(628)

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SPECIAL COURT FOR SIERRA LEONE

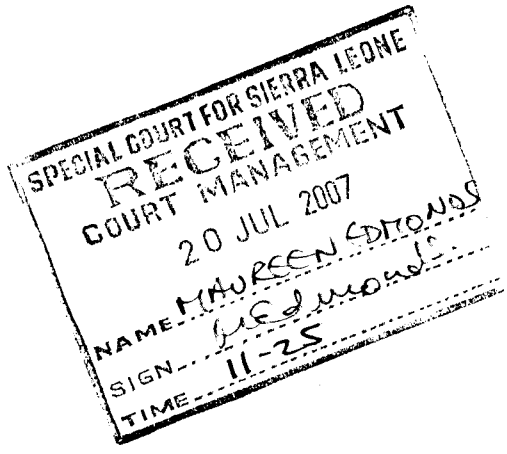
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Date: 20 June 2007

Case No.: SCSL-04-16-T



PROSECUTOR

Against

Alex Tamba BRIMA
Brima Bazzy KAMARA
Santigie Borbor KANU

JUDGEMENT

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Revised pursuant to Corrigendum issued by the Trial Chamber on 19 July 2007.

TABLE OF CONTENTS

23026

I. INTRODUCTION 21

II. ALLEGED DEFECTS IN THE FORM OF THE INDICTMENT 25

III. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE 49

IV. CONTEXT OF THE ALLEGED CRIMES 65

V. GENERAL REQUIREMENTS FOR ARTICLES 2, 3 AND 4 OF THE STATUTE 80

VI. POLITICAL STRUCTURE OF THE AFRC GOVERNMENT 98

VII. ROLE OF THE ACCUSED 108

VIII. MILITARY STRUCTURE OF THE AFRC FIGHTING FORCE 167

IX. APPLICABLE LAW 195

X. FACTS AND FINDINGS 247

XI. RESPONSIBILITY OF THE ACCUSED 450

XII. CUMULATIVE CONVICTIONS 564

XIII. DISPOSITION 568

SEPARATE CONCURRING OPINION OF THE HON. JUSTICE JULIA SEBUTINDE APPENDED TO JUDGEMENT PURSUANT TO RULE 88 (C) 573

PARTLY DISSENTING OPINION OF JUSTICE DOHERTY ON COUNT 7 (SEXUAL SLAVERY) AND COUNT 8 ('FORCED MARRIAGES') 581

ANNEX A: PROCEDURAL HISTORY 596

ANNEX B: GLOSSARY 618

ANNEX C: MAP OF SIERRA LEONE 630

DETAILED TABLE OF CONTENTS

I. INTRODUCTION 21

A. THE SPECIAL COURT FOR SIERRA LEONE 21
B. PROCEDURAL HISTORY 21
C. THE ACCUSED 23
D. SUMMARY OF THE CHARGES 23

II. ALLEGED DEFECTS IN THE FORM OF THE INDICTMENT 25

A. HISTORY OF INDICTMENTS 25
B. SCOPE OF REVIEW 26
C. APPLICABLE PLEADING PRINCIPLES 27
D. DISCUSSION 29
1. Particulars of Victims and Locations 29
(a) Victims 29
(b) Locations 30
(c) Offences of a Continuous Nature 31
2. Alleged Failure to Plead that Crimes were *Committed* by the Accused 32
(a) Pleading Principles When the Mode of 'Committing' is Alleged 32
(b) Findings 35
3. Objections Relating to Joint Criminal Enterprise ("JCE") 36
(a) Submissions of the Parties 36
(b) Pleading Principles 37
(c) Deliberations 39
(d) Findings 43
4. Alleged Failure to Specify Factual Foundation of Responsibility Pursuant to Article 6(3) of the Statute 45
5. Alleged Failure to Distinguish Between Individual Criminal Responsibility Under Article 6(1) and 6(3) of the Statute 46
6. Pleading of Count 7: Sexual Slavery and Any Other Form of Sexual Violence (Article 2(g) of the Statute) 46
(a) Submissions of the Parties 46
(b) Findings 47

III. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE 49

A. LAW APPLICABLE TO THE ASSESSMENT OF EVIDENCE 49
1. Burden and Standard of Proof 49
2. Admission of Evidence 50
B. FORMS OF EVIDENCE UNDER REVIEW 50
1. Witness Testimony 51
(a) Discrepancies Between the Evidence of Various Witnesses, or Between the Evidence of a Particular Witness and a Previous Statement 53
(b) Crimes Involving Sexual Violence 54
(c) Names of Locations 54
(d) Testimony of Accused in his own Defence 55
(e) Alibi of Accused Brima 55
(f) Witnesses Implicated in the Commission of the Crimes 57
(g) 'Incentives' for Witnesses 57
(h) Putting the Defence Case to Prosecution Witnesses 58
2. Documentary Evidence 59
(a) Introduction 59

(b) Copies and Internet Sources 60
(c) Radio Broadcasts and Transcripts Thereof 61
(d) Documents Used in Cross-Examination by the Prosecution 61
3. Expert Testimony and Reports 62
4. Facts of which Judicial Notice was Taken 63
5. Agreed Facts 64

IV. CONTEXT OF THE ALLEGED CRIMES 65

A. POLITICAL PRECURSORS 65
B. THE ARMED CONFLICT IN SIERRA LEONE FROM 1991 TO 1997 65
C. THE ARMED CONFLICT IN SIERRA LEONE FROM 1997 TO 1998 67
1. The AFRC/RUF Government Period (May 1997 to February 1998) 67
(a) The 25 May 1997 Coup and the AFRC/RUF Government 67
(b) Territorial Control of the AFRC/RUF Government 67
(c) Relationship between the AFRC and RUF 68
(d) Military Pressure on the AFRC Government 70
(e) The February 1998 ECOMOG attack on Freetown and the retreat of AFRC/RUF forces 70
D. THE ARMED CONFLICT IN SIERRA LEONE FROM 1998 TO 2001 71
1. Post AFRC/RUF Government period (February 1998 to May 1998) 71
(a) Restructuring of the AFRC/RUF troops in the Districts (February 1998) 71
(b) Planning the attack on Koidu Town (end February 1998) 71
2. Kono District (March 1998 to May/June 1998) 72
3. Koinadugu and Kailahun District (February 1998 – November 1998) 73
4. Koinadugu and Bombali Districts (May 1998 – November 1998) 74
(a) Retreat from Kono District (April/May 1998) 74
(b) AFRC Troop Movement from East to West (May 1998 – November 1998) 74
5. Advance on Freetown (November to December 1998) 76
6. Attack on Freetown (January 1999) 77
7. Retreat from Freetown (January/February 1999) 78
8. Port Loko District (February 1999 – April 1999) 78
E. THE 1999 LOMÉ PEACE ACCORD AND THE CESSATION OF HOSTILITIES IN SIERRA LEONE IN 2001 79

V. GENERAL REQUIREMENTS FOR ARTICLES 2, 3 AND 4 OF THE STATUTE 80

A. ARTICLE 2 OF THE STATUTE: CRIMES AGAINST HUMANITY 80
1. The Law 80
(a) There must be an attack 81
(b) The attack must be widespread or systematic 81
(c) The attack must be directed against any civilian population 82
(d) The acts of the perpetrator must be part of the attack 84
(e) The perpetrator must have knowledge that his acts constitute part of a widespread or systematic attack directed against a civilian population 84
2. Submissions of the Parties 85
3. Findings 85
(a) AFRC/RUF Government period 86
(b) Post AFRC/RUF Government Period (February 1998 January 200) 88
B. ARTICLE 3 OF THE STATUTE: VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II 92
1. The Law 92
(a) There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed 93
(b) There must be a nexus between the armed conflict and the alleged offence 94

(c) The victims were not directly taking part in the hostilities at the time of the alleged violation 94
2. Findings 94
C. ARTICLE 4 OF THE STATUTE: OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW 96
1. The Law 97
2. Findings 97
VI. POLITICAL STRUCTURE OF THE AFRC GOVERNMENT 98
A. INTRODUCTION 98
B. THE ARMED FORCES REVOLUTIONARY COUNCIL GOVERNMENT 99
1. The Governing Council of the AFRC Government 102
2. Information Available to the Governing Council 105
3. Principal Liaison Officers ("PLOs") 105
4. Honourables 107
C. CONCLUSION 107
VII. ROLE OF THE ACCUSED 108
A. INTRODUCTION 108
B. ALEX TAMBA BRIMA 108
1. Allegations and Submissions 108
2. Personal Background of Brima 109
3. The Identity of Brima 110
4. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998) 111
(a) Involvement in the 25 May 1997 Coup 112
(b) Council Membership 112
(c) Principal Liaison Officer 2 113
(d) Mining Supervision in Kono and Kenema Districts 114
(e) Findings 116
5. Brima's Alleged Arrest in Kono and Kailahun Districts (February – May 1998) 116
(a) Brima's Alibi for Kono District 116
(b) Return to Kono District 117
(c) Findings 118
6. Brima's Alleged Arrest in Koinadugu and Bombali Districts (February – November 1998) 118
(a) Brima's Alibi for Koinadugu and Bombali Districts 119
(b) Command of the Advance Troops from Mansofinia to Rosos 121
(i) The Credibility of Witnesses 121
a. Prosecution Witnesses 121
i. TF1-334 122
ii. TF1-184 122
iii. TF1-033 123
iv. TF1-153 124
v. George Johnson 125
b. Defence Witnesses 125
(c) Findings 127
(d) Brima's Alleged Detention at 'Colonel Eddie Town' 129
(e) Advance on Freetown 130
7. Brima's Role in Freetown and the Western Area (January 1999 – February 1999) 130
(a) Prosecution Witnesses 131
(b) Defence Witnesses 134
(c) Findings 137
8. Brima's Role in Port Loko District (February 1999 – July 1999) 138
(a) Findings 138

C. IBRAHIM BAZZY KAMARA 139
1. Allegations and Submissions 139
2. Personal Background of Kamara 140
3. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998) 140
(a) Involvement in the 25 May 1997 Coup 141
(b) Council Membership 141
(c) Principal Liaison Officer 3 141
(d) Findings 142
4. Kamara's Role in Kono and Kailahun Districts (14 February – 30 June 1998) 142
(a) Kamara's Role prior to the Departure of Johnny Paul Koroma from Kono District 143
(b) Kamara's Role after the Departure of Johnny Paul Koroma from Kono District 144
(i) Prosecution Witnesses 144
(ii) Defence Witnesses 145
(c) Findings 147
(d) The Return of the Accused Brima 147
5. Kamara's Role in Koinadugu and Bombali Districts (June 1998 – November 1998) 147
(a) Kamara's Command Position within the AFRC Troops from Mansofinia to Rosos 148
(b) Kamara's Alleged Detention in 'Colonel Eddie Town' 149
6. Kamara's Role in Freetown and the Western Area (January 1999 – February 1999) 149
(a) Findings 150
7. Kamara's Role in Port Loko District (February 1999 – July 1999) 150
(a) The Presence of the Accused in Port Loko District 151
(i) Prosecution Witnesses 151
(ii) Defence Witnesses 152
(iii) Findings 153
(b) Command of the AFRC troops in the 'West Side' 153
(i) Prosecution Witnesses 153
(ii) Defence Witnesses 154
(iii) Findings 157
D. SANTIGIE BORBOR KANU 158
1. Allegations and Submissions 158
2. Personal Background of Kanu 158
3. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998) 159
(a) Involvement in the 25 May 1997 Coup 159
(b) Council Membership 160
(c) Other Activities 160
4. Kanu's Role in Kono and Kailahun Districts (February 1998 – May 1998) 161
5. Kanu's Role in Koinadugu and Bombali Districts (June 1998 – November 1998) 161
(a) Kanu's Position within the AFRC Troops from Mansofinia to Rosos 162
(i) Prosecution Witnesses 162
(ii) Defence Witnesses 162
(b) Findings 163
(c) Kanu's Alleged Detention in 'Colonel Eddie Town' 164
6. Kanu's Role in Freetown and the Western Area (January 1999 – February 1999) 164
(a) Findings 166
7. Kanu's Role in Port Loko District (February 1999 – July 1999) 166

VIII. MILITARY STRUCTURE OF THE AFRC FIGHTING FORCE 167

A. PRELIMINARY REMARKS 167
B. SUBMISSIONS OF THE PARTIES 168
C. MILITARY UNIFORMS 169
D. EVIDENTIARY CONSIDERATIONS 170
(a) Military Expert Witnesses 170

(b) Factual Witnesses 174
E. FINDINGS ON THE MILITARY STRUCTURE OF THE AFRC FIGHTING FORCE 175
(a) Kono District (14 February 1998 through 30 June 1998) 175
(i) The Chain of Command 175
(ii) Planning and Orders Process 177
(iii) Disciplinary System 178
(iv) Conclusion 178
(b) Bombali District (May 1998-November 1998) 178
(i) The Chain of Command 178
(ii) Planning and Orders Process 181
(iii) Disciplinary System 183
(iv) Conclusion 185
(c) Freetown and the Western Area (January 1999) 185
(i) Chain of Command 185
(ii) Planning and Orders Process 189
(iii) Disciplinary System 190
(iv) Conclusion 191
(d) Port Loko District (February through April 1999) 191
(i) Chain of Command 192
(ii) Planning and Orders Process 193
(iii) Disciplinary System 193
(iv) Conclusion 194

IX. APPLICABLE LAW 195

A. INTRODUCTION 195
B. THE 'GREATEST RESPONSIBILITY REQUIREMENT' 196
1. Jurisdictional Requirement or Prosecutorial Discretion 196
(a) Submissions 196
(b) Findings 198
2. Scope of "the greatest responsibility requirement' 200
C. LAW ON THE CHARGES 201
1. Count 1: Acts of Terrorism (Article 3(d) of the Statute) 201
(a) Elements of the Crime 204
2. Count 2: Collective Punishments (Article 3(b) of the Statute) 206
(a) Elements of the Crime 207
3. Counts 3, 4 and 5: Unlawful Killings 209
(a) Count 3: Extermination (Article 2(b) of the Statute) 209
(b) Count 4 (Article 2(a) of the Statute) and Count 5 (Article 3(a) of the Statute): Murder 211
4. Counts 6, 7, 8 and 9: Sexual Crimes 212
(a) Count 6: Rape (Article 2(g) of the Statute) 212
(b) Count 7: Sexual Slavery and Any Other Form of Sexual Violence (Article 2(g) of the Statute) 214
(c) Count 8: Other Inhumane Acts (Article 2(i) of the Statute) 214
(i) Elements of the Crime 214
(ii) Submissions on the alleged crime of 'forced marriage' 215
(iii) Findings 216
(iv) Elements of the Crime of Sexual Slavery 217
(d) Count 9: Outrages Upon Personal Dignity (Article 3(e) of the Statute) 220
(i) Elements of the Crime 220
(ii) Findings 221
5. Counts 10 and 11: Crimes Relating to Physical Violence (Articles 3(a) and 2(i) of the Statute) 223
(a) Count 10 – Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Mutilation 223

(i) Elements of the Crime of 'Mutilation' 223
(b) Count 11 – Other Inhumane Acts 224
6. Count 12: Crimes Relating to Child Soldiers (Article 4(c) of the Statute) 224
(a) Elements of the Crime 225
(b) Submissions 225
(c) Findings 226
7. Count 13: Abductions and Forced Labour (Article 2(c) of the Statute) 228
(a) Introduction 228
(b) Elements of the crime 229
8. Count 14: Pillage (Article 3(f) of the Statute) 231
(a) Elements of the Crime 232
(b) Submissions 233
(c) Findings 233
D. LAW ON INDIVIDUAL CRIMINAL RESPONSIBILITY 234
1. Introduction 234
2. Individual Criminal Responsibility Pursuant to Article 6(1) of the Statute 234
(a) Committing 235
(b) Planning 236
(c) Instigating 237
(d) Ordering 237
(e) Aiding and abetting 238
(f) Participation in a Joint Criminal Enterprise 239
3. Individual Criminal Responsibility Pursuant to Article 6(3) of the Statute 239
(a) Elements of Superior Responsibility 240
(i) Existence of a Superior-Subordinate Relationship 241
(ii) Actual or Imputed Knowledge 243
a. Actual Knowledge 243
b. Imputed Knowledge 244
(iii) Failure to Prevent or Punish 245
4. Relationship Between Article 6(1) and 6(3) of the Statute 246

X. FACTS AND FINDINGS 247

A. UNLAWFUL KILLINGS (COUNTS 3-5) 247
1. Allegations and Submissions 247
2. Evidence and Deliberations 248
(a) Bo District (1 June 1997 – 30 June 1997) 248
(i) Tikonko 248
(ii) Gerihun 250
(iii) Findings 252
(b) Kenema District (25 May 1997 – 19 February 1998) 252
(i) Kenema Town 252
(ii) Findings 255
(c) Kono District (14 February 1998 – 30 June 1998) 255
(i) Koidu 256
(ii) Tombodu 256
(iii) Mortema 258
(iv) Findings 258
(d) Kailahun District (14 February 1998 – 30 June 1998) 259
(i) Kailahun Town 259
(ii) Findings 260
(e) Koinadugu District (14 February 1998 – 30 September 1998) 260
(i) Kabala 261
(ii) Koinadugu Town 262
(iii) Fadugu 262

(iv) Findings 263
(f) Bombali District (1 May 1998 - 30 November 1998) 263
(i) Bornoya 264
(ii) Karina 265
(iii) Mateboi 267
(iv) Gbendembu 267
(v) Findings 267
(g) Freetown and the Western Area (6 January 1999 – 28 February 1999) 268
(i) Freetown 268
a. East End Police 268
b. State House Area 269
c. Kingtom 272
d. Fourah Bay 273
e. Guard Street 275
(ii) Kissy 275
a. Good Shepherd Hospital 275
b. Rogbalan Mosque 276
c. Kissy Mental Home 278
d. Rowe Street 279
e. Fatamaran Street 280
(iii) Calaba Town 280
(iv) Wellington 280
(v) Findings 281
(h) Port Loko District 281
(i) Manaarma 281
(ii) Nonkoba 284
(iii) Findings 284
B. RAPE (COUNT 6) 285
1. Allegations and Submissions 285
2. Evidence and Deliberations 285
(a) Kono District (14 February 1998 – 30 June 1998) 285
(i) Koidu 286
(ii) Foendor / Foendu 286
(iii) Wondedu 287
(iv) Findings 288
(b) Koinadugu District (14 February 1998 – 30 September 1998) 288
(i) Kabala 288
(ii) Koinadugu Town 289
(iii) Fadugu 297
(iv) Findings 298
(c) Bombali District (1 May 1998 – 30 November 1998) 298
(i) Rosos 299
(ii) Findings 302
(d) Freetown and Western Area (6 January 1999 – 28 February 1999) 302
(i) State House 302
(ii) PWD 305
(iii) Greater Freetown 306
(iv) Findings 307
C. OUTRAGES ON PERSONAL DIGNITY (COUNT 9) 308
1. Preliminary Remarks 308
2. Allegations and Submissions 308
3. Evidence of Witnesses TF1-094, DAB-156 and TF1-085 309
(a) Prosecution Witness TF1-094 309
(b) Defence Witness DAB-156 311

(c) Prosecution Witness TF1-085 312
4. Evidence and Deliberations by District 315
(a) Kono District (14 February 1998 – 30 June 1998) 315
(i) Findings 317
(b) Koinadugu District (14 February 1998 – 30 September 1998) 317
(i) Findings 322
(c) Bombali District (1 May 1998 – 30 November 1998) 323
(i) Findings 325
(d) Kailahun (At all times relevant to the Indictment) 326
(i) Findings 326
(e) Freetown and Western Area (6 January 1999 – 28 February 1999) 326
(i) Findings 331
(f) Port Loko District (February, 1999 – April, 1999) 332
(i) Findings 336
5. Findings 336
D. PHYSICAL VIOLENCE 337
1. Allegations and Submissions 337
2. Evidence and Deliberations 337
(a) Kenema District (25 May 1997 - 19 February 1998) 337
(i) Kenema Town 338
(ii) Finding 339
(b) Kono District (14 February 1998 - 30 June 1998) 339
(i) Tombodu 339
(ii) Kaima/Kayima 341
(iii) Finding 343
(c) Koinadugu District (14 February 1998 - 30 September 1998) 343
(i) Kabala 343
(ii) Findings 344
(d) Bombali District (1 May 1998 - 30 November 1998) 344
(i) Rosos 344
(e) Freetown and the Western Area (6 January 1999 - 28 February 1999) 345
(i) Freetown 345
a. Upgun 345
b. Kissy Old Road 346
c. 'Operation Cut Hand' at PWD 346
(ii) Kissy 346
a. Rowe Street 346
b. Fatamaran Street 347
c. Old Road (Locust and Samuels area) 347
d. Parsonage Street 348
e. Old Shell Road 348
f. Kissy Mental Home 348
(iii) Wellington 350
(iv) Findings 350
E. CHILD SOLDIERS 351
1. Allegations and Submissions 351
2. The Expert Witnesses 351
3. The Evidence of Former Child Soldiers 353
4. The Evidence of Other Witnesses 358
5. Findings 362
F. ABDUCTIONS AND FORCED LABOUR (COUNT 13) 364
1. Allegations and Submissions 364
2. Findings 366
(a) Kenema District (about 1 August 1997 - about 31 January 1998) 366

(i) Tongo Field 366
(ii) Findings 372
(b) Kono District (about 14 February 1998 – January 2000) 372
(i) Tombodu 373
(ii) Koidu 376
(iii) Wondedu 377
(iv) Other locations in Kono District 377
(v) Findings 378
(c) Koinadugu District (about February 1998 – 30 September 1998) 378
(i) Kabala 379
(ii) Kumala 379
(iii) Koinadugu 379
(iv) Other locations in Koinadugu District 381
(v) Findings 382
(d) Bombali District (about May 1998 – 31 November [sic] 1998) 383
(i) Journey to Rosos 383
(ii) Rosos 384
(iii) Findings 385
(e) Kailahun District (all times relevant to Indictment) 386
(i) May 1997 – February 1998 386
(ii) February 1998 – January 2000 387
(iii) Findings 388
(f) Freetown and the Western Area (6 January 1999 – 28 February 1999) 388
(i) Freetown 389
(ii) Kissy 389
(iii) Calaba Town 390
(iv) Other locations in Freetown and Western Area 391
(v) Findings 391
(g) Port Loko District (about February 1999) 392
(i) Other locations in Port Loko District 392
(ii) Findings 392
G. COUNT 14 (PILLAGE) 393
1. Allegations and Submissions 393
2. Evidence and Deliberations 393
(a) Bo District (1 June 1997 - 30 June 1997) 394
(b) Koinadugu District (14 February 1998-30 September 1998) 394
(i) Kabala 394
(ii) Finding 395
(c) Kono District (14 February 1998 - 30 June 1998) 395
(i) Tombodu 396
(ii) Yardu Sando 396
(iii) Findings 396
(d) Bombali District (1 March 1998-31 November 1998) 396
(e) Freetown and the Western area (6 January 1999-28 February 1999) 397
(i) State House 397
(ii) Kissy 398
(iii) Findings 398
H. ACTS OF TERRORISM (COUNT 1) AND COLLECTIVE PUNISHMENT (COUNT 2) 400
1. Allegations and Submissions 401
(a) Evidentiary basis 401
(b) Primary purpose 403
2. Evidence and Deliberations 404
(a) Primary purpose of certain acts of violence 404
(i) Child soldiers 404

(ii) Abductions and Forced Labour 405
(iii) Sexual Slavery 407
(iv) Physical Violence: Amputations 408
(b) Kenema District (25 May 1997 – 19 February 1998) 409
(i) Kenema Town 410
(ii) Findings 411
(c) Bo District (1 June 1997 – 30 June 1997) 412
(i) Tikonko 413
(ii) Gerihun 414
(iii) Findings 415
(d) Kailahun District (14 February 1998 – 30 June 1998) 416
(i) Kailahun Town 417
(ii) Findings 417
(e) Kono District (14 February 1998 – 30 June 1998) 418
(i) Koidu Town 419
(ii) Tombodu 420
(iii) Yardu Sando 422
(iv) Findings 422
(f) Koinadugu District (14 February 1998 – 30 September 1998) 423
(i) Kabala, Fadugu, Koinadugu Town and Kurubonla 424
(ii) Findings 426
(g) Bombali District (1 May 1998 – 30 November 1998) 426
(i) Mansofinia (Koinadugu District) to Camp Rosos (Bombali District) 428
a. Mansofinia (Koinadugu District) 428
b. Yaya (Kono District) 429
c. Kamagbengbeh (Bombali District) 429
d. Bornoya and Mateboi 430
e. Karina 430
f. Gbendembu 432
g. Rosos 432
(ii) Findings 433
(h) Freetown and Western Area (6 January 1999 – 28 January 1999) 434
(i) State House 435
(ii) Kingtom 436
(iii) Fourah Bay 437
(iv) Kissy 438
a. Good Shepherd Hospital 438
b. Rogbalan Mosque 439
c. Old Shell Road 439
d. Kissy Mental Home 440
e. Rowe Street 441
f. Fatamaran Street 441
g. Old Road (Locust and Samuels area) 441
h. Parsonage Street 442
i. PWD 442
(v) Findings 443
(i) Port Loko District (13 February 1998 – June 1999) (January-April 1999) 444
(i) Attacks on the way to and from Gberi Bana 444
(ii) Manaarma 447
(iii) Nonkoba 448
(j) Finding 448
3. Finding on Count 1 448
4. Finding on Count 2 449

XI. RESPONSIBILITY OF THE ACCUSED 450

A. PRELIMINARY REMARKS 450
B. THE ACCUSED BRIMA 451
1. Allegations in the Indictment 451
2. Bo, Kenema and Kailahun Districts 452
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute 452
(i) Submissions 452
(ii) Findings 453
a. Committing 453
b. Ordering 453
c. Planning 454
d. Instigating 454
e. Otherwise aiding and abetting 454
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute 455
(i) Submissions 455
(ii) Findings 455
a. Existence of a superior-subordinate relationship 455
i. Bo District (1 – 30 June 1997) 458
ii. Kenema District (25 May 1997 – 19 February 1998) 458
iii. Kailahun District (27 May 1997 – 14 February 1998) 458
b. Findings 459
3. Kono District 459
(a) Responsibility of the Accused Brima under Article 6(1) 459
(i) Submissions 459
(ii) Findings 460
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute 460
(i) Submissions 460
(ii) Findings 461
4. Kailahun District 462
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute 462
(i) Submissions 462
(ii) Findings 463
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute 463
(i) Submissions 463
(ii) Findings 463
5. Koinadugu District 464
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute 464
(i) Submissions 464
(ii) Findings 465
a. Committing 465
b. Ordering/Instigating 465
i. Order at Mansofinia to terrorise the civilian population 465
c. Planning and otherwise aiding and abetting 467
(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute 467
(i) Submissions 467
(ii) Findings 467
6. Bombali District 468
(a) Responsibility of the Accused Brima Under Article 6(1) of the Statute 468
(i) Submissions 468
(ii) Findings 469
a. Committing 469
i. Murder and Extermination at Karina 469
b. Ordering 471
i. Order to terrorise and kill the civilian population at Karina 471
ii. Order to terrorise the civilian population around Rosos 472

iii. Order for killings at Mateboi and Gbendembu 473
iv. Order at Rosos to recruitment children for military purposes 473
c. Planning, Instigating and otherwise aiding and abetting 474
(b) Responsibility of the Accused Brima under Article 6(3) of the Statute 474
(i) Submissions 474
(ii) Findings 475
a. Existence of a superior-subordinate relationship 475
b. Actual or Imputed Knowledge 476
c. Failure to Prevent or Punish 478
(iii) Conclusion 480
7. Freetown and Western Area 480
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute 480
(i) Submissions 480
(ii) Findings 481
a. Committing 481
i. Killings of three persons at State House 481
ii. Killing of a soldier's wife at the State House Area 483
iii. Unlawful killings at Kissy Mental Home/Portee area 484
iv. Unlawful killings in the Wellington area 484
v. Amputation of a civilian's hand at Old Road area 485
b. Ordering/Instigating 486
i. Order to kill civilians in Fourah Bay area 486
ii. Orders to terrorise and collectively punish the civilian population 486
iii. Orders to kill collaborators 489
iv. Order to loot UN Vehicles and civilian property 489
v. Order to kill 14 captive Nigerian ECOMOG soldiers at State House 490
vi. Order to kill three nuns at Kissy Mental Home 490
vii. Order to massacre civilians in Rogbalan Mosque 491
viii. Order to abduct and enslave civilians including child soldiers 492
c. Planning 492
d. Otherwise aiding and abetting 492
(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute 493
(i) Submissions 493
(ii) Findings 493
a. Existence of a superior-subordinate relationship 493
b. Actual or Imputed Knowledge 498
c. Failure to prevent or punish 498
(iii) Conclusion 498
8. Port Loko District 499
(a) Responsibility of the Accused Brima under Article 6(1) of the Statute 499
(i) Submissions 499
(ii) Findings 499
(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute 499
(i) Submissions 499
(ii) Findings 500
(iii) Conclusion 500
9. Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers 501
(a) Responsibility under Article 6(1) for Count 9 (Outrages on Personal Dignity) 504
(b) Responsibility under Article 6(1) for Count 12 (Child Soldiers) 504
(c) Responsibility under Article 6(1) for Count 13 (Enslavement) 505
(d) Responsibility under Article 6(3) for Counts 9, 12 and 13 505
C. THE ACCUSED KAMARA 505
1. Allegations in the Indictment 505
2. Bo, Kenema and Kailahun Districts (25 May 1997 – 14 February 1998) 506

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute 507
(i) Submissions 507
(ii) Findings 507
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute 507
(i) Submissions 507
(ii) Findings 508
a. Existence of a superior-subordinate relationship 508
b. Conclusion 509
3. Kono District 509
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute 510
(i) Submissions 510
(ii) Findings 510
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute 511
(i) Submissions 511
(ii) Findings 511
a. Existence of a superior-subordinate relationship 511
b. Actual or Imputed Knowledge 517
c. Failure to prevent or punish 518
(iii) Conclusion 518
4. Kailahun District 519
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute 519
(i) Submissions 519
(ii) Findings 519
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute 519
(i) Submissions 519
(ii) Findings 520
5. Koinadugu District 520
(a) Responsibility of the Accused Kamara under Article 6(1) of the Statute 520
(i) Submissions 520
(ii) Findings 521
(b) Responsibility of the Accused Kamara under Article 6(3) 521
(i) Submissions 521
(ii) Findings 521
6. Bombali District 522
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute 522
(i) Submissions 522
(ii) Findings 523
a. Committing 523
b. Ordering 523
c. Planning 523
d. Instigating and otherwise Aiding and Abetting 524
(b) Responsibility of the Accused Kamara under Article 6(3) of the Statute 524
(i) Submissions 524
(ii) Findings 524
a. Existence of a superior-subordinate relationship 524
7. Freetown and the Western Area 526
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute 526
(i) Submissions 526
(ii) Findings 527
a. Committing 527
i. Killings of civilians in the Fourah Bay Area 527
ii. Killings of civilians at Wellington 527
b. Ordering, Planning and Instigating 528
c. Otherwise aiding and abetting 528

i. Killings of civilians in Fourah Bay 528
ii. "Operation Cut Hand" in Freetown 528
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute 529
(i) Submissions 529
(ii) Findings 529
a. Existence of a superior-subordinate relationship 529
b. Knowledge and failure to prevent or punish 530
c. Conclusion 530
8. Port Loko District 530
(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute 531
(i) Submissions 531
(ii) Findings 531
(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute 532
(i) Submissions 532
(ii) Findings 532
a. Existence of a superior-subordinate relationship 532
b. Actual or Imputed Knowledge 534
c. Failure to prevent or punish 534
d. Conclusion 534
9. Responsibility of the Accused Kamara for Crimes of Enslavement 535
(a) Responsibility Under Article 6(1) of the Statute 535
(b) Responsibility Under Article 6(3) of the Statute 535
(i) Kono District 535
(ii) Port Loko District 536
D. THE ACCUSED KANU 537
1. Allegations in the Indictment 537
2. Bo, Kenema and Kailahun Districts 538
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute 538
(i) Submissions 538
(ii) Findings 539
a. Committing and Ordering 539
b. Planning 539
c. Instigating 540
d. Otherwise aiding and abetting 540
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute 540
(i) Submissions 540
(ii) Findings 540
3. Kono District 541
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute 541
(i) Submissions 541
(ii) Findings 542
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute 542
(i) Submissions 542
(ii) Findings 543
4. Kailahun District 543
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute 543
(i) Submissions 543
(ii) Findings 544
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute 544
(i) Submissions 544
(ii) Findings 544
5. Koinadugu District 545
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute 545
(i) Submissions 545

(ii) Findings 545
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute 546
(i) Submissions 546
(ii) Findings 546
6. Bombali District 547
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute 547
(i) Submissions 547
(ii) Findings 548
a. Committing/Ordering 548
b. Planning 548
c. Instigating 548
d. Otherwise aiding and abetting 548
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute 548
(i) Submissions 548
(ii) Findings 549
a. Existence of a superior-subordinate relationship 549
b. Actual or Imputed Knowledge and Failure to Prevent or Punish 550
c. Conclusion 551
7. Freetown and the Western Area 551
(a) Responsibility of the Accused Kanu under Article 6(1) of the Statute 552
(i) Submissions 552
(ii) Findings 552
a. Committing 552
i. Fourah Bay: The killing of civilians 552
ii. Kissy Road: "Demonstration" of an amputation to the troops 553
iii. Upgun: "Demonstration" of an amputation on a civilian 553
iv. State House: Looting of vehicles 554
b. Ordering 554
i. Order at State House to kill captive Nigerian ECOMOG soldiers 555
ii. Order to kill civilians at a mosque in Kissy 555
iii. Order to commit amputations in Eastern Freetown 555
c. Planning 556
d. Instigating 556
e. Otherwise aiding and abetting 556
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute 557
(i) Submissions 557
(ii) Findings 557
a. Existence of a superior-subordinate relationship 557
b. Knowledge 559
c. Failure to prevent or punish 559
d. Conclusion 560
8. Port Loko District 560
(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute 560
(i) Submissions 560
(ii) Findings 560
(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute 561
(i) Submissions 561
(ii) Findings 561
9. Responsibility for Crimes of Enslavement under Article 6(1) 561
(a) Responsibility under Article 6(1) for Count 9 (Sexual Slavery) 563
(b) Responsibility under Article 6(1) for Count 12 (Child Soldiers) 563
(c) Responsibility under Article 6(1) for Count 13 (Enslavement) 563

XII. CUMULATIVE CONVICTIONS 564

A. INTRODUCTION 564
B. SUBMISSIONS OF THE PARTIES 564
C. DISCUSSION 565

XIII. DISPOSITION 568

A. THE ACCUSED BRIMA 568
B. THE ACCUSED KAMARA 569
C. THE ACCUSED KANU 570

SEPARATE CONCURRING OPINION OF THE HON. JUSTICE JULIA SEBUTINDE APPENDED TO JUDGEMENT PURSUANT TO RULE 88 (C) 573

A. INTRODUCTION 573
B. PROCEDURAL HISTORY 573
C. EXPERT OPINION ON "FORCED MARRIAGE" 575
1. Drawing a distinction between early or arranged marriages of minors in peacetime and 'forced marriage' during armed conflict: 575
2. Characterisation of 'forced marriage' during armed conflict as a crime under International Humanitarian law: 578
D. CONCLUSION 579

PARTLY DISSENTING OPINION OF JUSTICE DOHERTY ON COUNT 7 (SEXUAL SLAVERY) AND COUNT 8 ('FORCED MARRIAGES') 581

A. COUNT 7 581
B. COUNT 8 583
1. Submissions of the Parties 583
(a) The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act; 585
(b) The act was of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute; 585
(c) The perpetrator was aware of the factual circumstances that established the character or gravity of the act; 585
(d) The act was committed as part of a widespread or systematic attack directed against a civilian population; and 585
(e) The perpetrator knew or had reason to know that his acts or omissions constituted part of a widespread or systematic attack directed against a civilian population 585
2. Expert Evidence 585
3. Witness Evidence 587
4. Forced Marriages as a Crime against Humanity 591
5. Non-Criminal International Treaties 593
6. Decisions of Other Tribunals 594
7. Conclusion 594

ANNEX A: PROCEDURAL HISTORY 596

A. INDICTMENT, ARREST, TRANSFER AND INITIAL APPEARANCE 596
1. Alex Tamba Brima 596
2. Brima Bazzy Kamara 596
3. Santigie Kanu 596
B. PRE-TRIAL PROCEEDINGS 597
1. Joinder 597
2. Trial Chamber Composition 598
3. History of Indictments 598
4. Assignment of Counsel 600
(a) The Accused Brima and Kamara 600
(b) The Accused Kanu 601

5. Bail 602
6. Habeas Corpus 602
7. Preliminary Motions 603
(a) Constitutionality 603
(b) Kamara challenge to jurisdiction: Lomé Accord Amnesty 605
(c) Kanu motion challenging jurisdiction and alleging abuse of process 606
8. Disclosure Matters 607
9. Protective Measures for Witnesses 610
10. Pre-trial Briefs and Agreed Facts 611
11. Pre-Trial Case Management 612
C. TRIAL PROCEEDINGS 612
1. Overview 612
2. Evidentiary Issues 613
(a) Disclosure 613
(b) Judicial Notice 614
(c) Admission of Documentary Evidence 614
(d) Protective Measures and Matters not Subject to Disclosure 615
(e) Counsel Issues 616
3. Rule 98 Decision 617

ANNEX B: GLOSSARY 618

D. LIST OF ABBREVIATIONS, ACRONYMS AND SHORT REFERENCES 618
E. LIST OF CASES 621
1. Special Court 621
2. ICTY 623
3. ICTR 626
4. Domestic Decisions 628
5. Others 628
F. MAIN ACTORS IN THE CONFLICT 629

ANNEX C: MAP OF SIERRA LEONE 630

I. INTRODUCTION

1. This Judgement is rendered by Trial Chamber II of the Special Court for Sierra Leone composed of Justice Julia Sebutinde, Presiding Judge, Justice Richard Lussick and Justice Teresa Doherty.

