testified that she served as the cook to the person she called chief, aka Junior Lion (George Johnson). George Johnson is TF1-167. TF1-167 clearly testifies as to what happened in Mateboi. Her contradiction of TF1-167 does not make sense given that TF1-167 was in a better position to comment on events based upon his position and is again

²²⁹⁴ TF1-157, Transcript 22 July 2005, pp. 83-84

²²⁹⁵ TF1-157, Transcript 26 September 2005, p. 10

²²⁹⁶ TF1-167, Transcript 15 September 2005, pp. 61-62

²²⁹⁷ TF1-094, Transcript 13 July 2005, pp. 37-38; TF1-158, Transcript 26 July 2005, pp. 32-34; TF1-167, Transcript 15 September 2005, pp. 61-62; TF1-157, Transcript 27 July 2005, p. 90-92; DBK-085, Transcript 10 July 2006, pp. 34, 48-49; DBK-090, Transcript 17 July 2006, pp. 40-48; DBK-126, Transcript 12 October 2006, p. 86; DBK-094, Transcript 13 July 2006, pp. 30-31, 11 July 2006, pp. 73-74; Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 53-54

²²⁹⁸ DBK-126, Transcript 25 October 2006, p. 41

further proof that she is lying in this aspect of her evidence which should be given no weight.

Mandaha - Prosecution Evidence

1544. TF1-157 testified that on the way to Mandaha he saw dead people.²²⁹⁹ He also testified that Mandaha was attacked by rebels and that he saw a male civilian killed in Mandaha.²³⁰⁰

1545. Generally, there is no disagreement that there were killings in Mandaha. The issue is the determination as to who is responsible. The Prosecution submits that more weight should be given to the Prosecution witness TF1-157 because of his presence at the scene during the time of the killings.

1546. Furthermore, the Prosecution submits that this attack on Mandaha can be regarded as a consistent pattern of conduct by the Accused and the SLAs under his command as they moved through Bombali in order to find a base camp especially as all the above villages Karina, Bornoya, Mateboi and Mandaha are all within a distance of about 10 km.

Camp Rosos

1547. On arriving at Camp Rosos, the First Accused ordered that it should be a made a civilian no go area, meaning that there should be no civilians within 15 miles of Rosos and that captured civilians who were brought to the camp should be executed. The First Accused passed this order in the presence of the Second and Third Accused.²³⁰¹ These orders were carried out.²³⁰²

Colonel Eddie Town

1548. Whilst at Colonel Eddie Town seven women who were accused of witchcraft were displayed and impaled by SLAs at the HQ. Three of these women died. They were impaled by Cyborg, Kabila, Mad Crazy, and SBU Killer, all of whom were SLAs.²³⁰³ It is the case of the Prosecution that since all the Accused were based at the HQ in Colonel

²²⁹⁹ TF1-157, Transcript 22 July 2005, pp. 80-81

²³⁰⁰ TF1-157, Transcript 26 September 2005, p. 28

²³⁰¹ TF1-334, Transcript 23 May 2005, p. 104

²³⁰² TF1-334, Transcript 24 May 2005, pp. 2-5.

²³⁰³ TF1-167, Transcript 15 September 2005, pp. 72-74.

Eddie Town they either would have ordered the impaling or at the very least been aware of it.

COUNTS 6-9 SEXUAL VIOLENCE

Karina – Prosecution Evidence

1549. TF1-334 testified that in Karina he saw soldiers raping the young women that were captured. He testified that they were having forceful sexual intercourse.²³⁰⁴

1550. TF1-334 also testified that they had captured 35 women and they were stripped naked under the direct command of Woyoh. The fighters objected as they were not supposed to see naked women, having gone through ceremonies.²³⁰⁵

1551. The Defence has not challenged the above Prosecution evidence and as such the Prosecution submits that its evidence should be accepted in its entirety.

COUNTS 10-11 PHYSICAL VIOLENCE

Karina – Prosecution Evidence

1552. The First Accused further said that everyone should take part in the demonstration wherein Karina should be burnt down and if possible capture strong men. The First Accused also stated that amputations should take place in Karina.²³⁰⁶

1553. TF1-055 testified that in Karina, fighters threw his younger uncle off the top of an old garret in the village.²³⁰⁷ TF1-157 testified that he went to Karina and that two women were mutilated.²³⁰⁸

1554. TF1-153 testified that Coach Gibono told SAJ Musa that the First Accused and the troops were causing trouble on the way to finding the camp. Behaviour included the burning of houses, amputation of hands and killings. In particular in a village called Karina.²³⁰⁹

²³⁰⁴ TF1-334, Transcript 23 May 2005, p. 71

²³⁰⁵ TF1-334, Transcript 23 May 2005, p. 72

²³⁰⁶ TF1-334, Transcript 23 May 2005, p. 58

²³⁰⁷ TF1-055, Transcript 12 July 2005, p. 137

²³⁰⁸ TF1-157, Transcript 22 July 2005, pp. 74-76

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COUNT 14 LOOTING

1555. The First Accused ordered 'Operation Clear the Area' whereby all villages surrounding Camp Rosos were to be burnt down. The area was to be "jarred jarred," meaning everything of importance was to be taken.²³¹⁰ These orders were carried out.²³¹¹

²³⁰⁹ TF1-153, Transcript 22 September 2005, p. 76

²³¹⁰ TF1-334, Transcript 23 May 2005, p. 105

²³¹¹ TF1-334, Transcript 23 May 2005, p. 106.

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XIX. CRIMES DURING THE INVASION, OCCUPATION AND RETREAT FROM FREETOWN FROM 6 JANUARY UNTIL AROUND 28 JANUARY 1999

THE FIRST ACCUSED

1556. According to the evidence of the First Accused, he escaped from arrest together with the Third Accused and Woyoh at Goba Water in the confusion created after the death of SAJ Musa.²³¹²

1557. The First Accused alleges that he was en route to Makeni during the Freetown invasion in the company of the Third Accused.²³¹³

1558. He and the Third Accused met and stayed with the First Accused's family in Makeni during the time when the atrocities which are charged in the Indictment were committed in Freetown.²³¹⁴

1559. In essence the First Accused is relying on the defence of alibi in respect of the crimes committed in Freetown. Tellingly:

- a. the Third Accused has not supported this alibi,²³¹⁵
- b. the First Accused has not produced a single alibi witness to support his alibi that he was en route to Makeni and stayed with his family in Makeni during the time when the crimes were committed in Freetown and,
- c. during the entire Defence case it was not suggested to any Prosecution witness during cross-examination that the any of the Accused were under arrest during the advance from Colonel Eddie Town to Goba Water where at least two of the Accused escaped (First and Third Accused).

1560. The First Accused seeks to bolster his defence that he was not in Freetown at the time when the crimes were committed through a string of Defence witnesses who in essence say that:

²³¹² Accused Alex Tamba Brima, 15 June 2006, pp. 27-28.

²³¹³ Accused Alex Tamba Brima, 15 June 2006, p. 31.

²³¹⁴ Accused Alex Tamba Brima, 15 June 2006, pp. 83-84.

²³¹⁵ *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-510, "Kanu Response to prosecution Motion for Releif in Respect of Violations of Rule 67," 12 July 2006, para. 5.

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- a. the last time they saw all the Accused was whilst they were under arrest at either Benguema or Waterloo,²³¹⁶
- b. they did not personally see any of the Accused in Freetown during the invasion and,²³¹⁷
- c. That FAT Sesay became the commander of the troops on the death of SAJ Musa and was the commander during the attack on Freetown.²³¹⁸

1561. Tellingly:

- a. None of the Defence witnesses corroborate the First Accused's account that he escaped at Goba Water;²³¹⁹
- b. According to at least one Defence witness, Woyoh was killed in Freetown during the invasion;²³²⁰
- c. It is implausible that Woyoh, who was under arrest and in fear of prosecution when he reached Freetown, would escape from the troop with the First and Third Accused at Goba Water and then rejoin them in order to attack Freetown;
- d. None of the Defence counsel suggested during cross-examination to a single Prosecution witness who said that they saw the three Accused present and holding command positions, that they were wrong and that FAT Sesay was in command. The First Accused has obviously made this up during his evidence and brought his former comrades-in-arms who were with him at the time of the invasion to corroborate this lie;
- e. The only question put to any Prosecution witness about the position FAT Sesay held was put to TF1-167 which was to the effect that FAT Sesay was an administrative officer. TF1-167 agreed with this and it is the case of the

²³¹⁶ DAB-033, Transcript 25 September 2006, p. 76; DAB-095, Transcript 28 September 2006, pp. 64-65, 75; DAB-156, Transcript 29 September 2006, pp. 83-84.

²³¹⁷ DAB-156, Transcript 29 September 2006, pp. 83-84; DBK-131, Transcript 10 October 2006, p. 91.

²³¹⁸ DBK-012, Transcript 6 October 2006, p. 22; DAB-033, Transcript 25 September 2006, pp. 99-100; DAB-095, Transcript 28 September 2006, pp. 64-65.

²³¹⁹ The only witness to even mention Goba Water was DAB-023, and he claims he never saw the Accused passed Masiaka, Transcript 31 July 2006, pp. 79, 87.

²³²⁰ DBK-131, Transcript 26 October 2006, p. 54.

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Prosecution that that was precisely the role which FAT Sesay played, i.e Brigade Administrator.²³²¹

1562. All the Accused seek to blame those prisoners who were held at Pademba Road Prison and at the National Stadium and who were released on 6th January for the crimes which were committed in Freetown.²³²²

1563. Tellingly,

- a. The allegation that the Freetown crimes were committed by the persons released from Pademba Road and the National Stadium was not put to any Prosecution witness during cross-examination;
- b. Nor was it mentioned as any kind of defence in any of the Pre-Trial Brief's of the Accused;
- c. Only three out of the 12 Defence witnesses who were a part of the Freetown invasion have alleged this in their evidence and even they do not corroborate each other on key parts of this story. For example, from where these prisoners at Pademba Road received their weapons.²³²³ This defence is a pure fabrication made up at the last minute in a desperate attempt by the Accused to shift liability from themselves to others;
- d. Furthermore, the Defence witnesses, regarding the escaped prisoner story, are unable to explain how it was that the prisoners were released on 6 January but most of the killings, rapes, amputations and burning of buildings occurred during the retreat from Freetown, which was at least two weeks after the release of the prisoners;
- e. The three Accused, through various Defence witnesses, claim that the figure of those released was about 3,000. However, Gibril Massaquoi, on his release from Pademba Road Jail on 6 January, states that only about 1,000 prisoners were

²³²¹ George Johnson, TF1-167, Transcript 21 September 2005, pp. 49, 56-57.

²³²² DBK-012, Transcript 6 October 2006, pp. 34-35; DBK-005, Transcript 5 October 2006, p. 53; DBK-131, Transcript 11 October 2006, pp. 19-20.

²³²³ DBK-005 testified that he personally saw George Johnson handing weapons out to the released prisoners, Transcript 12 October 2006, p. 40. Conversely, DBK-012 claims he was with George Johnson, and George Johnson did not hand out weapons to the prisoners, Transcript 18 October 2006, p. 91.

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released.²³²⁴ Gibril Massaquoi also states that Mr. Manly-Spaine, the Defence counsel for the Third Accused, was released with them. However, this defence of the 3,000 released soldiers committing crimes was not put to any of the Prosecution witnesses by Counsel of the Third Accused during cross-examination.²³²⁵

THE SECOND AND THIRD ACCUSED

1564. Neither the Second nor the Third Accused has raised the defence of alibi for the attack on Freetown. Neither the Second nor Third Accused has produced any witnesses to say that they were elsewhere during the attack on Freetown.

1565. Instead, the Second and Third Accused, like the First Accused, rely on the Defence witnesses who say that they were under arrest until Benguema or Waterloo and were not seen in Freetown.

1566. The Second and Third Accused also rely on the Defence witnesses who say that most of the crimes in Freetown were committed by the prisoners who were released from Pademba Road Prison and the National Stadium.

ALL OF THE ACCUSED

1567. The evidence would suggest that it is not in dispute that crimes were committed in Freetown during the invasion, occupation and retreat.

1568. What seems to be in dispute is:

- a. who committed those crimes,
- b. whether the Accused were present or not when the crimes were committed, and
- c. if the Accused were present, whether they held command positions so as to render them liable for those crimes.

²³²⁴ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 113.

²³²⁵ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 113.

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RELIABILITY OF DEFENCE WITNESSES

1569. It is the case of the Prosecution that all ten²³²⁶ Defence witnesses who gave insider type evidence lied in key parts of their evidence and colluded with each other and the Accused in order to ensure that their stories were the same.

1570. In the view of the Prosecution, the Defence insider witnesses, many of whom were former or serving SLAs, were very proud of their profession of soldiering. Thus those aspects which relate to purely soldiering issues such as their training and combat experience up to the May 1997 Coup can be believed.

1571. Likewise, the movement of the troop from Colonel Eddie Town to Freetown as described by the Defence witnesses can be believed as their advance and capture of Freetown, against the odds, was clearly something which they were professionally very proud of.

1572. It is the position of the Prosecution that most of the remainder of the evidence that these insider Defence witnesses give can largely be regarded as untruthful and given in order to protect their former comrades-in-arms.

1573. Such evidence which the Prosecution considers to be manifestly unreliable and untrue relates to:

- a. The apparent ignorance of the Defence witnesses regarding events surrounding and after the Coup and up to the Intervention in Freetown;
- b. For example, their apparent ignorance of who carried out the Coup, why certain soldiers were referred to as honourables, who other AFRC members were. It is implausible that soldiers based in Freetown for nearly nine months, often serving as securities for senior members of the Junta, would not have learnt these basic details;
- c. The apparent ignorance of the fact that any of the Accused held any command positions in the jungle after the Intervention;
- d. That they did not see any of the Accused after the Intervention until they saw them under arrest at Colonel Eddie Town;

²³²⁶ DAB-023, DAB-018, DAB-095, DAB-033, DBK-037, DBK-005, DBK-012, DBK-129, DBK-131, and DBK-117.

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- e. That the Accused remained under arrest from Colonel Eddie Town until they were not seen again after Benguema or Waterloo;
- f. That FAT Sesay held a senior command position throughout the time that the SLAs were in the jungle and that he became overall commander of the troop after the death of SAJ Musa;
- g. That FAT Sesay led the attack on Freetown and that none of the Accused were seen in Freetown during the time of the attack;
- h. That the crimes in Freetown were committed by former detainees at Pademba Road Prison and the National Stadium;
- i. That they did not hear of any crimes being committed by the SLAs during the retreat from Freetown such as the killing, rape, amputation and abduction of civilians and the burning of civilian property.

1574. Even these Defence witnesses failed to corroborate the evidence of the First Accused or each other in many material respects.

1575. For example:

- a. DAB-023 ([REDACTED]) refers to the Accused as honourables.²³²⁷ He testified that Savage and Staff Alhaji were SLAs²³²⁸ and that Savage only went mad after he had committed all the atrocities in Tombodu.²³²⁹ He said George Johnson handed over the muster parade to SAJ²³³⁰ (the First Accused claims that it was FAT Sesay²³³¹). This witness does not mention that it was released SLAs from Pademba Road Prison who committed the crimes.
- b. DAB-018 ([REDACTED]) confirms that the position of honourable was a senior position which superseded rank.²³³² As such Honourable Momoh, aka Dorty, was in command of a convoy of 60 or more armed soldiers including officers from

²³²⁷ DAB-023, Transcript 3 August 2006, p. 39.

²³²⁸ DAB-023, Transcript 31 July 2006, pp. 36, 40.

²³²⁹ DAB-023, Transcript 31 July 2006, pp. 51-52.

²³³⁰ DAB-023, Transcript 31 July 2006, p. 63.

²³³¹ Accused Alex Tamba Brima, Transcript 13 June 2006, pp. 6-7.

²³³² DAB-018, Transcript 7 September 2006, p. 57.

Kono to Freetown.²³³³ This witness does not mention that it was released SLAs from Pademba Road Prison who committed the crimes during the 6 January Invasion of Freetown.

- c. DAB-131 ([REDACTED]) testified that the First Accused was a “big man,”²³³⁴ that it is no secret that the First Accused was a big man,²³³⁵ and that he saw the First Accused with a group of soldiers at Masingbi Road in Kono prior to the Intervention.²³³⁶ This witness did not mention that it was released SLAs from Pademba Road Prison who committed the crimes during the January 6th invasion of Freetown.
- d. DAB-096 ([REDACTED]) testified that he and the prisoners (including the First Accused) were at Waterloo when SAJ died.²³³⁷ According to the First Accused, he was at Benguema when SAJ died.²³³⁸ This witness also did not mention that it was released SLAs from Pademba Road Prison who committed the crimes during the 6 January Invasion of Freetown.
- e. DAB-095 ([REDACTED]) claims to have never heard of the First Accused,²³³⁹ yet according to DAB-096, it was this DAB-095 who took him to the First Accused’s wedding ceremony in Kono.²³⁴⁰ DAB-095 believes that Johnny Paul Koroma is called John Patrick despite being his security.²³⁴¹ He testified that Commander 0-Five was a part of the advance team with Colonel Eddie²³⁴² (according to the First Accused, he was arrested by Commander 0-Five and then taken to Colonel Eddie Town, i.e. after the advance party had already arrived²³⁴³), that FAT Sesay travelled with SAJ Musa to Colonel Eddie Town²³⁴⁴ (according to the First Accused, FAT Sesay was in command at Colonel Eddie Town before SAJ

²³³³ DAB-018, Transcript 7 September 2006, p. 58.

²³³⁴ DAB-131, Transcript 13 September 2006, p. 83.

²³³⁵ DAB-131, Transcript 14 September 2006, p. 66.

²³³⁶ DAB-131, Transcript 13 September 2006, p. 82.

²³³⁷ DAB-096, Transcript 25 September 2006, p. 33.

²³³⁸ Accused Alex Tamba Brima, Transcript 15 June 2006, pp. 11-12.

²³³⁹ DAB-095, Transcript 28 September 2006, p. 47.

²³⁴⁰ DAB-096, Transcript 18 September 2006, p. 106.

²³⁴¹ DAB-095, Transcript 28 September 2006, p. 74.

²³⁴² DAB-095, Transcript 20 September 2006, pp. 56-58.

²³⁴³ Accused Alex Tamba Brima, Transcript 12 June 2006, pp. 48-50.

²³⁴⁴ DAB-095, Transcript 28 September 2006, pp. 41-42.

- Musa arrived²³⁴⁵), the detainees, i.e. the Accused, did not attend SAJ Musa's muster parade at Colonel Eddie Town²³⁴⁶ (the First Accused says that the detainees attended the muster parade²³⁴⁷), and the detainees were at Waterloo when SAJ Musa died²³⁴⁸ (the First Accused says that the Accused were at Benguema when SAJ Musa died²³⁴⁹). This witness did not mention that it was released SLAs from Pademba Road who committed the crimes during the January 6th invasion of Freetown.
- f. DAB-033 ([REDACTED]) heard George Johnson tell SAJ Musa that he has arrested AFRC honourables (i.e the Accused), despite the First Accused claiming that none of the Accused, bar the Third Accused, were known as honourables. He claims everyone scattered and escaped at Benguema,²³⁵⁰ whereas the First Accused states that he and the Third Accused escaped at Goba Water when SAJ Musa was buried.²³⁵¹ DAB-033 concedes that FAT Sesay was not physically fit to be at the battle front and was only there to advise.²³⁵² He also does not mention that it was the released SLAs from Pademba Road jail who committed the crimes during the 6 January invasion of Freetown.
- g. DAB-059 ([REDACTED]) testified that the First Accused was second in command but because he refused to fight he was left in the dungeon in Kailahun.²³⁵³ He admits that the Third Accused was an honourable.²³⁵⁴ DAB-059 said that the First Accused was in hospital with malaria after the coup²³⁵⁵ (according to the First Accused he was in hospital after the Coup on account of a car crash²³⁵⁶). This

²³⁴⁵ Accused Alex Tamba Brima, Transcript 13 June 2006, p. 7.

²³⁴⁶ DAB-095, Transcript 28 September 2006, pp. 74-75.

²³⁴⁷ Accused Alex Tamba Brima, Transcript 13 June 2006, pp. 5-6.

²³⁴⁸ DAB-095, Transcript 28 September 2006, p. 75.

²³⁴⁹ Accused Alex Tamba Brima, Transcript 15 June 2006, pp. 11-12.

²³⁵⁰ DAB-033, Transcript 25 September 2006, p. 69.

²³⁵¹ Accused Alex Tamba Brima, Transcript 15 June 2006, pp. 27-28.

²³⁵² DAB-033, Transcript 25 September 2006, p. 99.

²³⁵³ DAB-059, Transcript 27 September 2006, p. 82.

²³⁵⁴ DAB-059, Transcript 27 September 2006, p. 89.

²³⁵⁵ DAB-059, Transcript 2 October 2006, p. 7.

²³⁵⁶ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 42 and Transcript 30 June 2006, p. 44.

witness also said that if you overthrew the government, you claimed to be an honourable.²³⁵⁷

- h. DAB-147 ([REDACTED]) saw Major Fonti Kanu after Daru in villages,²³⁵⁸ whereas the First Accused testified that Major Fonti Kanu drove with him from Daru to Kailahun Town where they were both subsequently detained.²³⁵⁹
- i. DBK-037 ([REDACTED]) mentioned the release of prisoners at Pademba Road but does not say that when released the prisoners went on the rampage and started committing crimes.²³⁶⁰ He confirms the concept of bush rank (e.g. prior to the Coup he was a private, but in the jungle he was promoted to a lieutenant, yet now he is serving as an SLA as a lowly lance-corporal).²³⁶¹ This indicates that the First Accused being discharged as a corporal does not mean that he could not have held a position of command in the bush. This witness concedes that the First Accused is called Alex Tamba Brima²³⁶² (the First Accused denied that he was ever called 'Alex'²³⁶³).
- j. DBK-005 ([REDACTED]) met Woyoh at State House.²³⁶⁴ According to the First Accused, Woyoh escaped from the troop at Goba Water.²³⁶⁵ DBK-005 admits that all three Accused were honourables with securities and were all important people.²³⁶⁶ He admits that all three Accused were members of the Supreme Council of the AFRC²³⁶⁷ (the First Accused claims not to have been an honourable,²³⁶⁸ a member of the Supreme Council,²³⁶⁹ and an ordinary soldier²³⁷⁰).

²³⁵⁷ DAB-059, Transcript 2 October 2006, p. 28.

²³⁵⁸ DAB-147, Transcript 3 October 2006, p. 52.

²³⁵⁹ Accused Alex Tamba Brima, Transcript 8 June 2006, pp. 48-49.

²³⁶⁰ DBK-037, Transcript 4 October 2006, pp. 14-16.

²³⁶¹ DBK-037, Transcript 4 October 2006, p. 74.

²³⁶² DBK-037, Transcript 4 October 2006, p. 76.

²³⁶³ Accused Alex Tamba Brima, Transcript 5 June 2006, pp. 59-61.

²³⁶⁴ DBK-005, Transcript 5 October 2006, p. 58.

²³⁶⁵ Accused Alex Tamba Brima, Transcript 15 June 2006, pp. 27-28.

²³⁶⁶ DBK-005, Transcript 5 October 2006, p. 36 and Transcript 12 October 2006, pp. 8-9, 17-18.

²³⁶⁷ DBK-005, Transcript 12 October 2006, pp. 18-19.

²³⁶⁸ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 42.

²³⁶⁹ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 23-24

²³⁷⁰ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 50-52.

- k. DBK-012 ([REDACTED]) testified that during the Freetown invasion the First Accused did not come to town but that he was at the front.²³⁷¹ The First Accused claims that he was not in Freetown during the Freetown invasion.²³⁷² Thus, DBK-012 both supports and contradicts the First Accused story at the same time. Another claim of the First Accused is that he was arrested in Yarya by Commander O-Five.²³⁷³ DBK-012 testifies that he met the First Accused as a prisoner in Eddie Town.²³⁷⁴ DBK-012 also testifies that he was part of the second group led by Commander O-Five to find the advance team that had been sent out by SAJ Musa earlier.²³⁷⁵ If this is true then DBK-012 would have come across the first Accused in Yarya instead at Colonel Eddie town. This witness also has a motive to lie on behalf of the Accused as he is currently in a relationship with the sister of the Second Accused.
- l. DBK-129 ([REDACTED]) was an insider witness who testified that Foday Bah Marah was one of the commanders or fighters at Westside.²³⁷⁶ This contradicts the First Accused's claim that he fell into the Westside Boys' ambush and was arrested together with Corporal Foday Bah Marah and other soldiers and taken to George Johnson in the Westside where they were detained in a dungeon.²³⁷⁷ Furthermore, in his testimony DBK-129 made no mention of the First Accused being under detention in the Westside.
- m. DBK-113 ([REDACTED]) gave evidence that the Third Accused was told by SAJ Musa to look after the women en route from Colonel Eddie Town to Freetown.²³⁷⁸ This contradicts the evidence of the First Accused, who claimed that he and the other two Accused were under arrest from Colonel Eddie Town until Goba Water when he and the Third Accused escaped. DBK-113's testimony contradicts the First Accused that the Third Accused was under arrest and also contradicts the Third

²³⁷¹ DBK-012, Transcript 9 October 2006, p. 46.

²³⁷² Accused Alex Tamba Brima, Transcript 5 July 2006. pp. 61-62

²³⁷³ Accused Alex Tamba Brima, Transcript 12 June 2006. pp. 43-44

²³⁷⁴ DBK-012, Transcript 9 October 2006, p. 108.

²³⁷⁵ DBK-012, Transcript 5 October 2006, p. 106.

²³⁷⁶ DBK-129 Transcript 9 October 2006, pp.89-90.

²³⁷⁷ Accused Alex Tamba Brima, Transcript 16 June 2006, pp.6-12.

²³⁷⁸ DBK-113 Transcript 13 October 2006, pp 34-35.

Accused's claim that he is not known as Five-Five. Furthermore this witness claims that he did not see any crimes being committed as the SLA withdrew from Freetown. In the face of the Prosecution evidence in respect of crimes being committed in Freetown this is clearly a lie.

- n. DBK-131 ([REDACTED]) accepted the concept of position superseding rank, i.e. position of an honourable made the honourable more senior to someone of a higher rank due to his position.²³⁷⁹ The First Accused maintains that throughout the AFRC government period he was a corporal and as such had no command authority.²³⁸⁰ This witness testified that he last saw the Accused at Waterloo.²³⁸¹ According to the First Accused, the Accused were at Benguema.²³⁸² Like many other Defence witnesses, DBK-131 says that Alabama was a security to SAJ Musa.²³⁸³ According to the First Accused, Alabama was SAJ Musa's cook.²³⁸⁴
- o. DBK-126 ([REDACTED]) was not an SLA, but claims to be [REDACTED] who accompanied the troop from Kono to Freetown.²³⁸⁵ DBK-126 gave evidence, when flustered, that she took food to the Second Accused at State House during the Freetown invasion²³⁸⁶ (which the Prosecution submits was the true position). This witness has already pleaded guilty to contempt of this Honourable Court for attempting to intimidate Prosecution witnesses.

PROSECUTION CASE IN RESPECT OF THE FREETOWN INVASION OF JANUARY 1999

1576. The Prosecution evidence that the First Accused took command of the troop after SAJ Musa's death at Benguema and that he appointed the Second Accused and Third Accused as his second and third in command respectively, is founded on the evidence of TF1-184, TF1-334, TF1-167, TF1-033, Gibril Massaquoi, TF1-153, and other crime-base witnesses who saw the Accused in Freetown.

²³⁷⁹ DBK-131, Transcript 26 October 2006, p. 25.

²³⁸⁰ Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 24-25 and Transcript 29 June 2006, pp. 89-91.

²³⁸¹ DBK-131, Transcript 10 October 2006, p. 91.

²³⁸² Accused Alex Tamba Brima, Transcript 15 June 2006, pp. 9-12.

²³⁸³ DBK-131, Transcript 26 October 2006, p. 25.

²³⁸⁴ Accused Alex Tamba Brima, Transcript 13 June 2006, p. 23.

²³⁸⁵ DBK-126, Transcript 25 October 2006, p. 32.

²³⁸⁶ DBK-126, Transcript 25 October 2006, p. 56.

1577. Significantly, all the above Prosecution insider witnesses were in a position to know of the change in command as the troop advanced to Freetown as they were either close insiders serving in the SLA, were accompanying the troop or, in one case, a senior RUF former member of the AFRC Supreme Council who was released from Pademba Road Prison during the invasion and brought to State House where he reported daily.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. TF1-167 was initially chief of security for the Second Accused and as such would have been present whilst the Second Accused was commander of the SLAs based in Kono after the Intervention. TF1-167 was later promoted to battalion commander and finally task force commander during the attack on Freetown. As such, he was in a unique position to speak about the command positions during the attack on Freetown since as task force commander during the attack he had to report the developments on the ground to the senior commanders.

d. [REDACTED]

[REDACTED] As such he did not know any of the Accused personally and has no reason to lie about the roles and command positions which they held in the jungle. He was personally present during the attack on Freetown.

²³⁸⁷ TF1-184, Transcript 26 September 2005, pp. 71, 76-77.

²³⁸⁸ TF1-334, Transcript 13 June 2005, p. 62.

- e. Gibril Massaquoi was a senior member of the RUF who was a part of the AFRC Junta's Supreme Council until his arrest in November 1997. As such he would know who held positions of command until his arrest in 1997 and would be in a position to know who held positions of command when he was released from Pademba Road Prison on 6 January 1999. After his release from Pademba Road on 6 January, he was taken directly to State House where he was able to meet with those in command who needed his help in order to contact his RUF comrades for reinforcements and logistical supplies such as food and ammunition.

[REDACTED]

1578. If the First Accused's evidence is dismissed in its entirety on the basis of being founded on lies (as is the case of the Prosecution) then this can only raise the reliability and credibility of the above witnesses evidence whom the Prosecution relies on in the areas where it is contradictory to the evidence of the First Accused.

1579. The Prosecution also stresses the significance of the First Accused giving evidence as an individual witness in his own case. The First Accused was not a common witness and as such learned counsel for both the Second and Third Accused had the ability to cross examine the First Accused and put to him the areas of his testimony which did not accord with the position of the Second and Third Accused.

1580. Tellingly, neither Defence counsel for the Second nor Third Accused challenged any positions which the First Accused took regarding the Second and Third Accused, for example that the Second Accused was a PLO and that the Third Accused was an honourable. As such, the position of the Prosecution is that where the First Accused's evidence relates to the Second and Third Accused, and it remains unchallenged by them, both the Second and Third Accused have, by implication, adopted the evidence of the First Accused.

1581. In the event that the Court finds that it cannot believe the evidence of the First Accused, or any particular part of his evidence as it relates to the Second and Third Accused, then the position of the Prosecution is that as the Second and Third Accused, through their failure to challenge these areas during cross-examination of the First Accused, have adopted his evidence. Thus, the Prosecution submits the evidence of the First Accused can be used against them in order to test the reliability and credibility of their Defences vis-à-vis the Prosecution evidence led in the area in dispute.

1582. The reliability and credibility of the Prosecution witnesses mentioned above in respect of Freetown, is further bolstered by the evidence of Gibril Massaquoi, a former RUF member of the AFRC Supreme Council, who was released from Pademba Road Prison on 6 January 1999. Gibril Massaquoi knew all the Accused from his days on the AFRC Supreme Council with them and in his evidence states that on his release from Pademba Road Prison he was taken to State House where he saw all the Accused in command positions.²³⁸⁹ The Defence have not shown that Gibril Massaquoi had any motive for lying.

1583. The reliability of the Prosecution witnesses is further enhanced by the evidence of the Prosecution crime-base witnesses in Freetown who did not know any of the Accused before the Freetown invasion and therefore have no motive to lie against them. Even some Defence witnesses support the Prosecution case.

1584. Such crime-base and Defence witnesses include TF1-024, TF1-227, TF1-023, TF1-085, DSK-113, DBK-113, and DBK-126,²³⁹⁰ who provided the evidence in connection with the presence of the Accused and their leadership position during the Freetown invasion led by the First Accused.

²³⁸⁹ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 115.

²³⁹⁰ TF1-024 stated seeing Gullit at State House, Transcript 7 March 2005, p. 45; TF1-277 stated seeing 55 shoot Zainab Bangura (the wife of a soldier) in Waterloo, Transcript 8 March 2005, p. 50; [REDACTED]

[REDACTED]; TF1-085 stated that en route to Waterloo, Five-Five was in command of the group heading to Wellington, Transcript 7 April 2005, p. 16; TF1-227 stated that Five-Five was in command of the abductees, Transcript 11 April 2005, p. 9; DSK-113 saw the First and the Third Accused after the attack on Benguema wandering around carrying out their usual duties, Transcript 12 October 2006, pp. 114-115; DBK-113 stated that Santigie Kanu was referred to as Five-Five and was in charge of women, Transcript 13 October 2006, p. 35; DBK-126 stated that she took food to the Second Accused whilst he was in State House, Transcript 25 October 2006, p. 56.

1585. In accounting for the crimes in Freetown the Prosecution stresses the great degree of hatred that already existed amongst the SLA faction towards Nigerian ECOMOG, the police, and the civilian population in general as it attacked Freetown.

1586. That hatred, the Prosecution submits, was a motivating factor behind many of the crimes that were committed in Freetown against the civilian population. Such hatred stemmed from ECOMOG and civilians both killing and targeting soldiers and their families during the Intervention,²³⁹¹ the continuation of this practice whilst the SLAs were in the jungle,²³⁹² the numerous occasions when the civilians had betrayed the SLAs to the Kamajors and ECOMOG whilst they were in the jungle,²³⁹³ and the execution of 24 senior AFRC officials in October 1998 by the Kabbah government whose Chief of Defence Staff at that time was Nigerian General Maxwell Khobe, and whose execution was carried out by Nigerian soldiers.²³⁹⁴

1587. There is also evidence that SAJ Musa himself gave orders that once in Freetown, all police stations should be burnt down and all policemen, Nigerians soldiers, and SLPP collaborators should be targeted and killed during the attack on Freetown.²³⁹⁵ An order which was endorsed by the First Accused²³⁹⁶ when he assumed command after the death of SAJ Musa.