A. The Special Court For Sierra Leone

2. The Special Court was established for the prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.[1] The Special Court is an independent hybrid Court established under an Agreement between the United Nations and the Government of Sierra Leone[2] pursuant to UN Security Council Resolution 1315 (2000) of 14 August 2000.[3] The Special Court is governed by its Statute[4] and by its Rules of Procedure and Evidence.[5]

3. In particular, the Statute empowers the Special Court to prosecute persons responsible for the commission of certain crimes against humanity;[6] certain serious violations of Article 3 Common to the 1949 Geneva Conventions on the Protection of War Victims and of the 1977 Additional Protocol II thereto;[7] certain other serious violations of international humanitarian law;[8] and certain crimes under Sierra Leonean law.[9]

B. Procedural History

4. The initial Indictments against the Accused Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu each contained 17 counts of crimes against humanity, violations of Article 3

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[1] Article 1(1) of the Statute of the Special Court for Sierra Leone.
[2] Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, signed on 16 January 2002.
[3] U.N. Doc. S/RES/1315 (2000).
[4] Statute of the Special Court for Sierra Leone, annexed to the Agreement.
[5] The Rules of Procedure and Evidence of the Special Court for Sierra Leone, first adopted by the Plenary of Judges on 16 January 2002 and subsequently amended on 7 March 2003; 1 August 2003; 30 October 2003; 14 March 2004; 29 May 2004; 14 May 2005; 13 May 2006 and 24 November 2006. Rule 1 provides for their entry into force, effective from 12 April 2002.
[6] Statute, Article 2.
[7] Statute, Article 3.
[8] Statute, Article 4.
[9] Statute, Article 5.

common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law.[10]

5. On 27 January 2004, having ordered a joint trial of the Accused Brima, Kamara and Kanu, Trial Chamber I ordered the Prosecution to file two consolidated indictments and that new case numbers be assigned to the two joint cases.[11] On 5 February 2004, the Prosecution filed a new indictment ("Consolidated Indictment") in compliance with the Order of Trial Chamber I.[12]

6. On 9 February 2004, the Prosecution applied for leave to amend the Consolidated Indictment and add a count of "other inhumane acts" pursuant to Article 2(i) of the Statute for acts of "forced marriage". Moreover, the Prosecution moved for other modifications of the Consolidated Indictment.[13]

7. On 6 May 2004, Trial Chamber I granted the proposed amendments to the Consolidated Indictment, which included a new Count 8 of "other inhumane acts", along with other amendments ("Amended Consolidated Indictment").[14]

8. On 17 January 2005 the President of the Special Court assigned the trial of the Accused Brima, Kamara and Kanu to the newly created Trial Chamber II.[15]

9. On 7 February 2005, the Prosecution requested leave to withdraw Counts 15-18 from the Amended Consolidated Indictment. On 15 February 2005, the Trial Chamber granted the Prosecution's request.[16] The operative indictment in this case, the Further Amended Consolidated Indictment, was filed on 18 February 2005.

10. The Prosecution case-in-chief commenced on 7 March 2005 and closed on 21 November 2005. The Prosecution called 59 witnesses. The Defence case-in-chief started on 5 June 2006 and

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[10] *Prosecutor v. Brima*, SCSL-03-06-I, Indictment (Annexes: Prosecutor's Memo to Accompany Indictment, Investigator's Statement, Draft Order Confirming Indictment), 7 March 2003; *Prosecutor v. Kamara*, SCSL-03-10-PT, Prosecutor's Memorandum to Accompany the Indictment, 26 May 2003; *Prosecutor v. Kanu*, SCSL-03-13-PT, Indictment, 15 September 2003.

[11] *id.*, Corrigendum – Decision and Order on Prosecution Motion for Joinder, 28 January 2004. See also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision for the Assignment of a New Case Number, 3 February 2004.

[12] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Indictment, 5 February 2004.

[13] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Request for Leave to Amend the Indictment, 9 February 2004.

[14] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004; see also *id.*, Consequential Order and Corrigendum to the Decision on the Prosecution Request for Leave to Amend the Indictment, 12 May 2004.

[15] Order Assigning a Case to the Trial Chamber, SCSL-2004-16-PT, 17 January 2005.

[16] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005 and Corrigendum to

finished on 26 October 2006. Final briefs were filed on 1 December 2006 and Closing Arguments were heard on 7 and 8 December 2006. The Trial Chamber sat 176 trial days.

C. The Accused

11. According to the Prosecution Alex Tamba Brima was born on 23 November 1971 in the village of Yarya in Kono District.[17] Brima claims that he was born at Wilberforce Village in Freetown. The Accused also denies that his first name is 'Alex' and he was ever nicknamed 'Gullit.'[18] Brima further asserts that he joined the SLA in June 1991 and retired from the Army in 2001, having risen to the rank of Corporal. According to the Prosecution, Brima joined the Army in April 1985 and attained the rank of Staff Sergeant during the AFRC Government period.[19]

12. Brima Bazzy Kamara was born on 7 May 1968 or 1970 at Wilberforce Village in Freetown.[20] On 20 May 1991, he joined the SLA. According to the Prosecution, he was promoted to the rank of Staff Sergeant during the period of AFRC rule. Kamara asserts that he rose only to the rank of Sergeant. According to the Kamara Defence, the Accused served as a military driver during the years before the coup in May 1997.[21]

13. Santigie Borbor Kanu was born in March 1965 either in the county of Maforki in the Port Loko District, or in Freetown. On 27 November 1990, he joined the SLA where he was allegedly promoted to the rank of Sergeant during the period of AFRC rule.[22]

D. Summary of the Charges

14. The Indictment comprises a total of 14 counts. All three Accused are charged with seven counts of crimes against humanity, namely: murder, extermination, rape, sexual slavery and other forms of sexual violence, other inhumane acts (including physical violence) and enslavement (Counts 3, 4, 6, 7, 8, 11 and 13 respectively). Furthermore, all three Accused are charged with six counts of violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, namely: acts of terrorism, collective punishments, violence to life, health and physical or mental

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Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005.

[17] Indictment, para. 1

[18] Brima Pre-Trial Brief, para. 5.

[19] Brima Final Brief, para 19, Brima Pre-Trial Brief, para. 6.

[20] The Prosecution assert that the Accused was born in 1968 (Indictment, para. 3), while Kamara states that he was born in1970 (Kamara Pre-Trial Brief, para. 7).

[21] Kamara Pre-Trial Brief, para. 7-9.

[22] Indictment, paras 5-6.

well-being of persons (in particular murder and mutilation of civilians), outrages upon personal dignity and pillage (Counts 1, 2, 5, 10, 9, and 14 respectively).

15. In addition, all three Accused are charged with an "other serious violation of international humanitarian law", namely with conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 12).

16. The crimes underlying the 14 counts of the Indictment are alleged to have taken place in various locations throughout the territory of Sierra Leone within the time period from 25 May 1997 to January 2000.

17. The Accused are charged with acts of terrorism, collective punishment and conscripting or enlisting child soldiers throughout the entire territory of Sierra Leone at all times relevant to the Indictment.

18. The Prosecution alleges that the Accused – by holding senior positions within the AFRC fighting forces during the entire period of the Indictment – are individually responsible for the crimes committed by the forces, pursuant to Article 6(1) of the Statute and, in addition or alternatively, pursuant to Article 6(3) of the Statute. The Prosecution further submits that the Accused participated in a joint criminal enterprise with the Revolutionary United Front of Sierra Leone, with the objective to take any actions in order to gain and exercise political power and control over the territory of Sierra Leone, resulting in the commission of the crimes mentioned above.

II. ALLEGED DEFECTS IN THE FORM OF THE INDICTMENT

19. All three Accused object to the lack of particularisation in the Indictment and assert that this prejudiced the Accused in the preparation and presentation of their case.[23] The Prosecution argues that alleged defects in the form of the Indictment brought by the Accused Kamara and Kanu by way of preliminary motion pursuant to Rule 72(B)(ii) of the Rules have been adjudged prior to the commencement of trial,[24] and are *res judicata* and not open to fresh litigation at the end of the proceedings when no exceptional circumstances are shown.[25]

A. History of Indictments[26]

20. All Accused were initially individually charged. The initial indictment against Brima was approved on 7 March 2003,[27] Kamara's on 28 May 2003[28] and Kanu's on 16 September 2003.[29] The indictments were later consolidated,[30] amended[31] and further amended.[32]

21. Only the Kanu and Kamara Defence filed timely motions pursuant to Rule 72(B)(ii) of the Rules. A preliminary motion filed by the Accused Brima less than one week before the trial started was dismissed for having been submitted out of time.[33]

22. On 19 November 2003, Trial Chamber I dismissed the objections by the Kanu Defence with regard to the initial indictment with the exception of the use of language "included but not limited

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[23] Brima Final Brief, paras 126-156; Kamara Final Brief, paras 89-103; Kanu Final Brief, paras 291-292.
[24] *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, 1 April 2004 ("Kamara Form of the Indictment Decision"); *Prosecutor v. Santigie Borbor Kanu*, Case No. SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003 ("Kanu Form of the Indictment Decision").
[25] Prosecution Closing Argument, Transcript 7 December 2006, pp. 57-59, referring to *Brđanin* Trial Judgement, para. 48; *see also* Prosecution List of Authorities Referred to in Oral Closing Submissions, 25 January 2006, point 1.
[26] For a detailed procedural history of the Indictments *see* Annex B of the Judgement..
[27] *Prosecutor v. Brima*, SCSL-03-06-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003.
[28] *Prosecutor v. Kamara,* SCSL-2003-10-PT, Decision Approving the Indictment, the Warrant of Arrest, and Order for Non-Disclosure, 28 May 2003.
[29] *Prosecutor v. Kanu*, SCSL-2003-13-I, Decision Approving the Indictment, the Warrant of Arrest and Order for Transfer and Detention and Order for Non-Public Disclosure, 16 September 2003.
[30] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Indictment, 5 February 2004.
[31] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Amended Consolidated Indictment, 13 May 2004; *see Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004; see also *id.*, Consequential Order and Corrigendum to the Decision on the Prosecution Request for Leave to Amend the Indictment, 12 May 2004.
[32] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Further Amended Consolidated Indictment, 5 February 2004; *see Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005 and Corrigendum to Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005.
[33] *Prosecutor v. Brima, Kamara, Kanu*, Decision on the Defence Motion for Defects in the Indictment, 2 March 2005.

to" and "but not limited to these events", which it found defective. The Kanu Defence objected to the specificity of the initial indictment regarding different forms of individual criminal responsibility and regarding various counts.[34]

23. On 1 April 2004, Trial Chamber I dismissed the objections by the Kamara Defence with regard to the initial indictment with the exception of the use of language "included but not limited to" and "but not limited to these events", which it found defective. These objections included (i) lack of precision in the form of the initial indictment, (ii) failure to particularise the mode of participation under Article 6(1) of the Statute, (iii) lack of specificity for joint criminal enterprise, and (iv) failure to particularise responsibility as a superior.[35] The Kamara and Brima Defence raised similar issues in their Pre-Trial Briefs.[36]

B. Scope of Review

24. Preliminary motions pursuant to Rule 72(B)(ii) are the primary instrument through which alleged defects in an indictment should be raised,[37] and the Defence should be limited in raising such objections at a later stage for tactical advantage.[38] In the instant case it cannot, however, be said that the Defence only raised the challenges on the form of the indictment in their Final Trial Brief for tactical purposes. The procedural history, as shown above, demonstrates that the Defence did in fact constantly complain about the vagueness of the Indictment throughout the trial, pursuant to Rule 72(B)(ii), the Pre-Trial Brief, the Motion for Judgement of Acquittal and the Final Brief. The Trial Chamber further notes that the Rules do not afford a right to appeal a decision pursuant to Rule 72(B)(ii), once a Trial Chamber has decided on such a motion.[39] The Trial Chamber is not precluded from reviewing in this Judgement whether shortcomings in the form of the Indictment have actually resulted in prejudice to the rights of the Accused.[40] It is within the discretion of a Trial Chamber to reconsider a decision previously made if a clear error of reasoning has been

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[34] Kanu Form of the Indictment Decision, para. 7, p. 10.
[35] Kamara Form of the Indictment Decision, para. 34, p. 24.
[36] Brima Pre-Trial Brief, paras 28-29.
[37] *Kupreškić* Appeal Judgemnet, para. 79; *see also* Rule 98 Decision, para. 323.
[38] *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98*bis* Motions for Acquittal, 11 March 2005, para. 10.
[39] Rule 72(D) of the Rules.
[40] Precedent exists to consider the form of an indictment at the judgement stage: *see Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement, 15 May 2003 ("*Semanza* Trial Judgement"), paras 41-62; *Prosecutor v. Jean Mpambara*, Case No. ICTR-01-65-T, Judgement, 11 September 2006 ("*Mpambara* Trial Judgement"), paras 28-35; *Prosecutor v. André Ntagerura, Emmanuel Bagambiki, Samuel Imanishimwe*, Case No. ICTR-99-46-T, Judgement, 25 February 2004 ("*Cyangugu* Trial Judgement"), paras 28-70; *Emmanuel Ndindabahizi*, Case No. ICTR-2001-71-T, Judgement, 15 July 2004 ("*Ndindabahizi* Trial Judgement"), paras 28-29; *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10 and ICTR-96-17-T, Judgement, 21 February 2003 ("*Ntakirutimana* Trial

demonstrated or if it is necessary to do so to prevent an injustice.[41] In fact, Rule 26*bis* provides that a Trial Chamber "shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused [...]".

25. In the interests of judicial economy the Trial Chamber will limit this review to (1) issues which require clarification in light of evidentiary, procedural, or legal developments arising during the course of the trial, and (2) those exceptional circumstances where a failure to consider an issue is necessary to prevent an injustice.[42]

26. Therefore, due to the paramount importance of ensuring that proceedings are conducted in a fair manner, the Trial Chamber will review the applicable pleadings principles.[43]

C. Applicable Pleading Principles

27. Article 17(4)(a) of the Statute provides that an accused is entitled to be "informed promptly and in detail [...] of the nature and cause of the charge against him or her." Rule 47(C) of the Rules specifies that an "indictment shall contain, and be sufficient if it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence." These provisions translate into an obligation on the part of the Prosecution to plead the material facts underpinning the charges with enough detail to inform an accused clearly of the charges against him so that he or she may prepare a defence, but not the evidence by which such material facts are to be proven.[44]

28. Where the scale of the crimes renders it impractical to require a high degree of specificity regarding, for example, the identity of the victims, the Prosecution does not need to identify every victim in the indictment in order to meet its obligation of specifying the material facts of the case.[45]

Judgement"), paras 49-63; *see also Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT, Transcript 25 October 2006, p. 8 (Oral Decision on Motion for Judgement of Acquittal).

[41] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, para. 13; *Kajelijeli* Appeal Judgement, paras 203 and 204; *Cyangugu* Appeal Judgement, para. 55.

[42] *Prosecutor v. Aloys Simba*, Case No. ICTR-2001-76-T, Judgement, 13 December 2005 ("*Simba* Trial Judgement"), paras 14-40; Kamara Form of the Indictment Decision, para. 47.

[43] See *Semanza* Trial Judgement, para. 42.

[44] *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"), para. 209 (citing *Prosecutor v. Kupreškić, Kupreškić, Kupreškić, Josipović, and Šantić*, Case No. IT-95-16-A, Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement"), para. 88); *Simba* Trial Judgement, para. 14.

[45] *Kupreškić* Appeal Judgement, paras 89, 90.

29. The materiality of a particular fact depends on the nature of the Prosecution case and on the context of the alleged criminal conduct with which the accused is charged.[46] Whether the identity of the victims, the time and place of the events and the description of those events are material facts depends upon the proximity of the accused to those events and, therefore, the form of individual responsibility with which the accused is charged.[47] To that end, a distinction has been drawn in the jurisprudence between

(i) individual criminal responsibility under Article 6(1) in a case where it is *not* alleged that the accused personally carried out the acts underlying the crimes charged;

(ii) individual criminal responsibility under Article 6(1) where it *is* alleged that the accused personally carried out the acts in question; and

(iii) individual criminal responsibility under Article 6(3).

30. With regard to the first category, the precise details to be pleaded as material facts are the particular form of participation of the accused, not the acts of those persons for whose acts the accused is alleged to be responsible.[48] Depending on the particular form of participation under Article 6(1), the material facts to be pleaded may vary.[49]

31. Where it is alleged that an accused personally carried out the underlying criminal acts in question, the Prosecution is required to set out "with the greatest precision" the identity of the victims, the means by which the acts were committed and the time and place of the events.[50] But even in cases where personal participation is alleged, the nature or scale of the alleged crimes may render it impracticable to particularise the identity of every victim or the dates of commission.[51]

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[46] *Blaškić* Appeal Judgement, para. 210; *Rutaganda* Appeal Judgement, para. 304.

[47] *Blaškić* Appeal Judgement, para. 210, referring to *Prosecutor v. Mrkšić et al.,* Case No.: IT-95-13/1-PT, Decision on Form of Consolidated Amended Indictment and on Prosecution Application to Amend, 23 January 2004 ("*Mrkšić* 23 January 2004 Decision"), para. 52; *Prosecutor v. Brđanin and Talić,* Case No.: IT-99-36-PT, Decision on Objections by Radoslav Brđanin to the Form of the Amended Indictment, 23 Feb. 2001 ("*Brđanin and Talić* 23 February 2001 Decision"), para. 13.

[48] *Blaškić* Appeal Judgement, para. 210, referring to *Brđanin and Talić* 23 February 2001 Decision, para. 10; *Mrkšić* 23 January 2004 Decision, para. 8.

[49] *Prosecutor v. Deronjić,* Case No.: IT-02-61-PT, Decision on Form of the Indictment, 25 October 2002.

[50] *Blaškić* Appeal Judgement, para. 213, referring to *Prosecutor v. Tadić,* Case No.: IT-94-1-T, Decision on the Defence Motion on the Form of the Indictment, 14 November 1995, paras 11-13.

[51] *Kupreškić* Appeal Judgement, paras 89, 90, stating that "[s]uch would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment. Similarly, an accused may be charged with having participated as a member of a military force in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings and forced removals. In such a case the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of the case in the indictment. Nevertheless, since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so" (footnotes omitted).

32. An allegation of superior responsibility requires that the Prosecution specify not only what is alleged to have been the superior's own conduct, but also what is alleged to have been the conduct of those persons for which the superior bears responsibility, subject to the Prosecution's ability to provide those particulars.[52]

D. Discussion

33. The Defence challenge the Indictment on a number of grounds. The Trial Chamber will address these objections in this Chapter only as far as they concern the pleading of the Indictment. Objections raised with regard to the applicable law[53] and the sufficiency of the evidence[54] are matters which will be discussed elsewhere in this Judgement.

1. Particulars of Victims and Locations

(a) Victims

34. The Brima Defence complains that the Indictment is impermissibly vague, in particular that no specific dates are given, when and where the crimes occurred and that no particulars were provided with regards to identity of the victims.[55]

35. This issue has been adjudicated in a decision on a preliminary motion by the Accused Kamara:

> The Trial Chamber [...] finds no merit in the allegations for the following reasons. [...] [T]here is no applicable magical formula as to the degree of specificity required for the purposes of pleading "an indictment alleging criminality in the international domain as distinct from criminality in the domestic sphere." It is precisely a matter of common sense and what is reasonable, having regard to "the scale or magnitude on which the acts or events allegedly took place" and "the totality of the circumstances surrounding the commission of the alleged crimes".[56]

36. Although this ruling applies only in relation to the Accused Kamara, the Trial Chamber notes that this finding is supported by the *Kupreškić* Appeal Judgement stating that

> [...] in a case where the Prosecution alleges that an accused personally committed the criminal acts, the material facts, such as the identity of the victim, the time and place of the events and the means by which the acts were committed, have to be pleaded in detail. Obviously, there may be instances where the sheer scale of the alleged crimes "makes it impracticable to require a high

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[52] *Blaškić* Appeal Judgement, para. 216, referring to *Prosecutor v. Krnojelac,* Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, paras 38, 40.
[53] *See, e.g.*, Brima Final Brief, paras 146-152 regarding Counts 7 and 8 of the Indictment.
[54] *See, e.g.*, Kanu Final Brief, paras 295, 299-301, 302-314, 316-323, 325-363 with regard to JCE; and Kamara Final Brief, paras 61-67 with regard to the existence of a superior-subordinate relationship for the purposes of responsibility under Article 6(3) of the Statute.
[55] Brima Final Brief, paras 131-133, 138.
[56] Kamara Form of the Indictment Decision, para. 46 (footnotes omitted).

> degree of specificity in such matters as the identity of the victims and the dates for the commission of the crimes".[footnotes omitted]
>
> Such would be the case where the Prosecution alleges that an accused participated, as a member of an execution squad, in the killing of hundreds of men. The nature of such a case would not demand that each and every victim be identified in the indictment. Similarly, an accused may be charged with having participated as a member of a military force in an extensive number of attacks on civilians that took place over a prolonged period of time and resulted in large numbers of killings and forced removals. In such a case the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of the case in the indictment. Nevertheless, since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so.[footnotes omitted][57]

Therefore, the Trial Chamber holds that the above decision, being a statement of law, applies to the other Accused and will not revisit this issue.[58]

(b) Locations

37. The Trial Chamber notes that the Prosecution has led a considerable amount of evidence with respect to killings, sexual violence, physical violence, enslavement and pillage which occurred in locations not charged in the indictment.[59] While such evidence may support proof of the existence of an armed conflict or a widespread or systematic attack on a civilian population, no finding of guilt for those crimes may be made in respect of such locations not mentioned in the indictment.[60] As the Appeals Chamber has stated:

> the overriding duty of a Prosecutor – what determines, in fact, his or her professional ability – is to shape a trial by selecting just so many charges that can most readily be proved and which carry a penalty appropriate to the overall criminality of the Accused. In national systems, this is reflected in Prosecution practices of selecting specimen charges or proceeding only on certain counts of a long Indictment. In international courts, where defendants may be accused of command responsibility for hundreds if not thousands of war crimes at the end of a war that has lasted for years, the need to be selective in deciding which charges to include in a trial Indictment is a test of Prosecution professionalism. In this respect, the Trial Chamber must oversee the Indictment, in the interests of producing a trial which is *manageable*.[61] [emphasis added]

Moreover, the jurisprudence of international criminal tribunals makes it clear that an accused is entitled to know the case against him and is entitled to assume that any list of alleged acts contained

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[57] *Kupreškić* Appeal Judgement, para. 89-90.
[58] *See* paras 2-3 *supra*.
[59] Such evidence has been considered for the "General Requirements of Articles 2, 3 and 4 of the Statute" where appropriate, see Rule 98 Decision, para. 19.
[60] Rule 98 Decision, para. 19, 20; *Brđanin* Trial Judgement, para. 397.
[61] *Prosecutor v. Norman*, Case No. SCSL-04-14-AR73, Decision on Amendment of Consolidated Indictment, 16 May 2005, para. 82.

in an indictment is exhaustive, regardless of the inclusion of words such as "including", which may imply that other unidentified crimes in other locations are being charged as well.[62]

38. In light of the above, the Trial Chamber will not make any finding on crimes perpetrated in locations not specifically pleaded in the Indictment. Such evidence will only be considered for proof of the chapeau requirements of Articles 2, 3 and 4 where appropriate, that is the widespread or systematic nature of the crimes and an armed conflict.[63]

(c) Offences of a Continuous Nature

39. The Trial Chamber notes that with regard to the prolonged offences or offences of a continuous nature, i.e. sexual slavery and use of child soldiers, the Prosecution has not pleaded any locations. With respect to enslavement, which is a crime of a similar nature, the Prosecution has specified locations in Kenema, Kono, Koinadugu, Freetown and Western Area and Port Loko Districts but not in Bombali or Kailahun Districts.

40. The Trial Chamber accepts that the prolonged nature of these crimes, especially in the context of the Sierra Leone conflict where the perpetrators were often on the move between villages and Districts for a significant period of time, may make pleading particular locations difficult. However, it is the duty of the Prosecution to provide any material facts on the alleged crimes within their possession so as to enable the Accused to prepare a defence. The Trial Chamber is of the view in the present case that the Prosecution should have pleaded the three continuous crimes with more particularity.

41. Nevertheless, a significant amount of evidence has been adduced by both Prosecution and Defence witnesses in respect of each of these crimes over the course of a lengthy trial. The Defence has not specifically objected to the lack of specificity with respect to locations with relation to enslavement, sexual slavery and child soldier recruitment and Counts 9, 12 and 13. In the interests of justice, the Trial Chamber will treat the pleading of these counts as permissible.

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[62] *Brđanin* Trial Judgement, para. 397; *Prosecutor v. Brđanin*, Decision for Motion of Acquittal, 28 November 2003, para. 88, referring to *Stakić* Trial Judgement, para. 772; Trial Chamber I in the instant case came to a similar finding, *Prosecutor v. Kanu*, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003, para. 17; Kamara Form of the Indictment Decision, para. 42.

[63] Rule 98 Decision, paras 19, 20; see also *Brđanin* Trial Judgement, para. 397.

2. Alleged Failure to Plead that Crimes were *Committed* by the Accused

42. The Brima Defence submits that the Prosecution has failed to plead with sufficient precision the acts which the Accused Brima allegedly *committed* in person.[64]

43. The Trial Chamber observes that the preliminary motions filed by the Kamara and Kanu Defence before the commencement of trial only generally complained of a lack of specificity in pleading individual criminal responsibility pursuant to Article 6(1) of the Statute, but they did not specifically assert that the particulars are insufficient as regards the *commission* of the crimes by one of the Accused.[65] The Trial Chamber thus does not consider this matter to be *res judicata*. In fact, a previous decision has held

> that by no stretch of legal imagination, taking the Indictment as a whole, can it be reasonably inferred that it is doubtful as to what role the Accused is here being charged with. His alleged role is that of a commander [...] not that of a "foot soldier".[66]

The Pre-Trial Brief does not mention the personal commission of a crime by the Accused. The only reference in general terms can be found in the Prosecution Opening Statement:

> As the evidence will demonstrate, the accused persons directly took part in these attacks. They killed, they raped, they directed attacks in which these atrocities were committed. They gave orders to rebel forces to engage in hostilities against civilians. But the accused persons, because of their station and rank, were not always the ones on the ground pulling the trigger. The liability for these incredible events is based not only on their own direct conduct, but also on the activities of their subordinates and or the activities of those they associates with in a joint criminal enterprise.[67]

44. The Trial Chamber has heard evidence of the Accused personally committing crimes. Convicting an accused for personal perpetration of a crime without giving adequate notice could seriously question the fairness of the proceedings. The Trial Chamber will therefore address this issue in more detail.