²³⁹¹ TF1-184, Transcript 26 September 2005, pp. 75-76; TF1-033, Transcript 11 July 2005, pp. 68-69; DAB-023, Transcript 31 July 2006, p. 18, DAB-095, Transcript 28 September 2006, p. 7; DBK-126, Transcript 11 October 2006, p. 43; DBK-005, Transcript 5 October 2006, pp. 40-41; Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 63-64.

²³⁹² DAB-085, Transcript 20 July 2006, p. 17; DAB-078, Transcript 6 September 2006, p. 25-26; DAB-156, Transcript 29 September 2006, pp. 39-40; DAB-033, Transcript 25 September 2006, pp. 91-92.

²³⁹³ TF1-334 testified that Johnny Paul Koroma ordered the burning of Koidu Town because the civilians had betrayed them to the Kamajors. TF1-334 also testified that while withdrawing from Freetown during the invasion, the First Accused heard that a soldier had been killed by Fourah Bay. He ordered that Fourah Bay be burnt and everyone killed, which was carried out, Transcript 18 May 2005, pp. 3-7. *See also* TF1-310, Transcript 5 July 2005, p. 70; Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 62-63; DAB-147; Transcript 3 October 2006, p. 31; DAB-018, Transcript 6 September 2006, p. 78; DAB-033, Transcript 2 October 2006, pp. 61-62.

²³⁹⁴ DBK-131, Transcript 10 October 2006, p. 45.

²³⁹⁵ George Johnson, TF1-167, Transcript 16 September 2005, p. 4.

²³⁹⁶ George Johnson, TF1-167, Transcript 16 September 2005, p. 14.

**PROSECUTION EVIDENCE OF COMMAND POSITIONS OF THE ACCUSED DURING THE
FREETOWN INVASION**

1588. After the death of SAJ Musa, the First Accused became the commander.²³⁹⁷ The Second Accused became the First Accused's second in command after SAJ Musa's death.²³⁹⁸ The Third Accused became third in command after SAJ Musa's death.²³⁹⁹ After SAJ Musa's death, the First Accused was in full control again, with the Second and Third Accused as his henchmen.²⁴⁰⁰ According to TF1-153, the First Accused became commander of the troops on the death of SAJ Musa.²⁴⁰¹

1589. At Orugu Village, the First Accused chaired a meeting with all commanders, including the Second and Third Accused and Hassan Papah Bangura, aka Bomblast, concerning the invasion of Freetown. The Third Accused reminded the commanders that the orders given by SAJ Musa about the targeting of civilians and burning of police stations still remained in place.²⁴⁰² At Allen Town the First Accused gave orders as to how they would enter Freetown.²⁴⁰³ After the jet attack at Allen Town, the First Accused ordered the group to move to attack Freetown.²⁴⁰⁴

1590. This meeting in Orugu Village is corroborated in large part by TF1-334 who states that it was at this meeting of commanders (including the Second and Third Accused) that the First Accused ordered the advance on Freetown.²⁴⁰⁵ The First Accused, at this meeting, also ordered the burning of police stations, the execution of collaborators, the opening of Pademba Road Prison for reinforcements, and the capture of State House and the ordnance at Murray Town.²⁴⁰⁶

²³⁹⁷ TF1-184, Transcript 27 September 2005, p. 56; George Johnson, Transcript 16 September 2005, p. 11; TF1-334, 13 June 2005, p. 59; TF1-033, Transcript 11 July 2005, pp. 55-56.

²³⁹⁸ TF1-334, 13 June 2005, p. 60; George Johnson, Transcript 16 September 2005, p. 12-13; TF1-184, Transcript 27 September 2005, p. 56.

²³⁹⁹ TF1-334, 13 June 2005, p. 60.

²⁴⁰⁰ TF1-033, Transcript 12 July 2005, pp. 38-40.

²⁴⁰¹ TF1-153, Transcript 22 September 2005, pp. 94-95.

²⁴⁰² George Johnson, TF1-167, Transcript 16 September 2005, p. 14.

²⁴⁰³ TF1-153, Transcript 22 September 2005, p. 98.

²⁴⁰⁴ TF1-033, Transcript 11 July 2005, p. 59.

²⁴⁰⁵ TF1-334, Transcript 13 June 2005, p. 100.

²⁴⁰⁶ TF1-334, Transcript 13 June 2005, p. 101.

1591. On the orders of the First Accused, the invasion of Freetown started in the early hours of 6th January 1999.²⁴⁰⁷ An advance party led the attack followed by the HQ where the Accused were based. The soldiers would not do anything without the command of the First Accused.²⁴⁰⁸
1592. State House was captured between 7.30 to 8.30 am on 6th January 1999. On arrival at State House, the First Accused gave orders for Pademba Road Prison to be opened.²⁴⁰⁹ This is largely corroborated by TF1-334 who states that immediately after State House was captured the First Accused, being the chief in command, the Second Accused, being deputy chief in command, and the Third Accused and other commanders arrived, including the task force commander.²⁴¹⁰
1593. According to the orders of the First Accused, the prisoners at both Pademba Road Prison and the National Stadium were released and told to report to State House, including politicians and Gibril Massaquoi.²⁴¹¹ The radio station was also secured.²⁴¹²
1594. Gibril Massaquoi, on his release from Pademba Road Prison on 6th January by the invading SLA forces, was told by Alfred Brown, who was an RUF radio operator with the SLAs, that the First Accused had lead the troops into Freetown after the death of SAJ Musa at Benguema.²⁴¹³ Gibril Massaquoi reported daily to State House whilst the First Accused was there. Gibril Massaquoi remained at State House for two to three hours each day.²⁴¹⁴
1595. On the day of the capture of Freetown, the Third Accused announced over a local radio station that he was Chief of Staff and that the Army under the command of the First Accused had taken over the reigns of government from President Kabbah.²⁴¹⁵

²⁴⁰⁷ TF1-334, Transcript 13 June 2005, p. 105.

²⁴⁰⁸ TF1-334, Transcript 13 June 2005, pp. 110-112.

²⁴⁰⁹ George Johnson, TF1-167, Transcript 16 September 2005, p. 27.

²⁴¹⁰ TF1-334, Transcript 13 June 2005, p. 105; Transcript 14 June 2005, pp. 4-5.

²⁴¹¹ TF1-334, Transcript 14 June 2005, p. 7, 13; Gibril Massaquoi, Transcript 7 October 2005, p. 114; Transcript 7 October 2005, pp. 113-114.

²⁴¹² TF1-334, Transcript 14 June 2005, p. 8.

²⁴¹³ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 114.

²⁴¹⁴ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 5; Transcript 11 October 2005, p. 64.

²⁴¹⁵ TF1-334, Transcript 14 June 2005, p. 19.

1596. Mosquito also announced over Radio France that that the troops commanded by the First Accused had captured Freetown and would continue to defend Freetown.²⁴¹⁶ FAT Sesay sent a message to the BBC in the presence of all of the Accused that the army had taken over the government of President Kabbah and that the First Accused was the commander.²⁴¹⁷ This is corroborated by TF1-167.²⁴¹⁸
1597. TF1-184 saw the Second Accused talking on the radio outside State House when TF1-184 arrived at State House.²⁴¹⁹ Anything which the Third Accused did came as an order from the First Accused.²⁴²⁰ The First Accused was at State House and the rebel boys were calling him Honourable Gullit, and he was the only commander there.²⁴²¹
1598. Gibril Massaquoi was called by the First Accused and the Third Accused in State House to clarify to the BBC that the AFRC and RUF held State House and not the government.²⁴²² TF1-153 also saw the First and Third Accused in State House.²⁴²³
1599. The First Accused ordered that Wilberforce Barracks should not be attacked because their families and relatives were under threat from ECOMOG.²⁴²⁴
1600. State House was used as the defence headquarters and the overall commander was the First Accused, followed by the Second Accused, and then the Third Accused. Other commanders at State House included Woyoh (who the First Accused claims escaped with him) who was subsequently killed in Freetown,²⁴²⁵ Hassan Papah Bangura, aka Bomblast, and Commander 0-Five.²⁴²⁶ Gibril Massaquoi also corroborates that State House was used as the AFRC defence headquarters.²⁴²⁷

²⁴¹⁶ TF1-334, Transcript 14 June 2005, p. 20.

²⁴¹⁷ TF1-334, Transcript 14 June 2005, pp. 20-21.

²⁴¹⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 39.

²⁴¹⁹ TF1-184, Transcript 29 September 2005, p. 100.

²⁴²⁰ TF1-184, Transcript 29 September 2005, p. 68.

²⁴²¹ TF1-024, Transcript 7 March 2005, pp. 45-46.

²⁴²² Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 122.

²⁴²³ TF1-153, Transcript 23 September 2005, p. 3.

²⁴²⁴ TF1-334, Transcript 14 June 2005, pp. 16-17.

²⁴²⁵ TF1-334, Transcript 16 June 2005, p. 60; TF1-184, Transcript 30 September 2005, pp. 8-9; DBK-131, Transcript 26 October 2006, p.54.

²⁴²⁶ TF1-334, Transcript 14 June 2005, pp. 21-22.

²⁴²⁷ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 3.

1601. TF1-167 reported to the First Accused at State House that he was unable to take Ascension Town and Congo Cross Bridges.²⁴²⁸
1602. On 6 January everybody, including the commanders, was patrolling the city and the civilians were singing, these are our brothers and we want peace.²⁴²⁹
1603. Gibril Massaquoi attended a meeting at State House which was chaired by the First Accused and attended by other senior commanders including the Second and Third Accused concerning the families that were in Wilberforce Barracks.²⁴³⁰ Gibril Massaquoi learnt at the meeting that the First Accused was leader of the group, the Third Accused was Chief of Army staff and that the Second Accused was commander in charge of men and armaments.²⁴³¹
1604. In the second week, ECOMOG forces took over Kingtom. Baski reported to State House in the presence of all the Accused that he needed reinforcements.²⁴³²
1605. At Shankardass, during the retreat, the First Accused called all those present including those who had been released from Pademba Road Prison and told them that he was the Commander in Chief.²⁴³³ After the fall of State House the key commanders would meet the First Accused at Shankardass.²⁴³⁴
1606. In the third week during the retreat, RUF Rambo told the First Accused that he was reluctant to come and reinforce them in Freetown because he thought SAJ Musa was alive. The First Accused told RUF Rambo that SAJ Musa was dead, that he was in command and that he was waiting for reinforcements.²⁴³⁵
1607. During the retreat at Allen Town, the First Accused called the commanders and ordered them to create defensive positions.²⁴³⁶

²⁴²⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 34.

²⁴²⁹ TF1-334, Transcript 14 June 2005, p. 29.

²⁴³⁰ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 120 and Transcript 11 October 2005, pp. 5, 65.

²⁴³¹ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 120.

²⁴³² TF1-334, Transcript 14 June 2005, p. 40.

²⁴³³ TF1-184, Transcript 27 September 2005, p. 77.

²⁴³⁴ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 3.

²⁴³⁵ TF1-334, Transcript 14 June 2005, p. 56.

²⁴³⁶ TF1-334, Transcript 14 June 2005, p. 100.

1608. At Allen Town, the First Accused ordered that Calaba Town be burnt down. This operation was carried out under the command of the Third Accused who reported back to the First Accused that he had carried out the operation.²⁴³⁷

1609. At Allen Town all the Accused were present after the retreat when the First Accused was planning a counter offensive on ECOMOG.²⁴³⁸

1610. [REDACTED]
[REDACTED]
[REDACTED].²⁴⁴⁰

1611. At Benguema, after the retreat, the Third Accused, referred to as Brigadier Five-Five, called a muster parade of civilians and made them carry out forced labour.²⁴⁴¹ SAJ Musa's wife, Tina Musa, was also present.²⁴⁴²

1612. Based on the above evidence, it is the case of the Prosecution that all of the Accused were in Freetown at the time of the invasion and that all the Accused held senior command positions during the attack, occupation and retreat from Freetown.

1613. As set out below, there are numerous examples of all the Accused either ordering the commission of crimes whilst holding command positions or personally participating in the commission of crimes.

INDIVIDUAL CRIMINAL RESPONSIBILITY - FREETOWN

JOINT CRIMINAL ENTERPRISE

1614. For all crimes committed as mentioned below occurring after the ECOMOG Intervention and during the attack, occupation and retreat from Freetown in January 1999, the three Accused are individually criminally responsible under the theory of joint criminal

²⁴³⁷ TF1-334, Transcript 14 June 2005, p. 100.

²⁴³⁸ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 28.

²⁴³⁹ TF1-023, Transcript 10 March 2005, pp. 29-30.

²⁴⁴⁰ TF1-023, Transcript 10 March 2005, p. 33.

²⁴⁴¹ TF1-227, Transcript 11 April 2005, pp. 8-13.

²⁴⁴² TF1-227, Transcript 11 April 2005, pp. 8-13.

enterprise, in that the crimes were within the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation. Liability pursuant to the theory of joint criminal enterprise for this period has been analysed above and this analysis applies to the crime base of Freetown.

INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 6(1)

Brima

Planning, Instigating or otherwise Aiding and Abetting

1615. The First Accused became the commander after the death of SAJ Musa and together with the Second and Third Accused and others, planned and led the invasion of Freetown.²⁴⁴³ During the retreat, the First Accused remained the commander in chief.²⁴⁴⁴ The attack on Freetown was carefully designed and organized by the First Accused, who intended that murder, extermination, acts of sexual violence, mutilations, use of child soldiers, forced labour, and looting and burning would occur, or was aware of the substantial likelihood of the occurrence of all of these crimes. This may be inferred from meetings held prior to the attacks, his position as overall commander, as well as his orders and active participation during the invasion and retreat.
1616. In addition, the First Accused prompted others, through inflammatory statements and active encouragement to participate in the planned unlawful acts. By these actions, the First Accused is liable for instigating the crimes charged.
1617. Alternatively, the First Accused is liable for aiding and abetting all of the crimes charged through his presence on the ground, his position of authority and his active support for the operations. For example, the First Accused was present when his boys killed about 30 people who refused to join the rebel movement.²⁴⁴⁵ The criminal acts were so notorious that the only possible inference, in view of his command position, is that the First Accused actively encouraged these acts or was aware that he was assisting the perpetrators in the commission of crimes.

²⁴⁴³ TF1-334, Transcript 13 June 2005, p. 105.

²⁴⁴⁴ TF1-184, Transcript 27 September 2005, p. 77.

²⁴⁴⁵ TF1-024, Transcript 7 March 2005, pp. 46-47.

Ordering

1618. In view of the compelling evidence that Freetown was attacked pursuant to the orders of the First Accused, and his position of authority in relation to the attack, it may reasonably be inferred that the First Accused ordered all of the crimes committed in Freetown. The executions at the PWD near Shankardass, for example, were carried out by SLAs under his command and orders.²⁴⁴⁶ He intended to bring about the commission of these crimes, or was aware of the substantial likelihood that they would occur.

1619. The First Accused gave direct orders for the burning of police stations,²⁴⁴⁷ the execution of collaborators and the opening of Pademba Road Prison.²⁴⁴⁸ These acts were carried out. Orders for killings were also carried out.²⁴⁴⁹

1620. The First Accused gave direct orders for Calaba Town to be burnt down,²⁴⁵⁰ for killings and burning on Fourah Bay Road as a “punishment” for the killing of a soldier by a civilian,²⁴⁵¹ and for civilians, including nuns, at Kissy Mental Hospital to be killed.²⁴⁵² He gave direct orders for amputations to be carried out and his orders were complied with.²⁴⁵³ Civilians were abducted in compliance with his orders²⁴⁵⁴ and forced to carry loads.²⁴⁵⁵ When the invading SLAs were losing their positions, he ordered the burning of Freetown.²⁴⁵⁶ The First Accused also ordered the looting of jeeps from the UN.²⁴⁵⁷

Committing

1621. The First Accused committed numerous killings, for example at State House,²⁴⁵⁸ Kingtom,²⁴⁵⁹ Fourah Bay Road,²⁴⁶⁰ and Kissy Mental Hospital.²⁴⁶¹ He is therefore liable

²⁴⁴⁶ George Johnson, TF1-167, Transcript 16 September 2005, pp. 46-47.

²⁴⁴⁷ George Johnson, TF1-167, Transcript 16 September 2005, p. 25; TF1-334, Transcript 13 June 2005, p. 118 ; TF1-334, Transcript 14 June 2005, p. 32.

²⁴⁴⁸ TF1-334, Transcript 13 June 2005, p. 101.

²⁴⁴⁹ TF1-334, Transcript 14 June 2005, pp. 23-24 ; Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116.

²⁴⁵⁰ TF1-334, Transcript 14 June 2005, p. 100.

²⁴⁵¹ George Johnson, TF1-167, Transcript 16 September 2005, p. 43.

²⁴⁵² TF1-184, Transcript 27 September 2005, p. 82-84.

²⁴⁵³ TF1-184, Transcript 27 September 2005, pp. 81-82.

²⁴⁵⁴ TF1-334, Transcript 14 June 2005, p. 63.

²⁴⁵⁵ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 30.

²⁴⁵⁶ TF1-184, Transcript 27 September 2005, p. 64.

²⁴⁵⁷ TF1-334, Transcript 14 June 2005, p. 24.

²⁴⁵⁸ TF1-184, Transcript 27 September 2005, p. 62 ; George Johnson, Transcript 16 September 2005, p. 38.

²⁴⁵⁹ TF1-334, Transcript 14 June 2005, p. 42-45.

for committing murder. He is also liable for extermination on the basis that his act formed part of a mass killing of civilians as part of a systematic attack involving killings throughout Freetown as the troop advanced and then retreated.

1622. There is evidence that all three Accused committed rape or at least instigated or aided and abetted the sexual violence at State House and elsewhere during the invasion and retreat.²⁴⁶²

1623. The First Accused personally carried out amputations²⁴⁶³ and took part in the burning of vehicles²⁴⁶⁴ and other property.²⁴⁶⁵

Kamara

Planning, Instigating or otherwise Aiding and Abetting

1624. The Second Accused was present when the attack on Freetown was planned and it may be inferred from his position as second in command that he participated actively in the planning phase. Throughout the invasion and retreat, orders were frequently made by the First Accused in the presence of the Second Accused.²⁴⁶⁶

1625. In view of the widespread nature of the acts of murder, extermination, sexual violence, mutilations, use of child soldiers, forced labour, and looting and burning, and the Second Accused's presence during the invasion and retreat from Freetown, coupled with his position of authority, it may reasonably be inferred that he prompted or encouraged these acts. It may also be inferred from these facts that the Second Accused intended such acts or was aware of the substantial likelihood that they would be committed, or at least knew that he was assisting the perpetrators in the commission of the crimes. On the basis that the crimes in Freetown were part of a consistent pattern of conduct by the AFRC/RUF

²⁴⁶⁰ TF1-334, Transcript 14 June 2005, pp. 66-67.

²⁴⁶¹ TF1-153, Transcript 23 September 2005, pp. 19-20.

²⁴⁶² TF1-334, Transcript 14 June 2005, p. 26.

²⁴⁶³ TF1-184, Transcript 27 September 2005, p. 80.

²⁴⁶⁴ TF1-334, Transcript 13 June 2005, p. 112.

²⁴⁶⁵ TF1-334, Transcript 14 June 2005, p. 66.

²⁴⁶⁶ See e.g. Kissy Mental Hospital, TF1-334, Transcript 14 June 2005, p. 84; order for abduction of civilians, TF1-334, Transcript 14 June 2005, p. 63.

forces as they invaded and retreated, the Second Accused is liable for planning, instigating or aiding and abetting the crimes charged in Freetown.

Ordering

1626. Executions were carried out by the Second Accused's body guard, Captain Blood, under orders.²⁴⁶⁷ After the order had been given by the First Accused in his presence to burn Freetown, the Second Accused was in command of the burning in Kissy Road.²⁴⁶⁸ As the troops retreated to Waterloo, the Second Accused ordered that the houses along the highway be burnt so ECOMOG wouldn't have any place to sit down if they advanced that far.²⁴⁶⁹

Committing

1627. The Second Accused carried out killings on Fourah Bay Road.²⁴⁷⁰ He is therefore liable for committing murder. He is also liable for extermination on the basis that his act formed part of a mass killing of civilians as part of a systematic attack involving killings throughout Freetown as the troop advanced and then retreated. The Second Accused participated in the burning of houses in Waterloo during the retreat from Freetown.²⁴⁷¹

1628. There is evidence that all three Accused committed rape or at least instigated or aided and abetted the sexual violence at State House and elsewhere during the invasion and retreat.²⁴⁷²

Kanu

Planning, Instigating or otherwise Aiding and Abetting

1629. The Third Accused was present when the attack on Freetown was planned and it may be inferred from his position as third in command that he participated actively in the planning phase. When Freetown was captured, the Third Accused announced over the radio his

²⁴⁶⁷ TF1-334, Transcript 14 June 2005, pp. 72-73.

²⁴⁶⁸ TF1-084, Transcript 6 April 2005, p. 39.

²⁴⁶⁹ TF1-334, Transcript 15 June 2005, pp. 11-12.

²⁴⁷⁰ TF1-334, Transcript 14 June 2005, pp. 66-67.

²⁴⁷¹ TF1-334, Transcript 15 June 2005, pp. 11-12.

²⁴⁷² TF1-334, Transcript 14 June 2005, p. 26.

position as chief of staff.²⁴⁷³ He acted on the orders of the First Accused.²⁴⁷⁴ An example of the Third Accused acting on the orders of the First Accused is the burning of Calaba Town.²⁴⁷⁵ Similarly, the Third Accused distributed petrol for the burning of Freetown.²⁴⁷⁶ Throughout the invasion and retreat, orders were frequently made by the First Accused in the presence of the Third Accused.²⁴⁷⁷

1630. In view of the widespread nature of the acts of murder, extermination, sexual violence, mutilations, use of child soldiers, forced labour, and looting and burning, and the Third Accused's presence during the invasion and retreat from Freetown, coupled with his position of authority, it may reasonably be inferred that he prompted or encouraged these acts. For example, he reiterated SAJ Musa's orders concerning the targeting of civilians and burning of police stations.²⁴⁷⁸ It may also be inferred from these facts that the Third Accused intended such acts or was aware of the substantial likelihood that they would be committed, or at least knew that he was assisting the perpetrators in the commission of the crimes. On the basis that the crimes in Freetown were part of a consistent pattern of conduct by the AFRC/RUF forces as they invaded and retreated, the Third Accused is liable for planning, instigating or aiding and abetting the crimes charged in Freetown.

Ordering

1631. At State House, the Third Accused gave orders for Nigerian civilians to be killed.²⁴⁷⁹ The Third Accused ordered that civilians from Ross Road to Fourah Bay Road should be amputated and hacked to death and that the entire area should be burnt down.²⁴⁸⁰ Soldiers under his command killed civilians at a mosque near Kissy.²⁴⁸¹ During the retreat he ordered a child to be buried alive.²⁴⁸²

²⁴⁷³ TF1-334, Transcript 14 June 2005, p. 19.

²⁴⁷⁴ TF1-184, Transcript 29 September 2005, p. 68.

²⁴⁷⁵ TF1-334, Transcript 14 June 2005, p. 100.

²⁴⁷⁶ TF1-184, Transcript 27 September 2005, p. 65.

²⁴⁷⁷ See e.g. Kissy Mental Hospital, TF1-334, Transcript 14 June 2005, p. 84; order for abduction of civilians, TF1-334, Transcript 14 June 2005, p. 63.

²⁴⁷⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 14.

²⁴⁷⁹ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 116.

²⁴⁸⁰ TF1-184, Transcript 27 September 2005, pp. 74-75.

²⁴⁸¹ TF1-334, Transcript 14 June 2005, p. 89.

²⁴⁸² TF1-085, Transcript 7 April 2005, pp. 23-24.

1632. At Upgun, the Third Accused ordered that the amputation of arms of civilians should start²⁴⁸³ and at Kissy Mental Hospital he ordered soldiers to amputate up to 200 civilians.²⁴⁸⁴ These orders were carried out.

1633. During the retreat from Freetown, the Third Accused ordered the “war candle to be put on” so that houses in Freetown would be burnt.²⁴⁸⁵ [REDACTED]
[REDACTED].²⁴⁸⁶

Committing

1634. The Third Accused killed a civilian at State House,²⁴⁸⁷ carried out killings on Fourah Bay Road,²⁴⁸⁸ and killed Zainab Kamara in Waterloo.²⁴⁸⁹ He is therefore liable for committing murder. He is also liable for extermination on the basis that his act formed part of a mass killing of civilians as part of a systematic attack involving killings throughout Freetown as the troop advanced and then retreated.

1635. There is evidence that all three Accused committed rape or at least instigated or aided and abetted the sexual violence at State House and elsewhere during the invasion and retreat.²⁴⁹⁰ At Benguema, the Third Accused forced civilians to work thereby depriving them of their liberty.²⁴⁹¹

1636. The Third Accused personally carried out amputations²⁴⁹² and the burning of property.²⁴⁹³

SUPERIOR RESPONSIBILITY UNDER ARTICLE 6(3)

1637. The Prosecution submits that in the light of all the evidence, coupled with the command positions possessed by all three Accused during the attack, occupation of, and retreat from Freetown, the three Accused bear responsibility pursuant to Article 6(3) of the Statute for

²⁴⁸³ TF1-334, Transcript 14 June 2005, pp. 68-70.

²⁴⁸⁴ George Johnson, TF1-167, Transcript 16 September 2005, p. 53.

²⁴⁸⁵ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 14.

²⁴⁸⁶ TF1-169, Transcript 6 July 2005, pp. 20-21.

²⁴⁸⁷ Gibril Massaquoi, Transcript 7 October 2005, p. 116.

²⁴⁸⁸ TF1-334, Transcript 14 June 2005, pp. 66-67.

²⁴⁸⁹ TF1-277, Transcript 8 March 2005, p. 50.

²⁴⁹⁰ TF1-334, Transcript 14 June 2005, p. 26.

²⁴⁹¹ TF1-227, Transcript 11 April 2005, pp. 8-13

²⁴⁹² TF1-334, Transcript 14 June 2005, pp. 68-70.

²⁴⁹³ TF1-334, Transcript 14 June 2005, p. 66 ; George Johnson, Transcript 16 September 2005, p. 56.

the crimes committed by their subordinates as set out below.

1638. The Prosecution submits that the evidence demonstrates that there was a superior subordinate relationship between the Accused and the perpetrators, who in most cases were carrying out the orders of the Accused, resulting in the commission of the crimes as charged.
1639. Based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Accused or at least in their presence, the Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so.
1640. As key commanders in the field, the Accused clearly had the material ability to prevent offences or to punish those subordinates responsible for committing crimes. The necessary and reasonable measures to do so were at the disposal of the Accused, indeed, the AFRC had a disciplinary system. However, far from putting any such procedures into effect, they themselves gave orders for, and actively encouraged, killings, mutilations and sexual violence and widespread burning of houses amounting to a campaign of terrorism.

**PROSECUTION EVIDENCE OF THE CRIMES COMMITTED BY THE ACCUSED DURING THE
FREETOWN INVASION**

COUNTS 1 – 2

1641. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNT 3 TO 5 :UNLAWFUL KILLINGS

1642. Pursuant to the orders of the First Accused concerning the targeting of policemen, two policemen were captured and executed near the Eastern police station by the troops as they continued there advance into Freetown.²⁴⁹⁴

1643. The First Accused shot and killed three civilian males who were brought into State House.²⁴⁹⁵

1644. The First Accused shot and killed another woman at State House who was the girlfriend of another soldier.²⁴⁹⁶

1645. The First Accused was present when the First Accused's boys shot and killed about 30 people who refused to join the rebel movement.²⁴⁹⁷

1646. The First Accused shot and killed two out of 14 ECOMOG soldiers who were brought to State House.²⁴⁹⁸

1647. The other 12 ECOMOG soldiers who were brought to State House were shot and killed on the orders of the First Accused.²⁴⁹⁹ On around 6th January when witness TF1-167 returned to State House to collect more reinforcements to take Congo Cross and Ascension

²⁴⁹⁴ TF1-334, Transcript 13 June 2005, pp. 117-118.

²⁴⁹⁵ TF1-184, Transcript 27 September 2005, pp. 61-62.

²⁴⁹⁶ TF1-184, Transcript 27 September 2005, p. 62.

²⁴⁹⁷ TF1-024, Transcript 7 March 2005, pp. 46-47.

²⁴⁹⁸ TF1-334, Transcript 14 June 2005, p. 23.

²⁴⁹⁹ TF1-334, Transcript 14 June 2005, pp. 23-24.

Town bridges, he also saw plenty of dead bodies including policemen, Nigerian soldiers and civilians.²⁵⁰⁰

1648. TF1-334 saw the killing of soldiers in State House and observed that there were corpses all around outside State House.²⁵⁰¹ Gibril Massaquoi also saw bodies outside State House not in uniform.²⁵⁰² TF1-033 saw killings in and around State House.²⁵⁰³ TF1-153 saw the Third Accused at State House and at least three dead ECOMOG soldiers in State House.²⁵⁰⁴

1649. The First Accused ordered the execution of 16 Nigerian civilians at State House who he believed were Nigerian soldiers in disguise.²⁵⁰⁵ On the order of the First Accused the Third Accused shot one civilian in the presence of Gibril Massaquoi and ordered for the rest to be killed. Gibril Massaquoi personally saw three more of the Nigerians being executed on the orders of the Third Accused and the bodies of the others being loaded on a white jeep for removal from State House.²⁵⁰⁶

1650. A soldier under the command of the Accused named Lt. Col. Kido executed six civilians around Garrison Street during the January 6th invasion of Freetown.²⁵⁰⁷

1651. On the orders of the First Accused, troops went to the Kingtom area where civilians, who were regarded as betrayers, were killed indiscriminately.²⁵⁰⁸ Gibril Massaquoi saw people being shut in houses as they were set on fire.²⁵⁰⁹

1652. On the report in front of the First and Second Accused that a civilian had killed a soldier, the First Accused ordered cutlasses to be distributed.²⁵¹⁰ At Uppgun Roundabout, the First Accused called a muster parade and announced that the civilians should be taught a lesson.²⁵¹¹ The Third Accused ordered that any civilians they saw from Ross Road to

²⁵⁰⁰ George Johnson, TF1-167, Transcript 16 September 2005, p. 38.

²⁵⁰¹ TF1-334, Transcript 14 June 2005, p. 26.

²⁵⁰² Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 12-13.

²⁵⁰³ TF1-033, Transcript 12 July 2005, pp. 20-21.

²⁵⁰⁴ TF1-153, Transcript 23 September 2005, p. 3 and Transcript 22 September 2005, p. 100.

²⁵⁰⁵ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 115-116.

²⁵⁰⁶ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 116.

²⁵⁰⁷ TF1-334, Transcript 14 June 2005, pp. 28-29.

²⁵⁰⁸ TF1-334, Transcript 14 June 2005, p. 42-45.

²⁵⁰⁹ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 15.

²⁵¹⁰ TF1-184, Transcript 27 September 2005, pp. 71-73.

²⁵¹¹ TF1-184, Transcript 27 September 2005, pp. 74-75.

Fourah Bay Road should be amputated and hacked to death and that the entire area should be burnt down.²⁵¹²

1653. This is largely corroborated by TF1-167, who states that the First Accused mustered the troops and ordered them to do a lot of burning and killing on Fourah Bay Road as a result of the civilians killing a soldier.²⁵¹³ When TF1-167 arrived at Fourah Bay Road, he saw a lot of burning and killing and that civilians were inside burning houses and that they were shot if they tried to get out.²⁵¹⁴ The killing of civilians at Fourah Bay Road on the orders of the First Accused was also corroborated by TF1-334 who also stated that all of the Accused personally took part in the killing of civilians at Fourah Bay Road.²⁵¹⁵

1654. In the Upgun area during the retreat, seven civilians had their hands amputated by soldiers and were told to go to Pa Kabbah to get new hands.²⁵¹⁶ At least one of the persons whose hand was amputated died.²⁵¹⁷

1655. During the retreat from Freetown, the AFRC troops under the command of the First Accused and on the First Accused's orders, were burning houses, killing people, amputating people and raping women.²⁵¹⁸

1656. During the retreat at Rowe Street, rebels captured seven civilians who they shot and killed.²⁵¹⁹

1657. During the retreat, two Government Ministers were captured and executed by forces under the command of the three Accused.²⁵²⁰

1658. [REDACTED]
[REDACTED]
[REDACTED]²⁵²²

²⁵¹² TF1-184, Transcript 27 September 2005, pp. 74-75.

²⁵¹³ George Johnson, Transcript 16 September 2005, p. 43.

²⁵¹⁴ George Johnson, Transcript 16 September 2005, p. 43.

²⁵¹⁵ TF1-334, Transcript 14 June 2005, pp. 66-67.

²⁵¹⁶ TF1-098, Transcript 5 April 2005, pp. 40-42.

²⁵¹⁷ TF1-098, Transcript 5 April 2005, p. 43.

²⁵¹⁸ TF1-033, Transcript 11 July 2005, p. 66.

²⁵¹⁹ TF1-084, Transcript 6 April 2005, p. 41.

²⁵²⁰ TF1-334, Transcript 14 June 2005, pp. 64-65; George Johnson, Transcript 16 September 2005, p. 46; Gibril Massaquoi, Transcript 10 October 2005, p. 19.

²⁵²¹ TF1-104, Transcript 30 June 2005, p. 72.

1659. [REDACTED]
[REDACTED]
[REDACTED].²⁵²⁴

1660. As the SLAs under the First Accused were withdrawing from State House, they set up headquarters at Shankardass.²⁵²⁵ During this time, the PWD (near Shankardass) was used as an execution ground by retreating SLAs including Mad Crazy, Cyborg, Kabila and Born Naked.²⁵²⁶ At least five Nigerian soldiers were executed there by the above named SLAs under the command of the First Accused.²⁵²⁷

1661. At PWD, the First Accused said that if they saw civilians burning tyres and singing that they were their brother, they (the civilians) were lying, so he ordered that those civilians should be shot.²⁵²⁸

1662. During the retreat, Captain Blood, one of the Second Accused's body guards, executed seven civilians under orders.²⁵²⁹

1663. The First Accused's order at Kissy Mental Hospital, in the presence of the Second and Third Accused, to soldiers to go to the low cost part of town to amputate arms of civilians, kill civilians and burn civilian property because the civilians were jubilating at the arrival of ECOMG is further corroborated by TF1-334.²⁵³⁰ The killing of civilians was carried out and reported to the First Accused at Kissy Mental Hospital.²⁵³¹

1664. At Kissy Mental Hospital, the First Accused ordered the execution of nuns and TF1-184 saw the bodies of these nuns.²⁵³² At least three of these nuns were killed by Foday Bah Marah, aka Bulldoze, in front of the Accused.²⁵³³ The killing of the nuns by Foday Bah Marah on the orders of the First Accused in the presence of the Second and Third Accused

²⁵²² TF1-104, Transcript 30 June 2005, p. 17.

²⁵²³ TF1-104, Transcript 30 June 2005, pp. 23-24.

²⁵²⁴ TF1-104, Transcript 30 June 2005, pp. 26-27.

²⁵²⁵ George Johnson, Transcript 16 September 2005, p. 45.

²⁵²⁶ George Johnson, Transcript 16 September 2005, pp. 46-47.

²⁵²⁷ George Johnson, Transcript 16 September 2005, pp. 46-47.

²⁵²⁸ TF1-334, Transcript 14 June 2005, p. 62.

²⁵²⁹ TF1-334, Transcript 14 June 2005, pp. 72-73.

²⁵³⁰ TF1-334, Transcript 14 June 2005, p. 84.

²⁵³¹ TF1-334, Transcript 14 June 2005, p. 87.

²⁵³² TF1-184, Transcript 27 September 2005, p. 82-84.

²⁵³³ George Johnson, Transcript 16 September 2005, p. 55.

is further corroborated by TF1-334.²⁵³⁴ Gibril Massaquoi also states that he saw Foday Bah Marah kill three nuns at Calaba Town during the retreat from Freetown because they had been unwilling to walk with the soldiers and that this had been reported to the First Accused.²⁵³⁵ The First Accused also shot one black nun around Kissy Mental Hospital.²⁵³⁶

1665. The First Accused, at Kissy Mental Hospital, ordered that if the troop came across a mosque which was housing people then those people should be shot and killed.²⁵³⁷ At a mosque near Kissy, soldiers under the command of the Third Accused shot and killed civilians.²⁵³⁸

1666. TF1-083 saw corpses both outside and inside the Rogballah Mosque.²⁵³⁹ According to the witness, he saw about 70 corpses in Rogballah Mosque.²⁵⁴⁰ The People's Army entered the mosque and carried out rampant firing which left a total of 71 people dead, including TF1-021's son.²⁵⁴¹ From Kissy to Orugu at Calaba Village, TF1-167 saw a lot of dead bodies in a Mosque where Rambo Red Coat (SLA) was deployed.²⁵⁴² Witness TF1-083 also saw corpses both inside and outside the Rogballah Mosque with about 70 inside the Mosque. The corpses were civilian men, women, and children.²⁵⁴³

1667. According to TF1-227, the Third Accused shot and killed Zainab Kamara in Waterloo during the retreat from Freetown in January 1999 because she was detracting the soldiers from fighting.²⁵⁴⁴ The witness knew the Third Accused from before as she used to see him at Benguema Barracks during the AFRC government.²⁵⁴⁵ The witness referred to the Third Accused as Brigadier Five-Five.²⁵⁴⁶

²⁵³⁴ TF1-334, Transcript 14 June 2005, p. 97.

²⁵³⁵ Gibril Massaquoi, Transcript 10 October 2005, p. 27-28.

²⁵³⁶ TF1-153, Transcript 23 September 2005, pp. 19-20.

²⁵³⁷ TF1-334, Transcript 14 June 2005, p. 88.

²⁵³⁸ TF1-334, Transcript 14 June 2005, p. 89.

²⁵³⁹ TF1-083, Transcript 8 April 2005, p. 70.

²⁵⁴⁰ TF1-083, Transcript 8 April 2005, p. 70.

²⁵⁴¹ TF1-021, Transcript 15 April 2005, p. 30.

²⁵⁴² George Johnson, Transcript 16 September 2005, p. 58.

²⁵⁴³ TF1-083, Transcript 8 April 2005, pp. 69-71.

²⁵⁴⁴ TF1-277, Transcript 8 March 2005, p. 50.

²⁵⁴⁵ TF1-277, Transcript 8 March 2005, p. 45.

²⁵⁴⁶ TF1-277, Transcript 8 March 2005, p. 46.

1668. During the retreat at Allen Town, whilst going in the church, TF1-085 saw women being raped and those who refused to be raped being killed with bayonets.²⁵⁴⁷

1669. During the retreat the rebels amputated the four fingers of a man named Musa and then shot him. Musa was later found dead.²⁵⁴⁸

1670. During the retreat the Third Accused ordered a child to be buried alive because it was making too much noise and then told the child's mother to laugh.²⁵⁴⁹

1671. SLA Gunboot raped and killed a 16 year old girl at Benguema after the retreat from Freetown.²⁵⁵⁰

COUNTS 6 TO 9 SEXUAL VIOLENCE

1672. After the capture of State House, soldiers came to State House with captured women who they forced to have sexual intercourse with them without the consent of those women.²⁵⁵¹ The most beautiful women were brought for the Accused, all of whom had new women that day who would sleep with them.²⁵⁵² Witness TF1-024 also heard women being raped in State House whilst he was detained there for four days.²⁵⁵³

1673. According to TF1-153, young girls from the Annie Walsh School had been raped at the time of the Freetown invasion and was told that nuns locked in a room in State House had also been raped.²⁵⁵⁴

1674. During the retreat from Freetown, TF1-085 was raped in a church near Allen Town by one of the rebels.²⁵⁵⁵

1675. Witness TF1-083 was told by his sister-in-law that she had been raped shortly after the invasion of Freetown by rebels.²⁵⁵⁶ The witness' sister was taken by the rebels to Occra Hills and raped by the rebels.²⁵⁵⁷

²⁵⁴⁷ TF1-085, Transcript 7 April 2005, pp. 18-19.

²⁵⁴⁸ TF1-083, Transcript 8 April 2005, p. 67.

²⁵⁴⁹ TF1-085, Transcript 7 April 2005, pp. 23-24.

²⁵⁵⁰ TF1-227, Transcript 11 April 2005, pp. 13-15.

²⁵⁵¹ TF1-334, Transcript 14 June 2005, pp. 25-26.

²⁵⁵² TF1-334, Transcript 14 June 2005, p. 26.

²⁵⁵³ TF1-024, Transcript 7 March 2005, p. 49.

²⁵⁵⁴ TF1-153, Transcript 23 September 2005, pp. 9, 13.

²⁵⁵⁵ TF1-085, Transcript 7 April 2005, p. 19.

1676. Witness TF1-085 was raped by SLA Colonel James and other women who had been captured by Colonel James told her that they had also been raped.²⁵⁵⁸ Gunboot raped and killed a 16 year old girl at Benguema after the retreat.²⁵⁵⁹

1677. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁵⁶¹

COUNTS 10 TO 11 PHYSICAL VIOLENCE

1678. Whilst in Freetown, Bishop Ganda was detained against his will at the house of the Third Accused and was also flogged.²⁵⁶² TF1-024 was taken to State House and beaten.²⁵⁶³

1679. Gibril Massaquoi saw about five soldiers, including one of the Third Accused's body guards, beating an old man named Mannah Kpaka, who was a politician.²⁵⁶⁴

1680. [REDACTED]
[REDACTED]²⁵⁶⁵

1681. At the Kola Tree, a witness saw a civilian whose hand was chopped off. Achempo, a high ranking AFRC, said that they had just cut off a person's hand and said that he should go and show it to Kabbah.²⁵⁶⁶

²⁵⁵⁶ TF1-083, Transcript 8 April 2005, p. 52.

²⁵⁵⁷ TF1-083, Transcript 8 April 2005, p. 68.

²⁵⁵⁸ TF1-085, Transcript 7 April 2005, pp. 35, 41.

²⁵⁵⁹ TF1-227, Transcript 11 April 2005, pp. 13-15.

²⁵⁶⁰ TF1-081, Transcript 4 July 2005, Closed session, pp. 4-6.

²⁵⁶¹ [REDACTED]

²⁵⁶² Gibril Massaquoi, TF1-046, Transcript 11 October 2005, pp. 15-17.

²⁵⁶³ TF1-024, Transcript 7 March 2005, p. 45.

²⁵⁶⁴ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp. 19-20.

²⁵⁶⁵ TF1-104, Transcript 30 June 2005, pp. 6, 10, 12.

²⁵⁶⁶ TF1-227, Transcript 8 April 2005, pp. 101-102.

1682. Outside the Good Shephard Hospital, the Junta were beating staff, patients and civilians with a cokobo (as stick with a big head and narrow end with a rope tied to it) because they believed the hospital staff had been treating ECOMOG and Kamajors.²⁵⁶⁷
1683. On the report that a civilian had killed a soldier in front of the Second and Third Accused, the First Accused ordered cutlasses to be distributed.²⁵⁶⁸ The Second Accused went to WFP warehouse and explained to Tina Musa that the boys were getting machetes for 'Operation Cut Hand', which TF1-153 assumed would be used to amputate people.²⁵⁶⁹
1684. At Upgun Roundabout, the First Accused called a muster parade and announced that the civilians should be taught a lesson.²⁵⁷⁰ The Third Accused ordered that any civilians they saw from Ross Road to Fourah Bay Road should be amputated and hacked to death and that the entire area should be burnt down.²⁵⁷¹
1685. At Upgun, the Third Accused ordered that the amputation of arms of civilians should start. The Third Accused personally demonstrated how to amputate arms to other soldiers by amputating the arms of two civilians and telling them to go to Pa Kabbah for new arms. The Third Accused set an example of how to amputate for other soldiers to follow (long sleeve and short sleeve).²⁵⁷²
1686. In the presence of the Third Accused, soldiers under his command (including Kabila and Mines) amputated the arms of ten civilians and told them to go to Kabbah for new arms.²⁵⁷³
1687. At a place referred to by the commander as Tafaiko, TF1-084 was robbed and had his hand amputated by the rebels.²⁵⁷⁴ The witness was taken to Satellite Clinic in King Harmon Road where he saw other persons who had had their hands amputated and suffered other injuries.²⁵⁷⁵ The witness was then transferred to Connaught Hospital where

²⁵⁶⁷ TF1-104, Transcript 30 June 2005, p. 23.

²⁵⁶⁸ TF1-184, Transcript 27 September 2005, pp. 71-73.

²⁵⁶⁹ TF1-153, Transcript 23 September 2005, p. 18.

²⁵⁷⁰ TF1-184, Transcript 27 September 2005, pp. 74-75.

²⁵⁷¹ TF1-184, Transcript 27 September 2005, pp. 74-75.

²⁵⁷² TF1-334, Transcript 14 June 2005, pp. 68-70.

²⁵⁷³ TF1-334, Transcript 14 June 2005, p. 70.

²⁵⁷⁴ TF1-084, Transcript 6 April 2005, p. 42.

²⁵⁷⁵ TF1-084, Transcript 6 April 2005, p. 43.

he stayed for three months. There he again saw people who had had their hands amputated.²⁵⁷⁶

1688. [REDACTED]
[REDACTED]²⁵⁷⁷

1689. In the Uppun area during the retreat, seven civilians had their hands amputated by soldiers and were told to go to Pa Kabbah to get new hands.²⁵⁷⁸ At least one of the persons whose hand was amputated died.²⁵⁷⁹

1690. According to TF1-167, the First Accused mustered the troops and ordered them to do a lot of burning and killing on Fourah Bay Road as a result of the civilians killing a soldier.²⁵⁸⁰ When TF1-167 arrived at Fourah Bay Road, he saw a lot of burning and killing and that civilians were inside burning houses and that they were shot if they tried to get out.²⁵⁸¹

1691. During the retreat at the Old Shell Road en route to the Kissy Mental Hospital, TF1-334 saw Osman Sesay, aka Changabulanga, a Battalion commander directly under the First Accused, amputate the hands of six civilians and tell them to go to Pa Kabbah for new hands.²⁵⁸²

1692. During the retreat, the First Accused amputated the hand of a civilian at the Shell Company in Old Road.²⁵⁸³

1693. During the retreat near the Junction by Leadenhall Street, two civilians had their hands amputated on orders of SLA and were told to go to Pa Kabbah for new hands.²⁵⁸⁴ Witness TF1-083 and Sorie had their hands amputated by the rebels during the retreat and were told to go to Pa Kabbah for new hands.²⁵⁸⁵

²⁵⁷⁶ TF1-084, Transcript 6 April 2005, pp. 43-44.

²⁵⁷⁷ TF1-104, Transcript 30 June 2005, pp. 27-29.

²⁵⁷⁸ TF1-098, Transcript 5 April 2005, pp. 40-42.

²⁵⁷⁹ TF1-098, Transcript 5 April 2005, p. 43.

²⁵⁸⁰ George Johnson, TF1-167, Transcript 16 September 2005, p. 43.

²⁵⁸¹ George Johnson, TF1-167, Transcript 16 September 2005, p. 43.

²⁵⁸² TF1-334, Transcript 14 June 2005, p. 82.

²⁵⁸³ TF1-184, Transcript 27 September 2005, p. 80.

²⁵⁸⁴ TF1-278, Transcript 6 April 2005, pp. 5-6.

²⁵⁸⁵ TF1-083, Transcript 8 April 2005, pp. 68-69.

1694. During the retreat, the First Accused ordered that the hands be amputated of all those who were pointing out their position to ECOMOG.²⁵⁸⁶ This order was carried out because about an hour and a half later, Mines came back with a full bag of hands.²⁵⁸⁷
1695. At Kissy Mental Hospital the Third Accused, in the presence of the First and Second Accused, ordered soldiers to go to the eastern part of Freetown and amputate up to 200 civilians and send them to Ferry Junction.²⁵⁸⁸
1696. These orders were carried out as the soldiers returned from the eastern part of Freetown with many amputated arms and machetes covered in blood. The soldiers who carried out the orders were Kabila, Born Naked, Cyborg and SBU Killer.²⁵⁸⁹
1697. The First Accused's order at Kissy Mental Hospital, in the presence of the Second and Third Accused, to soldiers to go to the low cost part of town to amputate arms of civilians, kill civilians and burn civilian property because the civilians were jubilating at the arrival of ECOMG is further corroborated by TF1-334.²⁵⁹⁰ The killing of civilians, burning of houses and amputations was carried out and reported to the First Accused at Kissy Mental Hospital.²⁵⁹¹
1698. At Kissy Mental Hospital, a Nigerian POW's hands were amputated and the Third Accused put a letter around his neck.²⁵⁹²
1699. At Kissy Mental Hospital, an elderly lady approached the Second Accused with her 12-13 year old daughter who had had her arm cut off by a soldier. Despite the women identifying the soldiers who had cut off her daughters arm, no action was taken against them.²⁵⁹³

²⁵⁸⁶ TF1-184, Transcript 27 September 2005, pp. 80-81.

²⁵⁸⁷ TF1-184, Transcript 27 September 2005, pp. 81-82.

²⁵⁸⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 53.

²⁵⁸⁹ George Johnson, TF1-167, Transcript 16 September 2005, p. 54.

²⁵⁹⁰ TF1-334, Transcript 14 June 2005, p. 84.

²⁵⁹¹ TF1-334, Transcript 14 June 2005, pp. 85-87.

²⁵⁹² George Johnson, TF1-167, Transcript 16 September 2005, p. 54-55.

²⁵⁹³ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp. 22-23 and Transcript 11 October 2005, p. 124.

1700. At Allen Town, the rebels captured a small boy called Samuel who they accused of being a Kamajor. They cut off his two hands and tongue and told him to tell the ECOMOG that they were returning.²⁵⁹⁴
1701. At Wellington, the rebels amputated the hand of a child who was four or five years old and also threatened to amputate the hand of the child's mother.²⁵⁹⁵
1702. A witness was beaten on the orders of the Third Accused because, whilst cooking, smoke arose which may give away their position.²⁵⁹⁶ En route to Masiaka the dead bodies of Kamajors were mutilated and the civilians were forced to eat the meat of the dead Kamajors on threat of being killed if they refused.²⁵⁹⁷
1703. After the retreat at Masiaka rebels cut two women by carving AFRC/RUF on there bodies.²⁵⁹⁸

COUNT 12 CHILD SOLDIERS

1704. The First Accused was present when the First Accused's boys shot and killed about 30 people who refused to join the rebel movement.²⁵⁹⁹
1705. TF1-024 was captured by three rebel boys wearing ECOMOG uniforms armed with AK-47's who told him if he did not go with them they would kill him.²⁶⁰⁰ After the retreat at Allen Town captured civilians were guarded by SBU's (small boys units) who were armed and aged 13 to 15.²⁶⁰¹ Witness TF1-227 saw about 25 child combatants at Benguema who were attached to the commanders. The Third Accused had between five to ten child combatants.²⁶⁰²

²⁵⁹⁴ TF1-023, Transcript 9 March 2005, pp. 36-37.

²⁵⁹⁵ TF1-085, Transcript 7 April 2005, p. 7.

²⁵⁹⁶ TF1-085, Transcript 7 April 2005, p. 28.

²⁵⁹⁷ TF1-085, Transcript 7 April 2005, pp. 31-32.

²⁵⁹⁸ TF1-085, Transcript 7 April 2005, p. 43.

²⁵⁹⁹ TF1-024, Transcript 7 March 2005, pp. 46-47.

²⁶⁰⁰ TF1-024, Transcript 7 March 2005, pp. 44-45, 65.

²⁶⁰¹ TF1-023, Transcript 9 March 2005, p. 35.

²⁶⁰² TF1-227, Transcript 11 March 2005, pp. 16-23.

FORCED MARRIAGE

1706. After the retreat, TF1-023 was handed over for marriage to an SLA. She was not asked her consent but accepted the situation because there was no option. There was no marriage ceremony and she was forced to have sex with him.²⁶⁰³ This was common practice, i.e. rebels to take captured women as their wives without their consent.²⁶⁰⁴ At 4 Mile, the witness was handed to an SLA captain whom she remained with for five months.²⁶⁰⁵

1707. [REDACTED]
[REDACTED]
[REDACTED].²⁶⁰⁸

1708. After TF1-085 was raped by Colonel James, she was told that she was his wife.²⁶⁰⁹

COUNT 13 ABDUCTIONS AND FORCED LABOUR

1709. About 50 civilians were locked in the kitchen of State House for up to four days,²⁶¹⁰ who the SLAs wanted to force to join their movement to make up for the troops which they had lost.²⁶¹¹ TF1-024 was also forced to carry a bomb for the rebels from around State House to Calaba Town.²⁶¹²

1710. Corporal Bastard, from the AFRC group, took TF1-227's money, wedding ring and other things and made him carry these things in a bundle to Kola Tree and set fire to his house.²⁶¹³ There were about 200 captured or abducted civilians gathered at Kola Tree.

²⁶⁰³ TF1-023, Transcript 9 March 2005, p. 45.

²⁶⁰⁴ TF1-023, Transcript 9 March 2005, p. 46.

²⁶⁰⁵ TF1-023, Transcript 9 March 2005, p. 59.

²⁶⁰⁶ TF1-023, Transcript 9 March 2005, pp. 54-56.

²⁶⁰⁷ TF1-023, Transcript 10 March 2005, p. 24.

²⁶⁰⁸ TF1-023, Transcript 10 March 2005, pp. 29-30.

²⁶⁰⁹ TF1-085, Transcript 7 April 2005, p. 21.

²⁶¹⁰ TF1-024, Transcript 7 March 2005, p. 48.

²⁶¹¹ TF1-024, Transcript 7 March 2005, p. 44.

²⁶¹² TF1-024, Transcript 7 March 2005, p. 53.

²⁶¹³ TF1-227, Transcript 8 March 2005, pp. 95-97.

Some of these civilians had to do domestic work whilst others had to cook for the AFRC.²⁶¹⁴

1711. During the retreat, after the loss of Eastern Police Station, the First Accused, in the presence of the Second and Third Accused, ordered the abduction of civilians in order to bring their plight to the attention of the international community.²⁶¹⁵ The abductions started immediately as the troops left Uppun.²⁶¹⁶

1712. TF1-334 saw civilians, especially young girls and children, being taken to the SLA temporary headquarters at PWD.²⁶¹⁷ At the time the First Accused passed this order, nearly everyone had civilians because the First Accused said that it would attract the attention of the international community.²⁶¹⁸

1713. The civilians were well secured and it was the responsibility of the commander who abducted the civilian to secure the civilian, i.e. make sure that they did not escape.²⁶¹⁹

1714. Young girls who were abducted in Freetown later became the wives of the various commanders.²⁶²⁰ Some of the children who were abducted were as young as nine and ten years old and were later trained to be SBUs.²⁶²¹

1715. Men and women travelling with Commander 0-Five from Freetown were made to carry loads on their heads.²⁶²² During the retreat, TF1-023 was abducted by an armed young boy wearing combats along with five others and was taken to Allen Town.²⁶²³ There were about 100 civilians at Allen Town who had been captured.²⁶²⁴

1716. At Wellington, TF1-085 was beaten by the rebels and taken with them by force at gunpoint. Colonel James made her carry his load.²⁶²⁵ The witness was led out of

²⁶¹⁴ TF1-227, Transcript 8 March 2005, pp. 97-100.

²⁶¹⁵ TF1-334, Transcript 14 June 2005, p. 63.

²⁶¹⁶ TF1-334, Transcript 14 June 2005, p. 63.

²⁶¹⁷ TF1-334, Transcript 14 June 2005, p. 64.

²⁶¹⁸ TF1-334, Transcript 14 June 2005, p. 119.

²⁶¹⁹ TF1-334, Transcript 14 June 2005, p. 119.

²⁶²⁰ TF1-334, Transcript 14 June 2005, p. 120.

²⁶²¹ TF1-334, Transcript 14 June 2005, pp. 121-122.

²⁶²² Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 30.

²⁶²³ TF1-023, Transcript 9 March 2005, p. 31.

²⁶²⁴ TF1-023, Transcript 9 March 2005, p. 31.

²⁶²⁵ TF1-085, Transcript 7 April 2005, pp. 8-15.

Wellington with other civilians who were also forced to carry loads by Colonel James' boys.²⁶²⁶

1717. During the retreat, whilst travelling through the hills, rebels captured civilians including women, suckling mothers and pregnant women. Some civilians were given loads to carry whilst others were killed.²⁶²⁷

1718. At Benguema, after the retreat, there were over 200 people (civilians and rebels) where Brigadier Five-Five (Third Accused) was in command. SAJ Musa's wife Tina was also present.²⁶²⁸ The Third Accused called a muster parade for the civilians who were forced to work at the site of the bridge at Macdonald under the supervision of the rebels.²⁶²⁹ TF1-227 was also made to do domestic work against her will.²⁶³⁰

COUNT 14 BURNING

1719. During the advance to Freetown, around the end of December 1998, the rebels burnt Lumpe²⁶³¹ and Wellington.²⁶³²

1720. As they entered Freetown, the First Accused ordered the burning down of Kissy Police Station.²⁶³³ It was the police barracks which was burnt down at Kissy Mess Mess.²⁶³⁴ This burning is further corroborated by TF1-033.²⁶³⁵

1721. On the orders of the First Accused, a lot of vehicles in Fisher Lane were set on fire.²⁶³⁶ The First Accused took part in the burning of the vehicles.²⁶³⁷ TF1-024 saw burning and

²⁶²⁶ TF1-085, Transcript 7 April 2005, p. 15.

²⁶²⁷ TF1-085, Transcript 7 April 2005, p. 22.

²⁶²⁸ TF1-227, Transcript 11 March 2005, pp. 8-13.

²⁶²⁹ TF1-227, Transcript 11 March 2005, pp. 8-13.

²⁶³⁰ TF1-227, Transcript 11 March 2005, pp. 8-13.

²⁶³¹ TF1-227, Transcript 8 March 2005, p. 42.

²⁶³² TF1-023, Transcript 9 March 2005, p. 29.

²⁶³³ George Johnson, TF1-167, Transcript 16 September 2005, p. 22.

²⁶³⁴ TF1-334, Transcript 13 June 2005, p. 109 and Transcript 14 June 2005, p. 94.

²⁶³⁵ TF1-033, Transcript 11 July 2005, p. 59.

²⁶³⁶ TF1-334, Transcript 13 June 2005, p. 110.

²⁶³⁷ TF1-334, Transcript 13 June 2005, p. 112.

looting on Waterloo Street.²⁶³⁸ The group which was leaving Freetown was headed by the Third Accused, Five-Five.²⁶³⁹

1722. As they entered Freetown, pursuant to the earlier orders of the First Accused, the East End Police Station was burnt down.²⁶⁴⁰ On the orders of the First Accused, both the Central Police Station and Harbour Police Station were burnt down.²⁶⁴¹

1723. As early as 7 January, Sam Bockarie, in the presence of the Second and Third Accused, told the First Accused over the radio to hold their positions and to burn down central Freetown and all important buildings if the Nigerians broke through.²⁶⁴² Sam Bockarie gave the same message over the BBC radio station.²⁶⁴³

1724. Subsequently, when the invading SLAs were losing their positions, the burning started.²⁶⁴⁴ According to TF1-167, who was at the forefront of the team, the burning took place at Kingtom Police barracks, then houses up to St. John and Kroo Town Road.²⁶⁴⁵ Houses in Kingtom were also set on fire.²⁶⁴⁶ TF1-098's house in Young Street was burnt down by soldiers.²⁶⁴⁷ The witness knew that they were soldiers as he had seen them before they fled in the bush.²⁶⁴⁸ Rebels burnt down the pharmacy and other houses in the Kissy area of Freetown.²⁶⁴⁹

1725. As the First Accused was losing the ground, Mosquito told the First Accused over the radio to begin to burn some areas, especially the important areas.²⁶⁵⁰ Mosquito even announced over the BBC that he was reinforcing the commander in Freetown and ordered that strategic positions such as government buildings and commercial buildings, including banks, should be completely burnt down and had told the commander to start burning.²⁶⁵¹

²⁶³⁸ TF1-024, Transcript 7 March 2005, p. 45.

²⁶³⁹ TF1-084, Transcript 7 April 2005, p. 16.

²⁶⁴⁰ George Johnson, TF1-167, Transcript 16 September 2005, p. 25; TF1-334, Transcript 13 June 2005, p. 118.

²⁶⁴¹ TF1-334, Transcript 14 June 2005, p. 32.

²⁶⁴² George Johnson, TF1-167, Transcript 16 September 2005, pp. 40-41.

²⁶⁴³ George Johnson, TF1-167, Transcript 16 September 2005, p. 41.

²⁶⁴⁴ George Johnson, TF1-167, Transcript 16 September 2005, p. 42.

²⁶⁴⁵ George Johnson, TF1-167, Transcript 16 September 2005, p. 42.

²⁶⁴⁶ TF1-334, Transcript 14 June 2005, p. 43.

²⁶⁴⁷ TF1-098, Transcript 5 April 2005, p. 37.

²⁶⁴⁸ TF1-098, Transcript 5 April 2005, p. 38.

²⁶⁴⁹ TF1-083, Transcript 8 April 2005, pp. 50-51.

²⁶⁵⁰ TF1-334, Transcript 14 June 2005, p. 49.

²⁶⁵¹ TF1-334, Transcript 14 June 2005, p. 48.

1726. The First Accused ordered the burning of the town.²⁶⁵² The Third Accused distributed the petrol and stated that no man should be unarmed, each should have kerosene, petrol or machete.²⁶⁵³ At the junction of State Avenue and Pademba Road, Gibril Massaquoi heard the Third Accused order the “war candle to be put on,” i.e. soldiers should set fire to houses.²⁶⁵⁴ The Third Accused sent for kerosene to be distributed and was moving behind the troop as they advanced down the road and setting houses on fire.²⁶⁵⁵ Houses were set on fire by the rebels in the Thunder Hill area.²⁶⁵⁶
1727. The First Accused ordered the burning of Parliament House, Income Tax and CID police station.²⁶⁵⁷ Anything which the Third Accused did came from an order from the First Accused.²⁶⁵⁸ Ayo Cole, aka Six Fingers, repeated the order to burn outside State House to TF1-184.²⁶⁵⁹ After the orders to burn were given, the orders were executed, although the witness did not see the Parliament Building on fire.²⁶⁶⁰ Steve Bio prevented the soldiers from burning the Parliament and State House.²⁶⁶¹ The First Accused ordered the burning to start.²⁶⁶²
1728. The First Accused ordered the distribution of fuel at State House and ordered the burning of the big market that day.²⁶⁶³ Later there were burnings.²⁶⁶⁴ The First Accused said that they should burn down State House.²⁶⁶⁵
1729. Six Finger told TF1-024 that the bossman have burned the CID (Criminal Investigation Department) where plain clothes policeman worked.²⁶⁶⁶ The First Accused ordered the

²⁶⁵² TF1-184, Transcript 27 September 2005, p. 64.

²⁶⁵³ TF1-184, Transcript 27 September 2005, p. 65.

²⁶⁵⁴ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 14.

²⁶⁵⁵ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 15.

²⁶⁵⁶ TF1-083, Transcript 8 April 2005, pp. 54-56.

²⁶⁵⁷ TF1-083, Transcript 8 April 2005, pp. 54-56.

²⁶⁵⁸ TF1-184, Transcript 27 September 2005, p. 68.

²⁶⁵⁹ TF1-184, Transcript 27 September 2005, pp. 70-72.

²⁶⁶⁰ TF1-184, Transcript 27 September 2005, pp. 73-74.

²⁶⁶¹ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp. 15-16.

²⁶⁶² TF1-334, Transcript 14 June 2005, p. 47.

²⁶⁶³ TF1-334, Transcript 14 June 2005, p. 54.

²⁶⁶⁴ TF1-334, Transcript 14 June 2005, p. 55.

²⁶⁶⁵ TF1-024, Transcript 7 March 2005, p. 51.

²⁶⁶⁶ TF1-024, Transcript 7 March 2005, pp. 65-66.

CID station to be burnt down and pursuant to this order, SLA Mines set the CID on fire.²⁶⁶⁷

1730. At Upgun, a muster parade was held by the First Accused where it was decided to burn down Freetown, Kissy Road, Ross Road up to Fourah Bay Road.²⁶⁶⁸ The Second Accused was present at the muster parade and proceeded to the war front where he (the Second Accused) was the most senior officer.²⁶⁶⁹ Burning was going on at the front by the Second Accused's men who burnt Trinity Church.²⁶⁷⁰

1731. The rebels were burning and looting along Kissy Road as they retreated.²⁶⁷¹ At the Kissy Junction, the rebels beat people, burnt houses, and stole property.²⁶⁷² Akim, who was a military man, threatened to turn Kissy into a desert and thereafter the rebels started burning houses rampantly including TF1-084's own house.²⁶⁷³

1732. The Second Accused was in command of the burning at Kissy Road and Annie Walsh whilst the Third Accused led a group of men to Ross Road and carried out the orders to burn property.²⁶⁷⁴ The First Accused led the troop to the Fourah Bay area, where all the SLAs took part in the burning of property, including the First and Third Accused.²⁶⁷⁵

1733. According to TF1-167, the First Accused mustered the troops and ordered them to do a lot of burning and killing on Fourah Bay Road as a result of the civilians killing a soldier.²⁶⁷⁶ When TF1-167 arrived at Foray Bay Road he saw a lot of burning and killing and that civilians were inside burning houses and that they were shot if they tried to get out.²⁶⁷⁷

1734. [REDACTED]
[REDACTED].²⁶⁷⁸ Corporal Bastard from the AFRC

²⁶⁶⁷ TF1-334, Transcript 14 June 2005, pp. 5-6; TF1-033, Transcript 11 July 2005, pp. 60-62.

²⁶⁶⁸ TF1-184, Transcript 30 September 2005, p. 9.

²⁶⁶⁹ TF1-184, Transcript 30 September 2005, p. 9.

²⁶⁷⁰ TF1-184, Transcript 30 September 2005, p. 9.

²⁶⁷¹ TF1-024, Transcript 7 March 2005, p. 52.

²⁶⁷² TF1-084, Transcript 6 April 2005, pp. 34-38.

²⁶⁷³ TF1-084, Transcript 6 April 2005, p. 39.

²⁶⁷⁴ TF1-084, Transcript 6 April 2005, p. 39.

²⁶⁷⁵ TF1-334, Transcript 14 June 2005, p. 66.

²⁶⁷⁶ George Johnson, TF1-167, Transcript 16 September 2005, p. 43.

²⁶⁷⁷ George Johnson, TF1-167, Transcript 16 September 2005, p. 43.