(a) Pleading Principles When the Mode of 'Committing' is Alleged

45. As stated above, where the Prosecution alleges that the accused committed crimes *in person*, the Prosecution is required to give as many particulars as possible, provided it is in a position to do

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[64] Brima Final Brief, para. 133. *See also* Kamara Final Brief, para. 91, where a general objection against lack of specificity in pleading modes of liability pursuant to Article 6(1) is launched.
[65] Kanu Form of the Indictment Decision, para. 7; Kamara Form of the Indictment Decision, paras 47-50, referring to *Prosecutor v. Allieu Kondewa*, Case No. SCSL-03-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003, para. 10, where it was held that "whether the Accused, for example, 'planned', or 'instigated', or 'ordered', the commission of any of the crimes specified in Articles 2 to 4 of the Statute is, in the Chamber's view, *pre-eminently an evidentiary matter*, the key determinant of the success or failure of the Prosecution's case" (emphasis added).
[66] Kamara Form of the Indictment Decision, para. 44.
[67] Prosecution Opening Statement, Transcript 7 March 2005, p. 41.

so.[68] As a general rule, an accused can only be convicted of crimes which are charged in the indictment, the prime accusatory instrument.[69]

46. An indictment is defective if it does not state the material facts underpinning the charges with enough detail to enable an accused to prepare his or her defence.[70] Whether a fact is material depends on the nature of the Prosecution case.[71] There are several factors that can determine the materiality of the facts. Such factors are referred to in both the ICTY and ICTR cases.[72] For example, the Appeals Chamber in the *Ntakirutimana* held that

> criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically, including where feasible 'the identity of the victim, the time and place of the events and the means by which the acts were committed.[73]

47. If the indictment is found defective because it fails to plead material facts or does not plead them with sufficient specificity, a Trial Chamber must consider whether the accused was nonetheless accorded a fair trial.[74] Where an accused has received timely, clear, and consistent information from the Prosecution detailing the factual basis underpinning the charge, the defects in the indictment are considered to be cured and a conviction may be entered.[75] If insufficient notice has violated the accused's right to a fair trial, no conviction may result.[76]

48. In assessing whether a defective indictment was cured, the issue is whether the accused was in a reasonable position to understand the charges against him or her.[77] In making this determination, a Trial Chamber must consider the Prosecution's pre-trial brief, its opening statement, and disclosed evidence such as witness statements or potential exhibits.[78] In the ICTY case of *Naletilić* and *Martinović*, the Appeals Chamber considered that in some cases, a list of witnesses in a chart, containing a summary of the facts and clearly identifying the charges in the

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[68] *Blaškić* Appeal Judgement, para. 213, referring to *Prosecutor v. Tadić,* Case No.: IT-94-1-T, Decision on the Defence Motion on the Form of the Indictment, 14 November 1995, paras 11-13.
[69] *Kvočka* Appeal Judgement, para. 33.
[70] *See Kamuhanda* Appeal Judgement, para. 17, and *Kupreškić* Appeal Judgement, para. 88.
[71] *Kamuhanda* Appeal Judgement, para. 17, referring to *Kupreškić* Appeal Judgement, para. 89.
[72] *Ndindabahizi* Appeal Judgement, para.16; *Ntakirutimana* Appeal Judgement, para. 25 quoting *Kupreskic et al.* Appeal Judgement, para. 89.
[73] *Ntakirutimana* Appeal Judgement, para. 32, quoting *Kupreškić et al.* Appeal Judgement, para. 89.
[74] *Kvočka* Appeal Judgement, para. 33; *Kupreškić* Appeal Judgement, paras 115-123.
[75] *Muhimana* Appeal Judgement, para. 217 quoting *Gacumbtsi* Appeal Judgement, para. 49; *Ntakirutimana* Appeal Judgement, para. 27, referring to *Kupreskic et al.* Appeal Judgement, para. 114; See also *Ntagerura et al.* Appeal Judgement, paras 28, 65.
[76] *Kvočka* Appeal Judgement, para. 33; *Kupreškić* Appeal Judgement, para. 114.
[77] *Kordić* Appeal Judgement, para. 142; *Rutaganda* Appeal Judgement, para. 303.
[78] *Naletilić* Appeal Judgement, para. 27.

indictment as to which each witness will testify, is sufficient to put the accused on notice.[79] However, in the same case, the Appeals Chamber also held that mere service of witness statements by the Prosecution in discharging its disclosure obligations does not automatically provide sufficient notice to the Defence.[80] The Trial Chamber is guided by these principles when determining whether the alleged defect in the Indictment has been cured.

49. The Defence submissions throughout the trial, including final trial briefs and closing arguments may assist in assessing whether the accused was sufficiently put on notice to respond to the allegations by the Prosecution.[81] In case of a lack of notice, the Defence must raise a specific objection at the time the evidence is introduced.[82] As the Appeals Chamber stated in the *Niyitegeka* case:

> In general , "a party should not be permitted to refrain from making an objection to a matter which was apparent during the course of the trial, and to raise it only in the event of an adverse finding against that party." Failure to object in the Trial Chamber will usually result in the Appeals Chamber disregarding the argument on grounds of waiver. In the case of objections based on lack of notice, the Defence must challenge the admissibility of evidence of material facts not pleaded in the Indictment by interposing a specific objection at the time the evidence is introduced. The Defence may also choose to file a timely motion to strike the evidence or to seek an adjournment to conduct further investigations in order to respond to the unpleaded allegation. [...][83] [emphasis added]

The Trial Chamber therefore finds that failure to object to the admissibility of evidence on material facts not pleaded in the Indictment constitutes a waiver and the Defence may not later raise an objection that it was not sufficiently put on notice.[84]

50. The aforesaid may be summarised as follows:

(i) It must be established whether the Indictment pleaded the particulars in relation to crimes personally committed by the Accused in sufficient detail;

(ii) If the Indictment does not provide sufficient detail, the Trial Chamber must consider whether this defect prejudiced the Accused in mounting a defence against the charge. In this context, the Trial Chamber will assess whether supplementary information given to the Defence

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[79] *Naletilić* Appeal Judgement, para. 27, referring to Rule 65*ter*(E)(ii) of the ICTY Rules of Procedure and Evidence, which has no equivalent in the Special Court's Rules; *Gacumbtsi* Appeal Judgement, paras 57-58 quoting *Naletilić* Appeal Judgement, para. 45.
[80] *Naletilić* Appeal Judgement, para. 27.
[81] *Kvočka* Appeal Judgement, paras 52, 53; *Kordić* Appeal Judgement, para. 148; *Naletilić* Appeal Judgement, para. 27.
[82] *Kamuhanda* Appeal Judgement, para. 21, referring to *Niyitegeka* Appeal Judgement, para. 199.
[83] *Niyitegeka* Appeal Judgement, para. 199.
[84] *Kayishema* Appeal Judgement, para. 91; *Ntakirutimana* Appeal Judgement, para. 52.

cured the shortcomings in the Indictment, and review the Prosecution Pre-trial Brief and Opening Statement, and in some instances information contained in material disclosed to the Defence;

(iii) If the Defence was not sufficiently put on notice, the Trial Chamber will consider whether an objection was raised when evidence of crimes personally committed by the Accused was adduced at trial.

(b) Findings

51. Concerning the individual criminal responsibility of the Accused, the Indictment alleges generally that

> by their acts or omissions, are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes each of them planned, instigated, ordered, *committed* or in whose planning, preparation or execution each Accused otherwise aided and abetted [...][85]

52. Hence, without further specification, the Prosecution alleges that the Accused bear responsibility for the crimes set forth in the Indictment pursuant to *all* modes of liability contained in Article 6(1) of the Statute. No particulars regarding time, location and identity of victims are given in relation to crimes personally 'committed' by the Accused. Despite this, the Prosecution has adduced a significant amount of evidence in the course of trial which personally implicates all three Accused.[86]

53. The Trial Chamber finds that this manner of pleading in the Indictment cannot suffice to put the Accused on notice that they will have to answer to the allegations of personal perpetration of crimes, and is therefore defective.

54. The Prosecution Pre-trial Brief does not contain any additional material facts relating to the criminal responsibility of the Accused. Likewise, the Prosecution Opening Statement remained ambiguous at best on this matter.[87]

55. The Trial Chamber observes that almost a year prior to the start of the trial, the Prosecution disclosed material to the Defence which contained an initial witness list and a summary of facts and counts to which each witness would testify.[88] This material, considered in conjunction with witness

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[85] Indictment, para. 35 [emphasis added].
[86] See Responsibility of the Accused, *infra*.
[87] *See* Transcript 7 March 2005, p. 41: "[T]he accused persons, because of their station and rank, were *not always* the ones on the ground pulling the trigger" (emphasis added).
[88] *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-PT, Material Filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial, 1 April 2004, 26 April 2004.

statements disclosed pursuant to Rules 66 and 68 of the Rules, might have put the Defence on notice that evidence personally implicating the Accused would unfold at trial. Lest an injustice be done, before finding an Accused responsible for personal commission of a particular crime, the Trial Chamber will review whether the defect in the Indictment has been cured by the Prosecution providing adequate notice to the Defence of a specific incident. The Trial Chamber will also take into account whether the Defence has raised an objection of lack of untimely notice.

3. Objections Relating to Joint Criminal Enterprise ("JCE")

56. The Defence submissions in relation to JCE can be grouped in three categories: (1) objections to the form of pleading in the Indictment, especially regarding its different forms; (2) legal submissions; and (3) evidentiary submissions. The Trial Chamber will only consider submissions falling into the first category in the section below.

(a) Submissions of the Parties

57. The Kamara Defence submits that the common purpose to "take any actions to gain and exercise political power and control over the territory of Sierra Leone"[89] as such does not amount to a specific crime and is thus too broad to prove the existence of a JCE.[90] The Kamara Defence submits in particular that the Prosecution must "establish the existence of a common plan, design, or purpose *specifically* aimed at committing a criminal act within the [Special Court's] jurisdiction" and show that an accused "joined with others in a plan aimed at achieving an end that constitutes a crime within the indictment."[91] By contrast, the Prosecution submits that "[w]hile 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."[92] The Prosecution further addressed this issue in the closing arguments stating that "if the common purpose was to regain control of the country by any means possible, including the commission of crimes, then although the ultimate aim may not have been a crime within the jurisdiction of the Court, the common purpose involved the commission of crimes."[93]

58. The Kamara Defence further submits that a JCE has only been pleaded *between* members of the AFRC – including the Accused – and members of the RUF, but not among the Accused *inter*

[89] Indictment, para. 33.
[90] Kamara Final Brief, para. 46.
[91] Kamara Final Brief, para. 47 (emphasis in the original); *see also* Brima Final Brief, para. 59.
[92] Prosecution Final Brief, para. 469.

se.[94] The Prosecution responds that "it is clearly alleged that the three Accused in this case were, between themselves, part of a joint criminal enterprise."[95]

59. The Kanu Defence submits that the "extraordinary broad nature of the case" warrants the dismissal of JCE as a pertinent mode of individual criminal responsibility against Kanu.[96] In support, it refers to the *Brđanin* Trial Judgement which held that in that case, JCE

> was not an appropriate mode of liability [...] given the extraordinarily broad nature of this case, where the Prosecution seeks to include within a JCE a person as structurally remote from the commission of the crimes [...] as the Accused.[97]

The Prosecution submits, in response to the Kanu Defence, that "membership in the enterprise may be fluid so long as the common aim remains constant".[98]

(b) Pleading Principles

60. The Indictment alleges that

> 33. The AFRC, including ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, and the RUF, including ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO, shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions 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 provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.
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> 34. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.

61. Before reviewing the pleading requirements for participation in a joint criminal enterprise as a mode of liability, the Trial Chamber will briefly set out the law of this mode of liability as it is not explicitly referred to under Article 6 of the Statute, but an established mode under customary

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[93] Prosecution Closing Arguments, 7 December 2007, p. 71.
[94] Kamara Final Brief, paras 41, 45.
[95] Prosecution Closing Argument, Transcript 7 December 2006, para. 71.
[96] Kanu Final Brief, paras 288-290.
[97] *Brđanin* Trial Judgement, para. 355.
[98] Prosecution Final Brief, paras 468, 473, citing, in addition to two irrelevant paragraphs of the *Brđanin* and *Tadić* Trial Judgements at fn. 756, *Blagojević* Trial Judgement, paras 700-701.

international law.[99] Three categories of JCE were identified by the ICTY Appeals Chamber in *Tadić*:

> The 'basic' form, consisting of "[c]ases where all co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they nevertheless all possess the intent to kill. The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proved to have, effected the killing are as follows: (i) The accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitate the activities of his co-perpetrators), and (ii) The accused, even if not personally effecting the killing, must nevertheless intend the result."[100]
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> The 'systemic' form, which is a variant of the 'basic' form "and embraces the so-called 'concentration camp' cases. The notion of common purpose was applied to instances where the offences charged were alleged to have been committed by members of military or administrative units such as those running concentration camps; *i.e.*, by groups of persons acting pursuant to a concerted plan."[101]
>
> The 'extended' form, encompassing "cases involving a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example of this would be a common, shared intention on the part of a group to forcibly remove members of one ethnicity from their town, village or region (to effect "ethnic cleansing") with the consequence that, in the course of doing so, one or more of the victims is shot and killed. While murder may not have been explicitly acknowledged to be part of the common design, it was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians. Criminal responsibility may be imputed to all participants within the common enterprise where the risk of death occurring was both a predictable consequence of the execution of the common design and the accused was either reckless or indifferent to that risk."[102]

62. As discussed above, the Prosecution is required to plead all material facts, including the precise mode of liability under Article 6 of the Statute it intends to rely on. With regard to JCE, the *Kvočka* Appeal Judgement unambiguously established that failure to plead the category of JCE charged constitutes a defect in the indictment.[103]

63. As for pleadings regarding JCE liability, the Trial Chamber recalls that the *actus reus* of JCE liability comprises three elements:

(i) A plurality of persons: They need not be organised in a military, political or administrative structure;

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[99] *Tadić* Appeal Judgement, para. 190; *Vasiljević* Appeal Judgement, para. 95; *Stakić* Appeal Judgement, para. 62; *Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić*, Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction-Joint Criminal Enterprise, 21 May 2003 ("*Ojdanić* Decision"), paras 20, 43.
[100] *Tadić* Appeal Judgement, para. 196.
[101] *Tadić* Appeal Judgement, para. 202.
[102] *Tadić* Appeal Judgement, para. 204.
[103] *Kvočka* Appeal Judgement, paras 28, 42; *Gacumbitsi* Appeal Judgement, para. 162.

(ii) The existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute: There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialise extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.

(iii) Participation of the accused in the common design involving the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of those provisions (for example murder, extermination, torture, rape, etc.), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.[104]

64. The *Krnojelac* Trial Chamber distinguished the following four categories of supporting facts which must be present in an indictment charging an accused with JCE:

(i) the nature or purpose of the JCE;

(ii) the time at which or the period over which the enterprise is said to have existed ;

(iii) the identity of those engaged in the enterprise, so far as their identity is known, but at least by reference to their category as a group;

(iv) the nature of the participation by the accused in that enterprise.

65. All legal prerequisites to the application of the offences charged constitute material facts and must be pleaded in the indictment.[105] Each of the material facts must usually be pleaded expressly, although it may be sufficient in some circumstances if it is pleaded by necessary implication.[106] However, if a pleading merely assumes the existence of the pre-requisite, this fundamental principle of pleading has not been met.[107]

(c) Deliberations

66. The Kamara Defence has previously challenged the Indictment as being defective in that it failed to provide sufficient particulars regarding the criminal nature of the purpose of the alleged

[104] Rule 98 Decision, paras 310-311, referring to *Tadić* Appeal Judgement, para. 227; *see also* Prosecution Final Brief, para. 466; Kanu Final Brief, para. 302.
[105] *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on Form of Indictment, 7 December 2001 ("*Hadžihasanović* Indictment Decision"), para. 10.
[106] *Hadžihasanović* Indictment Decision, para. 10; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decisions on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para. 48; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decisions on Form of Fourth Amended Indictment, 23 November 2001, para. 12.
[107] *Hadžihasanović Indictment Decision*, para. 10; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decisions on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001, para. 48.

joint criminal enterprise.[108] Trial Chamber I dismissed that application, finding that, upon a review of the Indictment as a whole and particularly paragraphs 33 and 34,[109] "the Indictment, in its entirety, is predicated upon the notion of a joint criminal enterprise", which is reinforced by paragraph 34, and that the nature of the alleged joint criminal enterprise was pleaded "with the degree of particularity as the factual parameters of the case admits," as alleged in paragraph 33.[110]

67. With the greatest respect, the Trial Chamber does not agree with the decision of our learned colleagues that the Indictment has been properly pleaded with respect to liability for JCE, since the common purpose alleged in paragraph 33, that is,

> to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas

is not a criminal purpose recognised by the Statute. The common purpose pleaded in the Indictment does not contain a crime under the Special Court's jurisdiction. A common purpose "to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone" is not an international crime and, as the Appeals Chamber has noted

> Whether to prosecute the perpetrators of rebellion for their act of rebellion and challenge to the constituted authority of the State as a matter of internal law is for the state authority to decide. There is no rule against rebellion in international law.[111]

68. In international criminal law the concept of JCE is commonly used to refer to an inherently criminal enterprise under the statutes of international tribunals. Examples of such pleading are as follows:

> The purpose of the joint criminal enterprise was the *permanent forcible removal* of Bosnian Muslims and Bosnian Croat inhabitants from the territory of the planned Serbian state *by the commission of the crimes alleged in Counts 1 to 12* [emphasis added].[112]

> Within the Republic of Bosnia and Herzegovina, the objective was the *permanent removal*, by force or other means, of Bosnian Muslims, Bosnian Croats or other non-Serb inhabitants from large areas of BiH *through the commission of crimes which are punishable under Articles 3, 4 and 5 of the [ICTY] Statute* [emphasis added].[113]

> The purpose of the joint criminal enterprise was the *permanent forcible removal* of the Bosnian Muslim and Bosnian Croat inhabitants from the territory of the planned Serbian state, *including a*

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[108] See Kamara Form of the Indictment Decision, para. 51.
[109] These paragraphs were referred to in the Kamara Form of the Indictment Decision, para. 52, as "paragraphs 23-24", which was their numbering in the previous Consolidated Indictment.
[110] See Kamara Form of the Indictment Decision, para. 52.
[111] *Prosecutor v. Kallon and Kamara*, Case No. SCSL-2004-15-AR72(E)/ SCSL-2004-16-AR72(E), Decisions on Challenge to Jurisdiction: Lomé Accord Amnesty ("Lomé Amnesty Decision"), para. 20, referring to M. N. Shaw, *International Law* (5th ed., 2003) p. 1040.
[112] *Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-PT, Sixth Amended Indictment, para. 27.1.*
[113] *Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39&40-PT, Consolidated Amended Indictment, para. 4.*

> *campaign of persecution, through the commission of the crimes alleged in Counts 1 to 8 of the Indictment.* [emphasis added][114]

The examples above demonstrate that the ICTY indictments allege a common purpose which is a crime under international law and then describe the crimes committed (direct or foreseeable) in pursuing this common purpose.

69. There are further indications in the case law that the 'common purpose' must be inherently criminal by purpose. For instance, the ICTY Trial Chamber in *Krajišnik* held that

> the mens rea required for the first form is that the JCE participants, including the accused, had a common state of mind, namely the state of mind that the *statutory crime(s)* forming part of the objective should be carried out.[115] [emphasis added]

Further, in the *Vasiljević* Judgement, the ICTY Trial Chamber held that "[t]he Prosecution must establish the existence of an arrangement or understanding amounting to an agreement between two or more persons *that a particular crime* will be committed." [emphasis added][116]

70. The principle of the JCE doctrine is to hold an individual accountable for all his actions that fall within, or are a foreseeable consequence of entering into, a criminal agreement. The rationale behind this principle is that a person should not engage in activity that is criminal or foreseeably criminal. Gaining and exercising political power is, however, not inherently a criminal activity.

71. There are considerable difficulties with the Prosecution's pleading of the JCE in this case. While the Trial Chamber generally concurs with the learned colleagues of Trial Chamber I, when holding that paragraph 33 and 34 have to be read as a whole,[117] these two paragraphs do not clarify what criminal purpose the parties agreed upon at the inception of the agreement. The Prosecution in paragraph 34 alleged that "the crimes in this Indictment [...] were either *actions within* the joint criminal enterprise or were a *reasonably foreseeable consequence* of the joint criminal enterprise."[118] In general, this language is used to refer to the 'basic' ("*actions within*") and the 'extended' ("*reasonably foreseeable consequence*") form of JCE. The Prosecution has alleged those two forms disjunctively, thereby impeding the Defence ability to know the material facts of the JCE against them, as it appears that the two forms as pleaded logically exclude themselves. If the charged crimes are allegedly within the common purpose, they can logically no longer be a reasonably foreseeable consequence of the same purpose and *vice versa*.

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[114] *Prosecutor v. Milomir Stakić*, Case. IT-97-24-PT, Fourth Amended Indictment, para. 26.
[115] *Krajišnik* Trial Chamber, 883, referring to *Tadić* Appeal Judgement, para. 227.
[116] *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 ("*Vasiljević* Trial Judgement"), para. 66.

72. The latter allegation of the Prosecution, that the crimes were a *reasonably foreseeable consequence* of the joint criminal enterprise, is particularly troubling. History has shown that serious violations of international humanitarian law by certain members of armed forces or groups during armed conflict are a foreseeable consequence of such an engagement in conflict. This, however, does not necessarily make the act of engagement in armed conflict in itself an international crime. International humanitarian law strictly distinguishes between the use of force (*jus ad bellum*) and the law applicable in armed conflict (*jus in bello*).[119] By charging the foreseeability of international crimes in a common purpose that is not inherently criminal, the Prosecution appears to blur these two concepts and therefore such a pleading should not be permitted.

73. Even though the contribution to a joint criminal enterprise need not be criminal in nature,[120] the purpose has to be inherently criminal and the perpetrators, including the accused, must have a common state of mind, namely the state of mind that the *statutory crime(s)* forming part of the objective should be carried out.[121]

74. The question remains whether the Prosecution has properly pleaded the 'basic' form of JCE in the Indictment and if a conjunctive reading between paragraph 33 and 34 should be allowed, as Trial Chamber I has found. In any event, such a reading bears similar difficulties. The Trial Chamber notes the position taken by the Prosecution that a JCE only needs to "involve" the commission of a crime. This position is indeed supported by jurisprudence.[122] But the fundamental question that arises from this is whether the agreement involved international crimes at the inception of the JCE. The Trial Chamber will refer to some evidence on the point to illustrate its view in this regard.

75. On 25 May 1997, a group of renegade Sierra Leonean Army soldiers staged a coup ousting the government of Tejan Kabbah and installed Johnny Paul Koroma as Chairman of the new government. On 28 May 1997 Koroma contacted the RUF leader Foday Sankoh to invite the RUF

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[117] Kamara Form of the Indictment Decision, para. 52.
[118] Indictment, para. 34.
[119] These concepts are usually referred to in international armed conflict, but are equally applicable in non-international armed conflict as it is recognised that every state has the right to use force in order to preserve its territorial integrity and to crush a rebellion and Resolutions of the General Assembly (*e.g.* 1514 (XV) 1960, 2621 (XXV) 1970, 2625 (XXV) 1970, 2674 (XXV) 1970, 2852 (XXVI) 1971 and 3103 (XXVIII) 1973) recognise the right to self determination (*see* Françoís Bugnion, "Jus ad Bellum, Jus in Bello and Non-International Armed Conflict", *Yearbook of International Humanitarian Law*, T.M.C. Asser Press, Vol. VI, 2003, pp. 167-198.
[120] *Kvočka* Trial Judgement, para. 189.
[121] *Krajišnik* Trial Chamber, 883, referring to *Tadić* Appeal Judgement, para. 227.
[122] *Vasiljević* Appeal Judgement, para. 99: "a common purpose which amounts to *or involves* the commission of a crime provided for in the Statute is required [...]" (emphasis added).

into his Government.[123] As the founders of the AFRC all belonged to the Sierra Leone Army and therefore had been fighting the RUF since 1991, the coalition between the two factions following the 1997 coup was not one based on longstanding common interests. Both factions officially declared that they were joining forces to bring peace and political stability to Sierra Leone.[124] On 18 June 1997, the RUF issued an official apology to the nation for its crimes and went on to praise Johnny Paul Koroma's government.[125] Apart from these formal pronouncements, little information has been adduced regarding the motives of the two factions in forming this alliance, but it appears that the AFRC had the intention to bring lasting peace to Sierra Leone after six years of civil strife.

76. From that evidence at least it does not appear that the JCE was criminal from its inception and that it "involved" the commission of international crimes to gain and exercise control political power over the territory of Sierra Leone.

(d) Findings

77. The Trial Chamber notes the Prosecution submission that "membership in the enterprise may be *fluid* so long as the common aim remains constant." However, this only illustrates yet another difficulty in the pleading of the Prosecution, *i.e.* the second pleading requirement that the indictment shall contain the "time at which or the period over which the enterprise is said to have existed". The indictment fails to provide a specific time period over which the JCE is supposed to have existed,[126] but it has been argued by the Prosecution that the time frame applied should be "all times relevant to the Indictment". If such a proposition is accepted than it follows that the common purpose was inherently criminal from its inception.

78. The Trial Chamber agrees that a common purpose and its objectives might change over time. This has been expressed in the *Blagojević* Trial Judgement:

> If the objective of the joint criminal enterprise changes, such that the objective is fundamentally different in nature and scope from the common plan or design to which the participants originally agreed, then a new and distinct joint criminal enterprise has been established. For this joint criminal enterprise, like the original joint criminal enterprise, the three elements must be established for criminal responsibility to attach. It may be that members of [the] second joint criminal enterprise are the same as those in the original enterprise.

[123] Gibril Massaquoi, Transcript 7 October 2005, pp. 46-47; exhibit P-54, Amnesty International, Sierra Leone, 1998 – A Year of Atrocities against Civilians", p. CMS 15799.
[124] Exhibit P-77, "Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997."
[125] Exhibit P-61, "Revolutionary United Front's Apology to the Nation", delivered on SLBS radio, 18 June 1997.
[126] The Trial Chamber does not consider that "at all times relevant to the Indictment" in para. 32 refers to the JCE between the RUF and AFRC in para. 33.

> Alternatively, it may be that only some of the original members of the first joint criminal enterprise joined the second joint criminal enterprise, and thus entail criminal liability for this enterprise. A person will only be held liable for that joint criminal enterprise to which he agreed to participate in under the first category of joint criminal enterprise, and the natural and foreseeable consequences thereof for the third category of joint criminal enterprise.[127]

79. It is not in dispute that a new JCE may emerge from a common purpose fundamentally different in nature and in scope from the initial common purpose, and that members in the initial JCE may also be members to this new JCE, if they adhere to this new common purpose. However, it is more important for the Prosecution to provide material facts of this new or changed common purpose in the Indictment. Having heard the evidence in this case, the Trial Chamber can merely state that an alleged common purpose between the AFRC and RUF may have well changed over time and that the members of the JCE may have ascribed to the involvement of international crimes to fulfil the purpose of exercising power and control. But at the same time it is clear that the purpose has changed and that effectively the allegations may have involved a new or different purpose.

80. The Prosecution is required to know its case before the start of the trial and to know of the changing nature and purposes of the enterprises either between the AFRC and the RUF or within the AFRC.[128] All those new and different purposes have to be pleaded in the indictment and the Prosecution cannot be permitted to mould the case against the Accused as the trial progresses.

81. Further, the Trial Chamber rejects the Prosecution argument that it has sufficiently pleaded a joint criminal enterprise between the three Accused in paragraph 35.[129] If one would accept that the Prosecution has indeed pleaded a separate JCE between the three Accused, which is not directly related to the previous JCE between the AFRC and RUF, then it follows that the Prosecution has not specifically identified the nature or purpose of such alleged JCE.

82. As with other pleading failures, such a defect may be cured by the provision of timely, clear, and consistent information, for example in a pre-trial brief.[130] No such timely, clear or consistent

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[127] *Blagojević* Trial Judgement, paras 700-701 (footnotes omitted).
[128] The Trial Chamber notes that the Indictment does not mention an JCE between the AFRC inter se as para. 33 states: "The *AFRC [...] and the RUF [...]* shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas." [emphasis added].
[129] Prosecution Closing Arguments, Transcript 7 December 2006, pp. 71-72.
[130] *Krnojelac* Appeal Judgement, para. 138.

information was provided to the Defence and the Defence has specifically objected to the pleading of the JCE in the Indictment.[131]

83. The Prosecution has submitted that the issue of specificity in the pleadings of JCE has already been litigated at the pre-trial stage and that the sufficiency of pleading a JCE was accepted by the Trial Chamber in its Rule 98 Decision.[132] The latter statement is not correct as the Trial Chamber held that "whether the Indictment has been sufficiently pleaded or is defective in form is not a matter which falls within the scope of Rule 98"[133] and has therefore not pronounced itself on these issues. Furthermore, and as mentioned above, it is accepted that even after the conclusion of the trial proceedings a Trial Chamber may in certain circumstances exceptionally reconsider a decision it, or another Judge or Trial Chamber acting in the same case, has previously made.[134]

84. The Trial Chamber has considered with great care the consequences of its decision and has considered reopening the hearing to allow the Prosecution to make fresh submissions or to argue that any defects had since been remedied. However, the Trial Chamber does not believe that a reopening of the case is necessary, as the Prosecution did make submissions in response on this objection in their Final Trial Brief and closing arguments.[135]

85. For these reasons, the Trial Chamber finds with respect to Joint Criminal Enterprise as a mode of criminal liability, the Indictment has been defectively pleaded. Therefore, the Trial Chamber will not consider JCE as a mode of criminal responsibility in this case.

4. Alleged Failure to Specify Factual Foundation of Responsibility Pursuant to Article 6(3) of the Statute

86. The Brima Defence submits that the Indictment remains impermissibly vague regarding the conduct of subordinates for whom the Accused allegedly bears individual criminal responsibility.[136]

87. The Trial Chamber observes that the same complaint has been made by the Kamara Defence in a preliminary motion, and dismissed as being without merit:

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[131] In its Pre-Trial Brief the Prosecution merely repeated the wording of the Indictment without further clarification and simply referred to the three categories of JCE, see Pre-Trial Brief, para. 209. Restating the law is not clear and consistent notice to the Defence.
[132] Prosecution Final Brief, para. 464.
[133] Rule 98 Decision, para. 323.
[134] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, at para. 13.
[135] See Prosecution Final Trial Brief, paras 460-497; Prosecution Closing Arguments, Transcript 7 December 2006, pp. 70-71; SCSL-04-16-608, Prosecution List of Authorities Referred to in Oral Closing Submissions, 25 January 2007, item 6.
[136] Brima Final Brief, paras 135-136.

> [P]aragraphs 28-64 set out *in extenso* the acts or crimes of the subordinates for which the Accused, in his superior capacity, is alleged to be responsible, for example armed attacks on civilians [...], terrorizing of the civilian population (to wit, unlawful killings, physical and sexual violence against civilian men, women and children, abductions, lootings and destruction of civilian property [...][137]

88. Although this ruling applies only in relation to the Accused Kamara, the Trial Chamber finds that the rationale of that decision is also applicable to the other Accused and will therefore not revisit the matter.[138]

5. Alleged Failure to Distinguish Between Individual Criminal Responsibility Under Article 6(1) and 6(3) of the Statute

89. The Brima and Kamara Defence submit that the Prosecution failed to distinguish the acts giving rise to responsibility of the Accused under Article 6(1) from those under 6(3) of the Statute.[139] Moreover, the Brima Defence alleges that the Prosecution charged the Accused with mutually exclusive modes of liability under Article 6(1) and Article 6(3) for the same conduct.[140]

90. The Trial Chamber observes that the same issue has been adjudicated in a decision on a preliminary motion by the Accused Kamara:

> Individual criminal responsibility under Article 6(1) and criminal responsibility as a superior under Article 6(3) are not mutually exclusive and can be properly charged both cumulatively and alternatively based on the same set of facts.[141]

91. Although this ruling applies only in relation to the Accused Kamara, the Trial Chamber finds that the rationale of that decision is also applicable to the other Accused and will therefore not revisit the matter.

6. Pleading of Count 7: Sexual Slavery and Any Other Form of Sexual Violence (Article 2(g) of the Statute)

(a) Submissions of the Parties

92. The Brima and Kamara Defence submit that Count 7 "offends the rule against duplicity" as the Accused are charged with two separate offences under the same count.[142] The Prosecution

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[137] Kamara Form of the Indictment Decision, para. 55(iv).
[138] Paras 28-64 of the initial Indictment against the Accused Kamara, referred to in the Kamara Form of the Indictment Decision, para. 55(iv), correspond to paras 41-79 in the Indictment.
[139] Brima Final Brief, paras 143-144; Kamara Final Brief, para. 92, referring to *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on Defence Preliminary Motion for Defects in the Form of the Indictment, 31 May 2000, paras 5.11 and 5.23; *but see* Prosecution Closing Argument, Transcript 7 December 2006, p. 8.
[140] Brima Final Brief, para. 129.
[141] Kamara Form of the Indictment Decision, para. 33(xii) (footnote omitted).

submits that the Defence has left it too late to raise the argument that the Indictment is defective. It cites as authorities Rule 72 of the Rules and *Brđanin* Trial Judgement, which held that "normally, an allegation pertaining to the vagueness of an indictment is dealt with at the pre-trial stage."[143]

(b) Findings

93. This argument has not been previously raised by the Defence and although an alleged defect in an indictment should be primarily raised by way of a preliminary motion pursuant to Rule 72(B)(ii), the Trial Chamber, as mentioned above, is not precluded from reviewing in this Judgement whether shortcomings in the form of the Indictment have actually resulted in prejudice to the rights of the Accused.[144] Furthermore, the Trial Chamber notes that the Defence did not raise the objections at such a late stage for tactical advantages, but merely followed the opinion of Justice Sebutinde in her "Separate and Concurring Opinion" to the Rule 98 Decision.[145] Justice Sebutinde expressed the view that Count 7 was "duplex and defective in as far as it does not enable the accused persons to know precisely which of the two crimes (sexual slavery or sexual violence) they should be defending themselves against" and that the situation could "prejudice a fair trial of the accused persons if left uncorrected."[146] Justice Sebutinde did not think that Count 7 was incurably defective, at that stage, and could be cured by an amendment dividing the offences into two separate counts.[147] Since then, the Prosecution has not availed itself of Justice Sebutinde's suggested remedy.

94. At the Rule 98 stage the question was not considered by the majority since no such question was before the Trial Chamber and it confined itself to considering the *prima facie* state of the evidence to establish Count 7.[148] Both the Brima and Kamara Defence allege that Count 7 in its current form has made it difficult for the Accused to fully understand the nature and the cause of the charges brought against them.[149] The Trial Chamber has accordingly reviewed the pleading of Count 7 and agrees with the opinion of Justice Sebutinde that it is bad for duplicity, for the reasons set out in her opinion previously mentioned and that such a pleading prejudices the rights of the Accused.