²⁶⁷⁸ TF1-227, Transcript 14 June 2005, p. 73.

group, took TF1-084's money, wedding ring and other things and made him carry these things in a bundle to Kola Tree and set fire to his house.²⁶⁷⁹

1735. The First Accused ordered the burning of Shankardass²⁶⁸⁰ in the presence of the Second and Third Accused at PWD, and because it was a hasty retreat, abductions and burnings should start.²⁶⁸¹ [REDACTED]

[REDACTED].²⁶⁸²

1736. From PWD, as the troop withdrew to Kissy Mental Hospital, they burnt down houses and captured civilians as they retreated.²⁶⁸³ The civilians who were abducted included men, young women, and children about 10 to 12 years old who were taken to the where the Accused had withdrawn to at Kissy Mental Hospital.²⁶⁸⁴

1737. At Kissy Mental Hospital, the First Accused saw the civilians jubilating with ECOMOG and ordered his troop to go from the mental hospital as far as they could burn. Pursuant to this order, troops under the command of the First Accused returned to Freetown and started burning houses, especially around the Fischer Lane area.²⁶⁸⁵

1738. At Kissy Mental Hospital, about 60 cars were burnt on the orders of the First Accused.²⁶⁸⁶ Many vehicles were also burnt at Kissy Mental Hospital on the orders of the Second Accused.²⁶⁸⁷

1739. From Kissy Mental Hospital en route to Orangu, the Third Accused started to burn houses and after that the troops just started to burn houses at random.²⁶⁸⁸ Such burning expanded to all eastern part of Freetown. The troop set houses on fire as they retreated from Kissy Mental Hospital with the three Accused.²⁶⁸⁹ At Goba Water, the First and

²⁶⁷⁹ TF1-084, Transcript 8 April 2005, pp. 95-97.

²⁶⁸⁰ TF1-184, Transcript 27 September 2005, pp. 79-80.

²⁶⁸¹ TF1-334, Transcript 14 June 2005, p. 78.

²⁶⁸² TF1-104, Transcript 30 June 2005, p. 30.

²⁶⁸³ TF1-334, Transcript 14 June 2005, p. 80.

²⁶⁸⁴ TF1-334, Transcript 14 June 2005, p. 81 and Transcript 15 June 2005, p. 8.

²⁶⁸⁵ TF1-334, Transcript 14 June 2005, p. 84.

²⁶⁸⁶ TF1-334, Transcript 14 June 2005, p. 83.

²⁶⁸⁷ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp. 24-25 and Transcript 11 October 2005, pp. 188-199.

²⁶⁸⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 56.

²⁶⁸⁹ TF1-334, Transcript 14 June 2005, p. 98.

Third Accused ordered soldiers to burn houses as a result of which the entire eastern area was filled with smoke.²⁶⁹⁰

1740. At Allen Town, the First Accused ordered Calaba Town to be burnt down.²⁶⁹¹ The Third Accused led the mission to Calaba Town and burnt down the houses pursuant to the orders of the First Accused.²⁶⁹² After completing the mission of burning down the houses in Calaba Town, the Third Accused reported the same to the First Accused.²⁶⁹³

1741. During the retreat, when the rebels entered Wellington, they started burning houses.²⁶⁹⁴

1742. As the troops retreated to Waterloo, the Second Accused ordered that the houses along the highway be burnt so ECOMOG wouldn't have any place to sit down if they advanced that far. The Second Accused participated in the burning of houses, along with other SLA soldiers.²⁶⁹⁵

1743. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁶⁹⁷

1744. [REDACTED]
[REDACTED]
[REDACTED]²⁶⁹⁹
[REDACTED]
[REDACTED]
[REDACTED]

²⁶⁹⁰ TF1-153, Transcript 23 September 2005, pp. 22-25.

²⁶⁹¹ TF1-334, Transcript 14 June 2005, p. 100.

²⁶⁹² TF1-334, Transcript 14 June 2005, p. 100.

²⁶⁹³ TF1-334, Transcript 14 June 2005, p. 100.

²⁶⁹⁴ TF1-085, Transcript 7 April 2005, p. 7.

²⁶⁹⁵ TF1-334, Transcript 15 June 2005, pp. 11-12.

²⁶⁹⁶ TF1-169, Transcript 6 July 2005, p. 12.

²⁶⁹⁷ TF1-169, Transcript 6 July 2005, p. 12.

²⁶⁹⁸ TF1-169, Transcript 6 July 2005, pp. 12-13.

²⁶⁹⁹ [REDACTED]

²⁷⁰⁰ TF1-169, Transcript 6 July 2005, pp. 18-19.

1746. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] 2701

[REDACTED]
 [REDACTED]
 [REDACTED]

1748. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] 2703

COUNT 14 LOOTING

1749. On 5 January rebels entered TF1-085's house in Wellington and looted it.²⁷⁰⁴ On 6 January the First Accused ordered the operations commander to go to the UN House and get the jeeps parked there. Pursuant to this order, Jeeps and Toyota Land Cruisers were taken and brought back.²⁷⁰⁵ This is corroborated by Gibril Massaquoi who saw most of the commanders driving vehicles, some of which had UNDP written on it (driven by Third Accused) and UNWFP, which vehicles he understood to have been looted from Freetown.²⁷⁰⁶

²⁷⁰¹ TF1-169, Transcript 6 July 2005, pp. 20-21.

²⁷⁰² [REDACTED]

²⁷⁰³ TF1-169, Transcript 6 July 2005, pp. 46-61.

²⁷⁰⁴ TF1-085, Transcript 6 April 2005, p. 62.

²⁷⁰⁵ TF1-334, Transcript 14 June 2005, p. 24.

²⁷⁰⁶ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 126.

1750. On 6 January there was looting in the Presidential Office at State House, which was completely vandalised.²⁷⁰⁷ The SLAs looted houses in Kingtom. They just broke into the houses and took what they wanted even if civilians were in the houses.²⁷⁰⁸

1751. In the Kissy area rebels would enter people's homes and take televisions, radios and whatever else was valuable.²⁷⁰⁹ During the retreat rebels entered his house and took money and other valuables.²⁷¹⁰

1752. Corporal Bastard from the AFRC group, took TF1-227's money, wedding ring and other things and made him carry these things in a bundle to Kola Tree and set fire to his house.²⁷¹¹ [REDACTED]

[REDACTED].²⁷¹²

²⁷⁰⁷ TF1-334, Transcript 14 June 2005, p. 26.

²⁷⁰⁸ TF1-334, Transcript 14 June 2005, p. 43.

²⁷⁰⁹ TF1-084, Transcript 6 April 2005, p. 39.

²⁷¹⁰ TF1-084, Transcript 8 April 2005, pp. 59-61.

²⁷¹¹ TF1-227, Transcript 8 April 2005, pp. 95-97.

²⁷¹² TF1-104, Transcript 30 June 2005, p. 30.

XX. CRIMES IN PORT LOKO FROM JANUARY 1999 UNTIL APRIL 1999

1753. After being pushed out of the Western Area by ECOMOG forces following the Invasion of Freetown in January 1999, the Accused split up. The Second Accused retreated to an area of Port Loko District commonly referred to as the “Westside”, “Western Jungle” or “Westside Jungle”. There he commanded a group of up to 700 soldiers. The soldiers under the Command of the Second Accused were often referred to as the “Westside Boys,”²⁷¹³ who committed a number of atrocities in the region.

1754. Several well-placed Prosecution insider witnesses have testified to the Second Accused as being the commander of the SLAs in Port Loko during the relevant indictment period, including TF1-334, TF1-167 and TF1-046. According to this evidence, after arriving in the Western Jungle the Second Accused learned that the First Accused had been stripped of his commander status, making the Second Accused the overall commander of that area.²⁷¹⁴ Shortly thereafter, he called a meeting at Westside, where he consolidated his power by naming himself the chief in command of the troops, restructuring his forces and making appointments and promotions.²⁷¹⁵ He demonstrated his command over the Westside by using his troops to restrict the passage of people to and from the area.²⁷¹⁶

JOINT CRIMINAL ENTERPRISE

1755. For all crimes committed as mentioned below occurring after the ECOMOG intervention, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were within the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation. Liability pursuant to

²⁷¹³ Prosecution Witness TF1-334 estimated that the number of people under the control of the Second Accused at Westside exceeded 700, including captured civilians. TF1-334, Transcript 15 June 2005, p. 31. Prosecution Witness TF1-167 estimated there were about 500-600 fighters, among them civilians. Soldiers under the Second Accused’s command in Port Loko included: Tito, [REDACTED], George Johnson, MTR, KBC, Stagger, Cambodia, Colonel Pikin, Ibrahim Bio Sesay and TF1-334. TF1-334, Transcript 16 June 2005, p. 103. This describes troop composition from Mammah to Mile 38. See also Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 44-45)

²⁷¹⁴ TF1-334, Transcript 15 June 2005, p. 23

²⁷¹⁵ TF1-334, Transcript 15 June 2005, p. 25-26; George Johnson, TF1-167, Transcript 16 September 2005, p. 69; Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 10 October 2005, pp. 44-45.

²⁷¹⁶ Gibril Massaquoi, TF1-046, Transcript 11 October 2005, pp. 130-132.

the theory of joint criminal enterprise for this period has been analysed above and this analysis applies to the crime base of Port Loko.

INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 6(1)

Kamara

Planning, Instigating or otherwise Aiding and Abetting

1756. It is clear from the evidence that the Second Accused, given his position of command²⁷¹⁷ and the management of his troops,²⁷¹⁸ designed and organised the attacks and crimes committed in Port Loko District. Villages and towns, such as Mammah Town, were attacked and burnt, in particular when the troops under the Second Accused's command had to retreat.²⁷¹⁹ The attacks also involved the use of child soldiers²⁷²⁰ and civilians for forced labour.²⁷²¹ The Second Accused intended that the crimes committed would occur, or was aware of the substantial likelihood of the occurrence of all of these crimes. This may be inferred from his active behaviour before their commission, his participation in them as well as his command position.²⁷²² By these actions, the Second Accused is liable for planning the crimes charged.

1757. In addition, the Second Accused prompted others to participate in the planned unlawful acts.²⁷²³ Furthermore the Second Accused, by not reacting to the crimes repeatedly committed by his troops, can also be considered as having instigated these acts and the crimes charged.²⁷²⁴

²⁷¹⁷ TF1-334, Transcript 15 June 2005, p. 23; Gibril Massaquoi, TF1-046, Transcript 11 October 2005, pp. 130-132

²⁷¹⁸ TF1 334, Transcript 15 June 2005, pp. 31-32; George Johnson, TF1-167, Transcript 16 September 2005, pp. 69-70.

²⁷¹⁹ George Johnson, TF1-167, 16 September 2005, pp. 65-66.

²⁷²⁰ George Johnson,, TF1-167, Transcript 16 September 2005, p. 72; TF1-334, Transcript 14 June 2005, p. 122; TF1-023, Transcript 10 March 2005, 7 November 2005.

²⁷²¹ TF1-334, Transcript 15 June 2005, pp. 21-23.

²⁷²² George Johnson, TF1-167, 16 September 2005, pp. 65-66.

²⁷²³ George Johnson, TF1-167, Transcript 16 September 2005, p. 65; TF1-023, Transcript 10 March 2005, pp. 36-37; TF1-334, Transcript 15 June 2005, p. 25.

²⁷²⁴ TF1-253, Transcript 15 April 2005, pp. 89-91.

1758. Alternatively, the Second Accused is liable for aiding and abetting all of the crimes charged through his presence on the ground,²⁷²⁵ his position of authority and his active support for the operations. The criminal acts were so widespread that the only possible inference, in view of his command position, is that the Second Accused actively encouraged these acts or was aware that he was assisting the perpetrators in the commission of crimes.

Ordering

1759. The evidence demonstrates that the Second Accused directly ordered numerous crimes. He gave orders for the killings of civilians and the burning of all houses in Mammah Town.²⁷²⁶ The Second Accused further ordered the burning of Mile 38²⁷²⁷, the execution of civilians in Gberibana²⁷²⁸ and various attacks in the area.²⁷²⁹ The Second Accused ordered the attack and burning of all villages as well as the execution of any civilian on the way to Port Loko Town.²⁷³⁰ Similarly, he ordered the burnings and executions in Makolo.²⁷³¹ By his orders the Second Accused also implied amputations of limbs of civilians, abductions and looting.²⁷³² In view of the compelling evidence that these places were attacked pursuant to the orders of the Second Accused, and his position of authority in relation to the attack, the only reasonable inference is that the Second Accused ordered all of the crimes committed in these locations. He intended to bring the commission of these crimes about, or was aware of the substantial likelihood that they would occur based on his express or implied orders in relation to these attacks. By these actions, the Second Accused is liable for ordering the crimes charged.

²⁷²⁵ TF1-023, Transcript 7 November 2005, pp. 28-33, Transcript 10 March 2005, p. 33.

²⁷²⁶ TF1-334, Transcript 15 June 2005, pp. 17-20; TF1-334, Transcript 15 June 2005, p. 23.

²⁷²⁷ TF1-334, Transcript 15 June 2005, p. 25.

²⁷²⁸ TF1-334, Transcript 15 June 2005, p. 29, p. 32;

²⁷²⁹ TF1-334, Transcript 15 June 2005, p. 32; George Johnson, TF1-167, Transcript 16 September 2005, pp. 70-71.

²⁷³⁰ TF1-334, Transcript 15 June 2005, p. 35.

²⁷³¹ TF1-334, Transcript 15 June 2005, pp. 38-39.

²⁷³² George Johnson, TF1-167, Transcript 16 September 2005, p. 77; TF1-320, Transcript 8 April 2005, pp. 16-18; DBK-129, Transcript 18 October 2006, pp. 19-20.

Committing

1760. The evidence shows that the Second Accused forced a boy to go into a burning house and the boy died in the flames.²⁷³³ The evidence further established that the Second Accused directly participated in the burning of Mammah Town²⁷³⁴ and Mile 38²⁷³⁵, and that he raped a woman.²⁷³⁶ As such he is liable for committing extermination, murder, acts of terrorism, collective punishment, pillage and rape.

SUPERIOR RESPONSIBILITY UNDER ARTICLE 6(3) OF THE STATUTE

1761. The Prosecution submits that in the light of all the evidence, coupled with the high level of authority possessed by the Second Accused during the attack and occupation of the villages in the Port Loko District, the Accused bears responsibility pursuant to Article 6(3) of the Statute for the crimes committed during this period.

1762. The Prosecution submits that the evidence demonstrates that there was a superior subordinate relationship between the Second Accused and the perpetrators, who in most cases were carrying out the orders of the Second Accused, resulting in the commission of the crimes as charged.

1763. Based on the fact that in most cases the orders to commit crimes were given to the subordinates directly by the Second Accused or at least in his presence, the Second Accused either knew or at the very least had reason to know that the subordinates were about to commit the offences or had done so.

1764. As the key commander in the field, the Second Accused clearly had the material ability to prevent offences or to punish those subordinates responsible for committing crimes. The necessary and reasonable measures to do so were at the disposal of the Accused, however, far from putting any such procedures into effect, he himself gave orders for, and actively encouraged, killings, physical and sexual violence and the burning of villages amounting to a campaign of terrorism.

²⁷³³ George Johnson, TF1-167, 16 September 2005, pp. 65-66.

²⁷³⁴ TF1-334, Transcript 15 June 2005, p. 23.

²⁷³⁵ TF1-334, Transcript 15 June 2005, p. 25.

²⁷³⁶ TF1-334, Transcript 15 June 2005, pp. 50-56; Exhibit p. 21

COUNTS 3-11: UNLAWFUL KILLINGS, SEXUAL VIOLENCE, PHYSICAL VIOLENCE

1765. The Prosecution further submits that throughout the relevant indictment period, the Westside boys committed a series of violent attacks on the civilian population of Port Loko District, including murders, amputations, and other forms of physical violence.

1766. They also looted and burned a number of villages. These various acts of violence commenced shortly after the retreat of the Second Accused's troops from the Freetown peninsula. In a similar manner to attacks against civilians carried out by the Junta in other parts of Sierra Leone, those conducted by the Westside Boys in Port Loko District were done as part of the *modus operandi* to terrorize and punish civilians.

1767. Some of the more prominent attacks during this period occurred in and around the towns of Mammah, Mile 38, Gbergibana, Manarma, Port Loko, and Makolo.

Mammah Town

1768. The Second Accused retreated to the Port Loko District after being pushed out of the vicinity of Newton in the Western Area by ECOMOG.²⁷³⁷ Prosecution witness TF1-334 testified that as the Second Accused withdrew, he ordered one of his securities to go with some men and 'decorate' nearby Mammah Town,²⁷³⁸ meaning that any civilian captured should be executed and displayed at the town junction.

1769. Fifteen bodies were later found chopped up and lying dead at Mammah, including two women and three children. The Second Accused reacted to this display by congratulating his subordinate for this "well-done" work.²⁷³⁹ After some time, the Westside Boys were forced to retreat from Mammah because of ECOMOG attacks.²⁷⁴⁰ Before his troops left Mammah, the Second Accused ordered the town to be set on fire, and he himself participated in the burning.²⁷⁴¹

²⁷³⁷ TF1-334, Transcript 15 June 2005, pp. 17-20; George Johnson, TF1-167, Transcript 16 September 2005, p. 63.

²⁷³⁸ TF1-334, Transcript 15 June 2005, p. 20.

²⁷³⁹ TF1-334, Transcript 15 June 2005, pp. 20-21.

²⁷⁴⁰ TF1-334, Transcript 15 June 2005, p. 23; George Johnson, TF1-167, Transcript 16 September 2005, p. 65.

²⁷⁴¹ TF1-334, Transcript 15 June 2005, p. 23.

1770. These events, as recounted by TF1-334, are corroborated by several other Prosecution witnesses.

1771. George Johnson - TF1-167 testified that the Second Accused ordered one of his securities to make the terrain surrounding Mamamah²⁷⁴² “more fearful” by killing civilians and displaying them on the main highway.²⁷⁴³ During the withdrawal from Mamamah, the Second Accused ordered a house to be burned down while villagers were inside it. As the house burned, a small boy tried to escape, at which point the Second Accused fired on the ground in front of the boy to force him back into the flames. The boy burned to death inside the house.²⁷⁴⁴

1772. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁷⁴⁸

1773. During her captivity TF1-023 regularly saw the Second Accused,²⁷⁴⁹ who had been identified to her as the overall commander,²⁷⁵⁰ at close proximity.²⁷⁵¹ The frequency and proximity of the witness’s encounters with the Second Accused bolsters her ability to correctly identify the Second Accused at Mamama as a commander. Also, her evidence that the Second Accused ordered the area to be made “more fearful” corroborates the evidence given by George Johnson - TF1-167, thus affirming her evidence that she was present during the attack.

²⁷⁴² Spelling used by TF1-167.

²⁷⁴³ George Johnson, TF1-167, Transcript 16 September 2005, p. 65; TF1-023, Transcript 10 March 2005, pp. 36-37

²⁷⁴⁴ George Johnson, TF1-167, 16 September 2005, p. 65-66.

²⁷⁴⁵ TF1-023, Transcript 9 March 2005, pp. 30-31.

²⁷⁴⁶ TF1-023, Transcript 10 March 2005, p. 34-36.

²⁷⁴⁷ Spelling used by TF1-023.

²⁷⁴⁸ TF1-023, Transcript 10 March 2005, pp. 35-36.

²⁷⁴⁹ TF1-023, Transcript 10 March 2005, p. 33.

²⁷⁵⁰ At Four Mile, witness was told by the person she was staying with that “Bazzy” was the overall commander. TF1-023, Transcript 7 November 2005, p. 28.

²⁷⁵¹ The witness testified that in Four Mile The Second Accused would visit her commander “husband” regularly, and she would see him moving about. TF1-023, Transcript 10 March 2005, p. 33. Witness also testified that she was present when “Bazzy” had discussions with other people at Four Mile, thus allowing to observe the Second Accused’s manner of speech. TF1-023, Transcript 7 November 2005, p. 28.

1774. The events at Mamamah were also corroborated by Defence witness DBK-129, who testified that one of the soldiers was ordered to kill and display bodies of civilians, to make the area “fearful”. He testified that a number of people were killed and their bodies and heads lain at a checkpoint, and that houses were burned as the troops retreated.²⁷⁵² The witness’s account of how dead civilian bodies were put on display closely resembles the testimony given by other Prosecution witnesses, and the use of the term “fearful” lends support to the account given by TF1-167.

1775. Defence witness DBK-012 denied the events at Mamamah,²⁷⁵³ but the Prosecution submits that his credibility is severely impugned for reasons set out below. Based on the totality of the evidence, which includes both Prosecution and Defence witnesses, the Prosecution argues that it has proven this crime base, including killings, burnings and acts of physical violence, beyond a reasonable doubt.

Mile 38

1776. TF1-334 testified that the Westside Boys retreated from Mammah to Mile 38,²⁷⁵⁴ where they were subsequently attacked by ECOMOG.²⁷⁵⁵ As they pulled out of Mile 38, the Second Accused ordered Mile 38 to be set on fire, and personally participated in the burning.²⁷⁵⁶ The passage through Mile 38 and the burning of houses as the forces retreated from ECOMOG is corroborated by Defence witness DBK-129.²⁷⁵⁷ Furthermore, TF1-023 testified that she saw the Second Accused at Mile 38 around the relevant time the Prosecution is alleging, along with about 300-400 rebels.²⁷⁵⁸

1777. Again the defence has not challenged the Prosecution evidence regarding the commission of crimes at Mile 38. On the contrary at least one Defence witness acknowledges the presence of the Westside Boys in that area.²⁷⁵⁹

²⁷⁵² DBK-129, 18 October 2006, pp. 17-18; 9 October 2006, pp. 87-90.

²⁷⁵³ DBK-012, 18 October 2006, pp. 72-73

²⁷⁵⁴ TF1-334, Transcript 15 June 2005, p. 24; George Johnson, TF1-167, Transcript 16 September 2005, p. 67.

²⁷⁵⁵ TF1-334, Transcript 15 June 2005, p. 25.

²⁷⁵⁶ TF1-334, Transcript 15 June 2005, p. 25.

²⁷⁵⁷ DBK-129, Transcript 9 October 2006, pp. 89-90.

²⁷⁵⁸ TF1-023, Transcript 7 November 2005, p. 33, 10 March 2004, p. 34.

²⁷⁵⁹ DBK-129.

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Gberibana

1778. From Mile 38 the Westside Boys headed into the jungle in the Okra Hill area of Port Loko.²⁷⁶⁰ Here, they set up a base in the village of Gberibana.²⁷⁶¹ In order to accomplish this, the Second Accused ordered his captain to make Gberibana a civilian free area, meaning that any civilians captured within that area had to be executed.²⁷⁶² Later, TF1-334 saw a number of bodies chopped in Gberibana, for which the Second Accused congratulated his captain for a job “well done.”²⁷⁶³ From his base in Gberibana, the Second Accused restructured his troops²⁷⁶⁴ and ordered various attacks on neighbouring areas.²⁷⁶⁵ He ordered that any areas in which ECOMOG was based had to be burned down and any captured civilians should be executed.²⁷⁶⁶

1779. Again, the defence has not brought any evidence challenging these events, and support for the establishment of a base in this area at this time is provided by Defence witness DBK-129.²⁷⁶⁷ The Prosecution submits that the consistency of the Prosecution evidence in relation to atrocities committed at Gberibana, in light of any contest from the defence, establishes that these atrocities did occur.

1780. The Prosecution also submits the evidence also demonstrates that the Second Accused, who was the commander in the Westside at Gberibana, raped a woman abducted from Freetown after ordering that she be beaten and locked in a rice box.²⁷⁶⁸

Port Loko Town and Manarma

1781. Prosecution evidence consistently states that while based at Gberibana, in or about April of 1999,²⁷⁶⁹ the Second Accused decided that his Westside Boys should attack Port Loko Town,²⁷⁷⁰ to capture arms and ammunitions from the Malian ECOMOG soldiers stationed

²⁷⁶⁰ TF1-334, Transcript 15 June 2005, p. 24.

²⁷⁶¹ TF1-334, Transcript 15 June 2005, p. 28; George Johnson, TF1-167, Transcript 16 September 2005, p. 67.

²⁷⁶² TF1-334, Transcript 15 June 2005, p. 28-29.

²⁷⁶³ TF1-334, Transcript 15 June 2005, p. 29.

²⁷⁶⁴ TF1-334, Transcript 15 June 2005, pp. 31-32; George Johnson, TF1-167, Transcript 16 September 2005, p. 69-70.

²⁷⁶⁵ TF1-334, Transcript 15 June 2005, p. 32; George Johnson, TF1-167, Transcript 16 September 2005, p. 70-71.

²⁷⁶⁶ TF1-334, Transcript 15 June 2005, p. 32.

²⁷⁶⁷ DBK-129, Transcript 9 October 2006, pp. 92-95.

²⁷⁶⁸ TF1-334, Transcript 15 June 2005, pp. 50-56; Exhibit P21.

²⁷⁶⁹ George Johnson, TF1-167 testified that the attack on Port Loko occurred prior to Independence Day of Sierra Leone, April 27, 1999. George Johnson, TF1-167, Transcript 16 September 2005, p. 79.

²⁷⁷⁰ TF1-334, Transcript 15 June 2005, p. 34; George Johnson, TF1-167, Transcript 16 September 2005, p. 72.

there.²⁷⁷¹ He ordered his troops to burn down any village and kill the civilians on the way to Port Loko Town, as he did not want to see any new civilians in his camp.²⁷⁷² This mission was commanded by TF1-167.²⁷⁷³

1782. En route to Port Loko Town, TF1-334 testified that the Westside Boys attacked a village where the Second Accused's captain executed a civilian woman with a machete.²⁷⁷⁴ This account is corroborated by TF1-167.²⁷⁷⁵ The village was burnt down as the troops withdrew.²⁷⁷⁶

1783. TF1-167 then sent an advance team to the next village. When he arrived at the next village, TF1-167 saw "a lot" of dead bodies on the ground, some of them with amputated arms and legs. He was informed that all the civilians in the village had been killed by the Second Accused's security officer.²⁷⁷⁷ The troops came across one young girl who was still alive with her arms amputated. They placed a letter, warning the Malians that they were about to attack them, around her neck and told her to take the message to them in Port Loko.²⁷⁷⁸ When TF1-167 returned back to camp he reported these killings to the Second Accused,²⁷⁷⁹ who took no action on the report.²⁷⁸⁰

1784. While Prosecution "insider" witnesses did not know names of the villages that were attacked en route to Port Loko, the testimony of several Prosecution and Defence witnesses suggest that one of these villages was Manarma.

1785. TF1-253 was a resident of Manarma²⁷⁸¹ who testified that in April of 1999 he was captured by rebel soldiers while trying to flee an attack on his village.²⁷⁸² He was beaten by the soldiers and taken back to his village, where he saw the body of a pregnant woman who had been beheaded. The hand of her child protruded through a hole in her stomach.

²⁷⁷¹ George Johnson, TF1-167, Transcript 16 September 2005, p. 74.

²⁷⁷² TF1-334, Transcript 15 June 2005, p. 35.

²⁷⁷³ TF1-167, Transcript 16 September 2005, pp. 72-74.

²⁷⁷⁴ TF1-334, Transcript 15 June 2005, p. 34

²⁷⁷⁵ George Johnson, TF1-167, Transcript 16 September 2005, p. 75.

²⁷⁷⁶ TF1-334, Transcript 15 June 2005, p. 35.

²⁷⁷⁷ George Johnson, TF1-167, Transcript 16 September 2005, pp. 75-76.

²⁷⁷⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 77.

²⁷⁷⁹ George Johnson, TF1-167, Transcript 16 September 2005, p. 76.

²⁷⁸⁰ George Johnson, TF1-167, Transcript 16 September 2005, p. 78-79.

²⁷⁸¹ Spelling used by TF1-253

²⁷⁸² TF1-253, Transcript 15 April 2005, pp. 53-61.

He also saw many other corpses, including that of one of his uncles.²⁷⁸³ There he met a Colonel Johnson, who was one of those in charge of the Manarrma area.²⁷⁸⁴ The rebels were cutting off peoples' hands in a house.²⁷⁸⁵ He testified that the attackers burned down all of the houses in the town that day.²⁷⁸⁶ After the attack on Manarrma, the rebels went to Port Loko, and they took the witness with them, bound, as a captive.²⁷⁸⁷ This testimony corroborates other Prosecution evidence in several respects. First of all, it supports the conclusion that TF1-167, whose last name is Johnson and who has acknowledged leading the attack on Port Loko, attacked Manarrma en route to Port Loko. Secondly, TF1-253 places the attack in April 1999,²⁷⁸⁸ which corroborates the Prosecution case as to the timing of the advance on Port Loko. Thirdly, the nature of the atrocities recounted by this witness, including amputations and burnings, corroborates the account given by Prosecution insider witnesses.

1786. TF1-320, a resident of Manarma at the time of the attack, also gave evidence that is highly corroborative of the Prosecution's case. He testified that rebel soldiers wearing full military uniforms²⁷⁸⁹ attacked the village, killing and amputating civilians.²⁷⁹⁰ He stated that the women civilians were taken into a house and "axed" or "hacked", and the house was then set on fire.²⁷⁹¹ He also stated that the rebels shot the burning houses.²⁷⁹² He testified that the rebels were commanded by someone who ordered the burnings²⁷⁹³ and that only three villagers survived the attack.²⁷⁹⁴ The credibility of this witness, who lost his wife in the attack, is enhanced by the fact that he observed these events from close range.²⁷⁹⁵ Following this attack, the witness was taken, bound, with the soldiers to Port Loko as a captive, and eventually back to base at Gberibana.²⁷⁹⁶

²⁷⁸³ TF1-253, 15 April 2005, p. 81.

²⁷⁸⁴ TF1-253, 15 April 2005, p. 81, 18 April 2005, p. 64.

²⁷⁸⁵ TF1-253, 15 April 2005, p. 90, 18 April 2005, p. 77

²⁷⁸⁶ TF1-253, Transcript 15 April 2005, pp. 93-94.

²⁷⁸⁷ TF1-253, Transcript 15 April 2005, p. 94

²⁷⁸⁸ TF1-253, Transcript 15 April 2005, p. 53

²⁷⁸⁹ TF1-320, Transcript 8 April 2005, p. 28.

²⁷⁹⁰ TF1-320, Transcript 8 April 2005, p. 13

²⁷⁹¹ TF1-320, Transcript 8 April 2005, pp. 14-16.

²⁷⁹² TF1-320, Transcript 8 April 2005, p. 15

²⁷⁹³ TF1-320, Transcript 8 April 2005, pp. 36-41

²⁷⁹⁴ TF1-320, Transcript 8 April 2005, p. 16.

²⁷⁹⁵ TF1-320, Transcript 8 April 2005, p. 13, 15-16.

²⁷⁹⁶ TF1-320, Transcript 8 April 2005, pp. 16-18.

1787. Defence witness DBK-012 affirms that there was an attack on ECOMOG positions in Port Loko Town by the Westside Boys, led by George Johnson.²⁷⁹⁷ DBK-012 testified that he was one of the soldiers who participated in the attack on Port Loko Town. In his evidence he stated that in Manarma he was ordered to gun down one civilian woman while one of his fellow attackers beat another pregnant civilian to death with a stick. After this “successful” operation the troops advanced to Port Loko.²⁷⁹⁸ This testimony, from a Defence witness, is highly corroborative of the Prosecution’s case with respect to the Manarma crime base.

1788. Defence witness DBK-129 also affirms that an attack on Port Loko was conducted from the base in Westside, in which troops captured two Malian soldiers.²⁷⁹⁹

Makolo

1789. After the attack on Port Loko the Second Accused announced another attack on Makolo. He ordered troops to destroy the entire village by burning it and to execute any civilians.²⁸⁰⁰ Troops captured three young women and one of the Second Accused’s securities chopped them with an axe, splitting their heads.²⁸⁰¹ The forces reported back to the Second Accused, who did not discipline them.²⁸⁰²

1790. The testimony of Defence witness DBK-129 supports the Prosecution position that an attack on Makolo occurred.²⁸⁰³ He denied the occurrence of any burnings but testified that looting did take place.²⁸⁰⁴

Gberi Junction

1791. After the attack on Makolo, TF1-334 testified that the Westside Boys made an attack on Gberi Junction, where the town was set on fire.²⁸⁰⁵ This attack was corroborated by TF1-167.²⁸⁰⁶

²⁷⁹⁷ DBK-012, Transcript 6 October 2006, pp. 44-45.

²⁷⁹⁸ DBK-012, Transcript 6 October 2006, p. 47

²⁷⁹⁹ DBK-012, Transcript 9 October 2006, pp. 95-98.

²⁸⁰⁰ TF1-334, Transcript 15 June 2005, p. 38.

²⁸⁰¹ TF1-334, Transcript 15 June 2005, p. 39.

²⁸⁰² TF1-334, Transcript 15 June 2005, p. 40.

²⁸⁰³ DBK-129, Transcript 9 October 2006, pp. 98-101.

²⁸⁰⁴ DBK-129, Transcript 9 October 2006, pp. 98-100; 18 October 2006, pp. 19-20

COUNTS 12-13 USE OF CHILD SOLDIERS, ABDUCTIONS AND FORCED LABOUR

1792. The Prosecution submits that it has demonstrated that throughout the relevant indictment period, the Westside boys travelled with a group of captured civilian men, women and children, whom they forced to perform various forms of servitude.²⁸⁰⁷ It has also shown that the troops under the command of the Second Accused included children who were trained fighters.²⁸⁰⁸
1793. Specifically, Prosecution witness TF1-334 testified that the Second Accused ordered civilians under his control in the Okra Hill area to dig up the road in order to create an obstacle for ECOMOG soldiers and secure a defensive position towards Masiaka.²⁸⁰⁹ This use of forced labour was corroborated by Defence witness DBK-129.²⁸¹⁰ Moreover, TF1-320 testified that he was captured by rebel soldiers during the attack on Manarma and taken captive to Port Loko.²⁸¹¹ Further support for this practice was given by TF1-023, a young woman who was captured in the Western Area in January 1999²⁸¹² by rebel soldiers who identified themselves as members of the AFRC.²⁸¹³ She was forcefully made to become the “wife” of one of the commanders and perform sexual services.²⁸¹⁴ She was eventually taken to Mile 38 for about a month,²⁸¹⁵ where she saw the Second Accused on numerous occasions.²⁸¹⁶
1794. The Prosecution submits that the defence has not mounted any significant challenge to the Prosecution’s assertion that civilians were taken hostage or forced to perform acts of labour in the Westside. In fact, some of these very allegations were corroborated by Defence witness DBK-037, who testified that there were about 300 abductees held at Westside.²⁸¹⁷

²⁸⁰⁵ TF1-334, Transcript 15 June 2005, p. 41.

²⁸⁰⁶ George Johnson, TF1-167, Transcript 16 September 2005, p. 80.

²⁸⁰⁷ TF1-334, Transcript 14 June 2005, p. 115.

²⁸⁰⁸ George Johnson, TF1-167, Transcript 16 September 2005, pp. 71-72; TF1-334, Transcript 14 June 2005, p. 122.

²⁸⁰⁹ TF1-334, Transcript 15 June 2005, p. 21-23.

²⁸¹⁰ DBK-129, Transcript 9 October 2006, pp. 85-87.

²⁸¹¹ TF1-320, Transcript 8 April 2005, pp. 13, 16.

²⁸¹² TF1-023, Transcript 9 March 2005, pp. 30-31

²⁸¹³ TF1-023, Transcript 10 March 2005, p. 25; TF1-023, Transcript 10 March 2005, p. 26.

²⁸¹⁴ TF1-023, Transcript 9 March 2005, p. 45-47.

²⁸¹⁵ TF1-023, Transcript 10 March 2005, p. 34

²⁸¹⁶ TF1-023, Transcript 7 November 2005, p. 33.

²⁸¹⁷ DBK-037, Transcript 4 October 2006, p. 55.

DEFENCE EVIDENCE REGARDING THE SECOND ACCUSED AS COMMANDER AT WESTSIDE

1795. The Prosecution submits that the defence has not seriously challenged, either through cross-examination or other evidence, the Prosecution's crime-based evidence with respect to Port Loko throughout the relevant indictment period. In fact, a number of Defence witnesses have testified, in varying detail, that crimes were committed at Westside.²⁸¹⁸ Thus, the Prosecution submits that the commission of these atrocities, including murders, amputations and other forms of physical violence, burnings, sexual violence and forced labour has been proven beyond a reasonable doubt.

1796. The primary theme arising from the Defence evidence regarding Port Loko appears to be the assertion that the Second Accused was not present in Port Loko when the crimes were committed and certainly held no command position in Port Loko during this period. While a number of Defence witnesses professed to have heard of the Westside Boys,²⁸¹⁹ they consistently stated that they did not see or hear of the Second Accused at Westside²⁸²⁰ or were unaware that he held a leadership role there.²⁸²¹ However, at least one Defence witness has stated that the Second Accused was a member of the Westside Boys.²⁸²²

1797. DAB-033 testified that from February to April 1999, the overall commander at Westside was Foday Kallay,²⁸²³ and his second in command was George Johnson.²⁸²⁴ However, the Prosecution has shown during cross-examination the total dishonesty of this witness throughout large parts of his evidence. This witness's evidence concerning command in Port Loko can be given absolutely no weight. Firstly, he only went to Westside on one

²⁸¹⁸ DAB-079, 28 July 2006, p. 69; DBK-131, Transcript 26 October 2006, p. 63. DBK-037, DBK-129, DBK-012, DBK-129, Transcript 9 October 2006, pp. 85-87. DBK-037, Transcript 4 October 2006, p. 55. DBK-129, Transcript 18 October 2006, pp. 17-18; 9 October 2006, pp. 87-90. DBK-129, Transcript 9 October 2006, pp. 89-90. DBK-012, Transcript 6 October 2006, pp. 46-47. DBK-129, Transcript 18 October 2006, pp. 19-20.

²⁸¹⁹ DAB-018, Transcript 7 September 2006, p. 96; DAB-023, Transcript 3 August 2006, p. 121; DAB-040, Transcript 5 September 2006, p. 66; DAB-079, Transcript 28 July 2006, p. 69; DAB-095, Transcript 28 September 2006, p. 69; TRC-01, Transcript 16 October 2006, p. 108.

²⁸²⁰ DAB-018, Transcript 7 September 2006, p. 97; DBK-012, Transcript 18 October 2006, p. 86, Transcript 6 October 2006, pp. 48-49; DBK-131, Transcript 10 October 2006, p. 104.

²⁸²¹ DAB-033, Transcript 2 October 2006, p. 106; DAB-023, Transcript 3 August 2006, p. 121; DAB-040, Transcript 5 September 2006, p. 66.; DAB-079, Transcript 28 July 2006, p. 69; DAB-095, Transcript 28 September 2006, p. 70; DBK-012, Transcript 18 October 2006, pp. 87-88; DBK-111, Transcript 22 September 2006, pp. 6-7; DAB-156, Transcript 29 September 2006, pp. 85-86; DBK-037, Transcript 5 October 2006, 17-18; DBK-131, Transcript 26 October 2006, pp. 61-62; TRC-01, Transcript 16 October 2006, p. 108.

²⁸²² DAB-079, Transcript 28 July 2006, p. 69, 73.

²⁸²³ DAB-033, Transcript 25 September 2006, p. 109.

²⁸²⁴ DAB-033, Transcript 25 September, 2006, p. 109.

occasion, when the Peace Accord was being signed in 1999. It is a matter of historical record that the Lomé Peace Accord was signed on 7 July 1999, meaning that any observations personally made by the witness at Westside fall well outside of the relevant indictment period for Port Loko District.

1798. In fact, the Prosecution does not dispute that the Second Accused was not the leader of the Westside Boys at the time of the Lomé Peace talks. Finally, the witness claims to have learned about the command structure at Westside through radio communications because he was using the same frequency as those at Westside.²⁸²⁵ This pure hearsay evidence, received at a geographically remote location from Port Loko, ought to be given little if any weight especially as such radio communications were not corroborated by any other witness.

1799. DAB-095 also testified that he heard that Foday Kallay was the commander for the Westside.²⁸²⁶ However, the reliability of this testimony is impugned by the fact that the witness admitted he had never been to Westside,²⁸²⁷ meaning that this assertion is based entirely on hearsay evidence. Also, as was the case with DAB-033, the witness's professed knowledge of the Westside refers to the period of time surrounding the Peace Accord of July 1999, which falls outside the relevant indictment period. Finally, it is the contention of the Prosecution, supported by the admission of a Defence witness,²⁸²⁸ that DAB-095 is the cousin of the First Accused and thus possesses a strong motive to lie before this Court.

1800. DBK-012 testified that during the movement from Freetown to Westside, the Second Accused was not with the troops at all, because he was under detention at an unspecified location.²⁸²⁹ He stated in his examination-in-chief the overall commander at the Westside was FAT Sesay and his second in command was George Johnson.²⁸³⁰ He later contradicted himself in cross-examination, stating that George Johnson was the overall

²⁸²⁵ DAB-033, Transcript 25 September 2006, p. 109-110.

²⁸²⁶ DAB-095, Transcript 28 September 2006, p. 74.

²⁸²⁷ DAB-095, Transcript 28 September 2006, p. 70.

²⁸²⁸ DAB-096, Transcript 25 September 2006, pp. 8-9.

²⁸²⁹ DBK-012, Transcript 18 October 2006, pp. 86-87.

²⁸³⁰ DBK-012, Transcript 6 October 2006, p. 44.

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commander at Westside.²⁸³¹ He claimed never to have seen or heard of the Second Accused at Westside.²⁸³²

1801. While DBK-012 provides further support for the existence of armed SLA soldiers at Westside, as well as the commission of atrocities in the course of various attacks in the jungle surrounding Okra Hill, the Prosecution submits that any evidence given by this witness relating to the presence or absence of the Second Accused at Westside should be rejected as being outright lies.

1802. Firstly, he is the only witness on record to state that the Second Accused was under detention during the pullout from the Western area. This assertion flies in the face of all other Prosecution and defence testimony, making it highly questionable.

1803. [REDACTED]
[REDACTED]²⁸³³
Furthermore, it is the case of the Prosecution that this witness has testified before this Court in exchange for assistance he has received from counsel for the Second Accused in relation to an unrelated criminal matter.²⁸³⁴

1804. The testimony of DBK-129 substantially supports the narrative that forms the basis of the Prosecution case in Port Loko district between January and April 1999, including events in Mammah, Mile 38, Okra Hill, Port Loko Town, and Makolo. However, throughout his testimony he consistently denies any implication on the part of the Second Accused. Rather, he repeatedly implicates George Johnson as the overall commander at Westside and states that George Johnson ordered all of the atrocities described in his testimony, and claims not to have seen the Second Accused at Westside.²⁸³⁵ The Prosecution accepts the presence of this witness in the Westside area during the relevant indictment period, and submits his testimony corroborates most of the crime-based elements of the Prosecution case vis-à-vis Port Loko. However, the Prosecution rejects the manner in which he has transferred responsibility for all atrocities from the Second Accused to George Johnson,

²⁸³¹ DBK-012, Transcript 18 October 2006, p. 75.

²⁸³² DBK-012, Transcript 6 October 2006, pp. 48-49.

²⁸³³ DBK-012, Transcript 18 October 2006, p. 84

²⁸³⁴ DBK-012, Transcript 18 October 2006, p. 83.

²⁸³⁵ See generally DBK-129, Transcript 9 October 2006, pp. 85-101; 18 October 2006, pp. 17-19.

and asks that this Court do the same. In this respect the Prosecution submits that the witness is lying.

1805. Defence witness DAB-156 testified that she was captured and raped by George Johnson,²⁸³⁶ and subsequently taken to the Westside as a captive.²⁸³⁷ According to her testimony, Foday Kallay and George Johnson were in charge of the Westside,²⁸³⁸ and the three Accused were under arrest.²⁸³⁹ The Prosecution submits that this witness's testimony ought to be completely disregarded because according to her own testimony she gave birth to her child in the Westside on 20 November 1999, and arrived in that area very shortly prior to the completion of her pregnancy.²⁸⁴⁰ Thus, even if the events she has recounted in relation to Port Loko district are true (which the Prosecution disputes), her testimony falls well outside the relevant indictment period.

1806. DBK-037 testified that he was at Westside from February 1999 onward.²⁸⁴¹ According to his testimony, FAT Sesay was the overall commander at Westside and George Johnson was his second in command.²⁸⁴² He also confirms the presence of TF1-334 in the Westside during the Indictment period

1807. The Prosecution submits that this Court should reject the aspect of his testimony of who was in command at the Westside. This is clearly a lie. Significantly of the many people who have testified regarding the Westside, he is the only witness to indicate that FAT Sesay was the overall commander there. This key discrepancy seriously impugns the credibility of his testimony in this regard. If FAT Sesay led the invasion in Freetown (which is denied by the Prosecution) and was also in the Westside it is wholly implausible that other Defence witness would have placed George Johnson or any one else in command at the Westside and not mentioned FAT Sesay. The truth is that FAT Sesay was not in the Westside during the period of the Indictment.

²⁸³⁶ DAB-156, Transcript 29 September 2006, p. 43.

²⁸³⁷ DAB-156, Transcript 29 September 2006, p. 66.

²⁸³⁸ DAB-156, Transcript 29 September 2006, p. 68.

²⁸³⁹ DAB-156, Transcript 29 September 2006, p. 69.

²⁸⁴⁰ DAB-156, Transcript 29 September 2006, pp. 69-70, 85.

²⁸⁴¹ DBK-037, Transcript 5 October 2006, p. 18

²⁸⁴² DBK-037, Transcript 4 October 2006, p. 51

1808. DBK-131 stated that he passed through the Westside between May and June 1999, where George Johnson was overall commander.²⁸⁴³ The Prosecution submits that this testimony has little or no value because even if true (which the Prosecution contests), it falls outside the relevant Indictment period.

CONCLUSION

1809. It is the case of the Prosecution that the crime-bases as alleged in the Indictment have not been challenged by the Defence and should therefore be accepted as proven by this Court.

1810. The Prosecution submits that the only issue for the Trial Chamber to decide is who was in command of the Westside Boys during the relevant indictment period. Was it the Second Accused as alleged by the Prosecution or others as stated by various Defence witnesses ranging from George Johnson to Foday Kallay to FAT Sesay.

1811. The Prosecution submits that it is significant that the two key Prosecution insider witnesses would have known the Second Accused very well and would have been able to identify him. George Johnson was the Second Accused Chief of Security (CSO) throughout most of the Junta period and moved with him everywhere after the Intervention from Kono to the Westside. The Defence have not seriously dented the credibility of this witness throughout cross-examination.

1812. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Defence have not seriously dented the credibility of this witness throughout cross-examination.

1813. Both TF1-167 and TF1-334 would have known and be able to recognize the Second Accused and indeed do not deny their own involvement in the commission of crimes in the Westside. What is remarkable is how consistent these two witnesses are in recounting the events in the Westside in respect of both the crimes and the Second Accused's position of command. In large parts of their evidence they entirely corroborate each other. The

²⁸⁴³ DBK-131, Transcript 10 October 2006, p. 93.

weight to be attached to their evidence is strengthened by the crime-base witnesses who identify the Second Accused as being in command.

1814. In contrast most of the Defence witnesses through cross-examination have already been shown to have lied in large and important parts of their evidence; they seldom corroborate each other as to who was in command of the Westside; seldom are they there or have knowledge about the relevant time period. Those who were personally present throughout the relevant crime period have simply lied, not about the events, but who was in command. They have simply dropped the Second Accused from the picture. As such all the Defence witnesses regarding the question of who was in command of the Westside should be given little if any weight.

1815. The Prosecution also submits that it is significant that although most of the Defence witnesses deny seeing the Second Accused in the Westside, neither he nor they have given an explanation of where he actually was at the time. Being second in command of the Freetown Invasion after the First Accused the Defence witnesses ought to have known where the Second Accused was.

XXI. COUNT 12 USE OF CHILD SOLDIERS

1816. At all times relevant to the Indictment, throughout the locations in the Republic of Sierra Leone specifically mentioned, the AFRC conscripted, enlisted and/or used boys and girls under the age of 15 to participate actively in hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps and thereafter used as fighters.²⁸⁴⁴

1817. The three Accused, by their acts or omissions, are individually criminally responsible for these crimes in all locations mentioned in the Indictment.

CHILD SOLDIERS: ENLISTMENT/CONSCRIPTION/USE

1818. The Prosecution notes the findings of the Prosecution Expert Witness and Defence Expert Witness to establish the well founded fact that for the duration of the conflict in Sierra Leone, the use of child soldiers was a widespread practice by all the warring parties, including the AFRC.

1819. [REDACTED]

²⁸⁴⁴ *Brima*, Indictment, para 65.

²⁸⁴⁵ Witness TF1-296, Transcript 4 October 2005, p. 92; [REDACTED]

²⁸⁴⁶ Witness TF1-296, Transcript 4 October 2005, p. 85; Exhibit P 33, para 43.

²⁸⁴⁷ Witness TF1-296, Transcript 4 October 2005, p. 92. [REDACTED]

²⁸⁴⁸ Witness TF1-296, Transcript 4 October 2005, p. 90; Exhibit P 33, para 43.

²⁸⁴⁹ TF1-296, [REDACTED], Transcript 4 October 2005, p. 94 and Transcript 5 October 2005, p. 53.

[REDACTED]

2852

1820. The Prosecution submits that the facts in this report are reliable and credible. [REDACTED]

[REDACTED]

2855

1821. [REDACTED]

[REDACTED]

2856

²⁸⁵⁰ TF1-296, Prosecution Expert on Child Soldiers , Transcript 4 October 2005, p. 100.

²⁸⁵¹ TF1-296, Prosecution Expert on Child Soldiers, Transcript 4 October 2005, p. 100-101.

²⁸⁵² TF1-296, Prosecution Expert on Child Soldiers, Transcript 4 October 2005, p. 96.

²⁸⁵³ [REDACTED]

²⁸⁵⁴ Ibid, para 3.

²⁸⁵⁵ Ibid, para 1.

²⁸⁵⁶ TF1-296, Prosecution Expert on Child Soldiers, Transcript 4 October 2005, p. 92.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ²⁸⁵⁷.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1823. The report of the Defence expert²⁸⁵⁸ does not contradict the Prosecution case regarding the use of child soldiers during the conflict in Sierra Leone. The Defence expert stated that one of the most alarming trends of the conflict was the participation of children as soldiers.²⁸⁵⁹ He went on to state that different sources suggest that the practice of child soldiers' recruitment and involvement in the Sierra Leone conflict was extensive and used by all the warring factions. The RUF-SL, the AFRC/SLA, the Westside Boys and the CDF did not only recruit and train soldiers but also involved them in their war efforts in various ways.²⁸⁶⁰

1824. He states that up to 12% of the estimated 45,000 fighters were children (equals 5,400 child soldiers) and that in the DDR program, 6,845 children were demobilized²⁸⁶¹. [REDACTED]

[REDACTED] The Defence expert further states that whilst forced recruitment was particularly associated with the RUF, voluntary enlistment into the warring faction was also noticeable, especially with the government forces of the CDF and the Sierra Leone Army (SLA). Although a significant

²⁸⁵⁷ Exhibit P 33, para 1.

²⁸⁵⁸ Exhibit D 37, The Use of Child Soldiers in the Sierra Leone Conflict, Expert Report Submitted to the Special Court for Sierra Leone, 11 October 2006.

²⁸⁵⁹ Ibid, para 1.

²⁸⁶⁰ Ibid, para 40.

²⁸⁶¹ Ibid, para 40.

number of the child fighters were abducted and trained in deadly acts of combat, a good number of them volunteered to become members of warring factions.²⁸⁶² Most of the children that followed the AFRC members after their ousting from power on 10 February 1998 were willing volunteers and followers, especially of military members' relatives and close associates. These children joined their relatives and close associates in retreating after the ousting of the AFRC out of fear of reprisals.²⁸⁶³ The Defence expert concludes in his findings that all the warring factions recruited child soldiers through various recruitment methods, including voluntary and forced.²⁸⁶⁴

1825. The Prosecution did not challenge the report of the Defence. In fact, both, the Prosecution Expert and the Defence Expert conclude in their findings that the use of child soldiers in the conflict of Sierra Leone was a widespread practice by,, amongst others, the AFRC.

[REDACTED]
[REDACTED]. The Defence expert's report differs slightly from the Prosecution expert's in that he states that most but not all children in the AFRC faction were willing volunteers and were not abducted. Even if this is true (which is denied by the Prosecution), it does not reduce the charges against the Accused or extinguish their liability. Significantly, the Defence expert witness does not deny that the AFRC forcefully conscripted children. Should it be true that children joined the AFRC on a voluntary basis, such voluntary joining of a warring faction is equally as unlawful as conscripting children by force. No legal defence can be drawn from this difference.²⁸⁶⁵

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1827. It is no defence that other parties to the conflict also recruited, enlisted or otherwise used child soldiers. The general finding that the use of child soldiers was prevalent also within

²⁸⁶² Ibid, para 48.

²⁸⁶³ Ibid, para 51.

²⁸⁶⁴ Ibid, para 53.

²⁸⁶⁵ Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para. 4557; *Article 51 of the Fourth Geneva Convention also forbids any pressure or propaganda aimed at securing "voluntary" enlistment.*

the AFRC throughout the conflict in Sierra Leone is corroborated by the testimony of the following Prosecution witnesses who were either child soldiers themselves or witnesses who testified about the use of child soldiers.

1828. Witness TF1-199, a former child soldier of 18 years of age at the time of his testimony and born on [REDACTED],²⁸⁶⁶ testified that he, together with other people, including adults, children, girls and aged people,²⁸⁶⁷ had been abducted in Madina Loko, Bombali District after the Christmas holiday 1998 by rebels, a mixture of RUF/AFRC,²⁸⁶⁸ some of whom were disguised in combat and some of whom did not wear any combat uniform.²⁸⁶⁹ In 1998, the witness was 11 years old. They said that every commander should choose his own boys from the adults and the children.²⁸⁷⁰ The witness was chosen by [REDACTED].²⁸⁷¹ (who was an SLA) The witness stated that in Karina, they (the SLAs) abducted other children, boys and girls, from the town.²⁸⁷²

1829. In Fadugu, the rebels abducted more children.²⁸⁷³ In Bafodia, the group the witness was with met a big group of rebels. [REDACTED] told the witness that they were both RUF and AFRC.²⁸⁷⁴ [REDACTED] told the witness that Col. Savage was in charge of Bafodia.²⁸⁷⁵ Savage mostly wore combat uniform, but not full combat. The witness saw Savage sometimes.²⁸⁷⁶ Other evidence adduced at this trial has proved beyond a reasonable doubt that Savage was an SLA throughout the conflict.²⁸⁷⁷ The witness saw Savage talk to [REDACTED].²⁸⁷⁸ The witness and five other boys²⁸⁷⁹ were trained by [REDACTED] in the use of guns, crawling and military commands.²⁸⁸⁰ In Bafodia, other boys, girls and adults

²⁸⁶⁶ TF1-199, Transcript 6 October 2005, p. 68.

²⁸⁶⁷ TF1-199, Transcript 6 October 2005, p. 73.

²⁸⁶⁸ TF1-199, Transcript 6 October 2005, p. 71.

²⁸⁶⁹ TF1-199, Transcript 6 October 2005, p. 69.

²⁸⁷⁰ TF1-199, Transcript 6 October 2005, p. 74.

²⁸⁷¹ TF1-199, Transcript 6 October 2005, p. 74.

²⁸⁷² TF1-199, Transcript 6 October 2005, p. 76.

²⁸⁷³ TF1-199, Transcript 6 October 2005, p. 79.

²⁸⁷⁴ TF1-199, Transcript 6 October 2005, p. 81.

²⁸⁷⁵ TF1-199, Transcript, 6 October 2005, p. 114.

²⁸⁷⁶ TF1-199, Transcript 6 October 2005, p.99

²⁸⁷⁷ George Johnson, TF1-167, Transcript 15 September 2005, p. 40; TF1-334, Transcript 19 May 2005, p. 21; TF1-133, Transcript 7 July 2005, p. 104; TF1-199

²⁸⁷⁸ TF1-199, Transcript 6 October 2005, p. 99.

²⁸⁷⁹ TF1-199, Transcript 6 October 2005, p.84.

²⁸⁸⁰ TF1-199, Transcript 6 October 2005, p. 83.

belonged to various other commanders, and other commanders were training other children.²⁸⁸¹

1830. The witness and [REDACTED] as part of the AFRC/RUF forces²⁸⁸² went on an attack in Kabala against ECOMOG and government soldiers following instruction by Col. Savage.²⁸⁸³ This order was given to [REDACTED] at a muster parade and [REDACTED] told the witness they had to go and attack.²⁸⁸⁴ The witness also testified that he went with his commander, [REDACTED], to attack a Civil Defence Force village, and [REDACTED] forced the witness to rape a girl.²⁸⁸⁵ The witness testified that [REDACTED] said to him that small boys from the SBU should have sex with girls because they were men. By SBU, the witness means 'Small Boys Unit', which are boys that belong to the commanders, these rebel commanders, AFRC and RUF commanders.²⁸⁸⁶ The witness said they were small RUF and AFRC.²⁸⁸⁷

1831. The witness further testified that he was given marijuana to smoke by [REDACTED] who said that he should smoke because he had to go and attack.²⁸⁸⁸ The witness said further that [REDACTED] told him that Col. Savage was not the highest and that Savage's commander was Brigadier Mani.²⁸⁸⁹ There is overwhelming evidence that he was an SLA, but the witness never saw this Mani.²⁸⁹⁰ Witness testified that on an attempt to escape he was caught and, as a punishment, flogged by [REDACTED], which resulted in a mark behind his back, which he showed to the court.²⁸⁹¹

1832. It is the submission of the Prosecution that the evidence of this witness is credible and should be given weight. He was abducted at age 11 and served as a child soldier. He has no apparent self-interest or loyalty to any of the parties which could motivate him to lie. His testimony is quite detailed and it is unlikely that he invented such details. Furthermore,

²⁸⁸¹ TF1-199, Transcript 6 October 2005, p.84

²⁸⁸² TF1-199, Transcript 6 October 2005, p. 87.

²⁸⁸³ TF1-199, Transcript 6 October 2005, p. 86.

²⁸⁸⁴ TF1-199, Transcript 6 October 2005, p.102.

²⁸⁸⁵ TF1-199, Transcript 6 October 2005, p. 89.

²⁸⁸⁶ TF1-199, Transcript 6 October 2005, p. 91.

²⁸⁸⁷ TF1-199, Transcript 6 October 2005, p. 91.

²⁸⁸⁸ TF1-199, Transcript 6 October 2005, p. 92.

²⁸⁸⁹ TF1-199, Transcript 6 October 2005, p.92.

²⁸⁹⁰ TF1-199, Transcript 6 October 2005, p. 104.

²⁸⁹¹ TF1-199, Transcript 6 October 2005, p. 93.

the witness gave evidence of an attack on Kabala which is corroborated by other witnesses (TF1-158 and TF1-180, see below) who also gave evidence that such an attack on Kabala occurred.

1833. The Defence did not challenge the actual evidence regarding the abduction of the witness.

By asking if the witness heard ██████ taking orders from others than Savage, both of whom are AFRC, the Defence accepted the fact that the witness was abducted by the AFRC.²⁸⁹² In the Motion for Acquittal filed under Rule 98 by the First Accused,²⁸⁹³ the Defence argues that Brigadier Mani was senior in rank and position to Alex Tamba Brima, accepting the fact that Mani was AFRC. The Defence challenged the age of the witness at the time of his abduction. However, the witness stated he was born on ██████ and he knows this because his mother told him.²⁸⁹⁴ There is no reason to believe that he invented such a date. He also stated the year of his abduction and this was not challenged by the Defence. The Prosecution submits that the evidence of witness TF1-199 provides further corroboration, because the witness gave evidence of other children being abducted and that he and other children were trained by ██████ in the use of guns, crawling and military commands.²⁸⁹⁵

1834. Witness TF1-157, another child soldier aged 20 at the time of his testimony,²⁸⁹⁶ testified that rebels and soldiers had attacked Bornoya, Bombali District and that he had been abducted by the rebels and soldiers together with other people²⁸⁹⁷ during ‘Operation Pay Yourself’, which was in February 1998. The witness was 13 years old at that time. The witness further testified that he met other children who were captured forcefully²⁸⁹⁸ in the jungle in Rosos.

1835. In Rosos, there was a mixture of rebels and soldiers, but they were altogether as one body; they were all rebels.²⁸⁹⁹ The rebels decided to give 16²⁹⁰⁰ civilians, including the

²⁸⁹² TF1-199, Transcript, 6 October 2005, p. 114-116.

²⁸⁹³ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-442, “Brima Motion for Acquittal Pursuant to Rule 98”, 12 December 2005.

²⁸⁹⁴ TF1-199, Transcript, 6 October 2005, p. 67-68.

²⁸⁹⁵ TF1-199, Transcript, 6 October 2005, p. 83-84.

²⁸⁹⁶ TF1-157, Transcript, 22 July 2005, p. 56-57.

²⁸⁹⁷ TF1-157, Transcript, 22 July 2005, p. 58, 62, 63, 64.

²⁸⁹⁸ TF1-157, Transcript, 22 July 2005, p. 65-67.

²⁸⁹⁹ TF1-157, Transcript, 25 July 2005, p. 10.

²⁹⁰⁰ TF1-157, Transcript, 25 July 2005, p. 3, 4.

witness, training in fighting in Robat Mas,²⁹⁰¹ so that they could go and fight.²⁹⁰² The witness's commander was [REDACTED], who was from the Sierra Leone Army.²⁹⁰³ The witness knew the names Gullit, Five-Five, Adama Cut Hand, Woyoh and Abdul amongst the Rebels.²⁹⁰⁴ The witness also saw Gullit but could not describe him; he was wearing an overall and he knows it was Gullit because people used to call this name,²⁹⁰⁵ but he did not see Gullit with the troops.²⁹⁰⁶ Abdul was also from the Sierra Leone Army.²⁹⁰⁷ The Prosecution submits that this evidence shows that both the First Accused and the Third Accused were fully aware that they were using child soldiers to fight for them.

1836. Witness TF1-157 is a credible witness. He was abducted and served as a child soldier. He has no apparent self-interest or loyalty to any of the parties which could motivate him to lie. The witness gave the account of what happened to him without blaming solely RUF or AFRC. The Defence did not effectively challenge the credibility of the witness.. In fact, it did not challenge key evidence. The testimony therefore reveals that witness TF1-157 was 13 years of age at the time he was abducted, that he was captured by AFRC/RUF rebels, that he met other children in Rosos and that they were given training. All of this evidence remained unchallenged. The Prosecution submits that the evidence of this witness should be given weight especially as it is corroborated in large part by witness TF1-158, whose testimony follows below.

1837. Witness TF1-158, 18 years of age during his evidence,²⁹⁰⁸ stated that he was abducted in May 1998 in Bornoya, Bombali District²⁹⁰⁹ by fighters who were wearing uniform trousers, combat, some small clothes, and some red bands around their heads.²⁹¹⁰ A boy made the introduction to the leaders SAJ Musa, Gullit, Kanu Santigie Borbor and 0-Five in Karina.²⁹¹¹ The witness also saw Gullit, 0-Five and Five-Five in Mateboi.²⁹¹² From

²⁹⁰¹ TF1-157, Transcript, 22 July 2005, p. 106,107.

²⁹⁰² TF1-157, Transcript, 25 July 2005, p. 6.

²⁹⁰³ TF1-157, Transcript, 25 July 2005, p. 20.

²⁹⁰⁴ TF1-157, Transcript, 25 July 2005, p. 23.

²⁹⁰⁵ TF1-157, Transcript, 26 September 2005, p.16.

²⁹⁰⁶ TF1-157, Transcript, 26 September 2005, p.17.

²⁹⁰⁷ TF1-157, Transcript, 26 September 2005, p. 20.

²⁹⁰⁸ TF1-158, Transcript, 26 July 2005, p. 29.

²⁹⁰⁹ TF1-158, Transcript, 26 July 2005, p. 30,36.

²⁹¹⁰ TF1-158, Transcript, 26 July 2005, p. 30.

²⁹¹¹ TF1-158, Transcript, 26 July 2005, p. 32.

²⁹¹² TF1-158, Transcript, 26 July 2005, p. 37.

Mateboi, they went to Rosos; they were many, around 400, civilians and the soldiers.²⁹¹³
Gullit, 0-Five and Five-Five were also in Rosos.²⁹¹⁴

1838. Staff Alhaji, who, according to the evidence, was an SLA, told them to go and look for food. The order was given to Staff Alhaji by Gullit, as Staff had told them. They were also given guns by Staff Alhaji.²⁹¹⁵ Witness was trained with about 300 to 350 people.²⁹¹⁶ Witness at that time was ten years old, some of the others were seven, eight, nine and ten years old.²⁹¹⁷ The training was done by Staff Alhaji. Gullit, Kanu Santigie Borbor and 0-Five were there and stood by, the witness saw them.²⁹¹⁸ Staff Alhaji was reporting to Gullit; the witness was standing by when he made the reports.²⁹¹⁹ After one week, they left Rosos and the witness escaped.²⁹²⁰ He was captured again²⁹²¹ by Officer Demo who was with Savage's group. The witness saw Savage,²⁹²² and was trained to cock and fire.²⁹²³ Savage told them to attack Kabala. There were about 500 people; the witness had guns and pistols given by Savage. They were divided into three groups, but they had to pull out because ECOMOG was already there,²⁹²⁴ then the group went to Kabala and the witness said there was infighting between the RUF and AFRC - Officer Demo said this. Consequently, they went and disarmed.²⁹²⁵

1839. Witness TF1-157 and TF1-158 [REDACTED]. The Defence challenged witness TF1-158 by asking him whether they had colluded. However, TF1-158 credibly answered that he stayed with [REDACTED], but that he did not speak to his brother about his testimony.²⁹²⁶ In other words, there is no evidence of collusion whatsoever and there is no evidence that affects the credibility of this witness. It is the Prosecution's submission that this witness too was a victim of the war and gave both

²⁹¹³ TF1-158, Transcript, 26 July 2005, p. 38.

²⁹¹⁴ TF1-158, Transcript, 26 July 2005, p. 38.

²⁹¹⁵ TF1-158, Transcript, 26 July 2005, p. 38.

²⁹¹⁶ TF1-158, Transcript, 26 July 2005, p. 39.

²⁹¹⁷ TF1-158, Transcript, 26 July 2005, p. 40.

²⁹¹⁸ TF1-158, Transcript, 26 July 2005, p. 40.

²⁹¹⁹ TF1-158, Transcript, 26 July 2005, p. 40.

²⁹²⁰ TF1-158, Transcript, 26 July 2005, p. 41.

²⁹²¹ TF1-158, Transcript, 26 July 2005, p. 42.

²⁹²² TF1-158, Transcript, 26 July 2005, p. 43.

²⁹²³ TF1-158, Transcript, 26 July 2005, p. 44.

²⁹²⁴ TF1-158, Transcript, 26 July 2005, p. 44-45.

²⁹²⁵ TF1-158, Transcript, 26 July 2005, p.45.