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[142] Brima Final Brief, paras 146-149; Kamara Final Brief, paras 94-96, 239; both submissions rely on the Separate Concurring Opinion of Justice Julia Sebutinde to the Trial Chamber's Rule 98 Decision, paras 3-9.
[143] *Brđanin* Trial Judgement, para. 48, citing the *Kupreskic* Appeal Judgement, para. 70
[144] *Cyangugu* Appeal Judgement, para. 50; *Kajelijeli* Appeal Judgement, paras 203-204.
[145] Rule 98 Decision, "Separate Concurring Opinion of Hon. Justice Julia Sebutinde".
[146] Rule 98 Decision, "Separate Concurring Opinion of Hon. Justice Julia Sebutinde", para. 8.
[147] Rule 98 Decision, "Separate Concurring Opinion of Hon. Justice Julia Sebutinde", paras 8, 9.
[148] See Rule 98 Decision, para. 163.
[149] Brima Final Brief, para. 149; Kamara Final Brief, para. 96.

95. The Trial Chamber by majority finds that Count 7 is bad for duplicity and is accordingly dismissed in its entirety.[150]

[150] Justice Doherty dissenting.

III. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

A. Law Applicable to the Assessment of Evidence

96. The Trial Chamber has assessed the probative value and weight of the evidence in this case in accordance with the Statute and the Rules. In accordance with Rule 89(A) of the Rules, the rules of evidence governing the proceedings before the Trial Chamber shall be the rules set forth in Section 3 of the Rules,[151] and the Trial Chamber "shall not be bound by national rules of evidence". Where no guidance is given by the Rules, the Trial Chamber, pursuant to Rule 89(B) of the Rules, has assessed the evidence in such a way as will best favour a fair determination of the case and which is consistent with the spirit of the Statute and the general principles of law.

1. Burden and Standard of Proof

97. Article 17(3) of the Statute enshrines the presumption of innocence, i.e. that an accused shall be presumed innocent until proved guilty.[152] This presumption places on the Prosecution the burden of establishing the guilt of each Accused, a burden which remains on the Prosecution throughout the entire trial.

98. In respect of each count charged against each Accused, the standard to be met for a conviction to be entered is that of proof beyond reasonable doubt. Rule 87(A) of the Rules provides, in its relevant part: "A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt." Accordingly, in respect of each count charged against each of the Accused, the Trial Chamber has determined whether it is satisfied, on the basis of the whole of the evidence, that every element of that crime and the criminal responsibility of the Accused for it have been established beyond reasonable doubt. In making that determination, the Trial Chamber has been careful to consider whether more than one inference was reasonably open from the facts and, if so, whether there was an inference inconsistent with the guilt of the Accused. If so, the onus and the standard of proof require that an acquittal be entered in respect of that particular count.[153]

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[151] Rule 89(A) provides that "[t]he rules of evidence set forth in this Section shall govern the proceedings before the Chambers..." The Section referred to is Section 3 ("Rules of Evidence") of Part VI ("Proceedings Before Trial Chambers") and the rules of evidence referred to are contained in Rules 89 to 98.

[152] This provision is in accordance with all major human rights instruments, *see* International Covenant on Civil and Political Rights, Art. 14(2); African (Banjul) Charter on Human and Peoples' Rights, Article 7(1)(b).

[153] See *Prosecutor v. Zejnil Delalić, Zdravko Mucić aka "Pavo", Hazim Delić aka "Zenga" and Esad Landžo*, Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Čelebići* Appeal Judgement"), para. 458.

2. Admission of Evidence

99. Rule 89(C) of the Rules states the general principle of admissibility that a Trial Chamber "may admit any relevant evidence".[154] The Appeals Chamber has made it clear that this provision favours the admission of all relevant evidence, the probative value and weight of which are only to be assessed at the end of the trial and in the context of the entire record.[155]

100. In addition to evidence of facts within the testifying witness's own knowledge, the Trial Chamber has also admitted hearsay evidence.[156] Under Rule 89(C) of the Rules, the Trial Chamber has a broad discretion to admit relevant hearsay evidence. However, before determining whether to rely on hearsay evidence, the Trial Chamber has carefully examined such evidence, taking into account that its source has neither been tested in cross-examination nor been the subject of an oath or solemn declaration.[157]

101. In some instances, the Trial Chamber relied upon circumstantial evidence, *i.e.*, evidence surrounding an event from which a fact at issue may be reasonably inferred,[158] in order to determine whether or not a certain conclusion could be drawn. While individual pieces of evidence standing alone may well be insufficient to establish a fact, their cumulative effect may be revealing and decisive.[159] Therefore, it is "no derogation of evidence to say that it is circumstantial."[160]

B. Forms of Evidence Under Review

102. For the purposes of the trial, 'evidence' has been taken to mean the information which has been put before the Trial Chamber in order to prove the facts at issue.

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[154] Rule 89(C) is thus different from its counterpart in the ICTY Rules, which provides that "[a] Chamber may admit any relevant evidence *which it deems to have probative value*" (emphasis added).
[155] *Prosecutor v. Moinina Fofana*, Case No. SCSL-04-14-AR65, Fofana – Appeal Against Decision Refusing Bail, 11 March 2005 ("Fofana Bail Decision"), para. 26; *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95, para. 14; Oral Decision, Transcript 6 July 2005, pp. 44-46; Oral Decision, Transcript 29 June 2006, pp. 77, 78.
[156] *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60, Judgement, 17 January 2005 ("*Blagojević* Trial Judgement"), para. 21; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 14. *See also Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95, para. 24.
[157] *Prosecutor v. Moinina Fofana*, Case No.SCSL-2004-14-AR73, Fofana – Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", Separate Opinion of Justice Robertson, 16 May 2005, para. 6. See also *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement"), para. 70; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.
[158] *Brđanin* Trial Judgement, para. 35; *Blagojević* Trial Judgement, para. 21.
[159] *Čelibići* Appeal Judgment, para. 458.
[160] *Prosecutor v. Orić*, IT-03-68-T, Order Concerning Guidelines on Evidence and the Conduct of Parties During Trial Proceedings, p. 7, referring to *Taylor, Weaver and Donovan* (1928) 21 Cr. App. R. 20, 21, *per* Lord Hewart C.J.

103. Evidence was admitted in the following forms: (i) oral evidence, (ii) documentary evidence, including such evidence provided in lieu of oral testimony pursuant to Rule 92*bis*, (iii) testimony of expert witnesses, (iv) facts of which judicial notice was taken and (v) facts agreed by the Parties.

1. Witness Testimony

104. The Trial Chamber heard the direct testimony of a total of 148 witnesses: 59 called by the Prosecution, 88 called by the Defence[161] and one called by the Trial Chamber.[162]

105. Rule 85 of the Rules, which governs the presentation of evidence, provides:

> (A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:
>
> Evidence for the prosecution;
>
> Evidence for the defence;
>
> Prosecution evidence in rebuttal, with leave of the Trial Chamber;
>
> Evidence ordered by the Trial Chamber;
>
> (B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him in chief, but a Judge may at any stage put any question to the witness.
>
> (C) The accused may, if he so desires, appear as a witness in his own defence. If he chooses to do so, he shall give his evidence under oath or affirmation and, as the case may be, thereafter call his witnesses.
>
> (D) Evidence may be given directly in court, or via such communications media, including video, closed-circuit television, as the Trial Chamber may order.

106. Rule 90 of the Rules governs the testimony of witnesses in court. Rule 90 states:

> (A) Witnesses may give evidence directly, or as described in Rules 71[163] and 85(D).
>
> (B) Every adult witness shall, before giving evidence, make one of the following solemn declarations:
>
> "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."
>
> Or

[161] This includes the Accused Alex Tamba Brima who gave evidence in his own defence.
[162] Gilbert Morrisette, Chief of Investigations at the Special Court for Sierra Leone, was called in order to provide background information with regard to exhibit D-39.
[163] Rule 71 deals with evidence by deposition.

"I solemnly swear on the [insert holy book] that I will speak the truth, the whole truth and nothing but the truth."

(C) A child shall be permitted to testify if the Chamber is of the opinion that he is sufficiently mature to be able to report the facts of which he had knowledge, that he understands the duty to tell the truth, and is not subject to undue influence. However, he shall not be compelled to testify by solemn declaration.

(D) A witness, other than an expert, who has not yet testified may not be present without leave of the Trial Chamber when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.

(E) A witness may refuse to make any statement which might tend to incriminate him. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony under solemn declaration.

(F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to:

(i) Make the interrogation and presentation effective for the ascertainment of the truth; and

(ii) Avoid the wasting of time.

107. In accordance with Rule 90(B), witnesses gave evidence under a solemn declaration or oath, and were cross-examined and re-examined in accordance with Rule 85(B).

108. When evaluating the credibility of witnesses who gave evidence *viva voce*, the Trial Chamber has taken into account a variety of factors, including their demeanour, conduct and character (where possible),[164] their knowledge of the facts to which they testified, their proximity to the events described, their impartiality, the lapse of time between the events and the testimony, their possible involvement in the events and the risk of self-incrimination, and their relationship with the Accused[165].

109. In some instances, only one witness gave evidence on a material fact. As a matter of law, the testimony of a single witness on a material fact does not require corroboration.[166] Nevertheless, the Trial Chamber has examined the evidence of a single witness with particular care before attaching any weight to it[167].

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[164] *Blagojević* Trial Judgement, para. 23.
[165] *Prosecutor v. Halilović*, Case No. IT-01-48-T, Judgement, 16 November 2005 ("*Halilović* Trial Judgement"), para. 17.
[166] *Tadić* Appeal Judgement, para. 65; *Aleksovski* Appeal Judgement, para. 62; *Kupreškić* Appeal Judgement, para. 33.
[167] *Limaj* Trial Judgement, para. 21; *Brđanin* Trial Judgement, para. 27.

(a) Discrepancies Between the Evidence of Various Witnesses, or Between the Evidence of a Particular Witness and a Previous Statement

110. It is the responsibility of the Trial Chamber to resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies. In doing so, the Trial Chamber has discretion to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the 'fundamental features' of the evidence.[168] In this context, the Trial Chamber endorses the statement of the ICTY Appeals Chamber in *Kupreškić* that

> [t]he presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors 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.[169]

111. A number of witnesses gave evidence of horrific events in which they personally suffered the amputation of one or both arms, or were raped, or saw such atrocities inflicted on members of their families, or who witnessed family members being tortured and killed. Recounting this evidence in court evoked strong emotional reactions in all of these witnesses, many of whom broke down in tears. As a result, the Trial Chamber took the view that there may have been memories which prevented the witnesses from giving a full account of their experiences to the Court, or which prevented them from articulating in detail what they had endured.[170] The Trial Chamber also took into consideration the possibility that any observations made by the witnesses at the relevant time may have been affected by terror or stress[171]. While these circumstances do not necessarily mean that such evidence is not reliable, the Trial Chamber has weighed it with particular scrutiny.

112. During the trial, both the Prosecution and the Defence made use of pre-trial statements from witnesses – and sometimes of interview notes – for the purpose of cross-examination. In many instances both parties alleged inconsistencies and contradictions between the pre-trial statements of witnesses and their evidence at trial. The Trial Chamber accepts that the information given in such a statement will not always be identical to the witness's oral evidence. This may be because the witness was asked questions at trial not previously asked, or may in his or her testimony remember details previously forgotten[172]. The Trial Chamber has also taken into account that the six to eight years that have passed since the events in the Indictment have, in all likelihood, affected the

[168] *Kupreškić* Appeal Judgement, para. 31.
[169] *Ibid.*
[170] See *Čelebići* Appeal Judgement, para. 496.
[171] *Limaj* Trial Judgement, para. 15.
[172] *Brđanin* Trial Judgement, para. 26.

accuracy and reliability of the memories of witnesses. Another factor considered by the Trial Chamber was that interviews with witnesses were usually conducted in one of the native languages of Sierra Leone, whereas the resulting witness statements used in court were a summarised English translation of the original statement or interview notes.

113. Thus, in general, the Trial Chamber has not treated 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 the essence of the incident had nevertheless been recounted in acceptable detail.[173]

(b) Crimes Involving Sexual Violence

114. Where a count charges sexual violence, the Trial Chamber has noted and applied, where appropriate, the principles prescribed by Rule 96, which states:

> In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:
>
> (i) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
>
> (ii) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
>
> (iii) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
>
> (iv) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of sexual nature of the prior or subsequent conduct of a victim or witness.

(c) Names of Locations

115. Although not raised as an issue in the Parties' Final Trial Briefs, the Trial Chamber reiterates that names of locations mentioned by witnesses which are similar, but not identical, may refer to the same location:

> We are mindful of the fact that due to the variety of vernacular languages and dialects generally spoken in Sierra Leone and particularly by the Prosecution witnesses in this case, the names of some locations were sometimes pronounced and/or spelt differently, depending on the dialect spoken by the witness. At other times, some of the witnesses were illiterate and could not spell the

[173] *Krnojelac* Trial Judgement, para. 69.

names of certain locations. In the latter case the Trial Chamber often resorted to the phonetic spelling of such a location.[174]

(d) Testimony of Accused in his own Defence

116. There is no burden whatsoever on an accused to prove his innocence. Article 17(4)(g) of the Statute provides that no accused shall be compelled to testify against himself or confess guilt.

117. The Accused Brima elected to testify in his own defence. In accordance with Rule 85(C) of the Rules, he gave his evidence under oath and thereafter called other witnesses in his defence. His election to give evidence does not mean that he accepted any onus to prove his innocence; nor does it mean that a choice must be made between his evidence and that of the Prosecution witnesses. Rather, the Trial Chamber has to determine whether the evidence of the Prosecution witnesses should be accepted as establishing beyond reasonable doubt the facts alleged, notwithstanding the evidence of the Accused Brima and that of the other Defence witnesses.[175]

118. The Accused Kamara and the Accused Kanu did not give evidence in their own defence. No adverse inferences were drawn from the fact that they did not testify.

119. Given that this is a joint trial of three accused, the Trial Chamber has been careful to consider the charges against each of the Accused in the light of the entirety of the evidence adduced by the Prosecution and each of the Accused.[176]

(e) Alibi of Accused Brima

120. The Accused Brima relied in part on an alibi defence. So long as there is a factual foundation in the evidence for that alibi, an accused bears no onus to establish that alibi; it is for the Prosecution to "eliminate any reasonable possibility that the evidence of alibi is true".[177] Further, a finding that an alibi is false does not in itself "establish the opposite to what it asserts".[178] The Prosecution must not only rebut the validity of the alibi but also establish beyond reasonable doubt the guilt of the Accused as alleged in the Indictment.[179]

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[174] Rule 98 Decision, para. 25.
[175] *Prosecutor v. Vasiljević*, Case No. IT-98-32-T, Judgement, 29 November 2002 ("*Vasiljević* Trial Judgement"), para. 13; *Limaj* Trial Judgement, para. 22.
[176] *Simić Trial* Judgement, para. 18; *Blagojević* Trial Judgement, para. 20.
[177] *Vasiljević* Trial Judgement, para. 15; *Čelebići* Appeal Judgement, para. 581.
[178] *Vasiljević* Trial Judgement, fn. 7.
[179] *Limaj* Trial Judgement, para. 11.

121. Although the Brima Defence alluded to the defence of alibi in its Pre-Trial Brief[180], the Trial Chamber found in an earlier decision that the Brima Defence had failed to comply with Rule 67(A)(ii)(a) of the Rules, in that it had not provided the notification required by that Rule.[181]

122. Rule 67(A)(ii)(a) of the Rules requires that:

> (A) As early as reasonably practicable and in any event prior to the commencement of the trial:
>
> (i) [...]
>
> (ii) The Defence shall notify the Prosecutor of its intent to enter:
>
> (a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

123. Failure of the Brima Defence to provide such notice under Rule 67(A)(ii)(a) does not limit the right of the Accused Brima to rely on the defence of alibi.[182] Nevertheless, the Trial Chamber held that

> [i]f the defence deliberately ignores its obligations under Rule 67(A)(ii), it can expect to be sanctioned by the Trial Chamber. Failure to provide timely disclosure may impair the interests of fair trial proceedings and undermine the prosecution's ability to prepare its case and investigate the evidence on which the alibi defence rests. Therefore, failure by the defence to observe its obligations under Rule 67(A)(ii) will entitle the Trial Chamber to take such failure into account when weighing the credibility of the defence of alibi.[183]

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[180] SCSL-04-16-PT-145, Defence Pre Trial Brief for Tamba Alex Brima, 17 February 2005, para. 11: "The Prosecution has asserted that Tamba Brima was 'in direct control of AFRC/RUF forces in Kono District.' This is denied by the Accused. For the reasons given elsewhere in this pre-trial brief the Accused could not have been in command of any forces. In any event, the Defence will seek to call evidence, if required, to show that Mr. Brima was held in custody by the RUF between February and July 1998. Accordingly it is submitted that he had an alibi for the period relating to the allegations."; para. 28(e): "[...] the Defence will rely on alibi or partial alibi in that it is asserted that the Accused was placed under arrest by the RUF in Kailahun in mid February 1998 and that he was incarcerated until around 8 July 1998 whereupon he fled and stayed with family until October 1998. He will assert that he was not engaged in any operations or hostilities during that time."

[181] *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006. The notice of alibi was not filed until 3 August 2006 in compliance with an Order in the mentioned decision, *see* 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.

[182] Rule 67(B) provides: "Failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences".

[183] *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006, para. 18 (Footnotes omitted).

(f) Witnesses Implicated in the Commission of the Crimes

124. The Defence calls into issue the credibility of certain Prosecution witnesses because these individuals have allegedly been implicated in crimes under the jurisdiction of the court[184] or in domestic crimes[185], or that they were informants to the police[186], or admitted taking drugs.[187] The Brima Defence specifically alleges that Witness George Johnson killed Brima's brother and that this was reason enough for the witness to "attempt to fabricate evidence" against the Accused.[188]

125. A witness with a self-interest to serve may seek to inculpate others and exculpate himself, but it does not follow that such a witness is incapable of telling the truth.[189] Hence, the mere suggestion that a witness might be implicated in the commission of crimes is insufficient for the Trial Chamber to discard that witness's testimony. Moreover, none of these Prosecution witnesses has been charged with any crimes and their evidence cannot, therefore, be described as "accomplice evidence." Furthermore, having heard the evidence of the witnesses concerned, the Trial Chamber found no reason to give undue consideration to any of the defence allegations above.

(g) 'Incentives' for Witnesses

126. The Defence alleges that the evidence of some of the Prosecution witnesses is suspect because they allegedly received incentives to testify against the Accused, such as financial incentives[190] or the promise of relocation to another country[191].

127. With regard to alleged 'financial incentives', the costs of allowances necessarily and reasonably incurred by witnesses as a result of testifying before a Chamber are met by the Special Court in accordance with the "Practice Direction on Allowances for Witnesses and Expert Witnesses", issued by the Registrar on 16 July 2004. The Practice Direction provides for a wide range of allowances to be paid to witnesses testifying before the Special Court. These include an attendance allowance as compensation for earnings and time lost as a result of testifying, accommodation, meals, transport, medical treatment, childcare and other allowances. No distinction is made between witnesses for the Prosecution and Defence.

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[184] George Johnson, Transcript 20 September 2005, p. 78.
[185] George Johnson, Transcript 21 September 2005, pp. 70, 71.
[186] Brima Final Brief, para. 200; George Johnson, Transcript 19 September 2005, pp. 34-35.
[187] George Johnson, Transcript 19 September 2005, p. 37.
[188] Brima Final Brief, para. 199.
[189] *Kordić* Trial Judgement, paras 628-629.
[190] Cross-examination of witness TF1-282, Transcript 14 April 2005, pp. 14-26; *see also* Brima Final Brief, para.188.
[191] Cross-examination of witness George Johnson, Transcript 19 September 2005, pp. 30-31.

128. The Practice Direction requires the Special Court's Witnesses and Victims Section ("WVS") to provide records of payments to the Special Court's Finance Section, and vice versa.[192] In the present case, records of disbursements to Prosecution witnesses were disclosed to the Defence pursuant to Rule 68 of the Rules,[193] and disbursement forms concerning witnesses for both Parties have been admitted into evidence.[194] The Trial Chamber is satisfied that these payments have been made in a transparent way and in accordance with the applicable Practice Direction. Allegations to the contrary are therefore without merit.

129. Relocation to another country is a protective measure employed by WVS pursuant to its responsibility to provide appropriate protection for witnesses and victims who are at risk on account of the testimony given by them.[195] The mere fact that a witness has received protection in that form is not in itself reason to doubt his or her evidence.

130. Accordingly, the Trial Chamber has not given undue weight to these alleged 'incentives' when assessing the credibility of the witnesses in question.

(h) Putting the Defence Case to Prosecution Witnesses

131. 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 Lieutenant Colonel Petrie - in the interests of fairness to the witnesses and overall considerations of justice."[196]

132. In contrast to its ICTY and ICTR counterparts,[197] the Rules of the Special Court do not oblige a Party to put its case to a witness. However, before such a Rule was adopted at the ICTR, the ICTR Appeals Chamber held that

> when weighing the [Defence's] allegation going to the credibility of the Prosecution witnesses, the Trial Chamber was 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

[192] Practice Direction on Allowances for Witnesses and Expert Witnesses, Article 2(D).
[193] *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL16-04-16-T, Decision on Kanu Motion to Disclose Prosecution Material and/or other Information Pertaining to Rewards to Prosecution Trial Witnesses and Brima's Motion in Support, 16 March 2005.
[194] Exhibit D-6, "All Disbursements for Witness" (confidential); exhibit P-23a, "Interoffice Memorandum – Witness Payment Policy – Payments made to TF1-004"; exhibit D-6, "All Disbursements for Witness".
[195] Statute, Article 16(4) and Rule 34 of the Rules; see also witness George Johnson, Transcript 19 September 2005, pp. 34, 35; the witness complained: "I'm presently under threat", and "My life is at stake, I just have to be protected well."
[196] Prosecution Trial Brief, para. 63.
[197] Rule 90(H)(ii) of the ICTY Rules of Procedure and Evidence and Rule 90(G)(ii) of the ICTR Rules of Procedure and Evidence provide that "[i]n 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."

> witnesses' reaction to such allegations, the Trial Chamber was not in a position to determine whether there was merit in the [Defence] charges.[198]

133. As claimed by the Prosecution, the Defence did lead evidence in the Defence case which was not put to Prosecution witnesses in cross-examination. This was not an oversight by the Defence, but a deliberate strategy devised by Defence counsel. As explained in the Defence Closing Arguments: "would it be in our interests to show our hands by cross-examining on a point which the Prosecution can come later to correct? It is only a matter of strategy."[199] In the circumstances, the Trial Chamber considers that it would not be in the interests of justice to set aside the testimony of the relevant Defence witnesses. However, in assessing the weight to be given to such evidence, the Trial Chamber will take into account that the evidence was not put to the Prosecution witnesses, with the result that the Trial Chamber did not have the benefit of observing their reactions.

2. Documentary Evidence

(a) Introduction

134. In the course of the trial, the Trial Chamber admitted a total of 155 exhibits: 109 were tendered by the Prosecution, and 46 by the Defence.

135. Rule 92*bis* of the Rules is entitled "Alternative Proof of Facts" and provides that

> (A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.
>
> (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
>
> (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

136. The effect of Rule 92*bis* was held by the Appeals Chamber to be as follows:

> SCSL Rule 92*bis* is different to the equivalent Rule in the ICTY and ICTR and deliberately so. The judges of this Court, at one of their first plenary meetings, recognised a need to amend ICTR Rule 92*bis* in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently concluded hostilities. The effect of the SCSL Rule is to permit the reception of "information" – assertions of fact (but not opinion) made in documents or electronic

[198] *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 26.
[199] Defence Closing Arguments, (Mr. Manly-Spain for the Accused Kanu), Transcript 8 December 2006, pp. 34-35.

> communications – if such facts are relevant and their reliability is "susceptible of confirmation". This phraseology was chosen to make clear that proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course."[200]

137. The Trial Chamber has assessed the weight and reliability of documentary evidence admitted pursuant to Rule 92*bis* in the light of all the evidence in the case.[201]

138. In compliance with an order of the Trial Chamber, the Prosecution indicated in the margin of documents submitted as evidence under Rule 92*bis* the passages claimed by it to be relevant,[202] and only those passages were admitted into evidence.

139. Many documents tendered by the Prosecution have been contested by the Defence. The Trial Chamber admitted the documents into evidence on the basis of relevance, leaving their reliability and probative value to be assessed at the end of the trial. The individual objections raised by the Defence are discussed below.

(b) Copies and Internet Sources

140. The Trial Chamber relied on a copy of a document if the original was unavailable.[203] Similarly, the Trial Chamber has accepted printouts from internet sources as accurate reproductions of the originals.

141. The Defence raised concerns regarding the authenticity of particular printouts, specifically those tendered by the Prosecution originating from the website www.sierra-leone.org.[204] The Defence argued that the website did not originate from a government or a respected non-governmental organisation, and that the actual source and its authenticity could not be verified.[205]

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[200] *Prosecutor v. Norman, Kondewa, Fofana*, Case No. SCSL-04-14-AR73, Fofana – Decision on Appeal against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005, para. 26.

[201] *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-PT, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, para. 70; see also *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*, 18 November 2005.

[202] *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, para. 75 referring to *Prosecutor v. Moinina Fofana*, Case No.SCSL-2004-14-AR73, Fofana – Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", Separate Opinion of Justice Robertson, 16 May 2005, para. 30; *see as well Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*, 18 November 2005, Annex A.

[203] Fofana Bail Decision, para. 24.

[204] *See* Exhibit P-53, "Statement on the historic return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council, 3 October 1999"; Exhibit P-60, "Personal Statement by Lt. JP Koroma on 1 October 1999"; Exhibit P-61, "Revolutionary United Front's Apology to the Nation - delivered on SLBS, 18 June 1997"; Exhibit P-77, "Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997".

[205] SCSL-04-16-T-430, Joint Defence Objections to the Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence, 15 November 2005, paras 36, 37.

Moreover, those documents were not put to any witness, as they were introduced through Rule 92*bis*. The Prosecution provided some background information on the website and explained that the documents were gathered and compiled by a journalist during the conflict in Sierra Leone.[206] However, in the absence of any reliable evidence as to authenticity, the Trial Chamber has regarded these exhibits as being of little weight unless corroborated.

(c) Radio Broadcasts and Transcripts Thereof

142. The Prosecution has tendered several transcripts of radio broadcasts.[207] Among other things, the Defence challenged the accuracy of broadcasts transcribed by the editor of the website where the transcripts were published.[208] At one point during the Trial, the Prosecution conceded that the transcript had to be amended by members of the Prosecution team after listening to the broadcast.[209] As the Trial Chamber has no information with regard to source and authenticity, it relied on the exhibits in question only if corroborated by other evidence.[210]

(d) Documents Used in Cross-Examination by the Prosecution.

143. It is important to emphasise that the admission of a document into evidence in the course of the trial has no bearing on the weight, if any, subsequently attached to it by the Trial Chamber.

144. Exhibits P-81 to P-99 were used by the Prosecution to cross-examine the Accused Brima. These documents had either not been served on the Accused beforehand, or were served not long before their use in cross-examination[211]. However, the documents were not used to "introduce new evidence, but to challenge evidence of the witness [Brima] that is already on record."[212] After each document was used in cross-examination, it was tendered in evidence by the Prosecution. All of the

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[206] Transcript 16 May 2005, p. 50; Transcript 7 October 2005, p. 61;

[207] *See* Exhibit P-73, "SLBS Radio Broadcast - 25 May 1997, 18:42 GMT"; exhibit P-74, "SLBS Radio Broadcast, 25 May 1997, 19:30 GMT"; exhibit P-75, "SLBS Radio Broadcast, 29 May 15:26 GMT"; exhibit P-76, "SLBS Radio Broadcast, 30 May 19:22 GMT", exhibit P-53, "Statement on the historic return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council, 3 October 1999"; exhibit P-60, "Personal Statement by Lt. JP Koroma on 1 October 1999"; exhibit P-61, "Revolutionary United Front's Apology to the Nation - delivered on SLBS, 18 June 1997"; exhibit P-77, "Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997".

[208] SCSL-04-16-T-430, Joint Defence Objections to the Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence, 15 November 2005, paras 36, 37.

[209] Transcript 7 October 2005, p. 61.

[210] The exhibits concerned are Exhibit P-73, "SLBS Radio Broadcast - 25 May 1997, 18:42 GMT"; exhibit P-74, "SLBS Radio Broadcast, 25 May 1997, 19:30 GMT"; exhibit P-75, "SLBS Radio Broadcast, 29 May 15:26 GMT"; exhibit P-76, "SLBS Radio Broadcast, 30 May 19:22 GMT".

[211] Transcript 29 June 2006, pp. 47, 48.

[212] Transcript 29 June 2006, p. 48.

documents were admitted into evidence, mostly with the consent of the Defence, although some (Exhibits P-85, P-88, P-89 and P-90) were objected to.

145. In the case of Exhibits P-81, P-82, P-83, P-86 (statements claimed by the Accused Brima to have been signed by him under duress), P-88, and P-89 (confessional statements made respectively by Abu Sankoh and Tamba Gborie, who were both subsequently executed) the Trial Chamber had some doubt that the statements had been made voluntarily.

146. None of the authors of the documents were called to prove the documents or be cross-examined (in the case of Exhibits P-88 and P-89 the authors were said to be dead). In the absence of any proof, the Trial Chamber had some doubt as to the authenticity of Exhibits P-84 (a press list by the Security Council Committee for Sierra Leone), P-85 (a magazine article), P-90 (a copy of the death certificate of the father of the Accused Brima – objected to by the Defence), P-91 (an extract from the Registry of Birth, Deaths and Marriages, showing the death of the father of the Accused Brima, who disputed the details), P-92 (Hospital records disputed by the Accused Brima), P-93, P-94, P-95, P-96, (newspaper articles disputed by the Accused Brima), P-98 (a declaration of means which the Accused Brima denied signing), and P-99 (a document giving details of the detention of the Accused Brima, which he denied).

147. In all the circumstances, although Exhibits P-81 to P-99 were admitted into evidence on the basis of their relevance, the Trial Chamber places no probative value on them.

3. Expert Testimony and Reports

148. Rule 94*bis* of the Rules governs the testimony of expert witnesses:

> (A) Notwithstanding the provisions of Rule 66(A), Rule 73*bis* (B)(iv)(b) and Rule 73*ter* (B)(iii)(b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.
>
> (B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:
>
> (i) It accepts the expert witness statement; or
>
> (ii) It wishes to cross-examine the expert witness.
>
> (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

149. The Trial Chamber heard the testimony of five expert witnesses, three for the Prosecution[213] and two for the Defence.[214] They were cross-examined and their reports admitted into evidence. Pursuant to Rule 94*bis*(C), the report of a third expert witness for the Defence was admitted into evidence without calling the expert in person.[215]

150. The Trial Chamber has evaluated the probative value of the expert evidence taking into account the professional competence of the expert, the methodology used and the credibility of the findings made in the light of all the other evidence in the trial.[216]

151. Where an expert report went beyond its parameters by drawing conclusions touching upon the 'ultimate issue' in this case, *i.e.*, the individual criminal responsibility of the Accused, the Trial Chamber disregarded its findings.[217]

4. Facts of which Judicial Notice was Taken

152. Rule 94 of the Rules is entitled "Judicial Notice" and provides as follows:

> (A) A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.
>
> (B) At the request of a party or of its own motion, a Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Special Court relating to the matter at issue in the current proceedings.

153. On 25 October 2005, the Trial Chamber issued a "Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence", taking judicial notice of 11 facts pursuant to Rule 94(A) of the Rules. These facts have been relied upon in this Judgement as indicated.

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[213] Expert witnesses called by the Prosecution: (1) Mrs. Zainab Bangura: Exhibit P-31, "Curriculum Vitae of Mrs. Zainab Bangura"; exhibit P-32, "Expert Report of on phenomenon of 'forced marriages' in the context of the conflict in Sierra Leone and, more specifically, in the context of the trials against the RUF and AFRC Accused only", May 2005., prepared by Zainab Bangura and Christina T. Solomon; (2) TF1-296: Exhibit P-33, "Report on the Situation in Relation to Children with the Fighting Forces" (confidential); (3) Colonel Richard Iron: Exhibit P-35, "Curriculum Vitae of Colonel Richard Iron"; exhibit P-36, "Military Expert Witness Report on the Armed Forces Revolutionary Council (AFRC) of Sierra Leone", August 2005.

[214] Expert witnesses called by the Defence: (1) Major General (retired) W. A. J. Prins: Exhibit D-36, "Military Expert Report on the Armed Forces Revolutionary Council Faction", July 2006; (2) Dr. Dorte Thorsen: Exhibit D-38, "Expertise on West Africa in Case before the Special Court for Sierra Leone", 26 July 2006.

[215] SCSL-04-16-572, Notice of Acceptance of the Expert Report on Child Soldiers by Mr. Gbla, 18 October 2006; exhibit P-37, "The Use of Child Soldiers in the Sierra Leone Conflict", 11 October 2006.

[216] *Vasiljević* Trial Judgement, para. 20; *Orić* Trial Judgement, paras 59-71; *Prosecutor v. Galić*, Case No. IT-98-29-T, Decision on the Expert Witness Statement Submitted by the Defence, 27 January 2003, p. 3.

[217] See Oral Decision, Transcript 12 October 2005, pp. 42, 43; Transcript 13 October 2005, p. 2; Oral Decision, Transcript 14 October 2005, pp. 38, 39; Oral Decision, Transcript 24 October, pp. 110, 112: "[The Trial Chamber] shall disregard any material which in [the Trial Chamber's] judgment goes to the ultimate issue or provides opinions on

5. Agreed Facts

154. A number of facts in this case were admitted in whole or in part by the Defence.[218] There is no provision in the Rules pertaining to agreed facts. Nonetheless, it follows from the very nature of adversarial proceedings that the Parties may stipulate to any fact on which they reach consensus.[219] Before relying on these agreed facts as indicated in this Judgement, the Trial Chamber has subjected them, as all other evidence, "to the tests of relevance, probative value and reliability".[220]

matters upon which the Trial Chamber is going to have to rule, or draws any conclusions or inferences which the Trial Chamber will have to draw, or makes any judgments which the Trial Chamber will have to make."

[218] *See* Prosecutor v. Brima, Kanu and Kamara, SCSL-2004-16-PT-28, Prosecutor's Request to Admit, 4 March 2004; SCSL-16-04-PT-35, [Brima]-Defence Response to Prosecutor's Request to Admit, 18 March 2004; SCSL-16-04-PT-160, [Brima]-Defence Response to Prosecutors [sic] Request to Admit, 2 March 2005; SCSL-16-04-PT-37, Kanu-Defence's Response to Prosecution Request to Admit, 19 March 2004; SCSL-16-04-PT-165, Kanu-Defence Additional Response to Prosecution Request to Admit, 4 March 2005; SCSL-16-04-PT-173, Kamara-Defence Response to Prosecutor's Request to Admit, 7 March 2005.

[219] *See also* Rule 92 of the Rules ("Confessions") which has however a different scope of applicability.

[220] *Simić* Trial Judgement, para. 21; *Blagojević* Trial Judgement, para. 28; *Halilović* Trial Judgement, para. 20.

IV. CONTEXT OF THE ALLEGED CRIMES

A. Political Precursors

155. On 27 April 1961, Sierra Leone gained independence from colonial rule. In the years that followed, there were a number of military coups and Sierra Leone went into economic decline.[221]

156. The Revolutionary United Front (RUF) was established in the late 1980s as an organised armed opposition group. Its aim was to overthrow the government of Sierra Leone. The leader of the RUF was Foday Saybana Sankoh, a former Colonel in the Sierra Leone Army ("SLA"). Sankoh had been dishonourably discharged from the SLA after serving a seven year prison sentence for his alleged involvement in a foiled coup in 1971.[222]

B. The Armed Conflict in Sierra Leone from 1991 to 1997

157. The RUF initiated armed operations in Sierra Leone in March 1991.[223] By the end of 1991 the RUF held consolidated positions in Kailahun District and occupied small parts of Pujehun District.[224]

158. In 1992 junior ranks of the SLA staged a coup under the command of Captain Valentine Strasser and established the National Provisional Ruling Council (NPRC) Government.[225]

159. In the years that followed, the RUF took control over Bo and Bonthe Districts.[226] The military advance of the RUF and the inability of the SLA to drive back the RUF triggered the emergence of local militias consisting primarily of traditional hunters. The main regional groups were the Kamajors in the east and the south, the Donzos in the far east, the Gbettis or Kapras in the north and the Tamaboros in the far north of Sierra Leone.[227] These militias were known as the Civil Defence Forces (CDF) and fought on behalf of the Government.

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[221] *Prosecution v. Norman, Fofana, Kondewa*, SCSL-2004-14-AR73, Appeals Chamber, Fofana - Decision on Appeal against Decision on Prosecution Motion for Judicial Notice and Admission of Evidence ("Fofana Judicial Notie Appeal Decision"), 16 May 2005, Fact A.
[222] Gibril Massaquoi, Transcript 7 October 2005, p. 11.
[223] Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, [hereinafter "Judicial Notice Decision"], Fact E.
[224] Exhibit P-57, No Peace Without Justice, "Conflict Mapping Program", 9 March 2004 [hereinafter "NPWJ Report"] CMS p. 16362.
[225] Exhibit P-57, NPWJ Report, CMS p. 16393.
[226] Exhibit P-57, NPWJ Report, CMS pp. 16132, 16197.
[227] Exhibit P-57, NPWJ Report, CMS p. 16210.

160. By early 1995 the RUF was in control of large parts of Sierra Leone and had established a stronghold in the north of the country.[228] In March 1995, due to its continuing inability to defeat the RUF, the Government employed the services of a private South African security company called Executive Outcomes. Executive Outcomes trained the SLA and was able to dislodge the RUF from most of its positions.[229]

161. In March 1996 elections were held from which the Sierra Leone People's Party, headed by Ahmad Tejan Kabbah, emerged victorious. Around the same time, the Government's support of the CDF resulted in tensions between it and the SLA, as the SLA believed that the Government was neglecting the Army. These tensions reached a peak in 1996 when the SLA lost control of two districts to the Kamajors, one of the groups within the CDF. In late 1996 and early 1997, there were a number of armed clashes between the two groups. In September 1996, a retired SLA officer named Johnny Paul Koroma staged an unsuccessful coup against President Kabbah and was jailed.[230]

162. Ongoing peace negotiations between the Government and the RUF resulted in the Abidjan Peace Agreement, signed on 30 November 1996.[231] The Agreement called for the cessation of hostilities on both sides. In return for peace with the RUF, the Government agreed to grant amnesty to RUF members for any crimes committed before the signing of the Peace Agreement, and to terminate its relationship with Executive Outcomes. The parties further committed themselves to the disarmament, demobilisation and reintegration of RUF combatants.[232]

163. In early 1997, hostilities erupted between the SLA/CDF and the RUF and the peace process broke down.[233] Foday Sankoh was arrested in Nigeria on 1 March 1997, allegedly for a weapons violation, and placed under house arrest by the Nigerian authorities.[234]

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[228] Exhibit P-57, NPWJ Report, CMS p. 16331.
[229] Exhibit P-57, NPWJ Report, CMS p. 16210; George Johnson, Transcript 15 September 2005, p.6; Transcript 19 September 2005, pp. 11, 109.
[230] Exhibit P-57, NPWJ Report, CMS p. 15928.
[231] Exhibit P-63, "Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone", 30 November 1996 [hereinafter "Abidjan Peace Accord"]; Judicial Notice Decision, Fact G.
[232] Exhibit P-63, Abidjan Peace Accord, CMS p.16510.
[233] Judicial Notice Decision, Fact H.
[234] Gibril Massaquoi, Transcript 7 October 2005, pp. 32-33.

C. The Armed Conflict in Sierra Leone from 1997 to 1998

1. The AFRC/RUF Government Period (May 1997 to February 1998)

(a) The 25 May 1997 Coup and the AFRC/RUF Government

164. On 25 May 1997, members of the SLA seized power from the elected Government of President Kabbah via a coup d'état.[235] The overthrow of the SLPP government was planned and executed by 17 junior rank soldiers, who were disgruntled with poor pay and discontented with the Government allocation of resources, which they believed favoured the CDF over the Army.[236] Johnny Paul Koroma was released from prison by the coup plotters[237] and appointed Chairman of the new Government, which was called the Armed Forces Revolutionary Council (AFRC).[238] Immediately thereafter, Koroma invited the RUF to join the AFRC Government.[239] Although still detained in Nigeria, Foday Sankoh accepted the offer and RUF fighters and commanders streamed into the capital from the provinces and joined the government.

165. Upon taking power, the AFRC government suspended the 1991 Constitution of Sierra Leone, dissolved the democratically elected Government and banned political parties.[240] Pursuant to their agreement, Foday Sankoh was appointed Johnny Paul Koroma's deputy. As Sankoh was still absent, his post remained *de facto* vacant.[241] At a later stage, SAJ Musa, a senior member of the SLA, became *de facto* deputy to Johnny Paul Koroma.[242]

(b) Territorial Control of the AFRC/RUF Government

166. When the AFRC government took power in May 1997, it was not immediately able to exercise control over the entire territory of Sierra Leone. Bo and Kenema Districts were controlled by the CDF. Thus the armed forces of the AFRC government, comprising both AFRC soldiers and RUF fighters, undertook operations to gain control over these two districts. Bo Town was captured by the joint government forces from the CDF in approximately June 1997.[243] Two military

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[235] Judicial Notice Decision, Fact I.
[236] Exhibit P-57, NPWJ Report, CMS p. 15761.
[237] Exhibit P-57, NPWJ Report, CMS p. 16011.
[238] Judicial Notice Decision, Fact J. Throughout the transcripts, the parties and witnesses refer to the AFRC troops interchangeably as "Juntas," "soldiers," "SLAs," "ex-SLAs," "People's Party" and "rebels." The Trial Chamber uses the term 'AFRC' throughout the judgement, although it refers on occasion to members of the AFRC as 'former soldiers' or 'renegade soldiers'.
[239] Exhibit P-57, NPWJ Report, CMS p. 15910.
[240] Exhibit P-4, "Proclamation of the AFRC Government", 28 May 1997.
[241] George Johnson, Transcript 15 September 2005, p. 18.
[242] TF1-334, Transcript 16 May 2005, pp. 92-93.
[243] TF1-004, Transcript 23 June 2005, pp. 8, 35-36, 96-99.

operations were conducted on 24 or 25 June 1997 on Tikonko village in Bo District.[244] AFRC/RUF troops under the command of RUF Sam Bockarie ('Mosquito') took control over Kenema District in approximately May 1997.[245] AFRC Government forces maintained control over Kenema until February 1998, but hostilities with the CDF continued in the District throughout the period of the AFRC Government.[246]

167. From June 1997 the AFRC Government controlled most parts of Freetown and the Western Area, as well as Bo, Kenema, Kono, Bombali and Kailahun Districts. However, the Government remained under constant threat from the CDF and the forces of the Economic Community of West African States Monitoring Group (ECOMOG).[247]

168. ECOMOG forces maintained control of the international airport at Lungi (Port Loko District), which is on the north bank of the Sierra Leone River opposite Freetown.[248] ECOMOG forces launched attacks against the AFRC Government in June, July and at the end of 1997.

(c) Relationship between the AFRC and RUF

169. As the founders of the AFRC belonged to the Sierra Leone Army and therefore had been fighting the RUF since 1991, the coalition between the two factions following the 1997 coup was not based on longstanding common interests. Both factions officially declared that they were joining forces to bring peace and political stability to Sierra Leone.[249] On 18 June 1997, the RUF issued an official apology to the nation for its crimes and went on to praise Johnny Paul Koroma's government.[250]

170. In the initial stages of the AFRC Government period, there was a high degree of cooperation between the upper ranks of the AFRC and the RUF. Commanders of both factions

[244] TF1-004, Transcript 23 June 2005, pp. 8, 35-36, 96-99.
[245] TF1-062, Transcript 27 June 2005, pp. 9, 15, 42, 53; TF1-045, Transcript 19 July 2005, pp. 32, 79; George Johnson, Transcript 19 September 2005, p. 55; DAB-147, Transcript 3 October 2006, p. 27; TF1-122, Transcript 24 June 2005, p. 5.
[246] TF1-062, Transcript 27 June 2005, p. 3; TF1-122, Transcript 24 June 2005, p. 71; TF1-122, Transcript 24 June 2005, p. 7.
[247] Exhibit P-57, NPWJ Report, CMS p. 15910-15911.
[248] *See* Exhibit P-30(a), "Map of Sierra Leone".
[249] Exhibit P-77, "Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997."
[250] Exhibit P-61, "Revolutionary United Front's Apology to the Nation", delivered on SLBS radio, 18 June 1997.

attended coordination meetings at which they planned operations[251] and organised joint efforts to obtain arms and ammunition.[252]

171. Nonetheless, from the earliest days there were tensions between the two factions and relations deteriorated over time.[253] In October 1997, Johnny Paul Koroma ordered the arrest of two RUF leaders on charges that they were plotting with the CDF to overthrow his government.[254] Not long after this incident, Koroma ordered the arrest of Issa Sesay, another top RUF commander, for his part in looting the Iranian Embassy in Freetown. In response the RUF stopped attending joint meetings.[255] In January 1998 Sam Bockarie, formally Vice-Chairman of the AFRC government in Foday Sankoh's absence, left Freetown for Kenema District because of his discontent with AFRC commanders.[256]

172. Outside of Freetown, AFRC and RUF troops engaged in joint operations in Bo[257] and Kenema[258] Districts and also cooperated with regards to diamond mining, a critical government resource.[259] However, as in Freetown, the relationship began to deteriorate[260] and each faction began hoarding its own share of proceeds from diamond operations.[261] On one occasion Sam Bockarie refused an instruction from Johnny Paul Koroma to attack Nigerian soldiers arriving through Liberia saying that no one would tell him how to fight.[262]

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[251] Gibril Massaquoi, Transcript 7 October 2005, pp. 83, 86, 93-94 ; TF1-045, Transcript 19 July 2005, pp. 57-66; George Johnson, Transcript 15 September 2005, p. 23; TF1-334, Transcript 17 May 2005, p. 56; Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11th August 1997"; Exhibit P-48, "Sierra Leone Humanitarian Situation Report 04, 5 June 1997"; Exhibit P-49, "United Nations Department of Humanitarian Affairs, Situation Report, 8-14 July 1997", CMS pp. 15688-15689.

[252] TF1-334, Transcript 17 May 2005, pp. 55-56; Gibril Massaquoi, Transcript 7 October 2005, pp. 72-73; TF1-045, Transcript 19 July 2005, pp. 64-75.

[253] TF1-045, Transcript 19 July 2005, pp. 57-62; TF1-045, 21 July 2005, pp. 27-31; Gibril Massaquoi, Transcript 11 October 2005, p. 53.

[254] TF1-045, Transcript 22 July 2005, pp. 42-45; Gibril Massaquoi, Transcript 7 October 2005, pp. 108-109.

[255] TF1-334, Transcript 17 May 2005, pp. 58, 69; George Johnson, Transcript 19 September 2005, p. 54-55.

[256] TF1-334, Transcript 17 May 2005, p. 57; Gibril Massaquoi, Transcript 11 October 2005, p. 53; DAB-142, Transcript 19 September 2006, pp. 12-13, 16 (although the witness refers to the year *1987*, the Trial Chamber is satisfied that he was describing events that took place in *1997*); DBK-129, Transcript 9 October 2006, p. 63.

[257] Exhibit P-66, U.S. Department of State, "Sierra Leone Country Report on Human Rights Practises for 1997", CMS p. 16528; TF1-004, Transcript 23 June 2005, pp. 96-99 testifying about crimes committed in the village of Tikonko; TF1-054, Transcript 19 April 2005, pp. 87-95 testifying about the killing of Paramount Chief Demby by 'soldiers', two of whom, at least, were known SLAs; TF1-053, Transcript 18 April 2005, pp. 104-107, saying that he saw 'soldiers' enter Chief Demby's house just before he heard shots.

[258] Gibril Massaquoi, Transcript 7 October 2005, pp. 106-107; TF1-062, Transcript 27 June 2005, pp. 15-16, 20-21, 26. TF1-122, Transcript 24 June 2005, pp. 35-49, 71-72; DAB-033, Transcript 25 September 2006, p. 43.

[259] TF1-062, Transcript 27 June 2005, pp. 11-15, 20-25; TF1-045, Transcript 19 July 2005, pp. 35-37.

[260] DBK-063, Transcript 2 August 2006, p. 24.

[261] DAB-033, Transcript 25 September 2006, pp. 43, who believed that mining proceeds were going only to the RUF; DBK-063, Transcript 2 August 2006, p. 24.

[262] George Johnson, Transcript 19 September 2005, pp. 55-58.

(d) Military Pressure on the AFRC Government

173. In addition to regional military pressure from ECOMOG, the AFRC government was subjected to international political pressure. Both regional and international institutions passed resolutions pressing for the restoration of democracy. The pressure increased as human rights violations within Sierra Leone escalated.[263] On 8 October 1997, the United Nations imposed international sanctions on the AFRC government.[264]

174. On 23 October 1997, political, military and economic pressure on the AFRC Government forced it to accept the ECOWAS Six-Month Peace Plan, also known as the Conakry Accord. The Conakry Accord called for an immediate cessation of hostilities throughout Sierra Leone and the restoration of the constitutional Government by 22 May 1998.[265]

(e) The February 1998 ECOMOG attack on Freetown and the retreat of AFRC/RUF forces

175. Soon after the Conakry Accord was signed, hostilities resumed. ECOMOG forces attacked Freetown on 13 and 14 February 1998. The AFRC forces were not able to hold their positions and escaped through the Freetown peninsula.[266] The government of former President Kabbah was reinstated in March 1998.[267]

176. The retreat from Freetown was uncoordinated and without any semblance of military discipline. [268] AFRC soldiers and RUF fighters fled with their families using either civilian cars or army vehicles.[269] The fleeing troops passed through the villages of Lumley, Goderich, York and Tumbo. From Tumbo they crossed Yawri Bay to Fo-gbo. They then proceeded to Newton and Masiaka (Port Loko District).[270] It took three to four days for the troops to reach Masiaka.[271] This period is often referred to as "the intervention".[272]

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[263] Exhibit P-38, Security Council Resolution 1181 (13 July 1998) Concerning the Ongoing Conflict in Sierra Leone.
[264] Exhibit P-37, Security Council Resolution 1132 (8 October 1997) Concerning Sierra Leone and the AFRC; Exhibit P-66, U.S. Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", Released by the Bureau of Democracy, Human Rights and Labor, January 30 1998, CMS p. 16525.
[265] Exhibit P-64, "ECOWAS Six-Month Peace Plan for Sierra Leone", 23 October 1997, CMS p. 16518.
[266] Exhibit P-57, NPWJ Report, CMS p. 16012; TF1-334, Transcript 17 May 2005, p. 68; Exhibit P-36, Colonel Richard Irons, "Military Expert Witness Report on the AFRC of Sierra Leone", August 2005 [hereinafter "Iron Report"], para. C2.1.
[267] Judicial Notice Decision, Fact P.
[268] TF1-334, Transcript 17 May 2005, p. 68; exhibit P-36, Iron Report, C2.2.
[269] Exhibit P-36, Iron Report, para. C2.1.
[270] George Johnson, Transcript 15 September 2005, p. 24; *see also* exhibit P-30(a), "Map of Sierra Leone", as marked by witness George Johnson.
[271] Exhibit P-36, Iron Report, C2.1.
[272] *See* Annex C, Map of the Routes taken by AFRC troops throughout the Indictment period.

D. The Armed Conflict in Sierra Leone from 1998 to 2001

1. Post AFRC/RUF Government period (February 1998 to May 1998)

(a) Restructuring of the AFRC/RUF troops in the Districts (February 1998)

177. After the chaotic retreat from Freetown, the AFRC and RUF troops gathered in Masiaka but organisation and control remained minimal.[273] At Masiaka senior AFRC and RUF officers discussed the future of their movement. An initiative to recapture Freetown was abandoned due to insufficient arms and ammunition.

178. At Masiaka, Johnny Paul Koroma announced "Operation Pay Yourself" over the BBC. Koroma informed his troops that they he could no longer pay them and they would therefore have to fend for themselves.[274] Immediately thereafter the rebels began a widespread campaign of looting.[275]

(b) Planning the attack on Koidu Town (end February 1998)

179. In the days that followed, the troops moved without any obvious strategic aim except survival. Johnny Paul Koroma retreated to his native village Magbonkineh in Bombali District.[276] A large group of former soldiers, AFRC officials and RUF fighters travelled to Kabala in Koinadugu District.[277] At Kabala the senior commanders met to discuss strategies. SAJ Musa called for an attack on Kono District. He believed that, given the strategic importance of the District, such an operation would lead to international recognition.[278]

180. After the commanders agreed to the plan to recapture Kono District, Koroma arrived in Kabala and held a muster parade at which he explained to his soldiers that he could no longer pay them and that henceforth they would be subordinate to RUF command.[279] When SAJ Musa learned about Koroma's decision, he was furious. He would not accept the notion that untrained RUF

[273] Exhibit P-36, Iron Report, pp. C2-C4.
[274] TF1-334, Transcript 17 May 2005, p. 73.
[275] TF1-334, Transcript 17 May 2005, pp. 73-74, 84.
[276] TF1-334, Transcript 17 May 2005, p. 84.
[277] TF1-334, Transcript 17 May 2005, p. 81.
[278] TF1-334, Transcript 17 May 2005, pp. 82-83.
[279] DAB-018, Transcript 7 September 2006, pp. 7-9.

fighters could be in charge of former soldiers,[280] and insisted that the purpose of his group was to reinstate the army and that the RUF could not lead such a mission.[281]

181. In addition, before the operation to recapture Kono took place, a dispute erupted over command and control issues resulting in hostilities between the two factions and the deaths of several fighters.[282] As a result, SAJ Musa, and a significant number of AFRC troops loyal to him, opted not to participate in or support the operation.[283]

182. The remaining AFRC/RUF troops travelled towards Koidu Town. At Njema Sewafe the advancing troops were forced to retreat by the CDF. Johnny Paul Koroma and his fighters returned to Makeni. Another group of AFRC/RUF rebels launched a second successful attempt to capture Koidu Town on 1 March 1998. Johnny Paul Koroma arrived in Koidu town shortly thereafter.

2. Kono District (March 1998 to May/June 1998)

183. Johnny Paul Koroma took overall command of the AFRC/RUF troops.[284] Koroma and other former soldiers and RUF commanders attended a meeting at RUF commander Denis Mingo's house. The discussion, chaired by Mingo, revolved around the relative positions of the AFRC and RUF. Koroma agreed with Mingo that the AFRC troops would be subordinate to the RUF, a decision which was unpopular with some of his own commanders.[285]

184. Once larger parts of Kono District fell to rebel control, Johnny Paul Koroma announced that he would travel abroad, via Kailahun District, in order to organise logistics for the troops.[286] Prior to his departure, he announced that the civilians had betrayed the troops by calling for support from the Kamajors (CDF) and that Kono should therefore become a 'civilian no go area'.[287] Rebels were ordered to execute weak civilians and force stronger ones to join the movement. Koroma further ordered that civilian housing in the areas surrounding rebel headquarters was to be burned to

[280] TF1-184, Transcript 27 September 2005, p. 9.
[281] TF1-184, Transcript 27 September 2005, p. 6-8. *See also*: TF1-153, Transcript 23 September 2005, pp. 62-63.
[282] George Johnson, Transcript 15 September 2005, pp. 30-32; George Johnson, Transcript 19 September 2005, pp. 58-60; TF1-184, Transcript 27 September 2005, pp. 16-18.
[283] George Johnson, Transcript 15 September 2005, pp. 30-32; TF1-184, Transcript 27 September 2005, p. 6-8; See also: TF1-153, Transcript 23 September 2005, pp. 62-63.
[284] TF1-334, Transcript 17 May 2005, p. 117.
[285] George Johnson, Transcript 15 September 2005, pp. 33-34.
[286] TF1-334, Transcript 18 May 2005, p. 3.
[287] TF1-334, Transcript 18 May 2005, p. 3.

prevent civilians from settling in Koidu Town.[288] Rebel fighters immediately began implementing Koroma's orders.[289]

185. Within three days of his arrival in Koidu Town, around 4 March 1998, Johnny Paul Koroma departed for Kailahun.[290] The majority of AFRC fighting forces remained in Kono District alongside the RUF troops. Although the AFRC were subordinate to the RUF,[291] there was cooperation between them and the two factions planned and participated in joint operations.[292]

186. The villages targeted by the rebels in Kono District during the Indictment period included Koidu Geya, Koidu Buma, Paema, Penduma, Tombodu,[293] Kaima (or Kayima),[294] Koidu Town,[295] Foendor,[296] Bomboafuidu,[297] Yardu Sandu,[298] Penduma[299] and Mortema.[300]

3. Koinadugu and Kailahun District (February 1998 – November 1998)

187. The other faction of AFRC soldiers, under the command of SAJ Musa, remained in Koinadugu District throughout this period, working on and off together with RUF rebels there. However, the main stronghold of the RUF was Kailahun District, which was under the control of Sam Bockarie ('Mosquito').[301]

188. When Johnny Paul Koroma departed for Kailahun District he was given to believe that he would be welcomed there by the RUF.[302] However, when he arrived in Kailahun he encountered a hostile RUF leadership. He was arrested by Sam Bockarie, Issa Sesay and other RUF fighters.[303] He

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[288] TF1-334, Transcript 18 May 2005, pp. 4-6.
[289] TF1-334, Transcript 18 May 2005, p. 9.
[290] TF1-334, Transcript 18 May 2005, pp. 15-16, 18-19; TF1- 045, Transcript 19 July 2005, p. 93.
[291] TF1-334, Transcript 21 June 2005, pp. 18-19.
[292] TF1-334, Transcript 18 May 2005, pp. 24-33; Transcript 19 May 2005, pp. 3-4.
[293] George Johnson, Transcript 15 September 2005, pp. 44-45; DAB-023, Transcript 3 August 2006, pp. 75, 78; TF1-334, Transcript 20 May 2005, pp. 14-15; DAB-098, Transcript 4 September 2006, pp. 33, 45; TF1-033, Transcript 11 July 2005, pp. 11-13; TF1-216, Transcript 27 June 2005, p. 92; TF1-217, Transcript 17 October 2005, pp. 17-21, 36-37, 46-47.
[294] TF1-074, Transcript 5 July 2005, pp. 11, 14-15.
[295] TF1-334, Transcript 20 May 2005, pp. 4, 7, 8; Exhibit P-54, Amnesty International Report, "Sierra Leone 1998: A year of Atrocities Against Civilians", CMS p. 15806-15807; TF1-217, Transcript 17 October 2005, pp. 4-5; DAB-131, Transcript 14 September 2006, p. 38.
[296] TF1-076, Transcript 27 June 2005, pp. 101-108.
[297] TF1-206, Transcript 28 June 2005, pp. 90-98; DAB-123, Transcript 11 September 2006, pp. 59-67, 76-85; DAB-123 Transcript 12 September 2006 p. 29.
[298] TF1-019, Transcript 30 June 2005, pp. 90-91.
[299] TF1-217, Transcript 17 October 2005, pp. 12-23, 46.
[300] DAB-025, Transcript 28 July 2006, pp. 95, 107-108; DAB-101, Transcript 12 September 2006, pp. 81-88, 96-98.
[301] TF1-114, Transcript 18 July 2005, pp.12, 59; TF1-113, Transcript 18 July 2005, pp. 73-74.
[302] TF1 045, Transcript 19 July 2005, pp. 94-96.
[303] TF1 045, Transcript 19 July 2005, pp. 97.

was then stripped and searched for diamonds and his wife was sexually assaulted.[304] Bockarie placed Koroma under house arrest in Kagama village near Buedu where he remained until mid 1999.[305] No evidence was adduced suggesting that Koroma had any form of contact whatsoever with any of his former associates during the remaining period covered by the Indictment.

4. Koinadugu and Bombali Districts (May 1998 – November 1998)

(a) Retreat from Kono District (April/May 1998)

189. AFRC troops maintained control over Kono District until April 1998 when ECOMOG forces advanced into Kono District.[306] Tensions between the AFRC and RUF forces in Kono had been escalating. As a result of the enemy advance and the exacerbating tensions between the two factions, the majority of the AFRC troops moved north to Mansofinia in Koinadugu District. Some former soldiers remained in Kono District and chose to operate independently or work more closely with the RUF, most notably a former soldier named 'Savage', who remained in Tombodu where he was the commander.[307]

190. At a meeting in Koinadugu District, various AFRC commanders met with SAJ Musa to discuss the future and develop a new military strategy. The commanders agreed that the troops who had arrived from Kono District should act as an advance troop which would establish a base in north western area Sierra Leone in preparation for an attack on Freetown. The purpose was to "restore the Sierra Leone Army". There is no evidence that the RUF was involved in these deliberations.

191. The split with the RUF had considerable consequences for the AFRC troops. They no longer controlled diamond mining areas, meaning that they had no revenue sources. Consequently, they had difficulty accessing new supplies of weapons and ammunitions. The only source available to them was stocks captured from ECOMOG or the CDF.[308]

(b) AFRC Troop Movement from East to West (May 1998 – November 1998)

192. The advance team returned to Mansofinia and started a three month journey through Sierra Leone to Rosos, which is located in eastern Bombali District. From Mansofinia they travelled south

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[304] TF1 045, Transcript 19 July 2005, pp. 98-100.
[305] George Johnson, Transcript 19 September 2005, pp. 62- 63; TF1-153, Transcript 23 September 2005, pp. 62-63; TF1 045, Transcript 19 July 2005, p. 97; DAB-059, Transcript 27 September 2006, pp. 81-82.
[306] Exhibit P-57, NPWJ Report, CMS p. 16211.
[307] Also known as Tombudu.
[308] Exhibit P-36, Iron Report, para. C5.4.

into Kono District and passed Kondea, Worodu and Yarya, the hometown of the Accused Brima. From there the troops headed north east, back into Koinadugu District to Yifin,[309] and then moved eastwards passing Kumala and Bendugu toward the area near Bumbuna (Tonkolili District). From there the troops headed further north east into Bombali District, passing Kamagbengbeh,[310] Bonoya, Karina, Pendembu[311] and Mateboi before finally arriving at Rosos.[312] The civilian population was routinely targeted and attacked by soldiers and fighters on that route.[313] Villages attacked by the troops on their path included Yifin,[314] Yiraye[315] and Kumalu[316] in Koinadugu District and Mandaha,[317] Rosos,[318] Bornoya,[319] Mateboi,[320] Gbendembu,[321] Madina Loko,[322] Kamadogbo,[323] Kamagbengbe[324] and Batkanu in Bombali District.[325]

193. Much of the journey was conducted by foot. The troops were accompanied not only by their families but also by hundreds of civilians abducted from targeted villages. The troops settled in Rosos, where they remained for around three months (July – September 1998).[326] However, following ECOMOG discovery and bombardment of the camp, they travelled west to a village known as 'Colonel Eddie Town.'[327] From 'Colonel Eddie Town' the troops staged a number of attacks on ECOMOG positions in order to supplement their dwindling stocks of arms and ammunition.[328]

194. While the advance team of the AFRC fighting forces travelled across the country from east to west, RUF troops under the command of Sam Bockarie maintained control over Kailahun

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[309] Also referred to as Yiffin.
[310] Also referred to as Magbengbeh.
[311] Also referred to as Gbendembu.
[312] Exhibit P-30(a), "Map of Sierra Leone".
[313] *See* General Requirements of Articles 2, 3 and 4 of the Statute.
[314] TF1-033, Transcript 11 July 2005, pp. 16, 86; TF1-033 Transcript 12 July 2005, pp. 26-31; TF1-153, Transcript 22 September 2005, p. 33; DAB-090, Transcript 24 July 2006, pp. 73, 96-105; DAB-086, Transcript 25 July 2006, pp. 11-23.
[315] TF1-153, Transcript 22 September 2005, pp. 48-50.
[316] TF1-133, Transcript 7 July 2005, pp. 81-82.
[317] TF1-033, Transcript 12 July 2005, p. 5-8; TF1-334, Transcript 23 May 2005, p. 77.
[318] TF1-269, Transcript 14 July 2005, pp. 41-43; TF1-267, Transcript 27 July 2005, pp. 4-7, 10, 12-13,16-17.
[319] TF1-158, Transcript 26 July 2005, p. 30; TF1-156, Transcript 26 September 2005, pp. 59, 60
[320] George Johnson, Transcript 15 September 2005, pp. 60, 61; TF1-334, Transcript 23 May 2005, p. 87.
[321] TF1-033, Transcript 11 July 2005, pp. 32-34.
[322] TF1-199, Transcript 6 October 2005, p. 73.
[323] TF1-058, Transcript 14 July 2005, p. 94; TF1-157, Transcript 22 July 2005, p. 68.
[324] TF1-334, Transcript 23 May 2005, pp. 55-56.
[325] TF1-179, Transcript 27 July 2005, pp. 34-35, 50-56.
[326] TF1-334, Transcript 23 May 2005, p. 103.
[327] 'Colonel Eddie Town' was also referred to by witnesses as 'Major Eddie Town'. The town is actually known by the name Gberi or Gberimatmatank. The troops renamed it after one of the commanders of the AFRC forces. It was never clear on the evidence adduced whether 'Colonel Eddie Town' is located in Port Loko or Bombali Districts.
[328] TF1-334, Transcript 25 May 2005, pp. 49-54.

District and parts of Kono District.[329] Villages attacked by RUF fighters in Kailahun District included Kailahun Town,[330] Daru[331] and Buedu.[332]

195. The faction of AFRC fighting forces under the command of SAJ Musa remained in Koinadugu District where they worked together with RUF troops loyal to RUF commander Denis Mingo, also known as 'Superman'. Significant evidence was adduced regarding the commission of crimes by the troops under the command of SAJ Musa and Denis Mingo including at Koinadugu Town,[333] Kabala,[334] Yomadugu,[335] Bafodeya,[336] Kurubonla,[337] Bambukura[338] and Fadugu.[339]

5. Advance on Freetown (November to December 1998)

196. As the different factions were unable to communicate with each other, SAJ Musa sent a second advance group to locate the first advance team in or about September 1998. The route taken by this second group is not clear, but it appears that they travelled along a route similar to the one taken by the first advance team.

197. In October 1998, following an armed clash with Dennis Mingo, SAJ Musa left Koinadugu District to join the advance team and prepare for an attack on Freetown. SAJ Musa did not follow the same route taken by the advance teams in his journey to the west.