²⁹²⁶ TF1-158, Transcript, 26 July 2005, p.53.

accurate and truthful evidence before the court. He had no reason to lie and was in no conflict of loyalty that gave him reason to lie. Furthermore, his testimony is quite detailed and it seems unreasonable to think he made it up. This witness gave evidence that he was captured, that children received training and that Gullit and Santigie Borbor had knowledge of child soldiers being trained in Rosos. This, the Prosecution submits, is corroborated evidence against both the First and Third Accused in their use of child soldiers during the conflict.

1840. The evidence of TF1-157 and TF1-158 is also corroborated by TF1-156, a civilian who lives in Bornoya²⁹²⁷ and who stated that during an attack on his village two children were abducted from Bornoya (who the witness could name) and that other people disappeared that day, but that the witness did not see the perpetrators.²⁹²⁸

1841. TF1-180 testified that he was born in 1986 and that he had a birth certificate but had left it in Makeni.²⁹²⁹ He said he was abducted by RUF rebels in Tonkoba Village, Bombali District.²⁹³⁰ He cannot tell the year of his abduction but it was while Kabbah was in power.²⁹³¹ The rebel commander had asked the witness's mother the age of the witness, and she said he would be 17 in November 1986.²⁹³² The witness was locked up in the Makeni Police barracks together with about 20 other captured children and older civilians.²⁹³³ He was trained to fight, taught how to fire a gun, dodge a jet and how to lay an ambush. The witness and other small boys were trained by Maj. Shell and Cpl. Vakeh. They were trained for one month.²⁹³⁴ After the training, they returned to Makeni Police Barracks where the rebels said the children should be tested in Lunsar.²⁹³⁵

1842. The children had to line up and Major Shell said they were to be given cocaine and brown-brown so they would be "audacious" while fighting²⁹³⁶. After the drugs were given to the witness and the other child combatants, they were put into a vehicle and taken to

²⁹²⁷ TF1-156, Transcript, 26 September 2006, p. 34.

²⁹²⁸ TF1-156, Transcript, 26 September 2006, p. 35.

²⁹²⁹ TF1-180, Transcript, 8 July 2005, p. 4.

²⁹³⁰ TF1-180, Transcript, 8 July 2005, p. 5.

²⁹³¹ TF1-180, Transcript, 8 July 2005, p. 19.

²⁹³² TF1-180, Transcript, 8 July 2005, p. 6.

²⁹³³ TF1-180, Transcript, 8 July 2005, p. 7-9.

²⁹³⁴ TF1-180, Transcript, 8 July 2005, p.9-10.

²⁹³⁵ TF1-180, Transcript, 8 July 2005, p. 10.

²⁹³⁶ TF1-180, Transcript, 8 July 2005, p. 10.

Lunsar to see Pa Mani where Superman was.²⁹³⁷ Superman was in charge of Lunsar; his men opened fire on the witness and others.²⁹³⁸ The witness returned to Makeni, where General Gullit, Major Santigie Borbor Kanu and General Issa Sesay ordered that the Small Boys should go on a food finding mission and that they should bring other small boys if they saw any.²⁹³⁹

1843. On these missions, they captured other small boys, who were handed over to the Makeni Bosses, General Issa Sesay, 0-Five, Brigadier Santigie Borbor Kanu and General Gullit.²⁹⁴⁰ The witness used to see them when they were driving around in Makeni in their vehicles.²⁹⁴¹ The witness and his group stayed in Makeni for two weeks when Brigadier Issa, Brigadier Santigie Borbor Kanu, Gullit and 0-Five, who were all in Makeni, gave an order that all the small boys in the street should be captured and that the small boys in Makeni should be sent to fight.²⁹⁴² Almost 150 boys were sent to fight upon an order passed by Gullit, Five-Five, 0-Five and General Issa.²⁹⁴³ Some of the boys were older but the majority was small boys.²⁹⁴⁴ Their commander was Merciful Killer who was a member of the People's Army.²⁹⁴⁵ They attacked Kabala, specifically targeting Guineans and ECOMOG.²⁹⁴⁶ The witness testified that Gullit and Santigie Kanu were in Makeni and that Kanu and Issa Sesay were in Makeni at the same time but that each had its own group.²⁹⁴⁷ The witness was not able to tell whether Five-Five or Gullit were RUF or AFRC. He says there were different groups in Makeni, Issa was in charge of it and he, the witness, was RUF.²⁹⁴⁸

1844. This witness has no reason to lie and there is no indication that he did. Quite the opposite: he testified that he was abducted by the RUF, that he himself was RUF and that he did not know which group Gullit and Five-Five belonged to. The witness clearly did not blame

²⁹³⁷ TF1-180, Transcript, 8 July 2005, p. 12.

²⁹³⁸ TF1-180, Transcript, 8 July 2005, p. 13.

²⁹³⁹ TF1-180, Transcript, 8 July 2005, p. 14, 30.

²⁹⁴⁰ TF1-180, Transcript, 8 July 2005, p. 14, 15.

²⁹⁴¹ TF1-180, Transcript, 8 July 2005, p. 34.

²⁹⁴² TF1-180, Transcript, 8 July 2005, p. 15, 30.

²⁹⁴³ TF1-180, Transcript, 8 July 2005, p. 16.

²⁹⁴⁴ TF1-180, Transcript, 8 July 2005, p. 38.

²⁹⁴⁵ TF1-180, Transcript, 8 July 2005, p. 17, 39.

²⁹⁴⁶ TF1-180, Transcript, 8 July 2005, p. 18.

²⁹⁴⁷ TF1-180, Transcript, 8 July 2005, p. 42.

²⁹⁴⁸ TF1-180, Transcript, 8 July 2005, p. 47.

one specific group or person, and the Prosecution submits that this indicates that he gave both an accurate and truthful account of what happened to him. The age of this witness at the time of his capture could not be determined, however, this witness is still valuable in view of his testimony of other children being captured, their fighting in Kabala and the knowledge of Gullit and Five-Five of these facts.

1845. This evidence is partly challenged by Defence witness DAB-079, a former member of the CDF,²⁹⁴⁹ who testified that he did not see any child soldiers among the SLAs whilst they were in Kabala.²⁹⁵⁰ However, the Prosecution deems this evidence unreliable and not credible. The Prosecution draws this conclusion from the fact that this witness denies seeing any crimes perpetrated by the SLA in Kabala. He did not witness sexual violence, other physical violence, acts of mutilation, carvings, abductions of men, children or women. This evidence stands alone against other evidence, such as that of TF1-180, which proves that these crimes did happen. This fact combined with his thorough denial of any crime committed in Kabala by SLA casts doubt on his evidence. Witness TF1-180's evidence on the other hand is corroborated by TF1-199, who testified that he went to fight in Kabala²⁹⁵¹ and by TF1-158, who gave evidence that Savage told them to attack Kabala.²⁹⁵²

1846. It is significant that Prosecution insider military witnesses who were with the AFRC faction in the jungle after the Intervention with all three Accused corroborate the evidence of the use of child combatants under the age of 15 by the AFRC faction and that all three Accused both knew of and used such child combatants in hostilities. [REDACTED]
[REDACTED],²⁹⁵⁴ testified that after Johnny Paul Koroma had made the announcement in Koidu Town that Koidu should be a no-go-area for civilians, abductions started.²⁹⁵⁵ From that day, the operations commander and the other soldiers, together with the RUF captured civilians, especially strong men, young

²⁹⁴⁹ DAB-079, Transcript, 28 July 2006, p.5-7.

²⁹⁵⁰ DAB-079, Transcript, 28 July 2006, p. 43.

²⁹⁵¹ TF1-199, Transcript, 6 October 2005, p. 86-88.

²⁹⁵² TF1-158, Transcript, 26 July 2005, p. 44-45.

²⁹⁵³ TF1-158, Transcript, 16 May 2005, p. 7

²⁹⁵⁴ TF1-158, Transcript, 16 June 2005, p. 17.

²⁹⁵⁵ TF1-158, Transcript, 20 May 2005, p. 4.

women and children aged 8-12.²⁹⁵⁶ He testified further that the children were trained in the SBU, Small Boys Units. They stayed with their commanders and were used to amputate people in Kono, which happened in the witness's presence. The small boys were designed to amputate, this happened in Tombodu.²⁹⁵⁷ The same witness went on to say that small children were abducted in Karina²⁹⁵⁸ and that he heard Gullit order that these children be distributed to the various commanders so that they will be with them.²⁹⁵⁹

1847. TF1-334 testified that children were trained in Camp Rosos, they were about 12 who were trainers and that he himself was the instructor of 77 trainees.²⁹⁶⁰ The witness testified that Santigie Borbor Kanu was in charge of the training, and Junior Sheriff was his deputy.²⁹⁶¹ The boys were around 10-12 years of age and the girls about 15.²⁹⁶² He knows their age because the training commanders, [REDACTED], would take the records from them, they were telling their ages, which they would write down.²⁹⁶³ [REDACTED]

[REDACTED] The women were taught the basics of weaponry.²⁹⁶⁴ The training lasted three weeks,²⁹⁶⁵ after which Kanu Santigie Borbor addressed them. Then they would wait for the arrival of Gullit, the Military Supervisors and company commanders. When they came, Kanu Santigie Borbor handed over the command over the boys to the Commander Gullit, i.e. the First Accused.²⁹⁶⁶

1848. The witness further testified that Gullit appreciated the efforts of the training instructors and that Gullit told the trainees to be strong, brave and intelligent and to be ready to face the challenges ahead. Gullit ordered that these people be distributed to the various companies to work with the company commanders. Gullit distributed the young boys.

²⁹⁵⁶ TF1-334, Transcript, 20 May 2005, p. 5.

²⁹⁵⁷ TF1-334, Transcript, 20 May 2005, p. 6.

²⁹⁵⁸ TF1-334, Transcript, 23 May 2005, p. 73.

²⁹⁵⁹ TF1-334, Transcript, 23 May 2005, p. 74 .

²⁹⁶⁰ TF1-334, Transcript, 24 May 2005, p. 25.

²⁹⁶¹ TF1-334, Transcript, 24 May 2005, p. 23, 24.

²⁹⁶² TF1-334, Transcript, 24 May 2005, p. 24.

²⁹⁶³ TF1-334, Transcript, 24 May 2005, p. 27.

²⁹⁶⁴ TF1-334, Transcript, 24 May 2005, p. 25, 26, 28, 31.

²⁹⁶⁵ TF1-334, Transcript, 24 May 2005, p. 28.

²⁹⁶⁶ TF1-334, Transcript, 24 May 2005, p. 29, 30.

Most of the women were with some commanders and soldiers, so Gullit sent them back to their various husbands with whom they were living.²⁹⁶⁷

1849. Witness TF1-334 gave further evidence that at the time they lost Eastern Police, Gullit said that they should start to abduct civilians from Freetown to attract the attention of the international community.²⁹⁶⁸ Bazy, Kanu Santigie Borbor and other Military supervisors were there when Gullit said this.²⁹⁶⁹ The abducted children were 9-10 years of age; these children were later trained to be SBUs.²⁹⁷⁰ When they were at Newton, everyone had a child of 10-12 years of age and gave him personal training. They would be shown how to fire or to handle a weapon. They were called SBU. At Newton, Gullit said that every commander that had a small child aged 10-12 should train them, give them basic military ideas. This was said in front of the witness. Kanu Santigie Borbor was responsible for the young girls and women at the camp.²⁹⁷¹

1850. Witness TF1-167, George Johnson, aka Junior Lion,²⁹⁷² testified that he joined the Sierra Leone armed forces after his schooling at the age of 23²⁹⁷³ and later was imprisoned in Pademba Road Prison. He was released on 25 May 1997²⁹⁷⁴ after which he worked for Johnny Paul Koroma as security officer²⁹⁷⁵ and then became the Second Accused's Chief Security Officer.²⁹⁷⁶ In 1998, the First Accused appointed him to the position of provost-marshal²⁹⁷⁷ and in 1998, he was given a battalion to command by the First Accused.²⁹⁷⁸ In 1999, the Second Accused appointed him as Colonel.²⁹⁷⁹ On the way to Camp Rosos, men, women and children were abducted and training of the civilians was organized at Rosos, overseen by Santigie Borbor and FAT Sesay.²⁹⁸⁰ Significantly, TF1-167's evidence largely corroborates that of TF1-334 concerning the military training of children at camp Rosos.

²⁹⁶⁷ TF1-334, Transcript, 24 May 2005, p. 30.

²⁹⁶⁸ TF1-334, Transcript, 14 June 2005, p. 119.

²⁹⁶⁹ TF1-334, Transcript, 14 June 2005, p. 63.

²⁹⁷⁰ TF1-334, Transcript, 14 June 2005, p. 122.

²⁹⁷¹ TF1-334, Transcript, 15 May 2005, p. 14, 15.

²⁹⁷² George Johnson, TF1-167, Transcript, 15 September 2005, p. 4.

²⁹⁷³ George Johnson, TF1-167, Transcript, 15 September 2005, p. 5.

²⁹⁷⁴ George Johnson, TF1-167, Transcript, 15 September 2005, p. 7.

²⁹⁷⁵ George Johnson, TF1-167, Transcript, 15 September 2005, p. 8.

²⁹⁷⁶ George Johnson, TF1-167, Transcript, 15 September 2005, p. 8.

²⁹⁷⁷ George Johnson, TF1-167, Transcript, 15 September 2005, p. 9.

²⁹⁷⁸ George Johnson, TF1-167, Transcript, 15 September 2005, p. 10.

²⁹⁷⁹ George Johnson, TF1-167, Transcript, 15 September 2005, p. 11.

²⁹⁸⁰ George Johnson, TF1-167, Transcript, 15 September 2005, p. 64.

Men, a few women, and children aged 10-15 were trained as fighters, Tamba Fasuluku was in charge of the training that lasted about three weeks.²⁹⁸¹ If someone ran away, that person was killed – the witness remembers two such cases.²⁹⁸² The children were called SBU (Small Boys Unit). 520 civilians were trained at Rosos, out of which 15 to 20 were children and 5 were women. The training was concentrated on weapon handling, tactics, firing and manoeuvring. They were then divided by FAT Sesay between the battalions.²⁹⁸³ The witness further testified that in Rosos, Alex Brima gave the witness the command of the 4th battalion, and there were about 13 SBUs under his command in that battalion.²⁹⁸⁴

1851. Both witnesses TF1-167 and TF1-334 are [REDACTED]

[REDACTED]²⁹⁸⁵ or making sure the captured civilians currently in training would not run away.²⁹⁸⁶ They might have had reason to lie due to their involvement in the crimes, however, they chose not to do so and by their testimony, admitted to their own wrongdoing. This indicates that their evidence is credible and should be given weight. The evidence clearly shows that the AFRC faction in the jungle did abduct children under the age of 15 and trained these children and that the Third Accused as well as the First and Second Accused knew about this.

1852. Witness TF1-227, a civilian who was captured by the AFRC,²⁹⁸⁷ testified that the commander whom he was with had three combatants who were between the ages of 10 and 14. They wore military uniforms. Some of them held guns and they acted as if they were trained soldiers.²⁹⁸⁸ The witness saw about 25²⁹⁸⁹ child combatants in Benguema,²⁹⁹⁰ and Brigadier Five-Five was the overall commander in Benguema.²⁹⁹¹ He had from five to ten child combatants.²⁹⁹²

²⁹⁸¹ George Johnson, TF1-167, Transcript, 15 September 2005, p. 65.

²⁹⁸² George Johnson, TF1-167, Transcript, 15 September 2005, p. 64.

²⁹⁸³ George Johnson, TF1-167, Transcript, 15 September 2005, p. 66

²⁹⁸⁴ George Johnson, TF1-167, Transcript, 15 September 2005, p. 67.

²⁹⁸⁵ TF1-334, Transcript, 20 May 2005, p. 5, 6.

²⁹⁸⁶ George Johnson, TF1-167, Transcript, 15 September 2005, p. 64.

²⁹⁸⁷ TF1-227, Transcript, 8 April 2005, p. 96.

²⁹⁸⁸ TF1-227, Transcript, 11 April 2005, p. 16.

²⁹⁸⁹ TF1-227, Transcript, 11 April 2005, p. 21

²⁹⁹⁰ TF1-227, Transcript, 11 April 2005, p. 16.

²⁹⁹¹ TF1-227, Transcript, 11 April 2005, p. 19.

²⁹⁹² TF1-227, Transcript, 11 April 2005, p. 22.

1853. This witness gave evidence that he was abducted by AFRC soldiers. He was not challenged by the Defence in his testimony regarding Benguema. The Prosecution submits that the evidence is that child soldiers were present at Benguema and that the Third Accused was there with five to ten child combatants under his command.

1854. The Prosecution concludes that the evidence demonstrates beyond a reasonable doubt that all three Accused knew or had reason to know that children under the age of 15 were conscripted and/or enlisted and/or used to take part in hostilities and are therefore to be held individually criminally responsible for their acts.

DEFENCE WITNESSES

1855. The Prosecution case is challenged by certain Defence witnesses. Witness DBK-131, aka Terminator, who joined the SLA in 1992 at the age of 13,²⁹⁹³ and had the rank of a sergeant²⁹⁹⁴ testified that in Kabala, he had a vehicle and he had his boys, and that he too was a commander because he was a sergeant and he claimed the command and nobody would have a say over him.²⁹⁹⁵ The witness said that later, he was a captain, but he did not have much command, he only had seven boys that remained with him, seven securities. He was the front commander.²⁹⁹⁶

1856. The witness went on to say that he saw some fire in Koinadugu Village. The witness then said that one of his boys who was trained in Kailahun had escaped to meet the witness to report about that incident.²⁹⁹⁷ In Kamakwei, the boys of his battalion captured a policeman from Laminaya and the boys wanted to kill this policeman, but the witness said "no".²⁹⁹⁸

1857. In cross-examination, the witness gave evidence that he and the SLA in general did not use children.²⁹⁹⁹ The Prosecution deems this witness unreliable. Firstly, he was a commander of the SLA. Such a witness is not an independent witness and his evidence has to be assessed with caution. He then testified in his examination-in-chief several times

²⁹⁹³ DBK-131, Transcript, 10 October 2006, p. 3.

²⁹⁹⁴ DBK-131, Transcript, 10 October 2006, p. 15

²⁹⁹⁵ DBK-131, Transcript, 10 October 2006, p. 24.

²⁹⁹⁶ DBK-131, Transcript, 10 October 2006, p. 32

²⁹⁹⁷ DBK-131, Transcript, 10 October 2006, p. 40.

²⁹⁹⁸ DBK-131, Transcript, 10 October 2006, p. 48.

²⁹⁹⁹ DBK-131, Transcript, 26 October 2006, p. 39.

about “his boys”, which indicates that there were children under his command. Being questioned about this in cross-examination, the witness said that he used this term with everyone under his command, regardless of their age.³⁰⁰⁰ The Prosecution submits that this aspect of the witness’s evidence is a lie founded on self interest and is contradictory in part to his evidence-in-chief. It is also contrary to the evidence introduced by the Prosecution witnesses and the Defence Expert witness that indicate that the SLA did use child soldiers.

1858. The First Accused also testified with regards to child soldiers: he gave evidence that he did not support the use of child soldiers and he did not see any child soldiers; most of the soldiers he saw were well trained SLA soldiers.³⁰⁰¹ The Prosecution emphasizes that this evidence as such does not refute the use of child soldiers by the AFRC and the allegation that the First Accused had knowledge of it. The choice of words, namely that he did not *support* the use of child soldiers instead indicates that they were used, but that he was not supportive of it. Also, his statement that he did not see them does not mean that they did not exist. Little if any weight should be given to the evidence of the First Accused as the Prosecution has adduced an abundance of evidence that when confronted with matters which tend to incriminate him, the First Accused lied in order to avoid any culpability. The Prosecution has explained extensively why his statements should be refuted in their entirety as they are based on lies (see earlier section in respect of the First Accused’s evidence). Also, set against the Prosecution’s evidence regarding child witnesses, which to a large degree is based on independent witnesses, the statement of the First Accused loses credibility and its inaccuracy becomes evident.

1859. Witness DAB-100, [REDACTED]³⁰⁰² answered to the question whether he saw any children fighting in the battle to take Koidu town that he did not see little children but children from the ages of 15 and over.³⁰⁰³ This testimony is not in contradiction to the Prosecution case, because the witness did not say it did not happen, but that he did not see it. Furthermore, the Prosecution asked the witness whether he saw children fighting, without making any reference to age. To this question, the witness answered he only saw children 15 years and older. The Prosecution submits that it is

³⁰⁰⁰ DBK-131, Transcript, 10 October 2006, p. 39.

³⁰⁰¹ Accused Alex Tamba Brima, Transcript, 12. June 2006, p. 53.

³⁰⁰² DAB-100, Transcript, 28 September 2006, p. 109.

³⁰⁰³ DAB-100, Transcript, 28 September 2006, p. 120.

unlikely that the witness was able to assess the exact age of the children. His answer rather indicates that this witness was prepared by the Defence to answer accordingly, which renders the truthfulness of his testimony questionable.

1860. DBK-090, a civilian, gave evidence that in May 1998, he wanted to go to Makeni but on the way was amputated by four men who left him lying on the ground. After this incident he saw groups of 500 people coming, and there were children among them, 10-15 years old.³⁰⁰⁴ In cross-examination, the witness stated that there were children, 10-15 years old, among them. Some were carrying cutlasses and some were carrying guns.³⁰⁰⁵ It is the case of the Prosecution that these children were with the SLA. The fact that they were carrying cutlasses and some even guns is indicative of the use of child soldiers.

1861. Witness DAB-085, a civilian from ██████,³⁰⁰⁶ gave evidence that he did not see any carving of AFRC/RUF on the bodies of civilians, or conscripting of civilians or enlisting boys and girls under the age of 15³⁰⁰⁷ in ██████.³⁰⁰⁸ Again, the Prosecution submits that this evidence does not contradict the Prosecution case, as the fact that the witness did not see any conscripting or enlisting does not mean that no conscription or enlisting happened; neither does it mean that no child soldiers were used. Furthermore, this witness denies any crime happening in ██████, which is contrary to the evidence and can therefore be regarded as unreliable.

1862. Witness DAB-079 stated in his evidence in chief that Kabala was burnt by RUF and that they committed many rapes and killings and had many child soldiers below the age of 18 with them.³⁰⁰⁹ In cross-examination, the witness stated that these attacks and burnings of villages in Koinadugu were carried out by joint RUF/SLA forces working together.³⁰¹⁰ This evidence corresponds with the Prosecution evidence regarding the attack on Kabala and it entails the fact that AFRC were using child soldiers in this attack (see section on witness TF1-157 and TF1-158). This Defence evidence entirely corroborates both the

³⁰⁰⁴ DBK-090, Transcript, 17 July 2006, p. 46-48.

³⁰⁰⁵ DBK-090, Transcript, 17 July 2006, p.59.

³⁰⁰⁶ DAB-085, Transcript, 20 July 2006, p. 7.

³⁰⁰⁷ DAB-085, Transcript, 20 July 2006, p. 18-19.

³⁰⁰⁸ DAB-085, Transcript, 20 July 2006, p. 17.

³⁰⁰⁹ DAB-079, Transcript 28 July 2006, p. 46-48.

³⁰¹⁰ DAB-079, Transcript 28 July 2006, p. 70-71.

evidence of the Prosecution witnesses mentioned above and the Prosecution case that child soldiers were used by the SLA faction in hostilities.

1863. In addition, Defence witness DAB-081 is also supportive of the Prosecution case. DAB-081 gave evidence that both SLA and RUF recruited young boys and girls in order to safeguard the village from any enemy attack. The children were 14-18 years of age.³⁰¹¹ In cross-examination, the witness even admitted that there was a military training program started by the two groups to protect the village and that the young kids were trained by RUF and SLA.³⁰¹² This evidence is corroborative of the Prosecution case.

1864. Witness DAB-124, a civilian from [REDACTED],³⁰¹³ testified that he saw people in [REDACTED]. Some had a soldier cap, some had the trousers, some had the soldier's raincoat, they were many.³⁰¹⁴ He further said that some of those soldiers were young but that he would not be able to tell their age. They hung guns on them and they were unable to carry their guns swiftly.³⁰¹⁵ In cross-examination, witness gave evidence that when he looked at the children, he would find out that they were below 10-15 years of age. They were within that range.³⁰¹⁶ This Defence witness also corroborates the Prosecution case that the SLA faction was using child soldiers in hostilities. It is significant that not only did he testify in cross-examination that the children were below 15, but in examination-in-chief, he said that they were not able to carry their guns swiftly, which is indicative of a child under the age of 15 who is not able to carry a heavy gun due to lack of strength.

1865. DAB-143, a civilian from [REDACTED]³⁰¹⁷ testified that in May 1997 there were rebels in [REDACTED]. Some were dressed in torn army uniforms, some had jeans on; by uniforms, he means uniforms worn by government soldiers.³⁰¹⁸ Some of the leaders of the rebels were Mosquito, Sheku Coomber and Morris Kallon, but there were

³⁰¹¹ DAB-081, Transcript, 21 July 2006, Closed session, p. 3

³⁰¹² DAB-081, Transcript, 21 July 2006, Closed session, p. 15 .

³⁰¹³ DAB-124, Transcript, 15 September 2006, p. 27.

³⁰¹⁴ DAB-124, Transcript, 15 September 2006, p. 31

³⁰¹⁵ DAB-124, Transcript, 15 September 2006, p. 31-32.

³⁰¹⁶ DAB-124, Transcript, 15 September 2006, p.47-48.

³⁰¹⁷ DAB-143, Transcript, 19 September 2006, p. 54.

³⁰¹⁸ DAB-143, Transcript, 19 September 2006, p. 56.

many others whose names the witness does not remember.³⁰¹⁹ After the February 1998 Intervention, SLAs and Johnny Paul Koroma came to [REDACTED]³⁰²⁰ and armed rebels were with them.³⁰²¹ The witness testified that he did see little children who were armed turned into soldiers/rebels in [REDACTED], but that he did not know their ages.³⁰²² This piece of evidence shows that if these child soldiers were RUF as opposed to SLA, the leader of the SLAs at that time, Johnny Paul Koroma, was quite prepared to accept them as a force to be used in hostilities in order to assist the SLA and RUF of achieving their joint objective of retaking Freetown.

CONCLUSION

1866. Based upon:

- a. Both the Prosecution and Defence experts' agreement in opining that all parties to the conflict (including the SLA faction) used child soldiers under the age of 15.
- b. The corroborative evidence of both Prosecution and Defence witnesses that child soldiers were used by the SLA faction.
- c. The credible evidence of former child soldiers who gave evidence before this Court, some of whom even stated that they were with the First and Third Accused.
- d. The fact that the crime base child soldier witness statements were also corroborated by the Prosecution military insider witnesses.

1867. The Prosecution submits that it has proven beyond a reasonable doubt that the SLA factions during the conflict routinely conscripted, enlisted and used boys and girls under the age of 15 to participate actively in hostilities.

³⁰¹⁹ DAB-143, Transcript, 19 September 2006, p. 56.

³⁰²⁰ DAB-143, Transcript, 19 September 2006, p.60.

³⁰²¹ DAB-143, Transcript, 19 September 2006, p.60.

³⁰²² DAB-143, Transcript, 19 September 2006, pp. 62-63.

XXII. FORCED MARRIAGE

1868. The Prosecution case as pleaded in the indictment is that during the indictment period, members of AFRC/RUF abducted women and girls in various locations within Sierra Leone and used them as sex slaves and/or forced them into “marriages” and/or subjected them to other forms of sexual violence.

1869. 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.”³⁰²³ Some of the factual elements which go to define the allegation of “forced marriage” include sexual slavery in a marital-type union where the abducted are labelled as “wife” and the conjugal status is imposed by coercion or threat. The court ought to consider the diminished capacity of the victim to leave the “husbands” due to factors such as the imminent threat of physical harm and they remained with their captors under the threat of death if they escaped or did not perform those conjugal duties that the wives had to.

1870. This familiar and repeated phenomenon of the Sierra Leone conflict resulted in the use of women as conjugal partners by the combatants, taking advantage of a coercive war environment where the women and girls had no capacity to give genuine consent. 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 and reduction of the women into servile status. 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.³⁰²⁴

³⁰²³ Exhibit P32, Prosecution Expert Report on Forced Marriages by [REDACTED], p. 14: Defines a ‘bush’ or ‘rebel’ wife as a young girl or woman who was abducted by a rebel and in most cases, coerced and terrorized into living with that rebel as a wife. A ‘bush wife...satisfied him sexually whenever and however he wanted.

³⁰²⁴ 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.

1871. It is the case of the Prosecution, that there is evidence to prove beyond a reasonable doubt that members of AFRC (SLA)/RUF engaged in sexual slavery and/or forced 'marriages' or other forms of sexual violence by exercising ownership over women and girls, battering them, depriving them of liberty and causing their engagement in acts of a sexual nature by use of force, threat of force, coercion or by taking advantage of a coercive environment or the victim's incapacity to give genuine consent in the circumstances.

EXPERT EVIDENCE

1872. The Court heard the testimony of two expert witnesses, for the Prosecution and the defence, respectively, on the issue of "forced marriage" during the war. Both experts state that no marriage transactions or ceremonies were held and the position of the "wife" is determined by the type of work they did and the sexual relationships that they were coerced into.³⁰²⁵

1873. When assessing the evidence by the respective experts, the court ought to consider the methodologies used by them at arriving at their conclusions and opinions, which would determine the weight to be attached to the opinions and reports of the respective experts. The expert witness called by the Prosecution, [REDACTED], in addition to her documentary research, undertook field research which involved extensive interviews with 28 women from villages outside Kailahun and 50 "bush wives" in Kailahun Town, four bush wives in Freetown, 15 bush wives from Makeni and relied on the field interviews done by CGC staff in Makeni, Kenema, Kono, Kabala and Koinadugu. The witness spoke to the paramount chiefs, religious leaders and the court clerks when she was researching the concept of early and arranged marriage and customary marriages. The witness also interviewed ex-combatants who were husbands.³⁰²⁶ On the other hand, the expert called by the defence, Dr. Dorte Thorsen, had not undertaken any field research in Sierra Leone or conducted any interviews with any persons. She had sought to make conclusions based on her research project of the traditions and customs of the minute Bisa community of

³⁰²⁵ See Exhibit D38, Defence Expert Report by Dr. Thorsen on Forced Marriages; Transcript of 24 October pp. 127-128. See Exhibit P32, Expert Report by [REDACTED] on the Phenomenon of Forced Marriage in the context of the conflict in Sierra Leone; Transcript 3 October 2005, p. 52 & p. 54.

³⁰²⁶ [REDACTED], Transcript 3 October page 35-38, 40, 42-43

Burkina Faso, and sought to restate the opinions of authors of books and research papers, none of which addressed specifically the issue of forced marriage during the Sierra Leone conflict. With this backdrop the Prosecution makes the submissions below.

1874. The Prosecution expert witness explained the use of the language, “forced marriage” in the context of the conflict in Sierra Leone. The witness testified that “forced marriage” was used to refer to girls who had been abducted and literally taken as wives, when the abductors told the victims “you now me wife” meaning, “you are now my wife”. Thus, right from the beginning of the relationship with the abductors, the women were identified as “his wife,” which means she belongs to him. The expert testified that the women did not have an option, they did not have an alternative, when they became wives.³⁰²⁷ The witness opined that the language “wife” was used as a sign of control, a sign of ownership, that in the Sierra Leonean tradition, when somebody becomes a wife, the man has complete control over her.³⁰²⁸

1875. ██████████ testified that there were expectations that flowed from the use of the language of ‘marriage’ and ‘wife’. These expectations were: when you became a wife of a rebel “*it means you service him alone, you take care of him, you do his laundry.*” This was reciprocated by the protection that was afforded to these women such that they were not exposed to being violated by other rebels. Women who were not wives were susceptible to being raped by one of more rebels.³⁰²⁹ TF1-133 testified that when a woman was handed over as a wife, she did not have sexual intercourse with anyone except for her husband. He was her “sole owner.”³⁰³⁰

1876. It was put to the witness that the forced marriages which took place in the bush were nothing more than “mere social relationships” and that a forced marriage was a contradiction in terms and that there cannot be a marriage without consent. The witness explained the use of language. The witness explained that the word “wife” was how the captors themselves called the girls they captured. An instance given was in Freetown when girls were pointed out and they would say “this is now my Junta wife.” The witness

³⁰²⁷ ██████████, Transcript 3 October 2005 pp. 51 -52.

³⁰²⁸ ██████████, Transcript 3 October 2005 p. 53.

³⁰²⁹ ██████████, Transcript 3 October 2005 p. 54.

³⁰³⁰ TF1-133, Transcript 7 July 2005, pp. 98-101.

testified that the word “marriage” was used to describe the relationship, what takes place, which you are expected to do within that relationship. The witness testified further that these marriages are termed “forced” because the girls went into it against their will, they were coerced.³⁰³¹ It is the submission of the Prosecution that the court ought to look beyond the label and examine the substance of the relationships between the “wives” and their captors. It is the captors who gave the label of “wife” to the girls they captured. And these terminologies are nothing more than descriptive of the relationships that existed. It does not mean that formal marriages took place between the abducted girls and the AFRC/RUF soldiers and that the victims consented.

1877. The court ought to consider the coercive environment under which these women were placed such that genuine consent was impossible.

1878. The opinions of [REDACTED] were corroborated by other witnesses called by the Prosecution. For instance, TF1-334 testified that the women were cooking and some girls were sleeping with the commanders. They would say, “this my wife.”³⁰³² TF1-133 testified that once a girl was taken as a ‘wife’ she would not have sex with anyone else, but the man she is handed over to be ‘wife’. The witness testified that that this man would be her sole owner, and it was a law made by the elders, like Rambo, that “you cannot covet your colleague’s wife.”³⁰³³

1879. In her report, Prosecution expert witness [REDACTED] explained that some of the bush wives accepted their status, because of what non-bush wives were expected to do. She states that non-bush wives *inter alia*:

- a. Carried the camp’s heavy loads and food supplies as the group moved across the countryside.
- b. Were regularly sexually abused by any rebel in the camp because they did not belong to any particular rebel. They were at the disposal of any man who felt like having sex and they dared not refuse. At night these women would go to bed scared, not knowing who would demand sex from them.