198. Upon his arrival in 'Colonel Eddie Town' in November 1998, SAJ Musa assumed command. He emphasised his disenchantment with the RUF and stressed that it was vital that his troops arrive in Freetown before the RUF.[340] SAJ Musa reorganised the troops and began the advance towards Freetown. The troops passed through the villages of Mange, Lunsar, Masiaka and

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[329] TF1-113, Transcript 18 July 2005, p. 73, 76; DAB-140, Transcript 19 September 2006, p. 93; DAB- 147, Transcript 3 October 2006, p. 49.
[330] TF1-113, Transcript 18 July 2005, p. 87-90.
[331] TF1-045, Transcript 19 July 2004, pp. 84-86.
[332] DAB-140, Transcript 19 September 2006, pp. 72-76, 80-83; TF1-114, Transcript 14 July 2005, pp. 119, 126-130; DAB-131, Transcript 14 September 2006, pp. 42-43.
[333] DAB-081, Transcript 20 July 2006, p. 82, 98-99.
[334] TF1-147, Transcript 13 July 2005, pp. 7-8, 10-12, 14; TF1-199, Transcript 6 October 2005, p. 88; DAB-156, Transcript 29 September 2006, pp. 39-40, 43, 77-78; DAB-083, Transcript 21 July 2006, p. 33; TF1-209, Transcript 7 July 2006, pp. 36-38; DAB-079, Transcript 28 July 2006, pp. 7-8, 41-43, 46-49.
[335] TF1-094, Transcript 13 July 2005, pp. 28-29, 49.
[336] TF1-199, Transcript 6 October 2005, pp. 69-70, 75, 90-91.
[337] TF1-133, Transcript 7 July 2005, pp. 93-95, 118. Kurubonla is also known as Krubola.
[338] DAB-088, Transcript 24 July 2006, pp. 20-25; DAB-089, Transcript 24 July 2006, pp. 43-57.
[339] TF1-199, Transcript 6 October 2005, pp. 77-78; DAB-077, Transcript 19 July 2006, pp. 92-94; DAB-078, Transcript 6 September 2006, pp. 10-18, 36; DAB-078, Transcript 11 September 1998, p. 40; DAB-085, Transcript 20 July 2006, pp. 7, 38-39, 41; Exhibit P-57, Conflict Mapping Report, "No Peace without Justice", 10 March 2004, p. 16056; Exhibit P-54, Amnesty International "Sierra Leone. A year of atrocities against civilians, 1998", p. 15811; Exhibit D-24 (under seal).
[340] George Johnson, Transcripts 15 September 2005, p. 81; 19 September 2005, p. 81.

Newton before arriving in Benguema in the Western Area in December 1998. Throughout the advance, the troops withstood frequent attacks by ECOMOG. Little evidence was adduced that the troops targeted civilians during this period, rather, they concentrated on purely military targets.

199. While the AFRC troops were advancing on Freetown, RUF troops in the east recaptured Koidu and planned an advance on Makeni in Bombali District. They reached Makeni in the final days of 1998.[341]

200. On one occasion during the advance, SAJ Musa and the AFRC troops heard the British Broadcasting Corporation (BBC) interview Sam Bockarie over the radio. Bockarie revealed the position of the AFRC fighting forces and explained that it was RUF troops who were approaching Freetown. Soon after, ECOMOG bombarded the area.[342] Musa immediately contacted Sam Bockarie, insulted him and told him that he had no right to claim that the troops approaching Freetown were RUF troops.[343]

201. On 23 December 1998, shortly after the arrival in Benguema, SAJ Musa was killed in an explosion during an attack on an ECOMOG weapons depot.

6. Attack on Freetown (January 1999)

202. Following the death of SAJ Musa, the troops reorganised. On 6 January 1999, they invaded Freetown. From Benguema, the troops passed through the villages of Waterloo, Hastings, Wellington and Kissy. During the advance, the civilian population was increasingly targeted. The AFRC troops were able to capture the seat of government at State House on the morning of the 6th of January.[344] That same day, Sam Bockarie announced over Radio France International (RFI) that the troops had taken Freetown and that "they" would continue to defend Freetown.[345]

203. One of the first acts of the invading troops upon reaching Freetown was to attack the city's central prison at Pademba Road and release all the prisoners. The release of the prisoners into the general population contributed to a general breakdown of order amongst the troops.[346] However, during the three days following the capture of State House, the AFRC fighting forces were able to control large areas of Freetown.

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[341] Exhibit P-36, Iron Report, D-5.
[342] TF1-334, 13 June 2005, pp. 46-48.
[343] TF1-334, 13 June 2005, p. 48.
[344] George Johnson, Transcript 15 September 2005, p. 21.
[345] TF1-334, Transcript 14 June 2005, p. 20.
[346] Exhibit P-36, Iron Report, D-11.

204. From State House, senior AFRC officers established radio contact with Sam Bockarie and asked for reinforcement. Bockarie instructed them to burn down Freetown if they could not hold the city.[347] Bockarie then announced over the BBC that if ECOMOG did not stop attacking troop positions the whole of Freetown would be burnt down.[348] In a second communication, Bockarie promised to send manpower, arms and ammunition, and arranged a location at which the AFRC troops should meet the RUF reinforcements. However, the support never arrived.[349]

205. The AFRC troops remained in Freetown for around three weeks, although they were not able to advance into the western part of the city. This period is often referred to as the "Freetown invasion".

7. Retreat from Freetown (January/February 1999)

206. Following heavy assaults from ECOMOG, the troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as the troops were running out of ammunition.[350] While the AFRC managed a controlled retreat, engaging ECOMOG and Kamajor troops who were blocking their way, RUF reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops.[351]

207. Most of the damage to Freetown, especially the damage to infrastructure and civilian housing, was inflicted by the retreating AFRC forces. The AFRC were also responsible for massive civilian casualties.[352]

8. Port Loko District (February 1999 – April 1999)

208. The AFRC forces withdrew, reorganised and established bases in the Western Area, including at in Newton and Benguema. They remained there until approximately early April 1999, when the AFRC divided. One group travelled to Makeni in Bombali District to support one of several RUF factions involved in internecine battle. A smaller group moved to Port Loko District and settled in the region of the Okra Hills near Rogberi. This group became known as the "West Side Boys" and frequently targeted and attacked the civilian population. Towns and villages

[347] TF1-334, Transcript 14 June 2005, pp. 48-49. George Johnson, Transcript 16 September, 2005, pp. 40-41. TF1-184, Transcript 27 September 2005, pp. 76-77.
[348] George Johnson, Transcript 16 September, 2005, pp. 40-41.
[349] George Johnson, Transcript 16 September 2005, pp. 49-51.
[350] Exhibit P-36, Iron Report, D-15.
[351] Exhibit P-36, Iron Report, D-15.
[352] *See* General Requirements of Articles 2, 3 and 4 of the Staute, para. 236, *infra*.

attacked included Masiaka,[353] Gberibana,[354] Manaarma,[355] Sumbuya,[356] Nonkoba[357] and Tendakum.[358] These troops remained in Port Loko District until the negotiation of the Lomé Peace Accord.

E. The 1999 Lomé Peace Accord and the Cessation of Hostilities in Sierra Leone in 2001

209. Following the atrocities committed in Freetown in January 1999, the Kabbah Government was under pressure to enter into a peace agreement with the warring factions. The AFRC was not represented during the negotiations. On 7 July 1999, the Sierra Leone Government of Tejan Kabbah and the RUF signed a peace agreement known as the Lomé Peace Accord.[359] The Accord resulted in a power-sharing arrangement between the Kabbah Government and the RUF. Foday Sankoh, who until this time remained under house arrest in Nigeria, returned to Sierra Leone and became Vice-President. Hostilities resumed shortly thereafter, a final cessation of which only occurred in January 2002.[360]

[353] TF1-085, Transcript 7 April 2005, pp. 35-36.
[354] TF1-334, Transcript 15 June 2005, pp. 51-74; TF1-334, Transcript 22 June 2005, pp. 12, 21-28.
[355] TF1-253, Transcript 15 April 2005, pp. 80-81; TF1-320, Transcript 8 April 2005, pp. 13-15, 38-40.
[356] TF1-282, Transcript 13 April 2005, pp. 15-18; Transcript 14 April 2005, p. 39.
[357] TF1-256, Transcript 14 April 2005, pp. 53-55; 72-82, 90-91, 97-98; DBK-111, Transcript 18 September 2006, pp. 43-45.
[358] DBK-111, Transcript 18 September 2006, pp. 46-47. Tendakum is also known as Chendakum.
[359] Exhibit P-62, "Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone", 7 July 1999 [hereinafter "Lome Peace Accord"].
[360] Judicial Notice Decision, Fact A.

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

A. Article 2 of the Statute: Crimes Against Humanity

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

1. The Law

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

> The Special Court shall have power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:
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> a. Murder;
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> b. Extermination;
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> c. Enslavement;
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> d. Deportation;
>
> e. Imprisonment;
>
> f. Torture
>
> g. Rape, sexual slavery, enforced prostitution; forced pregnancy and any other form of sexual violence;
>
> h. Persecution on political, racial, ethnic or religious grounds;
>
> i. Other inhumane acts.

212. Article 2 of the Statute differs from similar provisions in the governing statutes of other international tribunals in that it does not specifically require such crime to have been committed "during armed conflict" (unlike its ICTY counterpart[361]), or "on national, political, ethnic, racial or religious grounds" (unlike its ICTR counterpart[362]), or with the perpetrator's "knowledge of the attack" (unlike its ICC counterpart[363]).

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[361] ICTY Statute, Article 5.
[362] ICTR Statute, Article 3.
[363] ICC Statute, Article 7; *see* also United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2000/15, Section 5.

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

(a) There must be an attack

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

(b) The attack must be widespread or systematic

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

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[364] Rule 98 Decision, para. 41.
[365] *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković,* Case No. IT-96-23-A & IT-96-23/1-A, Judgement, 12 June 2002 ("*Kunarac* Appeal Judgement"), paras 82-89; *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998 ("*Akayesu* Trial Judgement"), para. 581; *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu*, Case No. IT-03-66-T, Judgement, 30 November 2005 ("*Limaj* Trial Judgement"), para. 182; *Prosecutor v. Naletilić and Martinović*, Case No. IT-03-66-T, Judgement, 31 March 2003, ("*Naletilić and Martinović* Trial Judgement"), para. 233.
[366] *Prosecutor v. Mitar Vasiljević,* Case No. IT-98-32-T, Judgement, 29 November 2002 ("*Vasiljević* Trial Judgement"), para. 30; *Kunarac* Appeal Judgement, para. 86.
[367] Rule 98 Decision, para. 42; *Limaj* Trial Judgement, para. 182; *Kunarac* Appeal Judgement, para. 86; *Prosecutor v. Duško Tadić* (*aka* "*Dule*"), Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement"), para. 251; *Prosecutor v. Duško Tadi}* (*aka* "*Dule*"), Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ("*Tadić* Jurisdiction Decision"), para. 141; *Kunarac* Appeal Judgement, para. 86.
[368] *Kunarac* Appeals Judgement, para. 93.
[369] *Prosecutor v. Tadić,* ICTY IT-94-1-T, Trial Chamber Judgement, 7 May 1997, ("*Tadić* Trial Judgement") para. 646.
[370] *Kunarac* Appeals Chamber Judgement, paras 96-97.
[371] *Tadić* Trial Judgement, para. 649.

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

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

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

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

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[372] *Akayesu* Trial Judgement, para. 580; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber Judgement, 21 May 1999, ("*Kayishema and Ruzindana* Trial Judgement"), para. 123; *Kunarac* Appeals Judgement, para.94; *Tadić* Trial Judgement, para. 648.
[373] *Limaj* Trial Judgement, para. 184; *Prosecutor v. Tihomir Blaškić,* Case No. IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"), paras 100, 120; *Kunarac* Appeal Judgement, para. 98: "neither the attack nor the acts of the accused needs to be supported by any form of 'policy' or 'plan' [...] It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was in fact a policy or plan, but it may be possible to prove these things by reference to other matters."
[374] *Kunarac* Trial Judgement, para. 429; *Kunarac* Appeal Judgement, para. 94.
[375] *Kunarac* Appeal Judgement, para. 95 (footnotes omitted).
[376] *Blaškić* Appeal Judgement, para 109; *Limaj* Trial Judgement, para. 186.
[377] *Akayesu* Appeal Judgement, para. 582; *Tadić* Appeal Judgement, paras 637-638.
[378] *Tadić* Appeal Judgement, paras 644.

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

217. The use of the word 'population' does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected to that attack,[380] although the targeting of only a limited and randomly selected number of individuals cannot satisfy the requirements of Article 2.[381]

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

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

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

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

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[379] *Kunarac* Appeal Judgement, para.91.
[380] *Limaj* Trial Judgement, para. 187; *Kunarac* Appeal Judgement, para. 90; *Blaškić* Appeal Judgement, para. 105; *Prosecutor v. Stanislav Galić,* Case No. IT-98-29-T, Judgement, 5 December 2003 ("*Galić* Trial Judgement"), para 143.
[381] *Limaj* Trial Judgement, para. 187; *Kunarac* Appeal Judgement, para. 90.
[382] Indictment, para. 20.

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

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

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

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

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

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

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[383] *Galić* Appeal Judgement, footnote 437; *Blaškić* Appeal Judgement, fn. 220.
[384] *Akayesu* Trial Judgement, para. 579
[385] *Tadić* Appeal Judgement, paras 632.
[386] *Kunarac* Appeal Judgement, para. 121; *Tadić* Appeal Judgement, para. 255.
[387] *Blaškić* Appeals Judgement, para. 126.
[388] *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement"), paras 254-257.
[389] *Limaj* Trial Judgement, para. 190; *Blaškić* Appeal Judgement, paras 125-126.
[390] *Limaj* Trial Judgement, para. 190; *Kunarac* Appeal Judgement, para. 102.

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

2. Submissions of the Parties

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

3. Findings

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

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

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[391] *Limaj* Judgement, para. 190; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 ("*Kordić* Trial Judgement"), para. 185.
[392] *Limaj* Trial Judgement, para. 190; *Tadić* Appeal Judgement, paras 248, 252; *Kunarac* Appeal Judgement, para 103: "[a]t most, evidence that [acts were committed] for purely personal reasons could be indicative of a rebuttable assumption that he was not aware that his acts were part of that attack."
[393] Prosecution Final Brief, paras 956-964.
[394] Joint Legal Part of the Rule 98 Motion, para. 47.
[395] *See* Context of the Alleged Crimes, *supra.*

attack against the civilian population was therefore state-sponsored, aimed broadly at quelling opposition to the regime and punishing civilians suspected of supporting the CDF/Kamajors.[396]

226. The second stage was precipitated by the removal of the AFRC/RUF government from Freetown, from which point onwards the two factions operated as non-state actors. The focal points of violence shifted as AFRC/RUF troops moved throughout the various provinces, faced with the challenge of more limited resources and poorer organisational capacity. The point has been made in the jurisprudence of the ICTY that such practical difficulties may typically result in attacks by non-State actors being less obviously classifiable as 'widespread' or 'systematic'.[397] However, the Trial Chamber finds that this was not the case in Sierra Leone. Instead, the continued attack against the civilian population was in most instances more frequent and brutal.

(a) AFRC/RUF Government period

227. Reliable documentary evidence establishes that after the May 1997 coup, violence and human rights abuses against civilians increased. Extrajudicial killings, mutilation, amputations, rape and beatings of unarmed civilians were frequent.[398] The AFRC/RUF routinely directed attacks against civilians suspected of supporting the Kamajors, in the course of which civilians were shot and their property looted.[399] Such attacks were not limited to selected individuals. Rather, entire villages in the southern and eastern provinces were burned on the basis that they harboured Kamajors.[400]

228. In Bo District, for example, civilians were killed, property was looted and homes were burned during attacks executed jointly by AFRC/RUF troops on the villages of Tikonko, Gerihun, Sembehun and Telu Bongor in June 1997.[401] Kenema District was controlled by the AFRC/RUF from Kenema Town and frequent beatings and killings of civilians took place there throughout the

[396] Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997", p. 16526-16527, 16539; Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15910.
[397] *See Limaj* Trial Judgement, para. 191.
[398] Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997", p. 16526.
[399] Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997", p. 16527-16528; TF1-122, Transcript 24 June 2005, pp. 23-26, 101-102, 114-115; TF1-122, Transcript 24 June 2005, pp. 35-37.
[400] Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997", p. 16530.
[401] TF1-004, Transcript 23 June 2005, pp. 13-15, 18, 96-99 (Tikonko); TF1-053, Transcript 18 April 2005, pp. 103, 107, 108, TF1-053, Transcript 19 April 2005, p. 94 (Gerihun); exhibit P-66, "U.S. Department of State, Sierra Leone Country Report on Human Rights Practises for 1997", CMS p. 16528 (Gerihun, Sembehun and Telu Bongor).

junta period.[402] In December 1997, in Kenema Town, the AFRC/RUF declared a campaign code named 'Operation No Living Thing' which mandated the killing of civilians accused of being Kamajors.[403]

229. The diamond mines in Kenema District were also the site of sustained attacks on civilians. The AFRC/RUF mining operations at Tongo Field were particularly well-organised, with a system established for abducting large numbers of civilians and forcing them to work in the mines on certain days.[404] Witnesses testified that many civilians were assaulted or killed during this process.[405] This testimony is corroborated by documentary evidence from the US Department of State describing physical violence inflicted on civilian miners near Tongo Field.[406]

230. Certain features of this evidence prove that the attack against the civilian population was systematic. First, it was executed at the behest of the State, as AFRC/RUF government officials were routinely responsible for the commission of the crimes. In Bo District, for example, AFRC officials were involved in the burning down of the SLPP party office.[407] In Kenema Town, several alleged Kamajor supporters were arrested and detained at the police station, released on bail and then subsequently re-arrested and executed by AFRC officials.[408] A similar incident occurred in Kailahun District, where at least 57 alleged Kamajor supporters were arrested and shot by AFRC/RUF officials.[409]

231. The execution of the attack pursuant to pre-conceived policies or plans is an additional feature that demonstrates the systematic nature of the attack. The Trial Chamber is satisfied that civilians were forced to labour in the diamond mines in Tongo Field pursuant to a policy formulated and administered by the AFRC Secretariat.[410] In addition, the pattern of crimes evinces a policy that inflicting violence on civilians served to eradicate support for the Kamajors. The Trial Chamber emphasises in this regard that the alleged presence of Kamajors among the civilians does not preclude the characterisation of the attack as one directed primarily against the civilian population.

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[402] DAB-147, Transcript 3 October 2006, p. 27; TF1-122, Transcript 24 June 2005, pp. 5, 7, 12, 29-30, 35-37, 44-48, 63-68; George Johnson, Transcript 19 September 2005, p. 55.
[403] TF1-122, Transcript 24 June 2005, pp. 32-33.
[404] TF1-062, Transcript 27 June 2005, pp. 22-27; TF1-122, Transcript 24 June 2005, p.72; TF1-334, Transcript 17 May 2005, pp.54-55; TF1-045, Transcript 20 July 2005 pp. 88-89; DAB-033, Transcript 25 September 2006, p. 43, Transcript 2 October 2006, pp. 109-110.
[405] TF1-062, Transcript 27 June 2005, p. 33; TF1-045, Transcript 19 July 2005, p. 55, Transcript 20 July 2005, pp. 16-18.
[406] Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997" p. 16530.
[407] TF1-053, Transcript 18 April 2005, pp. 98-99.
[408] TF1-122, Transcript 24 June 2005, pp. 35-49.
[409] TF1-113, Transcript 18 July 2005, pp. 89-90.
[410] Factual Findings, Enslavement, paras 1289-1308 *infra*.

The Trial Chamber accepts the submission of the Prosecution that throughout the junta period, the AFRC/RUF government sanctioned the commission of crimes against civilian population generally as a means of consolidating control and eliminating opposition to the regime.[411]

232. Although it is sufficient for the general requirements of crimes against humanity to establish that the attack was systematic, the Trial Chamber is satisfied that it was also widespread as AFRC/RUF attacks were carried out frequently against a large number of civilian victims and involved the simultaneous commission of multiple serious offences.

(b) Post AFRC/RUF Government Period (February 1998 January 200)

233. The retreat of the AFRC/RUF from Freetown in 1998 was characterised by the infliction of violence against civilians.[412] Documentary evidence authored by the United Nations and Human Rights Watch reports that attacks in villages across Sierra Leone continued regularly throughout the year.[413] Such attacks "exhibited a characteristic modus operandi: amputation of limbs, mutilation, actual or attempted decapitation, rape, burning alive of men, women and children, destruction of homes, abduction and looting".[414] Numerous instances appear in the oral evidence of pregnant women being killed, beaten or raped in these attacks.[415] Civilians suffered amputations including arms, hands, feet, breasts, lips and ears.[416] The abducted civilians, numbered in their thousands[417], were forced to serve the AFRC/RUF as "porters, potential recruits or sex slaves".[418] Women were actively targeted through sexual violence.[419] The phenomenon of the 'bush wives' witnessed thousands of women forcibly married to rebels.[420]

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[411] Prosecution Final Brief, paras 484-485.
[412] Exhibit P-41, "Fourth Report of the Secretary General on the Situation in Sierra Leone" (18 March 1998), p. 15576.
[413] Exhibit P-38, "Security Council Resolution 1181 (13 July 1998), p 15555; Exhibit P-45, "Third Progress Report of the UN Observer Mission in Sierra Leone" (16 October 1998), p. 15647; Exhibit P-52, "Sowing Terror, Atrocities against Civilians in Sierra Leone" (Human Rights Watch Report, July 1998), p. 15727.
[414] Exhibit P-45, "Third Progress Report of the UN Observer Mission in Sierra Leone" (16 October 1998), p. 15641.
[415] TF1-253, Transcript 15 April 2005, pp. 68-69, 71, 80-81; TF1-158, Transcript 26 July 2005, p. 35; TF1-198, Transcript 28 June 2005, p. 12; TF1-004, Transcript 23 June 2005, pp. 18-21; TF1-055, Transcript 12 July 2005, pp. 132, 136; TF1-209, Transcript 7 July 2005, pp. 28-36; TF1-094, Transcript 13 July 2005, pp. 41, 55-57; DAB-101, Transcript 12 September 2006, p. 93.
[416] Exhibit P-26, "MSF 1998 Report: Atrocities Against Civilians in Sierra Leone", pp. 3787-3792; exhibit P-42, "Fifth Report of the Secretary General on the Situation in Sierra Leone" (9 June 1998), p. 15590; exhibit P-54 "Sierra Leone. 1998 – A Year of Atrocities Against Civilians" (Amnesty International Report), p. 15798.
[417] Exhibit P-52, "Sowing Terror, Atrocities against Civilians in Sierra Leone" (Human Rights Watch Report, July 1998), p. 15727.
[418] Exhibit P-47, "Sixth Progress Report of the UN Observer Mission in Sierra Leone" (4 June 1999), p. 15672.
[419] Exhibit P-52, "Sowing Terror, Atrocities against Civilians in Sierra Leone" (Human Rights Watch Report, July 1998), p. 15727.
[420] Exhibit P-32, "Expert Report on the Phenomenon of "Forced Marriage" in the Context of the Conflict in Sierra Leone and, more specifically, in the context of the Trials Against the RUF and the AFRC Accused only", p. 15265.

234. The fact that civilians were the primary target of the attack is amply demonstrated by the nature of the offences described above, the majority of which served no military purpose. Instead, evidence establishes that the infliction of mass violence on the civilian population was on occasion regarded as a legitimate method for advancing the AFRC/RUF cause. The town of Karina in Bombali District was attacked in May 1998 because it was the alleged home town of President Kabbah.[421] The stated aim of the attack was to shock the entire country and the international community.[422] In addition to Karina, AFRC and/or RUF forces attacked civilians in a number of other villages in Bombali District, including Mandaha,[423] Rosos,[424] Bornoya,[425] Mateboi,[426] Gbendembu,[427] Madina Loko,[428] Kamadogbo,[429] Kamalu,[430] Kamagbengbe[431] and Batkanu.[432]

235. A report admitted in evidence, authored by UNHCR officers, details numerous incidents of killings, mutilations, beatings and rapes of civilians in Kono and Koinadugu Districts in 1998.[433] This report is corroborated by documentary evidence and the testimony of both Prosecution and Defence witnesses pertaining to attacks by the AFRC and/or RUF in Kono, Koinadugu and Kailahun Districts. In Kono District, civilians were attacked in Tombodu,[434] Kaima (or Kayima),[435] Koidu Town,[436] Foendor,[437] Bomboafuidu,[438] Yardu Sandu,[439] Penduma[440] and Mortema.[441] In Koinadugu District, civilians were attacked in Koinadugu Town,[442] Kabala,[443] Yifin,[444] Yiraye,[445]

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[421] TF1-157, Transcript 25 September 2005, pp. 29-30, 58-60; TF1-157 Transcript 26 September 2005, pp. 9, 23-24, 30; George Johnson, Transcript 15 September 2005, pp. 53-54.
[422] TF1-334, Transcript 23 May 2005, pp. 56-60, 61, 64-65.
[423] TF1-033, Transcript 12 July 2005, p. 5-8; TF1-334, Transcript 23 May 2005, p. 77.
[424] TF1-269, Transcript 14 July 2005, pp. 41-43; TF1-267, Transcript 27 July 2005, pp. 4-7, 10, 12-13,16-17.
[425] TF1-158, Transcript 26 July 2005, p. 30; TF1-156, Transcript 26 September 2005, pp. 59, 60
[426] George Johnson, Transcript 15 September 2005, pp. 60, 61; TF1-334, Transcript 23 May 2005, p. 87.
[427] TF1-033, Transcript 11 July 2005, pp. 32-34.
[428] TF1-199, Transcript 6 October 2005, p. 73.
[429] TF1-058, Transcript 14 July 2005, p. 94; TF1-157, Transcript 22 July 2005, p. 68.
[430] Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15811.
[431] TF1-334, Transcript 23 May 2005, pp. 55-56.
[432] TF1-179, Transcript 27 July 2005, pp. 34-35, 50-56.
[433] Exhibit P-51, "Sierra Leone Victims of Violence: Summary Report" (UNHCR) pp. 15707-15720.
[434] George Johnson, Transcript 15 September 2005, p. 44-45; DAB-023, Transcript 3 August 2006, pp. 75, 78; TF1-334, Transcript 20 May 2005, pp. 14-15; DAB-098, Transcript 4 September 2006, p. 33, 45; TF1-033, Transcript 11 July 2005, pp. 11-13; TF1-216, Transcript 27 June 2005, p. 92; TF1-217, Transcript 17 October 2005, pp. 17-21, 36-37, 46-47.
[435] TF1-074, Transcript 5 July 2005, pp. 11, 14-15
[436] TF1-334, Transcript 20 May 2005, pp. 4, 7, 8; Exhibit P-54, "Amnesty International Report on Sierra Leone, A year of atrocities against civilians", p. 15806-15807; TF1-217, Transcript 17 October 2005, pp. 4-5; DAB-131, Transcript 14 September 2006, p. 38.
[437] TF1-076, Transcript 27 June 2005, pp. 101-108.
[438] TF1-206, Transcript 28 June 2005, pp. 90-98; DAB-123, Transcript 11 September 2006, pp. 59-67, 76-85; DAB-123 Transcript 12 September 2006 p. 29.
[439] TF1-019, Transcript 30 June 2005, pp. 90-91.
[440] TF1-217, Transcript 17 October 2005, pp. 12-23, 46.
[441] DAB-025, Transcript 28 July 2006, pp. 95, 107-108; DAB-101, Transcript 12 September 2006, pp. 81-88, 96-98.
[442] DAB-081, Transcript 20 July 2006, p. 82, 98-99.

Yomadugu,[446] Bafodeya,[447] Krubola,[448] Bambukura[449] and Fadugu.[450] In Kailahun District, civilians were attacked in Kailahun Town,[451] Daru[452] and Buedu.[453] These locations are named on the basis that reliable evidence of attacks was adduced with respect to them. The Trial Chamber notes that these villages therefore represent a minimum assessment of the attack on the civilian population of Sierra Leone in the post-intervention period.

236. This attack culminated in the invasion of Freetown in January 1999, which has been described as "the most intensive and concentrated period of human rights abuses and international humanitarian law violations in Sierra Leone's civil war".[454] Reliable documentary evidence from several sources estimates that up to five thousand civilians were killed, one hundred had limbs amputated, thousands were raped, thousands were abducted, civilians were used by rebels as human shields and entire neighbourhoods were burnt to the ground, often with civilians inside their houses.[455] Eyewitnesses described the execution of members of religious orders[456] and civilians in mosques were also killed on suspicion that they had been harbouring ECOMOG soldiers.[457] A military expert testified that the damage to Freetown during the subsequent retreat appeared to have

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[443] TF1-147, Transcript 13 July 2005, pp. 7-8, 10-12, 14; TF1-199, Transcript 6 October 2005, p. 88; DAB-156, Transcript 29 September 2006, pp. 39-40, 43, 77-78; DAB-083, Transcript 21 July 2006, p. 33; TF1-209, Transcript 7 July 2006, pp. 36-38; DAB-079, Transcript 28 July 2006, pp. 7-8, 41-43, 46-49.
[444] TF1-033, Transcript 11 July 2005, pp. 16, 86; TF1-033 Transcript 12 July 2005, pp. 26-31; TF1-153, Transcript 22 September 2005, p. 33; DAB-090, Transcript 24 July 2006, pp. 73, 96-105; DAB-086, Transcript 25 July 2006, pp. 11-23.
[445] TF1-153, Transcript 22 September 2005, pp. 48-50.
[446] TF1-094, Transcript 13 July 2005, pp. 28-29, 49.
[447] TF1-199, Transcript 6 October 2005, pp. 69-70, 75, 90-91.
[448] TF1-133, Transcript 7 July 2005, pp. 93-95, 118.
[449] DAB-088, Transcript 24 July 2006, pp. 20-25; DAB-089, Transcript 24 July 2006, pp. 43-57.
[450] TF1-199, Transcript 6 October 2005, pp. 77-78; DAB-077, Transcript 19 July 2006, pp. 92-94; DAB-078, Transcript 6 September 2006, pp. 10-18, 36; DAB-078, Transcript 11 September 1998, p. 40; DAB-085, Transcript 20 July 2006, pp. 7, 38-39, 41; exhibit P-57, Conflict Mapping Report, "No Peace without Justice", 10 March 2004, p. 16056; exhibit P-54, Amnesty International "Sierra Leone. A year of atrocities against civilians, 1998", p. 15811; exhibit D-24 (under seal).
[451] TF1-113, Transcript 18 July 2005, p. 87-90.
[452] TF1-045, Transcript 19 July 2004, pp. 84-86.
[453] DAB-140, Transcript 19 September 2006, pp. 72-76, 80-83; TF1-114, Transcript 14 July 2005, pp. 119, 126-130; DAB-131, Transcript 14 September 2006, pp. 42-43.
[454] Exhibit P-53, "We'll Kill You if You Cry, Sexual Violence in the Sierra Leone Conflict" (Human Rights Watch Report January 2003) 15762
[455] Exhibit P-46, "Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone", p. 15653, 15657-15659; Exhibit P-53, "We'll Kill You if You Cry, Sexual Violence in the Sierra Leone Conflict" (Human Rights Watch Report January 2003) 15762; exhibit P-68, "Women Waging Peace and the Policy Commission "from Combat to Community" Women and Girls of Sierra Leone", p. 16578. *See also* testimony of Prosecution witnesses TF1-083, Transcript 8 April 2005, p. 62 and TF1-334, Transcript 14 June 2005, p. 86.
[456] Gibril Massaquoi, Transcript 10 October 2005, p. 28; TF1-334, Transcript 14 June 2005, pp. 95-97; George Johnson, Transcript 16 September 2005, p. 55; TF1-184, Transcript 27 September 2005, pp. 82-84; TF1-153, Transcript 23 September 2005, pp. 20-22; Gibril Massaquoi, Transcript 10 October 2005, pp. 27-28.
[457] TF1-083, Transcript 8 April 2005, pp. 69, 70; *see also* exhibit P-46, "Fifth report of the Secretary General on the UN Observer Mission in Sierra Leone", 4 March 1999, p. 15659.

been a policy driven by spite as there was little military justification for the crimes committed.[458] Witnesses testified that violence against civilians continued over the following months in Port Loko, at locations including Masiaka,[459] Gberibana,[460] Manaarma,[461] Sumbuya,[462] Nonkoba[463] and Tendakum.[464]

237. The above evidence suffices to establish the widespread nature of the attack against the civilian population in the post-intervention period, given the frequency with which attacks occurred over a prolonged period throughout much of the territory of Sierra Leone and the untold number of civilian victims affected.

238. Although it is not strictly necessary, the Trial Chamber finds that the regular pattern of crimes committed demonstrates that the attack was also systematic. In addition, it is evident from the declaration by AFRC/RUF leaders of a number of 'operations' targeted at civilians that pre-conceived plans or policies for the execution of the attack existed. One of the most notorious of these was 'Operation Pay Yourself' which officially sanctioned the looting of civilian property on an unprecedented scale so that the soldiers could support themselves.[465] 'Operation Spare No Soul' saw troops instructed to kill, maim or amputate any civilian with whom they came into contact, burn villages and rape girls and women freely.[466] The area surrounding the AFRC headquarters in Rosos, Bombali District, was secured through "Operation Fearful" and "Operation Clear the Area" which respectively mandated the killing of any civilian in the vicinity and the looting and burning of surrounding villages.[467]

239. The Trial Chamber is also satisfied beyond reasonable doubt that the Accused knew that their conduct formed part of this pattern of widespread or systematic attack. The evidence pertaining to this requirement will be presented in Chapter XI of this Judgement regarding the responsibility of the Accused.

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[458] Exhibit P-36, Iron Report, para. D.17.
[459] TF1-085, Transcript 7 April 2005, pp. 35-36.
[460] TF1-334, Transcript 15 June 2005, pp. 51-74; TF1-334, Transcript 22 June 2005, pp. 12, 21-28.
[461] TF1-253, Transcript 15 April 2005, pp. 80-81; TF1-320, Transcript 8 April 2005, pp. 13-15, 38-40.
[462] TF1-282, Transcript 13 April 2005, pp. 15-18; Transcript 14 April 2005, p. 39.
[463] TF1-256, Transcript 14 April 2005, pp. 53-55; 72-82, 90-91, 97-98; DBK-111, Transcript 18 September 2006, pp. 43-45.
[464] DBK-111, Transcript 18 September 2006, pp. 46-47.
[465] TF1-334, Transcript 17 May 2005, pp. 72-73; TF1-045, Transcript 19 July 2005, p. 82; TF1-334, Transcript 20 May 2005, pp. 4, 7, 8; Exhibit P-54, "Amnesty International Report on Sierra Leone, A year of atrocities against civilians", p. 15806; exhibit P-59 "No Peace Without Justice Conflict Mapping Report", p. 15913.
[466] TF1-033, Transcript 11 June 2005, pp. 12-14.
[467] TF1-334, Transcript 23 May 2005, pp. 100-106; 24 May 2005, pp. 2-5.

B. Article 3 of the Statute: Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

240. The Accused are charged with six counts of violations of Article 3 Common to the Geneva Conventions ("Common Article 3") and of Additional Protocol II, pursuant to Article 3 of the Statute: acts of terrorism (Count 1), collective punishments (Count 2), violence to life, health and physical or mental well-being of persons, in particular murder (Count 5), outrages upon personal dignity (Count 9), violence to life, health and physical or mental well-being of persons, in particular mutilation (Count 10), and pillage (Count 14).

1. The Law

241. Article 3 of the Statute is entitled 'Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II' and provides as follows:

> The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of Article 3 Common to the Geneva Conventions of 12 August 1949 for the Protection of War victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:
>
> a. Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
>
> b. Collective punishments;
>
> c. Taking of hostages;
>
> d. Acts of terrorism;
>
> e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
>
> f. Pillage;
>
> g. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples; and
>
> h. Threats to commit any of the foregoing acts.

242. The Trial Chamber endorses the following chapeau requirements of Violations of Article 3 Common to the Geneva Convention and of Additional Protocol II pursuant to Article 3 of the Statute, as articulated in its Rule 98 Decision.[468]

[468] Rule 98 Decision, para. 44.

(a) There must have been an armed conflict whether non-international or international in character at the time the offences were allegedly committed

243. Although Article 3 Common to the Geneva Conventions is expressed to apply to armed conflicts "not of an international character", the distinction between internal armed conflicts and international conflicts is "no longer of great relevance in relation to the crimes articulated in Article 3 of the Statute as these crimes are prohibited in all conflicts. Crimes during internal armed conflicts form part of the broader category of crimes during international armed conflict."[469] The Appeals Chamber of the ICTY has ruled that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State."[470] 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".[471]

244. The criteria for establishing the existence of an armed conflict are the intensity of the conflict and the degree of organisation of the warring factions.[472] These criteria are used "solely for the purpose, *as a minimum*, of distinguishing an armed conflict from banditry, unorganised and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law".[473]

245. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, until a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply on the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.[474]

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[469] *See Prosecutor v. Fofana*, Case No. SCSL-04-14-PT, Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict, 25 May 2004 ("Appeal Decision on Nature of Armed Conflict"), para. 25; *see also Milošević* Rule 98bis Decision, para. 21; *Limaj* Trial Judgement, para. 90.
[470] *Tadić* Jurisdiction Decision, para. 70.
[471] *Kunarac* Appeal Judgement, para. 58.
[472] *Tadić* Trial Judgement, para. 562; *Limaj* Trial Judgement, paras 84, 89;
[473] *Tadić* Trial Judgement, para. 562 [emphasis added]; *Limaj* Trial Judgement, paras 84, 89.
[474] *Tadić* Appeal Decision on Jurisdiction, para. 70; *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-T, Judgement, 16 November 2005 ("*Halilović* Trial Judgement"), para. 26; *Kunarac* Appeal Judgement, para. 64.

(b) There must be a nexus between the armed conflict and the alleged offence

246. For an offence to fall within the scope of Article 3 of the Statute, the Trial Chamber must establish that a sufficient link between the alleged breach of Common Article 3 or Additional Protocol II and the underlying armed conflict existed.[475] The rationale of the said requirement is to protect the victims of internal armed conflicts, but not from crimes unrelated to the conflict. The nexus is satisfied where the perpetrator acted in furtherance of or under the guise of the armed conflict.[476]

247. The following factors have been considered in the jurisprudence to determine if an act was sufficiently related to the armed conflict: whether the perpetrator was a combatant; whether the victim was a member of the opposing party; whether the act can be said to have served the ultimate goal of a military campaign; and whether the crime was committed as part of or in the context of the perpetrator's official duties.[477]

(c) The victims were not directly taking part in the hostilities at the time of the alleged violation

248. Both Common Article 3 and Additional Protocol II protect only those persons who take no active or direct part in the hostilities, and those who have ceased to take part therein and are therefore placed *hors de combat* by sickness, wounds, detention or any other cause.[478] To fulfil this requirement, the Prosecution must prove the relevant facts of each victim with a view to ascertain whether that person was actively involved in the hostilities at the relevant time.[479]

2. Findings

249. The Trial Chamber finds that at all times relevant to the Indictment, there was an armed conflict in Sierra Leone. The Trial Chamber took judicial notice of the fact that the conflict in Sierra

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[475] *See Tadić* Appeals Chamber Jurisdiction Decision, para. 70; *Prosecutor v. Ignace Bagilishema,* Case No. ICTR-95-1A-T, Judgement, 7 June 2001 ("*Bagilishema* Trial Judgement"), para. 105; *Prosecutor v. Alfred Musema,* Case No. ICTR-96-13-T, Judgement, 27 January 2000 ("*Musema* Trial Judgement"), para. 259; *Prosecutor v. Georges Anderson Nderubumwe Rutaganda,* Case No. ICTR-96-3-T, Judgement and Sentence, 6 December 1999 ("*Rutaganda* Trial Judgement"), para. 104; *Kayishema and Ruzindana* Trial Judgement, para. 185; *Akayesu* Trial Judgement, para. 643.

[476] Rule 98 Decision, para. 44; *Kunarac* Appeal Judgement, para. 58; *Tadić* Appeals Chamber Jurisdiction Decision, para. 70; *Rutaganda* Appeal Judgement, para. 570.

[477] *Kunarac* Appeal Judgement, paras 58-59. The nexus does not imply the requirement that the perpetrator be related or linked to one of the parties to the conflict: *Akayesu* Appeal Judgement, paras 443-444. *See also Prosecutor v. Georges Anderson Nderubumwe Rutaganda,* Case No. ICTR-96-3-A, Judgement, 26 May 2003 (*Rutaganda* Appeal Judgement), para. 570.

[478] Common Article 3; Article 4(1) of Additional Protocol II.

[479] *Tadić* Trial Judgement, para. 616; *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Trial Judgement (*Orić* Trial Judgement), para. 258; *Prosecutor v. Laurent Semanza,* Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003 ("*Semanza* Trial Judgement"), para. 365; *Halilović* Trial Judgement, para. 32.

Leone lasted from March 1991 until January 2002 and involved the RUF, AFRC and CDF.[480] The Defence for each of the three Accused admitted the fact that at all times relevant to the Indictment, a state of armed conflict existed throughout the territory of Sierra Leone.[481]

250. In relation to the character of the armed conflict, the Prosecution submitted in their Final Brief that Articles 3 and 4 of the Statute apply to both international and non-international armed conflicts.[482] While the distinction between non-international and international armed conflicts remains of consequence in international humanitarian law, the characterisation of the armed conflict in Sierra Leone was not canvassed at trial and no submissions were made on it by the parties. For this reason, the Trial Chamber confines itself to the following brief observations.

251. The Trial Chamber finds that the armed conflict in Sierra Leone was non-international. This conclusion is derived from the application of the two-pronged test for the internationalisation of non-international armed conflicts developed in the jurisprudence of the ICTY.[483] There is no evidence before the Trial Chamber that proves beyond reasonable doubt that a third State intervened in the conflict, either through its own troops or alternatively by exercising the requisite degree of overall control over some of the conflict's participants to find that they acted on its behalf. Nonetheless, the Trial Chamber reiterates that this finding is immaterial to its jurisdiction as Articles 3 and 4 of the Special Court's Statute apply where an armed conflict was in existence when the crimes were committed, regardless of whether such conflict was non-international or international in character.

252. The Trial Chamber considers it important to acknowledge that the armed conflict throughout Sierra Leone pre-dated the involvement of the AFRC and the May 1997 coup constituted a turning point in this regard. Prior to May 1997, there existed a state of armed conflict between the Kabbah Government and the RUF, which the 1996 Abidjan Peace Accord failed to resolve.[484] After the coup, the armed conflict continued but was now conducted by RUF and former SLA troops, on

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[480] Judicial Notice Decision, Facts A and D.

[481] "Defence Response to Prosecutors Request to Admit" (Brima), 2 March 2005, p. 6728; "Kamara - Defence Response to Prosecutor's Request to Admit", SCSL-2004-16-PT, 7 March 2005, p. 6826; "Kanu – Defense Additional Response to Prosecution Request to Admit", SCSL-2004-16-PT, 4 March 2005. The Trial Chamber notes that the Kanu Defence denied the fact in part. The Trial Chamber finds this immaterial as the denial did not go to whether a state of armed conflict existed, but rather whether the conflict was best characterised as a 'war of aggression' or a 'civil war': Kanu Pre-Trial Brief, para. 12.

[482] Prosecution Final Brief, para. 968, referring to Norman Nature of the Armed Conflict Decision, para. 25.

[483] *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeal Chamber, Judgement, 15 July 1999 at para. 84; *Prosecutor v. Naletilić*, Case No. IT-98-34-T, Trial Chamber, Judgement, 31 March 2003 at para. 182; *Prosecutor v. Kordić*, Case No. IT-95-14/2-T, Trial Chamber, Judgement, 26 February 2001 at para. 66.

[484] Exhibit P-63, "Peace Agreement Between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone", p. 16508.

behalf of the AFRC/RUF government, fighting against ECOMOG and the CDF/Kamajors, on behalf of the Kabbah Government. Documentary evidence establishes that regular armed clashes between the two sides occurred throughout the remainder of 1997.[485]

253. The armed conflict continued along the same lines after the ECOMOG intervention which saw the Kabbah government reinstated.[486] The May 1999 Ceasefire Agreement and the July 1999 Lomé Peace Treaty both provided for the cessation of the armed conflict,[487] which did not eventuate.[488] Although these agreements referred only to the RUF, it is apparent from documentary evidence that the AFRC/RUF staged joint attacks periodically throughout 1999.[489] In addition, AFRC and RUF leaders made a joint public statement in October 1999 which referred repeatedly to the prior state of 'war' and proclaimed their unified commitment to implementing the Lomé Treaty.[490] The Trial Chamber is therefore satisfied that the AFRC remained actively engaged in hostilities until the end of the Indictment period in January 2000.[491]

254. The Trial Chamber finds that the crimes were closely related to this conflict.[492] Unless indicated otherwise in Chapter X of this Judgement, the Facts and Findings, the Trial Chamber is also satisfied that all victims were not directly taking part in the hostilities at the time the crimes occurred.

C. Article 4 of the Statute: Other Serious Violations of International Humanitarian Law

255. The Accused are charged with one count of 'other serious violations of international humanitarian law' pursuant to Article 4(c) of the Statute: conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 12).

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[485] Exhibit P-66, "US Department of State Sierra Leone Country Report on Human Rights Practices for 1997", pp. 16527, 16534-16535; Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15910-15912.
[486] Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15912-15916.
[487] Exhibit P-65, "Agreement on Ceasefire in Sierra Leone", p. 16522; exhibit P-62, "Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone" pp. 16480.
[488] Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15918; exhibit P-67, "First Report on the United Nations Mission in Sierra Leone (UNAMSIL)" (6 December 1999) p. 16549.
[489] Exhibit P-59, "No Peace Without Justice Conflict Mapping Report", p. 15916-15918; exhibit P-67, "First Report on the United Nations Mission in Sierra Leone (UNAMSIL)" (6 December 1999) pp. 16548-16549.
[490] Exhibit P-59, "Statement on the Historic Return to Freetown, Sierra Leone, of the leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council", p. 16470-16471.
[491] The Trial Chamber took judicial notice of the fact that the conflict in Sierra Leone occurred from March 1991 until January 2002: Judicial Notice Decision , Fact A.
[492] *See* Context of the Alleged Crimes, *supra*.

1. The Law

256. Article 4 of the Statute is entitled 'Other Serious Violations of International Humanitarian Law' and provides as follows:

> The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:
>
> a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
>
> b. Intentionally directing attacks against personnel, installations, materials, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled the protection of given to civilians or civilian objects under the international law of armed conflict;
>
> c. Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

257. The crimes listed in Article 4 of the Statute possess the same chapeau requirements as those in Article 3 of the Statute.[493]

2. Findings

258. As stated above, the Trial Chamber finds that at all times relevant to the Indictment, there was an armed conflict in Sierra Leone and that the crimes were closely related to this conflict.[494] Unless indicated otherwise in its Factual Findings, the Trial Chamber is also satisfied that all victims were not directly taking part in the hostilities at the time the crimes occurred.

[493] *See also* Rule 98 Decision, para. 45.
[494] *See* Context of Alleged Crimes, *supra*.

VI. POLITICAL STRUCTURE OF THE AFRC GOVERNMENT

A. Introduction

259. The Trial Chamber will review the evidence on the AFRC Government structure in order to assess the authority of those government bodies to which one or all Accused are alleged to have belonged during the AFRC Government period between May 1997 and February 1998. Establishing the influence and authority exercised by the Accused will precede any findings on their role[495] and their responsibility[496] for the crimes allegedly committed in this period.[497]

260. The Indictment alleges that the three Accused were "senior members of the AFRC/Junta".[498] Specifically, it alleges that all three Accused were members of the "Junta governing body"[499] and that the Accused Brima and Kamara were "Public [sic] Liaison Officers" (PLOs) in the AFRC government.[500]

261. In its Final Brief, the Prosecution argues that as members of the governing council of the AFRC Government, the three Accused were responsible for the day-to-day decision making of the government,[501] and that the Accused Brima and Kamara, as PLOs, were superior to all other members of the governing council save Johnny Paul Koroma and SAJ Musa.[502] It further submits that the governing council and its members had political authority over the military[503] and that Regional Secretaries (or Ministers) acted as links between the governing council and the military forces deployed in the provinces.[504] Finally, the Prosecution contends that the Accused derived authority by virtue of the rule that political appointment superseded military rank during the AFRC Government period.[505]

262. The Brima and Kamara Defence argue that the AFRC was a military government and that military governments tend to appoint soldiers to political office, but that this does not mean that those soldiers holding political offices are necessarily involved in formulating military strategy. They further contend that during the AFRC Government period, Johnny Paul Koroma was the

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[495] *See* Role of the Accused, *infra*.
[496] *See* Responsibility of the Accused, *infra*.
[497] Indictment, paras 41, 43-44, 65, 67, 75.
[498] Indictment paras 22, 25, and 28.
[499] Indictment paras 23, 26, 29. Para. 29, relating to the Accused Kanu, is the only paragraph which refers to the Junta governing body as the "AFRC Supreme Council."
[500] Indictment paras 23, 26. The Trial Chamber notes that the correct title of this position was Principal Liaison Officer.
[501] Prosecution Final Brief, para. 299.
[502] Prosecution Final Brief, paras 332, 336.
[503] Prosecution Final Brief, para. 337.
[504] Prosecution Final Brief, para. 345.

commander-in-chief of an army with a functioning chain of command that included Colonels and a Brigadier.[506] They submit that Colonel Avivavo Kamara was the Deputy Defence Minister and a member of the Supreme Council and that in that role he was the individual responsible for assisting the commander-in-chief and the Supreme Council in initiating defence and security policies.[507] In addition, the Brima and Kamara Defence submit that there were AFRC Ministers in charge of Kenema and Bo Districts, which are the two Districts where crimes were allegedly committed during the AFRC Government period.[508]

263. Further submissions of the Parties will be addressed below as they arise with regards to specific contested facts.

B. The Armed Forces Revolutionary Council Government

264. On 25 May 1997, the SLPP Government of President Kabbah was overthrown by low level soldiers of the Sierra Leone Army ("SLA") belonging to the 'other/lower ranks.'[509] Those involved in the coup immediately released Major Johnny Paul Koroma from the prison in Freetown where he had been held on charges of participating in an earlier coup attempt against the Government. Johnny Paul Koroma was appointed Chairman of the new government which was named the *Armed Forces Revolutionary Council* ("AFRC").[510]

265. On 28 May 1997, the AFRC suspended the 1991 Constitution of Sierra Leone, dissolved the Sierra Leone Parliament, and banned membership of political parties.[511] In place of the former government, a proclamation signed by Johnny Paul Koroma was issued announcing the establishment of the *Armed Forces Revolutionary Council.* According to the Proclamation, the AFRC would consist of (a) a Chairman, (b) a Deputy Chairman, and (c) between 27 and 40 "other members."[512] The Proclamation also declared that the AFRC would have the power to make laws "for purposes as it may think fit, and in the national interest."[513]

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[505] Prosecution Final Brief, para. 351.
[506] Brima Final Brief, para. 118; Kamara Defence Closing Statement, 7 December 2006, p. 126.
[507] Brima Final Brief, para. 121; Brima Defence Closing Statement, 7 December 2006, p. 109, also noting that Colonel SO Williams was the Army Chief of Staff responsible for running the Sierra Leone army under the AFRC Government, and that Brigadier Mani was the Director of Military Operations in the AFRC Government.
[508] Kamara Final Brief, para. 84; Kamara Defence Closing Statement, 7 December 2006, p. 12- 126.
[509] Agreed Fact: Kamara- Response to Prosecutor's Request to Admit, Fact 14.
[510] *See* Context of the Alleged Crimes, paras 164-165, *supra.*
[511] Exhibit P-4, "Proclamation: Administration of Sierra Leone (Armed Forces Revolutionary Council), Proclamation 1997".
[512] Exhibit P-4, "Proclamation: Administration of Sierra Leone (Armed Forces Revolutionary Council), Proclamation 1997", setting the number of council members at 27. Exhibit P-5.1," AFRC Decree Number 4 Administration of Sierra

266. Subsequently, Johnny Paul Koroma invited the Revolutionary United Front ("RUF") leadership to join the Government.[514]

267. The AFRC Government was composed of a Chairman[515], a Deputy Chairman[516], a Secretary-General,[517] a governing council,[518] Principal Liaison Officers (PLOs),[519] the Armed Forces,[520] a Police and a Defence Council,[521] Secretaries of State (Regional Ministers),[522] and other Ministers.[523]

268. The Chairman of the AFRC Government and Head of State was Johnny Paul Koroma, who was also the Chairman of the *Supreme Council* and Commander-in-Chief of the Armed Forces.[524] Although under house arrest in Nigeria, RUF leader Foday Sankoh was appointed Deputy Chairman of the AFRC Government and member of the Governing Council.[525] At an unknown time he was replaced by SAJ Musa, an AFRC commander, who also held the positions of Secretary of

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Leone (Armed Forces Revolutionary Council) Proclamation", issued on 14 July 1997, expanding the maximum number of Council members from 27 to 40.

[513] *Ibid.*, Article 3 (1).

[514] Exhibit P-57, NPWJ Report, CMS p. 15910.

[515] Exhibit P-4, "Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation," 28 May 1997, para 1. (2). a.

[516] Exhibit P-4, "Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation," 28 May 1997, para. 1. (2).b.

[517] Exhibit P-4, "Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation," 28 May 1997, para. 1. (4).

[518] Exhibit P-6, "The Sierra Leone Gazette," 4 September 1997. Exhibit P-7, "The Sierra Leone Gazette," 18 September 1997.

[519] Exhibit P-5.2., "Armed Forces Revolutionary Council Decree. Establishment of Office of Principal Liaison Officer, 1997," 10 July 1997.

[520] TF1-184, Transcript 30 September 2005, pp. 47-48; TF1-045, Transcript 19 July 2005, p.61; TF1-334, Transcript 17 May 2005, pp. 18- 22; Gibril Massaquoi, Transcript 7 October 2005, p.73. TF1-334, Transcript 16 May 2005, pp. 88-101.

[521] Exhibit P-8, "The Constitution of Sierra Leone, 1991 (Amendment) Decree, 1997" establishing both a Police Council and a separate Defence Council. Pursuant to para. 2.167 of the Decree, the Defence Council consisted of: i) the Chairman of the Armed Forces Revolutionary Council, ii) the Chief Secretary of State, iii) the Under Secretary of State for Defence, iv) the Chief of Defence Staff, v) the Commanders of the Armed Forces (Army, Navy and Air Force) and their Deputies, vi) the Secretary of State for Internal Affairs, and vii) two other persons appointed by the Chairman.

[522] Exhibit P-5.3. "Armed Forces Revolutionary Council Decree. Establishment of Council of Secretaries, 1997," 1997. Also Prosecution Exhibit 9. "Change of Titles Order, 1997," in which the title of "Minister" is changed to the title of "Secretary of State."

[523] TF1-334, Transcript 16 May 2005, pp. 81-82.

[524] Exhibit P-5.1, "Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation (amendment) Decree, 1997. Exhibit P-6, "Sierra Leone Gazette, 4 September 1997. exhibit P-7, "Sierra Leone Gazette, 18 September 1997.. Exhibit P-8, "Constitution of Sierra Leone, 1991 (amendment) Decree." TF1-334, Transcript 16 May 2005, pp. 88-90.

[525] Exhibit P-6, "The Sierra Leone Gazette," 4 September 1997. exhibit P-7, "The Sierra Leone Gazette," 18 September 1997.

Mineral Resources and Chief Secretary of the AFRC *Council*.[526] The AFRC Secretary-General was AK Sesay.[527]

269. The AFRC Government also included positions known as Principal Liaison Officers (PLOs) who supervised specific ministries.[528] TF1-334 testified that PLOs reported directly to Johnny Paul Koroma.[529] On the question of the chain of command, there was evidence from TF1-334 that PLO 1 was immediately subordinate to the AFRC Vice-Chairman, SAJ Musa.[530]

270. A Council of Secretaries was established on 10 July 1997 which was "directly and collectively responsible for the Armed Forces Revolutionary Council."[531] The Council of Secretaries consisted of the Chief Secretary of State, who was the head of the Council of Secretaries, and other Secretaries of State which the Armed Forces Revolutionary Council from time to time appointed.[532] SAJ Musa, as Chief Secretary of State, was appointed as the head of the Council of Secretaries.[533] The three Accused were not members of the Council of Secretaries.[534] Apart from the membership of SAJ Musa, no other member of that body was mentioned in evidence.

271. The AFRC Government also included three Regional Ministers, also known as Regional Secretaries: for the North (Mr. Kamara aka 'Bushfall'); South (AF Kamara, aka 'Ambush'); and East (Eddie Kanneh). These men reported directly to the Chairman and were also supervised by the Deputy Chairman.[535]

272. The most complete evidence on the military command and reporting structure within the AFRC government was provided by Witness TF1-334, whose testimony on this point was not contested by the Defence in cross-examination. The Commander-in-Chief of the Armed Forces was Johnny Paul Koroma. Avivavo Kamara, the Deputy Defence Minister, reported directly to Koroma but was also subordinate to SAJ Musa.[536] Avivavo Kamara's immediate subordinate was the Director of Defence, Brigadier Mani. Brigadier Mani's subordinate was SFY Koroma, Johnny Paul

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[526] TF1-334, Transcript 16 May 2005, pp. 92, 98.
[527] TF1-334, Transcript 16 May 2005, pp. 90, 96; Alex Tamba Brima, Transcript 20 June 2006, p. 44.
[528] See Role of the Accused.
[529] TF1-334, Transcript 16 May 2005, p. 57
[530] TF1-334, Transcript 16 May 2005, pp. 99-101.
[531] Exhibit P-5.3, "AFRC Decree No. 2, Armed Forces Revolutionary Council (Establishment of Council of Secretaries) Decree, [10 July]1997"; TF1-334, Transcript 20 June 2005, p. 94.
[532] Exhibit P-5.3, "AFRC Decree No. 2, Armed Forces Revolutionary Council (Establishment of Council of Secretaries) Decree, [10 July]1997".
[533] TF1-334, Transcript 16 May 2005, p. 77; Alex Tamba Brima, Transcript 3 July 2006, p. 71.
[534] TF1-334, Transcript 20 June 2005, pp. 95, 96; Alex Tamba Brima, Transcript 20 June 2006, p. 38.
[535] TF1-334, Transcript 17 May 2005, pp. 16-17.
[536] TF1-334, Transcript 16 May 2005, pp. 99, 102.

Koroma's brother and the Chief of Defence Staff. SFY Koroma's immediate subordinate was the Chief of Army Staff, Brigadier SO Williams, also known as Kowas.[537]

1. The Governing Council of the AFRC Government

273. The Prosecution contends that the *Supreme Council* was the sole executive and legislative authority within Sierra Leone during the AFRC Government period[538] and that "[t]he Supreme Council and its members had political authority over the military [command], which fell under the ultimate authority of Major Johnny Paul Koroma."[539]

274. The Brima Defence argues that there was no body called the *Supreme Council*, and notes that while the Prosecution was able to produce several Government Gazettes it was unable to produce one referring to a *Supreme Council*.[540] It points to Exhibit P-78 arguing that there were three bodies: 1) the Armed Forces Revolutionary Council; 2) the Supreme Council; and 3) the Armed Forces.[541] The Accused Brima testified that there were two bodies, the *Council* and the *Supreme Council*. The latter, he said, was the body responsible for taking decisions and making laws, while the former only made recommendations to the *Supreme Council*.[542]

275. Thus the issue arising is whether there was one body known as the "*Supreme Council*" or "*Council,*" or whether there were two distinct bodies with distinct functions.

276. Exhibit P-4, a copy of a proclamation issued by the new AFRC Government on 28 May 1997, states that the *Armed Forces Revolutionary Council* would consist of (a) a Chairman, (b) a Deputy Chairman, and (c) "other members" not exceeding 27 in number.[543]

277. Exhibits P-6 and P-7, both Government Gazettes, name 34 persons as members of the *Armed Forces Revolutionary Council*, including Johnny Paul Koroma, Foday Sankoh, SAJ Musa

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[537] TF1-334, Transcript 17 May 2005, pp. 18-19.
[538] Indictment, para. 14.
[539] Prosecution Final Brief, para. 337.
[540] *See* Brima Defence Closing Statement, 7 December 2006, pp. 105-106, 107.
[541] *See* Brima Defence Final Trial Brief, para. 163; Brima Defence Closing Statement, 7 December 2006, p. 106.
[542] Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005, paras 9, 14; Brima Final Defence Brief, para. 121; Alex Tamba Brima, Transcript 6 June 2006, pp. 69-70; Brima Defence Closing Statement, 7 December 2006, pp. 106-107.
[543] Exhibit P-4, "Proclamation: Administration of Sierra Leone (Armed Forces Revolutionary Council), Proclamation 1997", setting the number of council members at 27; exhibit P-5.1," AFRC Decree Number 4 Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation", issued on 14 July 1997 expanding the maximum number of Council members from 27 to 40; The prosecution has tendered several exhibits which, under the authority of the Proclamation, formally nominated members of the Armed Forces Revolutionary *Council*, *see* specifically for the Accused Brima exhibit P-70, "Government Notice 272 (P.N. No. 3 of 1997), Sierra Leone (SL) Gazette No. 69"; exhibit P-6, "The Sierra Leone Gazette" 4 September 1997; exhibit P- 7, "The Sierra Leone Gazette," 18 September 1997.

and the three Accused, as well as members of the RUF such as Sam Bockarie, Morris Kallon, Issa Sesay, Gibril Massaquoi, Mike Lamin and Eldred Collins. The Gazettes name no military commanders apart from Johnny Paul Koroma, SAJ Musa and Flight Lieutenant King.[544] However, many of the names the Accused Brima referred to in his testimony as having been members of the "lower" *Council* overlap with the names in exhibits P-6 and P-7.[545]

278. Exhibit P-78 is an AFRC Press release dated 3 January 1998. It announces that "the following People's Revolutionary Leaders and State Monitors have been sacked from the *Supreme Council* of State, the *Armed Forces Revolutionary Council*, and the armed forces with immediate effect ...",[546] suggesting that these were at least two distinct and separate bodies.

279. In addition to the documentary evidence, several witnesses testified on the subject of the governing council.

280. Gibril Massaquoi testified that the *Supreme Council* was the body overseeing law making and decision making of the AFRC,[547] but also said there were occasions on which the *Supreme Council* simply endorsed decisions made by yet another body known as *The High Table*, a group composed exclusively of Johnny Paul Koroma, SAJ Musa, SFY Koroma, Abu Sankoh and Sam Bockarie, or Issa Sesay in Sam Bockarie's absence.[548] The Trial Chamber notes that Gibril Massaquoi is the only witness who admits to having been a member of the *Supreme Council*,[549] and therefore accords particular weight to his testimony regarding that body.

281. Witness TF1-334 testified that during the Junta period the terms *Council* and *Supreme Council* were used synonymously,[550] and that this body was responsible for carrying out the day-to-day activities of the Government.[551] Although the witness never personally attended meetings of the governing council, he assisted his supervisor who was illiterate to review and discuss the documents distributed at the meetings, including minutes.[552] The Trial Chamber is satisfied that given the witness' explanation, together with the degree of precision with which he was able to

[544] Exhibit P-6, "The Sierra Leone Gazette. 4 September 1997", listing members of the Armed Forces Revolutionary Council *Secretariat*; exhibit P- 7, "The Sierra Leone Gazette," 18 September 1997, listing members of the Armed Revolutionary *Council*.
[545] Alex Tamba Brima, Transcript 6 June 2006, pp. 70-72.
[546] Exhibit P-78, "AFRC Press Release," 3 January 1998.
[547] Gibril Massaquoi, Transcript 7 October 2005, pp. 72-73.
[548] Gibril Massaquoi, Transcript 7 October 2005, pp. 81.
[549] The Accused Brima denied having been a member of that body, Accused Alex Tamba Brima, Transcript 6 September 2006, p.70.
[550] TF1-334, Transcript 7 October 2005, p. 72.
[551] TF1-334, Transcript 16 May 2005, p. 57.
[552] TF1-334, Transcript 16 May 2005, pp. 11-13.

describe details of the government structure, and the fact that the witness was not shaken on cross-examination, that Witness TF1-334 is credible and reliable on the subject of the AFRC political structure.

282. The Trial Chamber notes that in addition to the aforementioned Prosecution witnesses, one Defence witness, DBK-012, also testified that the *Supreme Council* was the key decision-making body within the AFRC government.[553]

283. The Accused Brima, on the other hand, testified that the *Supreme Council* was the body responsible for taking decisions and making laws, while the *Council* only made recommendations to the *Supreme Council*.[554] The existence of a second body is supported by Gibril Massaquoi's testimony about a *High Table*, a group composed exclusively of Johnny Paul Koroma, SAJ Musa, SFY Koroma, Abu Sankoh and Sam Bockarie, or Issa Sesay in Sam Bockarie's absence.[555] The Trial Chamber notes, however, that the composition of the *Supreme Council* as described by the Accused Brima does not match *The High Table* described by Massaquoi. According to the Accused Brima, in addition to Johnny Paul Koroma and SAJ Musa, members of the *Supreme Council* included top military commanders and the regional ministers, as well as senior leaders of the RUF.[556]

284. Exhibit P-69 is a copy of minutes of a meeting of the *AFRC Secretariat* held on 9 December 1997 at which the Accused Brima and the Accused Kamara were present along with twelve other persons.[557] Exhibit P-34 shows minutes of an Emergency "*Council* Meeting of the AFRC" held on 11 August 1997 at which the Accused Brima and Accused Kamara as well as 13 others, including members of the RUF, were present. These minutes conclude: "it was noted that as Members of the *Highest Council* in the Land, members should conduct themselves appropriately."[558]

285. The Trial Chamber finds that the Prosecution has established beyond a reasonable doubt that the Government headed by Johnny Paul Koroma was named the *Armed Forces Revolutionary Council*, colloquially known as the 'Junta'. Within that Government, there was a governing body, called interchangeably the *Council* or the *Supreme Council*. This council had both legislative and

[553] DBK-012, Transcript 18 October 2006, pp. 30-31. The Witness testified however that he did not know whether the Accused Brima was a Supreme Council member but said that the Accused Kamara and Kanu were not members.
[554] Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005, paras 9,14; Alex Tamba Brima, Transcript 6 June 2006, pp. 69-70.
[555] Gibril Massaquoi, Transcript 7 October 2005, pp. 81-82.
[556] Alex Tamba Brima, Transcript 6 June 2006, pp. 63-68.
[557] Exhibit P-69, "AFRC- Secretariat. Minutes of Meeting held on 9 December 1997"
[558] Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11th August 1997," para. 14.

executive powers, and it was the body responsible for the day-to-day decision making of the AFRC government. The Trial Chamber also finds it established beyond a reasonable doubt that as "the Highest Council in the Land", the Governing Council exercised political control over the military branch of the government.