³⁰³¹ [REDACTED]

³⁰³² TF1-334 Transcript 15 June 2005, p. 14

³⁰³³ TF1-133 Transcript of 7 July 2005 p. 101

- c. Were not provided with food, instead had to find food for themselves and others.
- d. Were expected and could be sent to the war front to fight if the unit needed additional fighters.³⁰³⁴

1880. It is paramount for this Court to appreciate the coercive environment in which the abducted women lived in. The nation was in a state of conflict, where the normal legal apparatus of policing and law enforcement was not functioning, and the only protection the women had was to be a 'wife' to their captors.³⁰³⁵

1881. The Prosecution submits that the report and evidence of the expert brought by the Prosecution is more useful in resolving the issues before the court and should be given more weight than the report and evidence of the expert brought by the Defence. The report of the Defence expert which was based only on secondary sources, related more to Burkina Faso than to the war Sierra Leone and was more useful in raising questions for future studies than in addressing the issues currently before the court or providing any answers.³⁰³⁶

1882. The Prosecution submits that the phenomenon of sexual slavery and/or forced "marriages" and/or other forms of sexual violence pleaded in the indictment, for which the Prosecution submits that it has adduced sufficient evidence in the present case, where the women and girls were forcefully abducted and informed that they had become wives, without ceremony or parental consent, is in no way comparable to any form of recognized marriages practiced in Sierra Leone.³⁰³⁷ The Defence expert witness, Dr. Dorte Thorsen accepts this position.³⁰³⁸

1883. The expert brought by the Defence also accepts that in forced 'marriage', as it occurred during the war in Sierra Leone, "the girls had less of a choice, or less of a possibility of removing themselves from this forced marriage during the war, whereas during peace times, they would have been able to talk with kin and ask for different support from different types of kin and possibly run away from the husband that they did not agree to

³⁰³⁴ See: Exhibit P32 Expert Report by [REDACTED] on the Phenomenon of "Forced Marriage" in the context of the conflict in Sierra Leone at p. 16.

³⁰³⁵ [REDACTED], Transcript 3 October 2005 p. 54

³⁰³⁶ Dr. Dorte Thorsen, Transcript 24 October 2006, pp.121-122, 125-126; Transcript 25 October 2006, pp.5, 12.

³⁰³⁷ Dr. Dorte Thorsen, Exhibit P32, Prosecution Expert Report on Forced Marriages by Zainab Bangura, pp.10-13.

³⁰³⁸ Dr. Dorte Thorsen, Transcript 25 October 2006, p.3; Transcript 24 October 2006, pp.129-130.

marry. During the war, it might have been more difficult for them to run away, considering the threats they were under.”³⁰³⁹

1884. Any attempt to make “forced marriage” during the war analogous to the customary arranged marriage practices prevalent in Sierra Leone must be dismissed. In a typical customary arranged marriage scenario, there is “consent” by the intending spouses or the families/fiduciaries consent to the marriage itself. There is no such form of consent in a “forced marriage” during the war, parents arrange marriages for their children to protect the welfare of the children, for instance to perpetuate social, cultural and religious beliefs and values, economic reasons, to find a mate who would be able to financially support and take care of the spouse and the family. In contrast, a forced bush marriage has no such compassionate parental objectives to assist their children.

1885. The Prosecution accepts that there may have been situations, where after the war, the man and woman obtained parental approval of their so-called marriage,³⁰⁴⁰ and where the women opted to remain with the men for various reasons,³⁰⁴¹ but submits that this ex post facto parental consent does not go to exonerate the earlier acts of the perpetrators.

1886. The opinions of Dr. Dorte Thorsen, page 16, paragraph 4 of her report as to why some of the girls remained with their bush husbands, could not be further from reality and is a complete disregard of the material factual circumstances. In fact, the women were forced by circumstances to remain with their captors. ██████████ explained that some remain with their “bush husbands” because they have children from these fighters, and no one would marry them again. Some stayed because these men saved them from further violence by other fighters.³⁰⁴² In her report, ██████████ states that the most common reason why some “bush wives” remained with their “husbands” is that most of them have children with their husbands, and they are scared no other man will marry them and accept their “rebel” children. And there were others who stayed because they feel their husbands saved them, from being gang raped in the bush.³⁰⁴³ There is widespread discrimination

³⁰³⁹ Dr. Dorte Thorsen, Transcript 25 October 2006, p.3.

³⁰⁴⁰ ██████████, Transcript, 3 October 2006, p. 119-123.

³⁰⁴¹ Exhibit P32, Prosecution Expert Report on Forced Marriages by ██████████, pp.20; ██████████, Transcript, 3 October 2006, pp. 75-76.

³⁰⁴² ██████████, Transcript 3 October 2005, p. 60.

³⁰⁴³ Exhibit P32, Prosecution Expert Report on Forced Marriage by ██████████ p. 20.

against these bush wives which has fuelled anxiety and prejudice against these women.³⁰⁴⁴
 The report by Physicians for Human Rights entitled “War Related Sexual Violence in Sierra Leone” states :

a. “Relationship between Victim and Perpetrator

b. The complexity of the relationship between victim and perpetrator that has on occasion developed in the bush must be noted. It has been reported that some women and girls who were abducted chose to remain with their captors. There are a number of possible explanations. The PHR survey revealed that some who became pregnant as a result of rape consider themselves married to their captors and believe they have no choice but to remain with their “husbands.” Other possible factors contributing to the reported phenomena of abductees voluntarily remaining with their captors include: identification with the abductor, drug addiction, the more desirable food options reportedly available in the bush, fear that they will be rejected by their families and communities if they go home, and the fact “that many abductees, particularly those who were abducted as young girls are now accustomed to their new way of life and surrogate families.”³⁰⁴⁵

1887. Although the Defence expert states that she did read the report of the Prosecution expert before writing her report,³⁰⁴⁶ nowhere in her own report does she refer to the report of the Prosecution expert, and she only read the transcripts of the Prosecution expert’s testimony after she had already written and submitted her own report.³⁰⁴⁷ In court, she expressed inability to comment on aspects of the report of the Prosecution expert put to her based on her reading of it, because she had not done her own research, but relied on secondary sources.³⁰⁴⁸

1888. The Prosecution submits that given the circumstances, the women were exposed to severe mental suffering. At page 17 of her report, [REDACTED] states that “bush wives” are traumatized and most of them have not received psycho-social counselling. Some were

³⁰⁴⁴ Exhibit P32, Prosecution Expert Report on Forced Marriage by [REDACTED], p. 19.

³⁰⁴⁵ Exhibit P58, p. 76 para. 1.

³⁰⁴⁶ Dr. Dorte Thorsen, Transcript 24 October 2006, p.123.

³⁰⁴⁷ Dr. Dorte Thorsen, Transcript 24 October 2006, pp.123&134;

³⁰⁴⁸ Dr. Dorte Thorsen, Transcript 25 October 2006, p.8.

virgins when they were abducted and raped and had to remain with their husband for protracted periods of time.

Kono District: 14 February – 30 June 1998

1889. Both Prosecution and Defence evidence shows that there was sexual slavery and/or forced ‘marriages’ or other forms of sexual violence against women and girls by members of AFRC/RUF in Kono District as pleaded in the indictment. TF1-133 was captured by four rebels who included one Mohamed Killer.³⁰⁴⁹ When the witness reached Woronbiai, Mohamed the killer told her that Cobra was her husband and when she refused, he threatened to kill her and cut her buttocks with a bayonet.³⁰⁵⁰
1890. The other women who were captured with the witness including her co-wife, were all given to men as ‘wives’ and had to have sex with them.³⁰⁵¹ This evidence was not at all challenged in cross-examination³⁰⁵² and should be accepted. According to Defence witness DAB-125, who testified about ██████████ in Kono District, if they saw a young girl they would hold and turn her into their wife.³⁰⁵³ This evidence supports the Prosecution case. In addition, the Prosecution evidence was never disputed by any Defence witnesses and should be accepted.
1891. There is evidence that TF1-133 was elected a Mammy Queen, whose job was to investigate women’s claims of maltreatment by their ‘husbands’. It is the case of the Prosecution that this arrangement did not in any way help the women’s plight, as it did not affect the powers of the men over their abducted ‘wives’, or afford them any liberty to leave or refuse to engage in acts of a sexual nature with their so called husbands.

³⁰⁴⁹ TF1-133, Transcript 7 July 2005, pp.83-84.

³⁰⁵⁰ TF1-133, Transcript 7 July 2005, pp.89-90.

³⁰⁵¹ TF1-133, Transcript 7 July 2005, pp.90-91.

³⁰⁵² TF1-133, Transcript 7 July 2005, pp.113-122.

³⁰⁵³ DAB-125, Transcript 13 September 2006, p.54.

Koinadugu District: 14 February – 30 September 1998

1892. The Prosecution submits that there is evidence of sexual slavery and/or forced 'marriages' or other forms of sexual violence committed against women and girls by members of AFRC/RUF in Koinadugu District as pleaded in the indictment.
1893. There is evidence that TF1-209 was captured in Kabala and taken into the house of one Allusein belonging to Superman's group (RUF), who made her cook and do laundry for him, made her his wife for four months and repeatedly had sex with her.³⁰⁵⁴ Thereafter, the witness was taken over for a month by one Jabie, belonging to SAJ Musa's group (SLA), who made her cook, do laundry for him and had sex with her.³⁰⁵⁵ This evidence of TF1-209 regarding what was done to her and who did it, was not challenged in cross-examination.³⁰⁵⁶
1894. There is further evidence that TF1-094 who at the time was in class two and had not attained puberty, was captured by one Andrew an SLA who took her to Yamadugu and raped her, making her pregnant and turning her into a wife who laundered for him and others.³⁰⁵⁷ She had no power to deny him sex and if she refused, she would have been killed.³⁰⁵⁸ It was suggested to the witness in cross-examination that at the time she was pregnant, Andrew said he would marry her.³⁰⁵⁹
1895. This shows that at the time, she was not legally married to him. The witness accepted in cross-examination that Andrew used to care for her.³⁰⁶⁰ It is however the case of the Prosecution that, the fact that the men cared for their abducted 'wives' did not change the fact of their being under sexual slavery or forced marriage as the men exercised ownership over them, denied them liberty and engaged them in acts of a sexual nature under a coercive war environment whereby they were unable to give genuine consent.

³⁰⁵⁴ TF1-209, Transcript 7 July 2005, p.38.

³⁰⁵⁵ TF1-209, Transcript 7 July 2005, p.39.

³⁰⁵⁶ TF1-209, Transcript 7 July 2005, p.44-77.

³⁰⁵⁷ TF1-094, Transcript 13 July 2005, pp.28-29.

³⁰⁵⁸ TF1-094, Transcript 13 July 2005, p.29.

³⁰⁵⁹ TF1-094, Transcript 14 July 2005, p.38.

³⁰⁶⁰ TF1-094, Transcript 14 July 2005, p.38.

1896. During her stay with the SLAs, TF1-094 who was pregnant was insulted and beaten by the Third Accused Santigie Borbor Kanu.³⁰⁶¹

1897. The evidence further shows that in Kurubola, women who had been captured with TF1-133 had to have sex with the rebels who captured them after they finished the cooking. The women were betrothed to a man after they were captured and became his wife. That man would have sex with the captured woman.³⁰⁶² When a woman was captured, the man who captured her would have sex with her. She would then be taken to town and betrothed to another man and become his wife. Then that man would have sex with the woman. When a woman was handed over as a wife, she did not have sexual intercourse with anyone except for her husband. He was her 'sole owner'.³⁰⁶³ The evidence of TF1-133 herein, was not discredited in cross-examination³⁰⁶⁴ or disputed by any other witness and should be accepted.

Freetown and Western Area: 6 January – 28 February 1999

1898. The Prosecution submits that there is evidence proving that during the retreat from Freetown, women and girls were abducted and forcefully turned into wives or sex slaves and/or subjected to other forms of sexual violence by members of the AFRC/RUF as pleaded in the indictment.

1899. In January 1999 during the retreat from Freetown, TF1-023 was handed over for marriage to an SLA. She was not asked for her consent but accepted the situation because there was no option. There was no marriage ceremony and she was forced to have sex with him.³⁰⁶⁵ It was common practice for rebels to take captured women as their wives without their consent.³⁰⁶⁶ At 4 Mile the witness was handed to an SLA Captain who she remained with for 5 months.³⁰⁶⁷ All this evidence was not challenged in cross-examination.³⁰⁶⁸ The Prosecution submits that this evidence should be accepted.

³⁰⁶¹ TF1-094, Transcript 13 July 2005, p.40.

³⁰⁶² TF1-133 Transcript 7 July 2005, pp.97-98.

³⁰⁶³ TF1-133 Transcript 7 July 2005, pp.99-100.

³⁰⁶⁴ TF1-133, Transcript 7 July 2005, pp.113-122.

³⁰⁶⁵ TF1-023, Transcript 9 March 2005, p.45.

³⁰⁶⁶ TF1-023 Transcript 9 March 2005 p.46.

³⁰⁶⁷ TF1-023, Transcript 9 March 2005 p.59.

1900. TF1-023 testified that as a commander's wife she was given special treatment and respect and was not forced to do anything,³⁰⁶⁹ apart from sexual intercourse.³⁰⁷⁰ It appears the witness was well protected and cared for.³⁰⁷¹ It is however the case of the Prosecution that all this did not change the status of the witness who remained under sexual slavery because she had no way of leaving as an armed person watched over her and those who attempted to escape were caught and beaten.³⁰⁷²

1901. [REDACTED]
[REDACTED],³⁰⁷³ Mile 38 and at Magbeni³⁰⁷⁴ where he was the overall commander of the troops that moved with the witness. This evidence remained consistent and was unsuccessfully challenged in cross-examination.

1902. TF1-023 told court that at Lumpe she saw 10 women who she knew who had been captured and married to rebels.³⁰⁷⁵ This evidence was not challenged in cross-examination.

[REDACTED].³⁰⁷⁶ [REDACTED]

[REDACTED].³⁰⁷⁷

1903. During the retreat from Freetown, the SLAs abducted DAB-085 from Wellington and took her with them.³⁰⁷⁸ In a church at Allen town, the witness was raped³⁰⁷⁹ by Col. James who later told her that she was his wife.³⁰⁸⁰ When the witness cooked on the way to Waterloo, the Third Accused Santigie Borbor Kanu saw the smoke from the cooking, and sent his boys to stop her because the ECOMOG jets could locate them through the smoke, and he ordered that the witness be beaten.³⁰⁸¹

³⁰⁶⁸ TF1-023, Transcript 7 November 2005 pp.7-34.

³⁰⁶⁹ TF1-023, Transcript 9 March 2005, pp.57-58.

³⁰⁷⁰ TF1-023, Transcript 7 November 2005 pp.13.

³⁰⁷¹ TF1-023, Transcript 7 November 2005 pp.13.

³⁰⁷² TF1-023, Transcript 9 March 2005 p.53.

³⁰⁷³ TF1-023, Transcript 10 March 2005 p.33.

³⁰⁷⁴ TF1-023, Transcript 7 November 2005 p.34.

³⁰⁷⁵ TF1-023, Transcript 9 March 2005, p.54.

³⁰⁷⁶ TF1-023 Transcript 10 March 2005, p.24 .

³⁰⁷⁷ TF1-023, Transcript 10 March 2005, p. 29.

³⁰⁷⁸ TF1-085, Transcript 7 April 2005, p.8-11.

³⁰⁷⁹ TF1-085, Transcript 7 April 2005, p.19.

³⁰⁸⁰ TF1-085, Transcript 7 April 2005, p.21.

³⁰⁸¹ TF1-085, Transcript 7 April 2005, p.28.

1904. The research of the expert brought by the Prosecution found that when Freetown was attacked, soldiers went into houses looking for young girls as 'wives'.³⁰⁸²

Port Loko District: February – April 1999

1905. The Prosecution submits that there is evidence that while in Port Loko District, members of AFRC/RUF, used women and girls as sex slaves and/or forced them into 'marriages' and/or subjected them to other forms of sexual violence as pleaded in the indictment.

1906. During the retreat from Freetown, the SLAs stayed at Masiaka. Col. James had 6 'wives' including TF1-085 and others who had been captured from the villages.³⁰⁸³ The other 'wives' were made to do chores.³⁰⁸⁴ The witness, who was aged 16 years at the time,³⁰⁸⁵ was the youngest of the 'wives'.³⁰⁸⁶ When the witness kept demanding to go back to Freetown, Col. James drugged her with cocaine injections.³⁰⁸⁷ Cocaine is a sensory deprivation tank for the soul.

1907. Col. James forced TF1-085 to have sex with him and she bled and he took her to a Doctor who advised against sexual intercourse. When she got well, he again forced her into sex. She became pregnant three times and miscarried on all occasions.³⁰⁸⁸

1908. Col. James purported to marry TF1-085 by going to the Third Accused, Santigie Borbor Kanu, with money to obtain his permission, being the overall boss and therefore, father in law.³⁰⁸⁹ The Prosecution submits that this did not create any valid marriage or change the witness' status of being under sexual slavery or in a forced marriage as she was not at liberty to leave and remained there under a coercive war environment.

1909. When TF1-085 and two other women attempted to escape, they were caught and the bodies of the two women marked with AFRC/RUF, while she was locked up at the police

³⁰⁸² [REDACTED], Transcript, 4 October 2006, p.36.

³⁰⁸³ TF1-085, Transcript 7 April 2005, p.33.

³⁰⁸⁴ TF1-085, Transcript 6 April 2005, p.37.

³⁰⁸⁵ TF1-085, Transcript 6 April 2005, p.123.

³⁰⁸⁶ TF1-085, Transcript 6 April 2005, p.33.

³⁰⁸⁷ TF1-085, Transcript 6 April 2005, pp.33-34. On the cocaine stone, there's no sense of pain, no regret or shame, no feelings of guilt or grief, no depression, and no desire. This helped keep the women under the 'husband's' control.

³⁰⁸⁸ TF1-085, Transcript 6 April 2005, pp.35-36.

³⁰⁸⁹ TF1-085, Transcript 7 April 2005, pp.37-38.

station before Col. James took her home and battered her, threatening to kill her for trying to escape.³⁰⁹⁰

1910. TF1-282 testified that she was captured and taken to the bush where the man who captured her called out "Five-Five" and later raped her before being taken to Sumbuya.³⁰⁹¹ On the way, one Malaria said he wanted the witness³⁰⁹² and when they reached Sumbuya, he took her to a house³⁰⁹³ where he raped her³⁰⁹⁴ and took her as his wife.³⁰⁹⁵ In cross-examination, the statement of TF1-282 was put to her, where it was recorded to the effect that she had stated that the man who took her had asked the witness' brother to go and inform her parents that he had taken her as a wife and that after the war, he would go and see them. The witness could not remember saying so. Even if she had said so, it is the case of the Prosecution that it did not change the situation of the witness being in sexual slavery or forced 'marriage'. When Malaria asked the witness to marry him, she said yes because she believed saying no would make no difference and that she might be killed.³⁰⁹⁶ The witness did not believe she could leave Malaria, as she was afraid of what he would do to her.³⁰⁹⁷ There were armed people staying in the same house with Malaria.³⁰⁹⁸

1911. The Prosecution submits that being victims of very embarrassing and stigmatizing experiences that befell them, there was no other reason for the Prosecution witnesses to testify, other than to come forward and tell the truth. These were honest and truthful witnesses who the Prosecution submits should be believed by the court.

³⁰⁹⁰ TF1-085, Transcript 6 April 2005 p.43.

³⁰⁹¹ TF1-282, Transcript 13 April 2005, p. 12 and Transcript 14 April 2005, pp. 32-34.

³⁰⁹² TF1-282, Transcript 13 April 2005, p. 23.

³⁰⁹³ TF1-282, Transcript 13 April 2005, p. 16.

³⁰⁹⁴ TF1-282, Transcript 13 April 2005, p. 17.

³⁰⁹⁵ TF1-282, Transcript 13 April 2005, p. 18.

³⁰⁹⁶ TF1-282, Transcript 14 April 2005, p. 39.

³⁰⁹⁷ TF1-282, Transcript 13 April 2005, p. 18.

³⁰⁹⁸ TF1-282, Transcript 13 April 2005, p. 18.

WITNESSES CALLED BY THE DEFENCE

1912. Defence witnesses largely support this position. According to DAB-156, the way she was turned into a wife was by force,³⁰⁹⁹ and according to DAB-125, if they saw a young girl they would hold her and turn her into their wife.³¹⁰⁰

THE ROLE OF THE ACCUSED PERSONS

1913. The Prosecution submits that each of the Accused persons is liable for the crimes of sexual slavery and/or the inhumane act of forced 'marriage' or other forms of sexual violence committed against women and girls by members of AFRC/RUF as pleaded in the indictment, based on evidence of their participation in committing the crimes, being part of the joint criminal enterprise ("JCE") and based on their superior responsibility.

1914. In Kono District after the ECOMOG Intervention in Freetown, captured women, especially the beautiful ones were under the full control of the commanders and became their wives. They were unmarried but cooked for soldiers and were used sexually.³¹⁰¹ It is the case of the Prosecution that during this time, the Second Accused was the most senior SLA commander based in Kono District³¹⁰² until about the end of April early May 1998 when the First Accused arrived and took over as the SLA commander.³¹⁰³ On occasion, the Third Accused came to Kono during this period.³¹⁰⁴ The three Accused therefore knew or had reason to know that the crimes complained of were being committed in Kono District during the indictment period.

1915. In January 1999, the three Accused were at State House where soldiers brought and engaged women in forceful sexual intercourse.³¹⁰⁵ The most beautiful women were for the three Accused.³¹⁰⁶ The First Accused took one very young girl with him to Makeni, who

³⁰⁹⁹ DAB-156, Transcript 29 September 2006, p.77.

³¹⁰⁰ DAB-125, Transcript 13 September 2006, p.54.

³¹⁰¹ TF1-334, Transcript 20 May 2005, pp.6-7.

³¹⁰² TF1-334, Transcript 18 May 2005, p.21.

³¹⁰³ TF1-334, Transcript 19 May 2005, p.8.

³¹⁰⁴ TF1-334, Transcript 18 May 2005, p.20.

³¹⁰⁵ TF1-334, Transcript 14 June 2005, pp.25-26.

³¹⁰⁶ TF1-334, Transcript 14 June 2005, p.26.

had been a student at Convent Secondary School and stopped in form 2.³¹⁰⁷ The Second Accused stayed with his girl until the Westside, while the Third Accused stayed with a very young girl he got from Freetown without marrying, until the retreat from Freetown.³¹⁰⁸ The three Accused therefore participated in the commission of the crimes pleaded in the indictment.

1916. TF1-046 testified that while the three Accused were in command at State House in January 1999, civilians came to complain to the Military Police about looting and soldiers coming into houses looking for girls.³¹⁰⁹ The witness heard a civilian complain to the Second Accused about looting and entering homes at night.³¹¹⁰ The witness never saw or heard of anyone being punished for looting or entering houses looking for women in Freetown.³¹¹¹ The three Accused therefore knew and/or had reason to know and/or foresaw the commission of the crimes herein and took no steps to stop or punish the offenders.

1917. During the retreat from Freetown after January 1999, the Third Accused was in charge of women and girls.³¹¹² Col. James purported to marry TF1-085 by going to the Third Accused with money to obtain his permission, because, being the overall boss, according to the witness, the Third Accused was the father in law.³¹¹³ At Karina prior to the Freetown invasion, 35 women were captured and handed over to the Third Accused who assigned them to soldiers who wanted them as wives.³¹¹⁴ At Camp Rosos prior to the Freetown invasion, the Third Accused was in total control of women.³¹¹⁵ The Third Accused therefore incurs liability pursuant to Article 6(1) of the Statute.

1918. It is the case of the Prosecution that the Second Accused was the overall commander of what became known as the Westside, which constitutes the Port Loko District crime base.³¹¹⁶ In this position, the Second Accused knew or had reason to know about the

³¹⁰⁷ TF1-334, Transcript 15 June 2005, p.3.

³¹⁰⁸ TF1-334, Transcript 15 June 2005, p.4; TF1-334, Transcript 16 June 2005, p.105.

³¹⁰⁹ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp.10-11.

³¹¹⁰ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp.11-12.

³¹¹¹ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p.12.

³¹¹² TF1-334, Transcript 16 June 2005, pp.87-88.

³¹¹³ TF1-085, Transcript 7 April 2005, pp.37-38.

³¹¹⁴ TF1-334, Transcript 23 May 2005, pp.72-77; TF1-334, Transcript 24 May 2005, p.61.

³¹¹⁵ TF1-334, Transcript 15 June 2005, pp.23-26

³¹¹⁶ TF1-334, Transcript 24 May 2005, pp.62-68.

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commission of the crimes herein against women and girls by his troops and took no steps to stop or punish the offenders.

XXIII. CONCLUDING REMARKS

1919. The Prosecution submits that on the basis of all the evidence presented during its case, the Trial Chamber can be satisfied, beyond reasonable doubt, of the guilt of each the Accused under all counts of the Indictment.

1920. It is the Prosecution's view that the three Accused can be found liable under various modes of liability set out in Article 6(1), as well as under Article 6(3) in respect of a single count. The Prosecution submits that this Trial Chamber should make findings on *all* modes of liability in respect of which evidence has been led for each count, even if more than one mode of liability describes the extent of an Accused participation under a particular count. For example, an accused may be found to have instigated a series of crimes falling under one count, and also to have committed some of those crimes. Similarly, an Accused may be found liable as a superior as well as directly responsible under Article 6(1). Findings of multiple modes of liability will be taken into account at the sentencing stage. For example, if an accused is found liable under both Articles 6(1) and 6(3) in respect of the same act, the superior responsibility should be considered as an aggravating factor.³¹¹⁷

1921. The Prosecution submits that multiple convictions must be entered when they are admissible. Indeed, "[m]ultiple convictions serve to describe the full culpability of a particular accused or provide a complete picture of his criminal conduct."³¹¹⁸ The Prosecution submits that the intention of the lawmakers of the Statute was indeed to allow that convictions for the same conduct constituting distinct offences under several of the

³¹¹⁷ As is well known, when more than one form of individual criminal responsibility is found to have been proven by the Prosecutor, the Trial Chamber will weigh these various forms and the other relevant factors to decide on the appropriate sentencing. See for example *Prosecutor v. Dragan Obrenovic*, IT-02-60/2-S, Sentencing Judgment, 10 December 2003, para. 88 and 90: "Weighing Dragan Obrenovic's different forms of individual criminal responsibility, the Trial Chamber finds that Dragan Obrenovic's liability stems primarily from his responsibilities as a commander. (...) Considering these facts the Trial Chamber finds a sentence in the range of 20 years to 40 years imprisonment to be appropriate based on the gravity of the crime committed by Dragan Obrenovic, and particularly his role and participation in the commission of that crime, and having taken into consideration the sentencing practices in the former Yugoslavia as well as the sentencing practices of this Tribunal." (Emphasis added)

³¹¹⁸ *Prosecutor v. Kunarac et al.*, Judgment, IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 169 (footnote omitted).

Articles of the Statute be entered, as it was the case for the Security Council regarding the ICTY and ICTR Statutes.³¹¹⁹

1922. Multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible if each statutory provision involved has a materially distinct element not contained in the other.³¹²⁰ An element is materially distinct from another if it requires proof of a fact not required by the other.³¹²¹ Where this test is not met, the Chamber “must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld.”³¹²²
1923. Multiple convictions entered under an offence set out in Article 2 (crimes against humanity) and a crime set out in Articles 3 or 4 (violations of Common Article 3 to the Geneva Conventions and Additional Protocol II, and Other Serious Violations of International Humanitarian Law) are permissible. Indeed, the jurisprudence has settled that Articles 3 or 4 require a close link between the acts of the accused and the armed conflict, while this element is not required by the Article 2.³¹²³ On the other hand, Article 2 requires proof that the act occurred as part of a widespread or systematic attack against a civilian population; that element is not required by Articles 3 or 4. Thus, Article 2 and Article 3 or 4 have an element requiring proof of a fact not required by the other. As a result, cumulative convictions under both Article 2 and 3 or 4 are permissible. War crimes contained under Articles 3 or 4 do not constitute ‘lesser included offences’ of crimes against humanity.³¹²⁴
1924. Similarly, the jurisprudence has now settled that cumulative convictions on the basis of the same acts under one Article of the Statute (for example, under more than one paragraph of Article 3, when conduct violates at the same time the prohibition of Pillage,

³¹¹⁹ *Prosecutor v. Kunarac et al., Judgement*, IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 178.

³¹²⁰ *Prosecutor v. Kunarac et al., Judgement*, Case No. IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 196.

³¹²¹ *Prosecutor v. Kunarac et al., Judgement*, Case No. IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 196.

³¹²² *Prosecutor v. Delalić et al. (Čelebići case), Judgement*, Case No. IT-96-21-A, App. Ch., 20 February 2001, paras. 412-413 (see also para. 421). See also the Separate and Dissenting Opinion of Judge Hunt and Judge Bennouna, paras. 13-23.

³¹²³ *Prosecutor v. Jelisić, Judgement*, IT-95-10-A, App. Ch., 7 July 2001, para. 82

³¹²⁴ *Prosecutor v. Jelisić, Judgement*, IT-95-10-A, App. Ch., 7 July 2001, para. 82

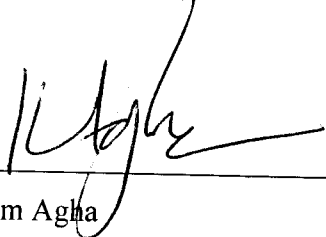
Acts of Terrorism and Collective Punishment) are permissible provided that the test above is met.³¹²⁵

1925. The Prosecution submits that there must be a finding on the Indictment that each Accused is either guilty or not guilty of the count.³¹²⁶ Where an Accused is found not guilty for the sole reason that to find otherwise would produce an impermissible cumulative conviction, the disposition should be in terms such as, "Not guilty on the basis that a conviction on this charge would be impermissibly cumulative."³¹²⁷

1926. The consequence of concurrence should be dealt with at the sentencing stage, by sentencing the Accused concurrently for cumulative convictions.

Filed in Freetown,
6 December 2006

For the Prosecution,



Karim Agha
Senior Trial Attorney

³¹²⁵ *Prosecutor v. Kordić & Čerkez*, Judgement, IT-95-14/2-A, App. Ch., 17 December 2004, para. 1039-40.
Prosecutor v. Krnojelac, Appeal Judgement, IT-97-25-A, App. Ch., 17 September 2003, para. 188. *Prosecutor v. Vasiljević*, Appeal Judgement, Case No. IT-98-32-A, App. Ch., 25 February 2004, para. 146. *Prosecutor v. Krstić*, Appeal Judgement, Case No. IT-98-33-A, App. Ch., 19 April 2004, para. 231.

³¹²⁶ *Prosecutor v. Delalić et al. (Čelebići case)*, Judgement, Separate and Dissenting Opinion of Judge Hunt and Judge Bennouna, Case No. IT-96-21-A, App. Ch., 20 February 2001, para. 59.

³¹²⁷ *Prosecutor v. Delalić et al. (Čelebići case)*, Judgement, Separate and Dissenting Opinion of Judge Hunt and Judge Bennouna, Case No. IT-96-21-A, App. Ch., 20 February 2001, para. 59.

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**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-98-29-A
Date: 30 November
2006
Original: English

IN THE APPEALS CHAMBER

Before:

**Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Theodor Meron
Judge Wolfgang Schomburg**

Registrar:

Mr. Hans Holthuis

PROSECUTOR

v.

STANISLAV GALIĆ

JUDGEMENT

The Office of the Prosecutor:

Ms. Helen Brady
Mr. Mark Ierace
Ms. Michelle Jarvis
Ms. Shelagh Mc Call
Ms. Anna Kotzeva

Counsel for Stanislav Galić:

Ms. Mara Pilipović
Mr. Stéphane Piletta-Zanin

of which criminalise terror against the civilian population, and provisions of Yugoslavia's 1988 "Armed Forces' Regulations on the Application of International Laws of War",³⁰⁴ which incorporated the provisions of Additional Protocol I, following Yugoslavia's ratification of that treaty on 11 March 1977. Those provisions not only amount to further evidence of the customary nature of terror against the civilian population as a crime, but are also relevant to the assessment of the foreseeability and accessibility of that law to Galić.³⁰⁵

97. In addition to national legislation, the Appeals Chamber notes the conviction in 1997 by the Split County Court in Croatia for acts that occurred between March 1991 and January 1993, under, *inter alia*, Article 51 of Additional Protocol I and Article 13 of Additional Protocol II, including "a plan of terrorising and mistreating the civilians", "open[ing] fire from infantry arms [...] with only one goal to terrorise and expel the remaining civilians", "open[ing] fire from howitzers, machine guns, automatic rifles, anti-aircraft missiles only to create the atmosphere of fear among the remaining farmers", and "carrying out the orders of their commanders with the goal to terrorise and threaten with the demolishing of the Peruća dam".³⁰⁶

98. In light of the foregoing, the Appeals Chamber finds, by majority, Judge Schomburg dissenting, that customary international law imposed individual criminal liability for violations of the prohibition of terror against the civilian population as enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, from at least the period relevant to the Indictment.

to [...] the application of measures of intimidation and terror [...] shall be punished by imprisonment for not less than five years or by the death penalty".

³⁰⁴ Regulations on the Application of International Laws of War in the Armed Forces of the SFRY, ex. P5.1. This manual provides *inter alia* that "Serious" violations of the laws of war are considered criminal offences (p. 14), considers as war crimes "attack on civilians [...] inhuman treatment of civilians [...] inflicting great suffering or injury to bodily integrity or health [...] application of measures of intimidation and terror" (p. 18, emphasis added), mentions explicitly under the part dealing with means and methods of combat that "Attacking civilians for the purpose of terrorising them is especially prohibited." (p. 29), and envisages that that the perpetrators of war crimes "may also answer before an international court, if such a court has been established" (p. 15).

³⁰⁵ *Ojdanić* Appeal Decision on Joint Criminal Enterprise, para. 40. See also *Hadžihasanović et al.* Appeal Decision on Jurisdiction in Relation to Command Responsibility, para. 34.

³⁰⁶ *Prosecutor v. R. Radulović et al.*, Split Country Court, Republic of Croatia, Case No. K-15/95, Verdict of 26 May 1997. The Appeals Chamber also notes the reference made by the Trial Chamber to the first conviction for terror against the civilian population, delivered in July 1947 by a court martial sitting in the Netherlands East Indies in the *Motomura et al.* case; the court martial convicted 13 of the 15 accused before it of "systematic terrorism practised against civilians" for acts including unlawful mass arrests. See Trial Judgement, paras 114-115, referring to *Trial of Shigeiki Motomura and 15 Others*, in *Law R. Trials War Crim.*, Vol. 13, p. 138.

UNITED
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International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-94-1-T
Date: 5 August 1996
Original: English & French

IN THE TRIAL CHAMBER

Before: Judge Gabrielle Kirk McDonald, Presiding
Judge Ninian Stephen
Judge Lal C. Vohrah
Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh
Decision of: 5 August 1996

PROSECUTOR

v.

DUŠKO TADIĆ a/k/a "DULE"

DECISION ON DEFENCE MOTION ON HEARSAY

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Brenda Hollis

Mr. Alan Tieger
Mr. Michael Keegan

Counsel for the Accused:

Mr. Michail Wladimiroff
Mr. Alphons Orié

Mr. Steven Kay
Ms. Sylvia De Bertodano

Case No. IT-94-1-T

5 August 1996

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I. INTRODUCTION

Pending before the Trial Chamber is the Motion on Hearsay ("Motion") filed by the Defence on 26 June 1996 pursuant to Rule 54 of the Rules of Procedure and Evidence of the International Tribunal ("Rules"). The Prosecution filed its response on 10 July 1996. Oral argument was heard on 16 July 1996.

THE TRIAL CHAMBER, HAVING CONSIDERED the written submissions and the oral arguments of the parties,

HEREBY ISSUES ITS DECISION.

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II. DISCUSSION

A. The Pleadings

1. This Motion raises the issue of the admissibility of hearsay evidence during trial before the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("International Tribunal"). In bringing this Motion, the Defence contends that the admission of hearsay evidence would violate the right of the accused to examine the witnesses against him provided by in Article 21(4)(e) of the Statute of the International Tribunal ("Statute"). On this basis, the Defence avers that the International Tribunal should refuse to admit evidence directly implicating the accused in the crimes charged unless it first finds that the probative value of this evidence substantially outweighs its prejudicial effect. Further, the Defence asserts that the Trial Chamber should rule on the admissibility of such statements without hearing its content. Instead, the Defence requests that the Trial Chamber make such a ruling only after a review of the circumstances under which the evidence was received.

2. While acknowledging that the International Tribunal is not bound by any national rules of evidence, the Defence asserts that the Rules are more akin to the adversarial common law system and that most such systems contain a general exclusionary rule against hearsay. Even accepting that there are exceptions to this general rule because some types of hearsay may have sufficient probative value to be admissible - for example, instances of excited utterances and dying declarations - the Defence argues that the Trial Chamber should not admit any hearsay evidence unless the Prosecution first demonstrates that the evidence has substantial probative value that outweighs any prejudicial effect on the accused.

3. In opposition to the Defence, the Prosecution argues that the International Tribunal's omission of a Rule excluding hearsay evidence was clearly deliberate and is consistent with both the International Tribunal's procedure of trials in which judges are the finders of fact, and with the civil law system in which the basic rule is that all relevant evidence is admitted. The Prosecution contends that the Judges of the International Tribunal are fully capable of determining the weight that should be afforded to such evidence. In the Prosecution's view, the

position of the Defence extends beyond even most common law systems in that these systems allow the admission of hearsay evidence that meets certain exceptions without requiring a further showing. Finally, the Prosecution maintains that the Defence's arguments run contrary to the spirit and intent of the Rules and that adoption of its requests would necessitate a formal amendment requiring approval of the Judges of the International Tribunal.

B. Analysis

4. The power of the Trial Chamber to regulate the conduct of the parties and the presentation of evidence during trial arises from the provisions of the Statute and the Rules. Relevant to the Motion under review is Article 21 of the Statute, which provides for the rights of the accused. The relevant portion states:

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

...

(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...

5. The International Tribunal's Rules, originally adopted in February 1994, govern the admission of evidence. See generally Rules 89-98. Despite the adoption of several amendments to the Rules since their creation, there is no Rule that calls for the exclusion of out-of-court, or hearsay, statements.

6. Rule 89, entitled *General Provisions*, reads as follows:

(A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

Rule 95 provides additional guidance regarding the admissibility of evidence. This Rule, entitled *Evidence Obtained by Means Contrary to Internationally Protected Human Rights*, declares:

No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

7. It is clear from these provisions that there is no blanket prohibition on the admission of hearsay evidence. Under our Rules, specifically Sub-rule 89(C), out-of-court statements that are relevant and found to have probative value are admissible. Although Sub-rule 89(A) clearly provides that the Trial Chamber is not bound by national rules of evidence, in determining the validity of the Defence Motion, it is instructive to review the practice regarding admissibility of evidence in civil and common law systems.

8. In common law systems, evidence that has probative value is generally defined as "evidence that tends to prove an issue." Henry C. Black, *Black's Law Dictionary* 1203 (6th ed. 1991). Relevancy is often said to require implicitly some component of probative value. For example, the Supreme Court of Canada, in *R. v. Cloutier*, relied on the following statement of Sir Rupert Cross:

"For one fact to be relevant to another, there must be a connection or nexus between the two which makes it possible to infer the existence of one from the existence of the other. One fact is not relevant to another if it does not have real probative value with respect to the latter."

R. v. Cloutier, 2 S.C.R. 709, 731 (Canada Sup. Ct. 1979) (quoting Sir Rupert Cross, *Cross on Evidence* 16 (4th ed. 1974)). Another commentator, in a discussion of United States law, expressed a similar opinion:

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There are two components to relevant evidence: materiality and probative value. Materiality looks to the relation between the propositions for which the evidence is offered and the issues in the case. . . . The second aspect of relevance is probative value, the tendency of evidence to establish the proposition that it is offered to prove.

Charles T. McCormick, *McCormick on Evidence* 339-40 (4th ed. 1992).

9. Thus, it appears that relevant evidence "tending to prove an issue", must have some component of reliability. In some common law systems, the general exclusion of hearsay evidence is based upon its presumed lack of reliability. However, this is not an absolute rule. For example, the United States Federal Rules of Evidence provides for twenty-seven specific situations in which hearsay evidence is admissible. See U.S. FED. R. EVID. 803-04. In addition to the circumstances explicitly provided for, the United States rules allow for the admission of statements

not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable effort; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

U.S. FED. R. EVID. 803(24); see also U.S. FED. R. EVID. 804(b)(5). The Evidence Act of the Laws of Malaysia, while not explicitly defining hearsay, also stipulates the circumstances in which statements by persons who are unavailable to be called as witnesses are declared relevant and thus admissible. See Malay. EVID. ACT, 1950 § 32 (rev. 1971).

10. Despite these relatively strict limitations on the admission of hearsay, judges in non-jury common law cases often take a slightly different approach:

Where the admissibility of evidence is . . . debatable, the contrasting attitudes of the appellate courts towards errors in receiving and those excluding evidence seem to support the wisdom of the practice adopted by many experienced trial judges in non-

jury cases of provisionally admitting debatably admissible evidence if objected to with the announcement that all questions of admissibility will be reserved until the evidence is all in.

McCormick on Evidence 86-87.

11. In civil law systems, however, there exists no general rule against the admissibility of hearsay evidence. Out-of-court statements are included in a case file of all evidence, prepared by the investigating magistrate, which is considered fully by the judges during the trial proceeding. This difference in criminal procedure between the civil and common law systems is explained primarily by the inquisitorial nature of the civil system, especially in the pre-trial phase, and the absence of a jury. Procedure in these systems, as one commentator noted when discussing the French legal system, is guided by the principle that "[a]ll forms of evidence are admissible as long as they do not conflict with the ethics of [the] system of criminal procedure." *Criminal Procedure Systems in the European Community* 118 (Christine Van Den Wyngaert et al., eds. 1993). Similarly, in criminal matters in Belgium, "the facts may be proven by all possible means" and the trial judge need only rely on his "intimate conviction" regarding whether a fact has been proven after assessing the weight of the evidence presented. *Id.* at 20-22.

12. Article 6(3)(d) of the European Convention on Human Rights provides for the right of the accused to examine witnesses against him. In interpreting this provision, the European Court of Human Rights has held that while the use of witness statements made out of court does not, in and of itself, violate this provision, "[a]s a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him." *Delta v. France*, 191-A Eur. Ct. H.R. (ser. A) 15 (1990). However, the European Court of Human Rights has not directly addressed hearsay as such, and indeed, has clearly stated that the admissibility of evidence is primarily a matter of regulation under national law. *Schenk v. Switzerland*, 145 Eur. Ct. H.R. (ser. A) 29 (1988).

13. In sum, the prohibition on the admissibility of hearsay that fails to meet a recognised exception is a feature of criminal procedure primarily limited to common law systems. In the

civil law system, the judge is responsible for determining the evidence that may be presented during the trial, guided primarily by its relevance and its revelation of the truth.

14. The International Tribunal, with its unique amalgam of civil and common law features, does not strictly follow the procedure of civil law or common law jurisdictions. In view of this, the Trial Chamber recognizes the value to the parties of knowing the standards it will apply in determining whether hearsay evidence is admissible. Moreover, in this first trial before the International Tribunal, an analysis of the Rules will further the ever-present goal of transparency of the proceedings.

15. The Trial Chamber is bound by the Rules, which implicitly require that reliability be a component of admissibility. That is, if evidence offered is unreliable, it certainly would not have probative value and would be excluded under Sub-rule 89(C). Therefore, even without a specific Rule precluding the admission of hearsay, the Trial Chamber may exclude evidence that lacks probative value because it is unreliable. Thus, the focus in determining whether evidence is probative within the meaning of Sub-rule 89(C) should be at a minimum that the evidence is reliable¹.

16. In evaluating the probative value of hearsay evidence, the Trial Chamber is compelled to pay special attention to indicia of its reliability. In reaching this determination, the Trial Chamber may consider whether the statement is voluntary, truthful, and trustworthy, as appropriate.

17. The Defence, however, argues that the Trial Chamber should exclude hearsay evidence implicating the accused in one of the crimes charged unless it finds that its probative value substantially outweighs its prejudicial effect. The Trial Chamber is asked to balance hearsay evidence with the possible prejudicial effect on the Defence before ruling on its admissibility. Further, the Defence would require that the Trial Chamber rule on the admission of such evidence without actually hearing its content. This procedure, while possibly appropriate if trials before the International Tribunal were conducted before a jury, is not warranted for the

¹ Rule 95, while concerned with the methods by which evidence is obtained, also allows for its exclusion if it is unreliable.

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trials are conducted by Judges who are able, by virtue of their training and experience, to hear the evidence in the context in which it was obtained and accord it appropriate weight. Thereafter, they may make a determination as to the relevancy and the probative value of the evidence.

18. Moreover, Sub-rule 89(D) provides further protection against prejudice to the Defence, for if evidence has been admitted as relevant and having probative value, it may later be excluded. Pursuant to this Sub-rule, the trial Judges have the opportunity to consider the evidence, place it in the context of the trial, and then exclude it if it is substantially outweighed by the need to ensure a fair trial.

19. Accordingly, in deciding whether or not hearsay evidence that has been objected to will be excluded, the Trial Chamber will determine whether the proffered evidence is relevant and has probative value, focusing on its reliability. In doing so, the Trial Chamber will hear both the circumstances under which the evidence arose as well as the content of the statement. The Trial Chamber may be guided by, but not bound to, hearsay exceptions generally recognised by some national legal systems, as well as the truthfulness, voluntariness, and trustworthiness of the evidence, as appropriate. In bench trials before the International Tribunal, this is the most efficient and fair method to determine the admissibility of out-of-court statements.

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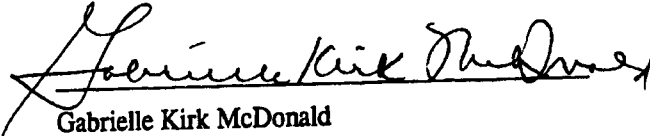
III. DISPOSITION

For the foregoing reasons, **THE TRIAL CHAMBER**, being seized of the Motion filed by the Defence and

PURSUANT TO RULE 54,

BY MAJORITY DECISION HEREBY DENIES THE MOTION.

Done in English and French, the English text being authoritative.


Gabrielle Kirk McDonald
Presiding Judge

Judge Stephen appends a Separate Opinion to this Decision.

Dated this fifth of August 1996
At The Hague
The Netherlands

[Seal of the Tribunal]

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**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons Responsible
for Serious Violations of International
Humanitarian Law Committed in the
Territory of the former Yugoslavia
since 1991

Case No: IT-95-14-T

Date: 21 January 1998
English

Original: French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Fouad Riad
Judge Mohamed Shahabuddeen

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Decision of: 21 January 1998

THE PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION ON THE STANDING OBJECTION OF THE DEFENCE TO THE
ADMISSION OF HEARSAY WITH NO INQUIRY AS TO ITS RELIABILITY**

The Office of the Prosecutor

**Mr. Mark Harmon
Mr. Andrew Cayley
Mr. Gregory Kehoe**

Counsel for the Accused

**Mr. Anto Nobile
Mr. Russell Hayman**

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1. On 30 September 1997, Defence Counsel for Tihomir Blaškić (hereinafter "the Defence") submitted a Motion objecting in principle to the admission of hearsay evidence with no inquiry as to its reliability (hereinafter "the Motion"). The Prosecutor presented her arguments in her Response of 30 October 1997 (hereinafter "the Response"). On 19 November 1997, the Defence filed a Reply (hereinafter "the Reply"). Lastly, the parties debated the question during a public hearing on 28 November 1997 (hereinafter "the hearing").

The Trial Chamber will first analyse the claims of the parties and then discuss all the disputed points.

I. CLAIMS OF THE PARTIES

2. In its Motion, the Defence raises an objection in principle to the admission of hearsay evidence, with no inquiry as to its reliability, in particular, following the depositions of two witnesses who testified before the Trial Chamber on 26 and 29 September 1997.

The Defence invokes the accused's fundamental right to cross-examine the Prosecution witnesses, as provided in article 21(4)(e) of the Statute of the Tribunal (hereinafter "the Statute"). Basing itself *inter alia* on the case-law of the European Court of Human Rights, the Defence recalled that what is at stake is "a basic tenet of both national and international judicial systems". The Defence, therefore, considers that hearsay evidence should be admissible only if it is based on a proper foundation and only if found to be reliable following a detailed investigation by the Trial Chamber. In support of its Motion, the Defence refers both to the common law legal systems and Sub-rule 89(B) and Rule 95 of the Rules of Procedure and Evidence (hereinafter "the Rules") as well as to the Decision of Trial Chamber II of 5 August 1996 in respect of the Defence Motion on hearsay, *The Prosecutor v. Tadić, IT-94-1-T, CPI 2* (hereinafter "Decision on Hearsay").

3. In her Response, the Prosecutor first maintains that the common law rule against the admissibility of hearsay evidence is not directly applicable to proceedings before the International Tribunal and that the recent developments in common law jurisdiction tend to demonstrate that whether the evidence is direct or hearsay is a matter which is relevant to its weight and not its admissibility. The Prosecutor then asserts that the case-law of the European

Court of Human Rights cited by the Defence is not relevant to the matter at hand. Lastly, the Prosecutor recalls that the admissibility of hearsay evidence before the Tribunal has been well established, pursuant to Rule 89 of the Rules and the Decision on Hearsay.

II. DISCUSSION

4. The Trial Chamber must review the conditions under which hearsay evidence is admissible and *inter alia* concentrate on the question of its reliability and compatibility with a fair trial. In so doing, the Trial Chamber notes that for reasons inherent to the armed conflict which concerns us here, thousands of people were displaced, detained or even killed. Under such conditions, it can be expected that the witnesses will refer to events which others, and not they themselves, experienced. This, however, may be considered only on the basis of parity between the Parties and on respect for the rights of the accused as expressed in internationally recognised standards.

5. The Trial Chamber would first recall the rules most relevant to this case. Firstly, Sub-rule 89(A) of the Rules states explicitly that the "Chambers shall not be bound by national rules of evidence". For that reason, neither the rules issuing from the common law tradition in respect of the admissibility of hearsay evidence nor the general principle prevailing in the civil law systems, according to which, barring exceptions, all relevant evidence is admissible, including hearsay evidence, because it is the judge who finally takes a decision on the weight to ascribe to it, are directly applicable before this Tribunal. The International Tribunal is, in fact, a *sui generis* institution with its own rules of procedure which do not merely constitute a transposition of national legal systems. The same holds for the conduct of the trial which, contrary to the Defence arguments, is not similar to an adversarial trial, but is moving towards a more hybrid system.

A. Hearsay evidence is admissible

6. At the hearing, the Defence specified that it was not contesting the principle of the admissibility of hearsay evidence but the limits to such admissibility. Nevertheless, the contents of the initial Motion largely deal with the principle of the admissibility of hearsay evidence. The Trial Chamber would wish to recall its agreement in principle to the admissibility of such evidence.

7. The Trial Chamber notes that the only provision regarding the admissibility of evidence is to be found in Sub-rule 89(C) of the Rules:

“A Chamber may admit any relevant evidence which it deems to have probative value”.

This provision applies whether the evidence is direct or hearsay. In fact, when interpreted in the light of the other paragraphs of Rule 89, it is sufficiently general to include the admissibility of hearsay evidence. In respect of this point, the Rule offers a correct interpretation of the Statute.

8. Concomitantly, the Trial Chamber would point out that the case-law of the European Court of Human Rights invoked by the Defence in support of its Motion is not appropriate here. In fact, the cases mentioned relate to situations in which, because of other insufficient inculpatory evidence, the accused was convicted essentially on the basis of hearsay evidence, or even anonymous testimony. In the case *Kostovski v. The Netherlands* (ECHR, Series A, no. 166, 1989), the conviction was handed down as a result of the statements of two anonymous witnesses questioned by the police. Likewise, in the case *Windisch v. Austria* (ECHR Series A, no. 186, 1990), the conviction was based mainly on anonymous statements. In the case *Delta v. France* (ECHR Series A, no. 191, 1990), an accused was convicted without the presence of the only two prosecution witnesses and merely on the basis of the testimony of the police officer who had taken their statements. In the case *Unterpertinger v. Austria* (ECHR Series A, no. 110, 1986), the conviction was also based principally on the statements of two witnesses who refused to appear at the hearing.

9. Lastly, the Trial Chamber, as the parties, moreover, have noted, points out that case-law relative to this matter already exists within the Tribunal. Trial Chamber II in the “Decision on Hearsay” in the case *The Prosecutor v. Tadić* has already ruled on the issue. The Judges reached the conclusion that the Statute and the Rules contained no principle barring the admissibility of hearsay testimony and reaffirmed the two conditions governing the admissibility of the evidence : its relevance and its probative value.

In respect of the provisions of the Statute and the Rules, the Judges stated:

“there is no blanket prohibition on the admission of hearsay evidence. Under our Rules, specifically, Sub-rule 89(C), out of court statements that are relevant and found to have probative value are admissible.” (para. 7)

Judge Stephen, in particular, affirmed:

"The fact that evidence is hearsay does not, of course, affect its relevance nor will it necessarily deprive it of probative value". (*Separate Opinion of Judge Stephen on the Defence Motion on Hearsay*, p.2).

10. This Trial Chamber agrees with those conclusions and emphasises that the two criteria for admissibility - relevance and probative value - pursuant to Sub-rule 89(C) of the Rules, apply whether the testimony is direct or hearsay. In fact, direct testimony may also not be relevant or have the required probative value and thus be declared inadmissible. The direct or hearsay nature of the testimony is but one of the many factors which the Trial Chamber will consider when evaluating the relevance and probative value of such testimony. The Trial Chamber therefore considers that the admissibility of hearsay evidence may not be subject to any prohibition in principle since the proceedings are conducted before professional Judges who possess the necessary ability to begin by hearing hearsay evidence and then to evaluate it so that they may make a ruling as to its relevance and probative value. The Trial Chamber notes, finally, that the principle of the inadmissibility of hearsay evidence, as enshrined in the common law countries, has, in those very countries today, become "riddled with judicial and even legal exceptions" (Jean Pradel, *Droit pénal comparé*, Précis Dalloz, 1995, p. 406).

B. The question of the limits to the admissibility of hearsay evidence

11. As regards the limits to the admissibility of hearsay evidence, the Defence is seeking both that a general limit be placed on recourse to hearsay evidence and that the evidence be identified so that the Judges may evaluate its reliability. The principal argument in support of such limits is the absence of any cross-examination of the initial declarant. However, since the principle making hearsay evidence admissible has been accepted, the objection in respect of the absence of cross-examination is not related to admissibility but to the weight given to the evidence.

12. The right to cross-examination guaranteed by Article 21(4)(e) of the Statute applies to the witness testifying before the Trial Chamber and not to the initial declarant whose statement has been transmitted to this Trial Chamber by the witness.

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The Trial Chamber does, however, note that the right to cross-examine the witness in court may be used to challenge the importance to be given to the hearsay testimony, for example, by clearly indicating the number of intermediaries who transmitted the testimony and by seeking to learn the identity and other characteristics of the initial declarant as well as the possibilities for that declarant to have learned the relevant elements or even by bringing out the other facts or circumstances which might assist the Trial Chamber in its evaluation of such evidence.

13. In the opinion of the Trial Chamber, the Judges are the ones who will, in due course and in each case, determine the reliability to be accorded to a testimony, according to the circumstances in which it was obtained and to its content. For this purpose, the Judges, if necessary, will not hesitate to ask the witness questions relating to the hearsay evidence. The proceedings of the International Tribunal are not conducted before a jury, but before professional Judges who rule on both fact and law. Thanks to their training and experience, the Judges can give the appropriate weight to testimony declared admissible in light of its reliability. Such an evaluation can logically be made only *a posteriori* once the Parties have presented all their claims.

C. The need to ensure a fair trial

14. The Trial Chamber would recall that testimony initially admitted because it satisfies the two-fold criteria of relevance and probative value may subsequently be rejected, pursuant to Sub-rule 89(D) of the Rules should the Judges deem that, within the context of the trial, such testimony no longer meets the need to ensure a fair trial. Sub-rule 89(D), in fact, states that

“A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a faire trial”.

In its Decision on hearsay, Trial Chamber II already considered the real guarantee for the Defence in respect of the unconditional admission of evidence. It noted that

“Moreover, Sub-rule 89(D) provides further protection against prejudice to the Defence, for if evidence has been admitted as relevant and having probative value, it may later be excluded” (para. 18).

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Each of the parties must provide the elements which it considers necessary in order to allow the Trial Chamber to identify clearly what falls within the category of hearsay and in order to convince the Trial Chamber, as a last resort, that the testimony in question satisfies the need to ensure a fair trial. In particular, the Defence is free to demonstrate that a hearsay testimony which was declared admissible must, in the end, be excluded because its probative value is insufficient.

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III. DISPOSITION

FOR THE FOREGOING REASONS,

The Trial Chamber

RULING *inter partes* and unanimously,

REJECTS the Defence Motion of 30 September 1997 on the objection in principle to the admission of hearsay evidence with no inquiry as to its reliability.

Done in French and English, the French version being authoritative.

Done this twenty-first day of January 1998
At The Hague
The Netherlands

(signed)

Claude Jorda, Presiding Judge
Trial Chamber I

ANNEX 1: GLOSSARY**GOVERNMENTS OR POLITICAL PARTIES IN SIERRA LEONE MENTIONED IN****EVIDENCE**

S.L.P.P.:	Sierra Leone Peoples Party
A.P.C.:	All Peoples Congress
N.P.R.C.:	National Provisional Ruling Council
A.F.R.C.:	Armed Forces Revolutionary Council (May 1997-February 1998) Often referred to as the Junta

MAIN RUF LEADERSHIP

Foday Sankoh	Also known as Lion
Sam Bockarie	Also known as Mosquito or Masikita
Issa Sessay	
Denis Mingo	Also known as Superman
Gibril Massaquoi	
Morris Kallon	
Mike Lamin	
Augustine Gbao	
Komba Gundema	
Eldred Collins	
Issac Mongor	

MAIN COMBATANT GROUPS

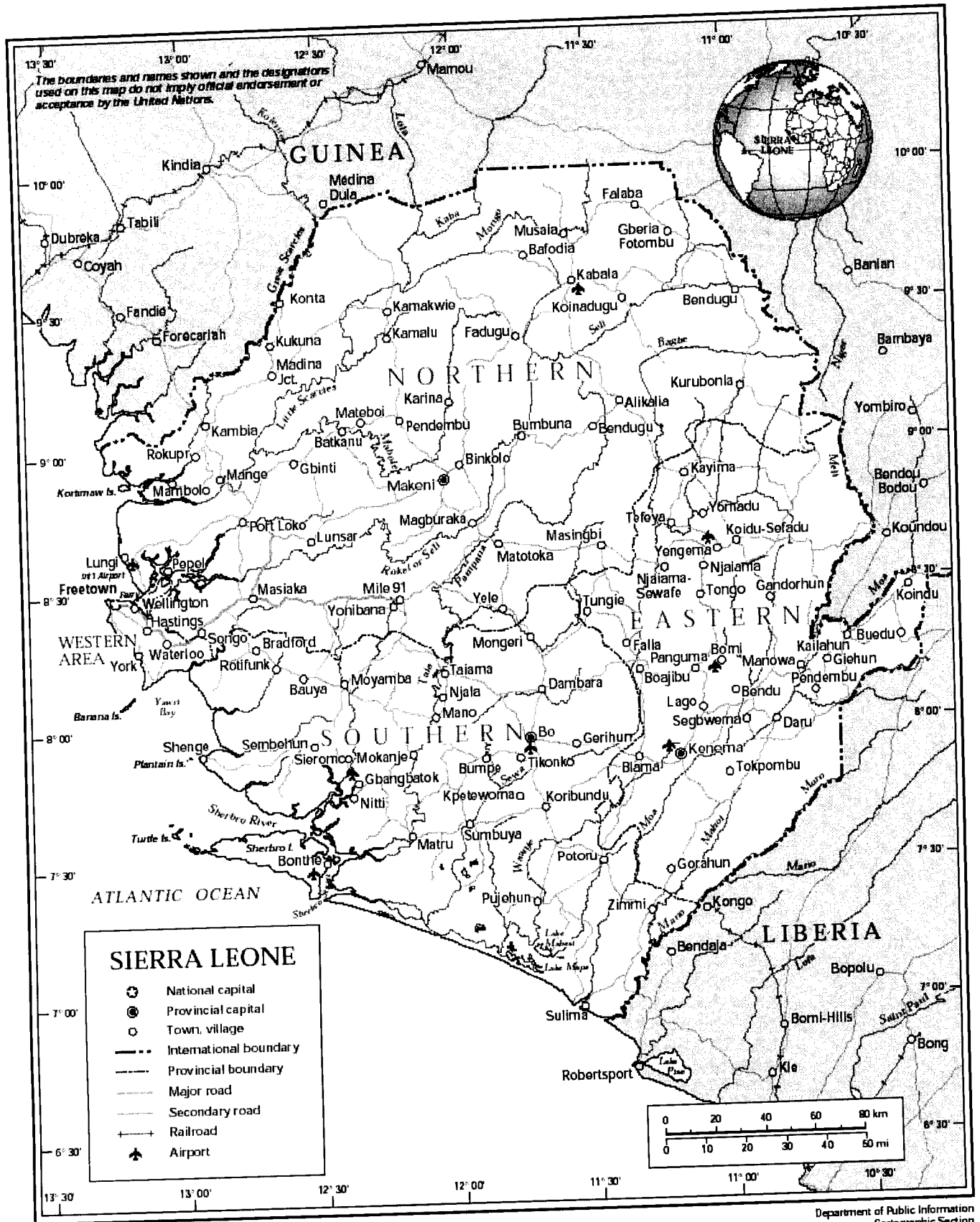
S.L.A.	Sierra Leone Army (Those soldiers that aligned with the A.F.R.C. Government and later the A.F.R.C. Faction after the Intervention)
Loyal S.L.A.	Those members of the Sierra Leone Army that fought alongside E.C.O.M.O.G. to restore the S.L.P.P. government
E.C.O.M.O.G.	Economic Community of West African States Monitoring Group
R.U.F.	Revolutionary United Front

C.D.F.	Civil Defence Forces, which included Kamajors
A.F.R.C. Faction	The designation of the A.F.R.C. after being forced from the power after the Intervention and reverting to a military force
S.L.P.	Sierra Leone Police
Peoples Army	The combined group of RUF/SLA
RSLAF	Republic of Sierra Leone Armed Forces
RDF	Rapid Deployment Force
Junta Forces	Mixed SLA/RUF forces

SOME SIGNIFICANT A.F.R.C. / S.L.A. PARTICIPANTS IN ADDITION TO THE ACCUSED

Johnny Paul Koroma	Also known as JPK
Solomon Anthony James Musa	Also known as SAJ Musa. [REDACTED] [REDACTED]
Abu Sankoh	Also known as Zagallo
Hassan Papah Bangura	Also known as Bomblast. [REDACTED] [REDACTED]
George Johnson (TF1-167)	Also known as Junior Lion [REDACTED]
Alie Turay [REDACTED]	Also known as Alabama
Brigadier Mani	
Franklyn Conteh, WOII	Also known as Woyoh
Mohamed Savage	Also known as Mr. Die
Staff Alhaji Bio	Also known as Staff Alhaji
Adama Cut Hand	Also referred to as Adama

ANNEX 2 – Maps of Sierra Leone



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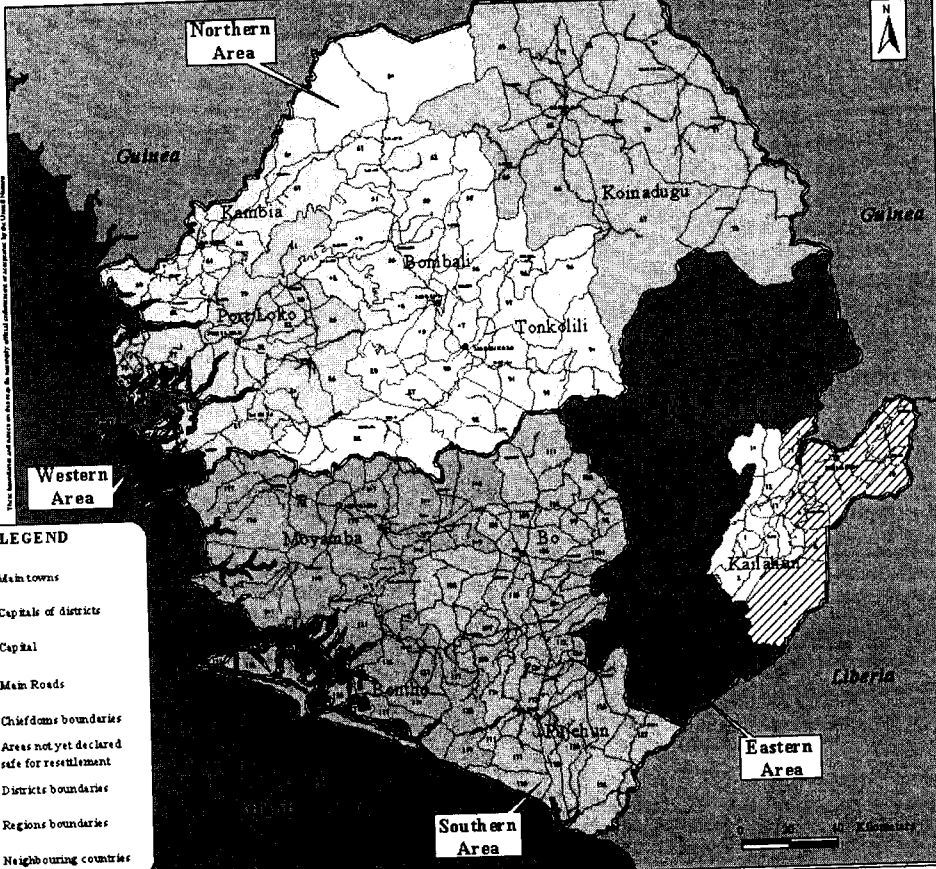
SIERRA LEONE PLANNING MAP



The UN Refugee Agency



July 2002



- LEGEND**
- Main towns
 - Capitals of districts
 - ★ Capital
 - Main Roads
 - ▭ Chiefdoms boundaries
 - ▨ Areas not yet declared safe for resettlement
 - ▭ Districts boundaries
 - ▭ Regions boundaries
 - ▭ Neighbouring countries

Chiefdom Names and Geo-Codes

Chiefdom Name	Geo-Code
1 Njala	01
2 Jari	02
3 Mankro	03
4 Faga	04
5 Faga	05
6 Faga	06
7 Faga	07
8 Faga	08
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