2. Information Available to the Governing Council

286. The Prosecution contends that minutes of Supreme Council meetings were circulated to all members.[559] From this fact it asks the Trial Chamber to infer that *Supreme Council* members were aware of all developments around the country.[560]

287. The Trial Chamber notes that minutes of two other Council meetings held in August and December 1997 were apparently circulated to all Council members.[561] Witness TF1-045 described attending two meetings, one in September 1997 and the other in October/November of the same year, attended by high-ranking members of both the AFRC and RUF, and chaired by the Army Chief of Staff. Those present discussed relations between the two factions, the supply of ammunitions and weapons, and methods with which to prevent government forces from harassing the civilian population.[562] Those present at the second meeting also discussed international pressure on the AFRC regime to restore the Kabbah government, and the formation of a delegation to attend peace talks in Conakry.[563]

288. The Trial Chamber is satisfied on the evidence that security issues and other urgent matters were discussed at these meetings. Therefore, the Trial Chamber finds that *Supreme Council* members were apprised of all major developments around the country.

3. Principal Liaison Officers ("PLOs")

289. In its Final Brief, the Prosecution contends that "[t]he PLO's position in government was an extremely important one. They were members of the Supreme Council and superior to all members of that Council, save Johnny Paul Koroma, SAJ Musa and AK Sesay."[564]

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[559] Prosecution Final Brief, para. 368, citing Gibril Massaquoi, Transcript 7 October 2005, p. 101.
[560] Prosecution Trial Brief, para. 368.
[561] Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11th August 1997; Exhibit P-69, "AFRC- Secretariat. Minutes of Meeting held on 9 December 1997".
[562] TF1-045, Transcript 19 July 2005, p. 57-70
[563] TF1-045, Transcript 19 July 2005, 71.
[564] Prosecution Final Brief, paras 332, 399.

290. The Kamara Defence submits that even if it is established that an Accused was a Principal Liaison Officer, this only suggests that he held "some kind of government position," and does not establish that the Accused had military powers or that the position gave him any powers of command and control over the rank and file of the Sierra Leonean army.[565]

291. According to a Government Decree establishing the office of the Principal Liaison Officer, PLOs were to be responsible for "supervising, monitoring and coordinating the operations of any Department of State or such other business of Government, as may from time to time be assigned to him."[566] However, the only evidence of such a task being assigned to the PLOs appears in exhibit P-34. According to the minutes of an emergency meeting of the *Council* held on 11 August 1997, a decision was made that "[a]ll Principal Liaison Officer must have effective control over the Honourable Members of the Council."[567] This suggests that Principal Liaison Officers were superior to other members of the *Council*.

292. The Prosecution further argues that "based on the evidence as a whole regarding the Supreme Council and the PLOs, there can be no doubt that PLOs in the AFRC hierarchy [were senior to other council members] and were only beneath Johnny Paul Koroma and SAJ Musa in the AFRC chain of command."[568] It further points to exhibit P-5.3, a Decree establishing a *Council of Secretaries* "which was to be directly and collectively responsible to the AFRC" to suggest that the PLOs had a status above that of the Regional Secretaries.[569]

293. The Decree referred to by the Prosecution prescribes the duties of the Council of Secretaries as follows

> be responsible for the preparation and consideration of policy papers or matters and shall advise the Armed Forces Revolutionary Council and make recommendations on matters of good governance
>
> execute the policies and directive of the Armed Forces Revolutionary Council.

294. These duties are clearly subordinate to the duties of a PLO which are to supervise and monitor ministries.

295. The Trial Chamber finds that the PLOs were superior to the Regional Secretaries.

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[565] Kamara Defence Closing Statement, 7 December 2006, p. 124.
[566] Exhibit P-5.2, "Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree," 12 July 1997, para. 3.
[567] Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11 August 1997," para. 16.
[568] Prosecution Final Brief, paras 336.

4. Honourables

296. In its Final Trial Brief, the Prosecution submits that 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.[570]

297. The position of the Brima Defence is that the title of 'Honourable' was an honorific akin to 'Doctor' or 'Professor' in certain other countries, and that numerous individuals apart from the Accused and the coup plotters held this title.[571]

298. Witness DAB-156 testified that it was possible to acquire the title of 'Honourable' in other ways.[572] Witness DBK-131 also testified that numerous individuals who had not taken part in the coup were given the title of 'Honourable', including the witness himself. He added that over 200 soldiers were referred to as Honourables and that wealthy individuals were also often able to acquire the title of 'Honourable'.[573] However, this assertion was never put to Prosecution witnesses and in the view of the Trial Chamber it is not persuasive.

299. The Trial Chamber is satisfied that the title of 'Honourable' was conferred on all 17 Coup plotters and was not merely a title denoting respect.[574]

C. Conclusion

300. The Trial Chamber is satisfied that the governing council of the AFRC government was the *Supreme Council*, sometimes simply referred to as the "*Council.*" It had both legislative and executive powers and was responsible for the day-to-day decision making of the AFRC Government. It further finds that the Principal Liaison Officers were members of that Council, that they were responsible for supervising various ministries, and that they were superior to other members of the Supreme Council and the Council of Secretaries.'

[569] Prosecution Final Brief, para. 341, citing Exhibit P-5.3, "Armed Forces Revolutionary Council (Establishment of the Council of Secretaries) Decree 1997," 12 July 1997.
[570] Prosecution Final Trial Brief, para. 76.
[571] Brima Defence Closing Statement, p. 108.
[572] DAB-156, Transcript 2 October 2006.
[573] DBK-131, Transcript 26 October, pp. 20-21.
[574] TF1-334, Transcript 17 May 2005, p. 12; DAB-023, Transcript 3 August 2006, pp. 39, 40.

VII. ROLE OF THE ACCUSED

A. Introduction

301. In this Chapter, the Trial Chamber will examine the personal backgrounds of each Accused and their functions, positions and whereabouts within the Indictment period from May 1997 to January 2000. Establishing the influence and authority exercised by the Accused during this period will precede any findings of the Trial Chamber on their criminal responsibility for the crimes alleged during this time period.[575]

B. Alex Tamba Brima

1. Allegations and Submissions

302. The Indictment alleges that the Accused Brima "at all times relevant to the Indictment was a senior member of the AFRC, Junta and AFRC/RUF forces".[576] It also alleges that he was a "Public [sic] Liaison Officer (PLO)"[577] and "member of the Junta governing body" within the AFRC government.[578] It further charges that the Accused Brima was "in direct command of AFRC/RUF forces in Kono District" between mid February 1998 and about 30 April 1998[579] and "AFRC/RUF forces which conducted armed operations throughout the north eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Bombali District between about May 1998 and 31 July 1998".[580] Finally, it alleges that the Accused Brima "was in command of AFRC/RUF forces which attacked Freetown on 6 January 1999".[581]

303. The Defence presented by the Accused involved claims of alibi, illness and mistaken identity. Regarding the mistaken identity, the Accused asserted: 1) That he was named "Tamba Brima" and not "*Alex* Tamba Brima"; 2) In addition, that he did not play football and therefore was not nicknamed 'Gullit' after a Dutch footballer of the same name.

304. Regarding the AFRC Government period, the Accused Brima asserts that while he was formally a member of a governing council called "the Council" and held the position of PLO 2,[582]

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[575] *See* Responsibility of the Accused, *infra*.
[576] Indictment para. 22.
[577] Indictment para. 23.
[578] Indictment para. 23.
[579] Indictment para. 24.
[580] Indictment para. 24.
[581] Indictment para. 24.
[582] Brima Final Brief, paras 121, 175.

he was often too ill to carry out his functions.[583] Moreover, while the Accused concedes that he did spend some time in Kono District during the AFRC Government period, he states that he did so for personal reasons and was not involved in diamond mining for the government in that district.

305. The alibi of the Accused for the subsequent periods covered by the Indictment can be summarised as follows: (1) immediately following the fall of the AFRC Government in February 1998, he left Kono District for Kailahun District where he was detained by the RUF until July 1998. Therefore, he was not present in Kono District during the period February through June 1998, nor was he in Koinadugu District during the first part of the Indictment period (February through July 1999);[584] (2) upon his release from detention in Kailahun, the Accused Brima returned to his family's hometown in Kono District where he went into hiding for two months;[585] (3) in September 1998, he was again arrested and detained, this time by members of the AFRC. These men took the Accused from his family's village in Kono District to 'Colonel Eddie Town' in Bombali or Port Loko District and kept him in detention as they moved towards Freetown;[586] (4) at Goba Water in the Western Area, days before the troops invaded Freetown on 6 January 1999, the Accused was able to escape and make his way to Makeni in Bombali District.[587] Thus, the Accused did not participate in the commission of any of the crimes alleged in the Indictment.[588]

306. The Brima Defence also contends that key Prosecution witnesses were unreliable[589] and that other named persons were responsible for the campaign of atrocities depicted by the evidence.[590]

307. The Trial Chamber will address the alibi of the Accused Brima and the Prosecution and Defence submissions and evidence in detail when reviewing the allegations regarding his various roles over the Indictment period.

2. Personal Background of Brima

308. According to Brima, he was born on 23 November 1971 at Wilberforce in Freetown.[591] Brima notes, however, that Yarya in Kono District is his family's native village.[592] He is Christian and married with two wives, Margaret Brima and Nenneh Galleh Brima. He married the latter after

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[583] Brima Final Brief, para. 218.
[584] Brima Final Brief, para. 209.
[585] Brima Final Brief, paras 207-208, 216.
[586] Brima Final Brief, paras 219-221.
[587] Brima Final Brief, para. 211.
[588] Brima Final Brief, para. 23.
[589] Brima Final Brief, paras 39, 47, 187-203.
[590] Brima Final Brief, para. 211.
[591] Alex Tamba Brima, Transcript 5 June 2006, p. 52.
[592] Alex Tamba Brima, Transcript 5 June 2006, p. 52; Brima Final Trial Brief, para. 20.

the death of his brother Komba Brima.[593] Alex Tamba Brima had eleven brothers, four of whom are still alive[594] and were serving in the Sierra Leone Army in 1997 and continue to do so, including two also named Tamba Brima.[595]

309. Brima enlisted into the Sierra Leone Military Forces at Lungi Garrison on 5 June 1991,[596] and not in April 1985 as the Indictment alleges.[597] He rose to the rank of Corporal, a rank which he held until May 1997.[598] During the AFRC/RUF Government period he was promoted to the rank of Staff Sergeant.[599]

310. Brima retired from the army on 10 August 2001.[600] The Accused Brima testified that he was a petty trader after his resignation from the army.[601] The Prosecution has adduced evidence that he was a miner and politician at the time of his arrest in 2003.[602]

3. The Identity of Brima

311. The Accused Brima denies that his first name is 'Alex' and claims that he is a victim of mistaken identity.[603] During Brima's initial appearance on 15 and 17 March 2003, the Presiding Judge asked the Accused to confirm that he was "Alex Tamba Brima" and he did so.[604] Many witnesses, Prosecution and Defence, referred to the Accused as 'Alex' Tamba Brima.[605] Official

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[593] Alex Tamba Brima, Transcript 5 June 2006, p. 53.
[594] Alex Tamba Brima, Transcript 5 June 2006, p. 63.
[595] Alex Tamba Brima, Transcript 28 June 2006, pp. 5-7; Exhibit D-13, naming the rank and names of his brothers who serve in the Sierra Leone Army.
[596] Exhibit D-14, "Discharge Book".
[597] Indictment, para. 2.
[598] Exhibit D-14, "Discharge Book".
[599] Exhibit P-70, "Government Notice 272 (P.N. No. 3 of 1997), Sierra Leone (SL) Gazette No. 69", 31 December 1997.
[600] Alex Tamba Brima, Transcript 6 June 2006, p. 14; Exhibit D-14, "Discharge Book".
[601] Alex Tamba Brima, Transcript 16 June 2006, pp. 17, 18.
[602] John Petrie, Transcript 5 October 2005, p. 76.
[603] Brima Final Brief, paras 21, 179-182. The Accused Brima raised this issue in a motion at the pre-trial stage, see *Prosecutor v. Brima*, SCSL-2003-06-PT, Defence Motion for Leave to Issue a Writ of Habeas Corpus, 28 May 2003; *see also* Defence Pre-Trial Brief for Tamba Alex Brima, 17 February 2005, para. 5: "[The Accused] does not accept the name 'Alex' used by the Prosecution as he has never been so named [...]."
[604] Transcript 15 March 2003, p. 2; Transcript 17 March 2003, p. 7, stating that he is named "Tamba *Alex* Brima". While the first initial appearance was adjourned in order to provide the Accused with an interpreter, the Trial Chamber is satisfied that Brima was sufficiently literate in English to understand the question of Justice Itoe. Brima described himself as reasonably educated and said that he could read, write and speak English: Transcript 28 June 2006, p. 4.
[605] Prosecution witnesses: TF1-114, 14 July 2005, p. 119; George Johnson, 15 September 2005, p. 9; John Petrie, Transcript 6 October 2005, p. 44; TF1-153, Transcript 22 September 2005, p. 56. Defence witnesses: DAB-079, Transcript 28 July 2006, p. 62; DBK-037, Transcript 4 October 2005, p. 61; DBK-117, 16 October 2006, p. 28; TRC-01, 16 October 2006, p. 101.

AFRC governmental decrees also refer to "*Alex* T. Brima".[606] The Trial Chamber is therefore satisfied that the full name of the Accused is "*Alex* Tamba Brima."

312. In his Pre-Trial Brief and in his testimony, the Accused denied having the nickname 'Gullit' after a former Dutch football player.[607] Although he did not mention it in his Pre-Trial brief, at trial he testified that it was his brother, Komba Brima, who was known as "Gullit." [608] He further testified that he played volleyball and not football as a hobby. [609] Numerous witnesses, both for the Prosecution[610] and for the Defence,[611] confirmed that because Alex Tamba Brima was a respected football player, he was commonly known as 'Gullit', after the former Dutch football player Ruud Gullit.[612] The Trial Chamber is accordingly satisfied that the Accused was commonly referred to by the nickname 'Gullit'.

4. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998)

313. The Indictment alleges that the Accused Brima "at all times relevant to this Indictment, Alex Tamba Brima was a senior member of the AFRC, Junta and AFRC/RUF forces."[613] It further alleges that the Accused "was a member of the group which staged the coup and ousted the government of President Kabbah" and a "Public [sic] Liaison Officer (PLO) within the AFRC".[614] In addition, Alex Tamba Brima was a member of the junta governing body."[615] In its Final Brief, the Prosecution argues that by virtue of these positions, the Accused Brima played a fundamental role in the AFRC Government, that he regularly attended Supreme Council meetings and that he held an important position in the mining industry. The Prosecution further contends that that he had power and authority over soldiers and officers of higher rank during the AFRC government period, and that he was aware of the government's policy of forced mining.[616]

314. The Brima Defence submits that whether or not the Accused Brima was a member of the group that organised the 25 May 1997 coup has no bearing on the allegations against him, and notes

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[606] Exhibit P-7, "Armed Forces Revolutionary Council Secretariat".
[607] Alex Tamba Brima, Transcript 5 June 2006, p. 61; Brima Final Brief, para. 179.
[608] Alex Tamba Brima, Transcript 6 June 2006, pp. 16-17.
[609] Alex Tamba Brima, Transcript 6 June 2006, pp. 29-31.
[610] TF1-153, Transcript 22 September 2005, pp. 12; TF1-184, Transcript 27 September 2005, p. 19; TF1-334, Transcript 16 May 2005, p. 21; TF1-114, Transcript 14 July 2005, pp. 118-119; TF1-033, Transcript 11 July 2005, p. 6; George Johnson, Transcript 15 September 2005, pp. 9-10.
[611] DAB-025, Transcript 28 July 2006, p. 62; DAB-063, Transcript 2 August 2006, p. 70; TRC-01, Transcript 16 October 2006, p. 101.
[612] John Petrie, Transcript 5 October 2005, p. 67.
[613] Indictment para. 22.
[614] Indictment para. 23.
[615] Indictment para. 23.
[616] Prosecution Final Brief, paras 501-504.

that while 24 military personnel were charged with the offence of treason by the Government of Sierra Leone, he was not one of them.[617] The Defence adds while the Accused was PLO 2 in the Junta Government,[618] he was too ill to carry out his functions.[619] In addition, it contends that the Accused was a member of *a* governing council, but not the ultimate decision making body within the AFRC government.[620]

315. The Accused denied that he was involved in the 25 May 1997 coup, and explained that he was awarded a government position in recognition of his father's good service to the Army.[621] The Accused testified that he was in and out of the hospital during the AFRC Government period and that he was too ill during this period to perform his official duties.[622] He added that he did travel to Kono District during this period but only on personal business: in October 1997 to visit his mother, for a week in December 1997 to marry, and again in February 1998 to consult a local healer. He was in Kono when ECOMOG ousted the AFRC regime in Freetown.[623]

(a) Involvement in the 25 May 1997 Coup

316. The Trial Chamber notes that although the Accused Brima denies that he was involved in the coup,[624] numerous witnesses, both for the Prosecution and for the Defence, testified that he was one of the individuals who planned and took part in the coup.[625] Thus, the Trial Chamber is satisfied that the Accused Brima was involved in the 1997 coup.

317. The Trial Chamber is satisfied that in return for his participation in the coup, the Accused Brima was rewarded with specific functions in the AFRC Government. He remained in those positions until that government was ousted by the ECOMOG forces in February 1998.

(b) Council Membership

318. While the Accused argued that there were two decision-making councils in the AFRC government, and that he was only a member of the body with less power and influence, the Trial

[617] Brima Defence Final Trial Brief, para. 167.
[618] Brima Pre-Trial Brief, paras 9, 14.
[619] Alex Tamba Brima, Transcript 6 June 2006, pp. 58-61.
[620] Brima Pre-Trial Brief, para. 14; Alex Tamba Brima, 6 June 2006, pp. 69-70.
[621] Alex Tamba Brima, Transcript 6 June 2006, pp. 47-50.
[622] Alex Tamba Brima, Transcript 6 June 2006, pp. 58-61; Transcript 8 June 2006, pp. 18-20.
[623] Alex Tamba Brima, Transcript 8 June 2006, pp. 18-24.
[624] Alex Tamba Brima, 6 June 2006, p. 32-33. Brima Final Brief, paras 167-169.
[625] TF1-033, Transcript 11 July 2005, p. 6; Gibril Massaquoi, Transcript 7 October 2006, p. 76; TF1-334, Transcript 17 June 2005, p. 69; TF1-114, Transcript 14 July 2005, p. 118-119; DAB-079, Transcript 28 July 2006, p. 62, DAB-025, Transcript 28 July 2006, p. 112; TRC-01, Transcript 16 October 2006, p. 101; DAB-085, Transcript 20 July 2005, p.

Chamber found that there was only one governing council, namely the Supreme Council.[626] Both Prosecution and Defence witnesses testified that the Accused was on this Council[627] and indeed the Accused himself concedes that he was on *a* governing council. The Trial Chamber is therefore satisfied that the Accused was a member of the AFRC Supreme Council and that he obtained his seat in return for his participation in the coup. As a council member, Brima attended coordination meetings between high-ranking members of the AFRC and RUF.[628]

319. The testimony of the Accused Brima regarding his title as 'Honourable' is ambiguous. He denies that he was known as an "Honourable," but allows that persons may have referred to him as such.[629] In its closing arguments, the Brima Defence clarified that the Accused only said "If people call me that, fine, but I have never called myself Honourable".[630] The Trial Chamber is satisfied that the Accused was referred to by the title of "Honourable", as this title was conferred on all 17 coup plotters and was not merely a title denoting respect.[631]

(c) Principal Liaison Officer 2

320. The Accused does not dispute that he was appointed to the position of Principal Liaison Officer in the AFRC Government,[632] but said that he was too ill to perform his duties.[633]

321. The office of the Principal Liaison Officer (PLO) was established by the AFRC government on 10 July 1997.[634] According to the Decree establishing the office, the PLOs were responsible for "supervising, monitoring and coordinating the operations of any Department of State or such other business of Government, as may from time to time be assigned to [them]."[635] The Trial Chamber is

52; DAB-079, Transcript 28 July 2006, pp. 62, 68, 69; DAB-085, Transcript 20 July 2006, p. 52; DAB-063, Transcript 2 August 2006, pp. 60-62.

[626] Political Structure of the AFRC, paras 273-285 *supra*.

[627] TRC-01, Transcript 16 October 2006, p. 16; DAB-005, Transcript 12 October 2006, pp. 18-19.

[628] TF1-045, Transcript 19 July 2005, pp. 71-72; Gibril Massaquoi, Transcript 7 October 2005, p. 83, 93; TF1-334, Transcript 16 May 2005, p. 57. Exhibit P- 34, "Minutes of an Emergency Council Meeting of the AFRC Held at State House on Monday 11 August 1997." Exhibit P-69, "AFRC-Secretariat Minutes of Meeting held on 9 December 1997".

[629] Alex Tamba Brima, Transcript 3 July 2006 pp. 40-41.

[630] Brima Defence Closing Statement, 7 December 2006, p. 108.

[631] DAB-063, Transcript 2 August 2006, pp. 60-62; DAB-00512 October 2006, pp. 17-18.

[632] Alex Tamba Brima, Transcript 6 June 2006, p. 56; Brima Defence Closing Statement, 7 December 2006, p. 104.

[633] Alex Tamba Brima, Transcript 6 June 2006, pp. 41-42, 59.

[634] Exhibit P-5.2, "Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree", 1997, para. 3: "A Principal Liaison Officer shall be responsible for supervising, monitoring and co-ordinating the operations of any Department of State or such business of Government, as may from time to time be assigned to him by the Armed Forces Revolutionary Council".

[635] Exhibit P-5.2, "Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree," 12 July 1997, para. 3.

satisfied that the Accused Brima was assigned to supervise the Ministries of Works and Labour; Customs and Excise, and the parastatals Sierratel and SALPOST.[636]

322. As a PLO 2, the Accused Brima reported to PLO 1, Abu Sankoh, and ultimately to SAJ Musa[637] and the Chairman, Johnny Paul Koroma.[638]

323. Only one witness testified that he saw the Accused in the hospital shortly after the coup. However, he said that the Accused was suffering from malaria and not recovering from a road accident, as the Accused himself claimed. While the witness said that he visited the Accused in the hospital in March and April 1997, he added that the visits took place after the coup.[639] Thus, his testimony on the dates of his visits to the Accused in the hospital is inconsistent.

324. The Accused did not deny that he attended council meetings.[640] Indeed, he testified that he attended many meetings during this period.[641]

325. Thus, the Trial Chamber is satisfied on the Prosecution evidence adduced that while the Accused may have been ill during the AFRC Government period, he did not suffer from any illness that prevented him from performing his duties.

(d) Mining Supervision in Kono and Kenema Districts

326. The Indictment is silent on the role of the Accused in diamond mining activities. In its Pre-Trial Brief however, the Prosecution alleges that the Accused was in charge of diamond mining in Kono District.[642] The Accused concedes that he was in Kono District on several occasions during the Junta period, but states that he was there on personal business.[643]

327. Witness TF1-153 was appointed as a mines monitor by SAJ Musa.[644] He testified that the Accused Brima came to Kono with Sam Bockarie on one occasion to introduce the mines monitors to the community.[645] He added that Brima came to Koidu Town several other times, on one occasion staying for about a week, and that he would report back to SAJ Musa about any

[636] Alex Tamba Brima, Transcript 6 June 2006, pp. 56-61.
[637] TF1-334, Transcript 16 May 2005, pp. 99-101.
[638] TF1-334, Transcript 16 May 2005, pp. 57, 99-101.
[639] DAB-059, Transcript 27 September 2006, pp. 63-64.
[640] Alex Tamba Brima, Transcript 6 June 2006, pp. 47-50, 56-58, 63.
[641] Alex Tamba Brima, Transcript 6 June 2006, p. 76.
[642] Prosecution Supplemental Pre-Trial Brief, 21 April 2004, paras 22.c, 30. c, 250.b.
[643] Alex Tamba Brima, Transcript 8 June 2006, pp. 18-24.
[644] TF1-153, Transcript 22 September 2005, pp. 18-19. On cross-examination, the witness denied that the Accused Brima had been involved in the decision to send him to Kono, Transcript 23 September 2005, p. 38.
[645] TF1-153, Transcript 23 September 2005, pp. 60-61.

difficulties regarding the mines monitors and the mining.[646] While the Brima Defence raised issues with regards to the witness's credibility and reliability,[647] the Trial Chamber notes that the witness was not shaken on cross-examination on this point.

328. The evidence indicates that Brima did not hold executive powers in this position in Kono District. Witness TF1-153 testified that as a mines monitor he was directly responsible to the Mines Ministry and SAJ Musa as Mines Minister rather than to the Accused Brima.[648] In addition, Resident Minister East, Eddie Kanneh, was heavily involved in diamond mining and had overall control of the diamond mining areas in Kono, Kenema and Kailahun Districts and reported directly to Johnny Paul Koroma.[649] Sam Bockarie was also a major player in diamond mining activities, particularly in eastern Sierra Leone, during the AFRC regime and worked closely with Eddie Kanneh.[650] Thus, the evidence shows that the Accused Brima performed the role of overseer of the mining activities of the AFRC Government and reported directly to SAJ Musa.

329. The Trial Chamber has considered the evidence of witness TF1-045 that he encountered the PLO 2 in Kenema District during the AFRC government period. However, the Trial Chamber notes that the witness said that he knew the Accused Brima well[651] but that he did not know the name of PLO 2.[652] The Trial Chamber therefore concludes that the person that the witness referred to as "PLO 2" was not the Accused Brima and dismisses his testimony on this point.

330. Regarding the whereabouts of the Accused Brima during the AFRC government period, the Trial Chamber is satisfied that Brima was in Freetown on 25 May 1997, and that either he later moved to Kono District or travelled frequently between Kono and Freetown. For example, there is evidence that on 9 December 1997 he attended a meeting in Freetown,[653] but Witness DAB-059 saw Brima in Koidu Town sometime in December 1997.[654] Witness TF1-153 also indicated that Brima's visits to Kono District were sporadic.[655]

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[646] TF1-153, Transcript 22 September 2005, pp. 19-23; Transcript 23 September 2005, p. 61.
[647] Brima Final Brief, para. 191.
[648] TF1-153, Transcript 22 September 2005, pp. 60-61.
[649] TF1-045, Transcript 19 July 2005, pp. 30-32; TF1-334, Transcript 17 May 2005, p. 17; DBK-063, Transcript 2 August 2006, pp. 68-69.
[650] TF1-334, Transcript 17 May 2005, pp. 56-57; TF1-045, Transcript 19 July 2005, p. 32; George Johnson, Transcript 15 September 2005, p. 17.
[651] TF1-045, Transcript 19 July 2005, p. 100.
[652] TF1-045, Transcript 19 July 2005, p. 39.
[653] Exhibit P-69, "AFRC-Secretariat, Minutes of Meeting held on the 9th December", 1997.
[654] DAB-059, Transcript 27 September 2006, p. 65.
[655] TF1-153, Transcript 22 September 2005, p. 22.

331. The Trial Chamber is satisfied that Brima travelled to Kono on diamond mining business rather than exclusively on personal business. On the evidence it is not possible to establish the frequency or length of time of these visits, although it is clear that he was in Kono when ECOMOG ousted the AFRC government in Freetown.

(e) Findings

332. The Trial Chamber is satisfied that the Accused Brima was a member of the group that organised the 25 May 1997 coup, that he was a member of the AFRC Supreme Council, and that he was an "Honourable." It is further satisfied that he was Principal Liaison Officer 2 in the AFRC government and was responsible for overseeing mining activities and reporting to SAJ Musa, the Mines Minister, in Freetown.

5. Brima's Alleged Arrest in Kono and Kailahun Districts (February – May 1998)

333. The Prosecution alleges that "[b]etween mid February 1998 and about 30 April 1998, Alex Tamba Brima was in direct command of AFRC/RUF forces in the Kono District".[656] In its Pre-Trial Brief, the Prosecution further alleges that the Accused was liable for crimes committed during this period by virtue of his position as "the SLA in charge of Kono post ECOMOG intervention within the AFRC/RUF collaboration".[657]

334. In its Final Brief, the Prosecution concedes that for a short period of time in either Kailahun or Buedu the Accused Brima may have been under house arrest, but argues that this lasted no more than a week, after which he was able to move around Kailahun freely and even visited and ate with Sam Bockarie. The Prosecution argues that around the end of April or beginning of May 1998 the Accused was sent by Sam Bockarie to cement the relationship between the RUF and the AFRC in Kono[658] In its closing arguments, the Prosecution conceded that only the Accused Kamara was present when the crimes were committed in Kono District.[659]

(a) Brima's Alibi for Kono District

335. In his Pre-Trial Brief, the Accused Brima argued that he was not in charge of the AFRC and RUF troops in Kono between 14 February and 30 June 1998, but on the contrary was in RUF

[656] Indictment, para. 24.
[657] Prosecution Supplemental Pre-Trial Brief, para. 38.b, 87.b, 136.b, 201.b.
[658] Prosecution Final Brief, para. 1051.
[659] Prosecution Closing Statement, Transcript 7 December 2006, pp. 34-35.

custody in Kailahun from February 1998 until July 1998.[660] At trial, Brima testified that he left Kono for Kailahun at approximately the time of the ECOMOG intervention in Freetown, and that when he arrived in Kailahun District he was forcibly detained by the RUF throughout the Indictment period for Kono. [661] He escaped in July 1998 and made his way back to Kono immediately thereafter.[662]

336. Witnesses for both the Prosecution and the Defence confirmed that the Accused Brima was detained for an indeterminate period by the RUF in Kailahun in or about February 1998.[663] He was captured in the village of Bendu in Kailahun District by RUF fighters including Prosecution witness TF1-045 and the RUF commander Issa Sesay. They disarmed the Accused, searched him for diamonds and then brought him to the house of Mike Lamin, an RUF commander, in the village of Buedu.[664]

337. During the same period, the RUF commander Sam Bockarie arrested Johnny Paul Koroma in Kailahun District.[665] The Accused Brima testified that he was present when Bockarie issued the order to arrest Koroma, his wife, children and bodyguards, and that he saw Koroma's bodyguards disarmed but that he did not see what happened to them subsequently.[666]

338. The legal impact of Brima's detention on his responsibility for crimes committed by his troops in Kono District will be discussed elsewhere in this Judgement.[667]

(b) Return to Kono District

339. The Prosecution argues that the Accused Brima was released from detention in Kailahun and returned to Kono by late April or early May 1998.[668] The Prosecution contends that any disagreement between the Accused and the RUF faction under Sam Bockarie only lasted a few

[660] Brima Pre-Trial Brief, para. 11.
[661] Alex Tamba Brima, Transcript 8 June 2006, pp. 39-73.
[662] Alex Tamba Brima, Transcript 8 June 2006, pp. 77-78. The witness did not specify the day on which he escaped but said that he immediately fled for Kono District. The journey took his three days and he arrived in Kono on 17 July 1998.
[663] TF1-045, Transcript 19 September 2005, p. 100; TF1-334, Transcript 17 May 2005 p.83, Transcript 19 May 2005, p. 8; DAB-033, Transcript 25 September 2006, pp. 49-51; DAB-059, Transcript 27 September 2006, pp. 70-72; DAB-142, Transcript 19 September 2006, pp. 18-19.
[664] TF1-045, Transcript 19 July 2005, pp. 98-100.
[665] TF1-045, Transcript 19 July 2005, pp. 98-100; DAB-059, Transcript 27 September 2006, pp. 81-82.
[666] Alex Tamba Brima, Transcript 8 June 2006, pp. 67-69.
[667] Responsibility of the Accused, Brima, *infra*.
[668] Prosecution Final Brief, para. 1214.

days, after which the Accused was "back on good terms with Sam Bockarie and other RUF commanders in Kailahun."[669]

340. The Accused Brima maintains his alibi for this period, specifically testifying that he did not return to Kono District until 17 July 1998.[670]

341. Prosecution witnesses put the Accused Brima in Kono District in late April and early May 1998.[671] Witnesses for the Defence confirmed that the Accused was detained and mistreated in Kailahun but could not say for how long he was detained.[672]

(c) Findings

342. The Trial Chamber is satisfied that in February 1998, the Accused Brima was detained for an indeterminate period by the RUF in Kailahun District.[673] In late April or early May 1998, he travelled from Kailahun to Kono District.[674] Upon arrival Brima took overall command of the AFRC troops based in Kono District [675] Brima's arrival in Kono District marked the departure of the AFRC troops from Kono District towards Mansofinia in Koinadugu District.[676]

343. The Prosecution evidence adduced relates entirely to crimes committed in Kono District prior to the Accused Brima's return. There is no evidence that he supported or assisted the AFRC and/or RUF troops operating in Kono District during his stay in Kailahun District.

6. Brima's Alleged Arrest in Koinadugu and Bombali Districts (February – November 1998)

344. The Indictment states that the Accused Brima "was in direct command of AFRC/RUF forces which conducted armed operations throughout the north eastern and central areas of the Republic of

[669] Prosecution Final Brief, para. 601.
[670] Brima Final Brief, paras 209-210; Alex Tamba Brima, Transcript 8 June 2006, pp. 77-78, Transcript 12 June 2006, p. 16.
[671] TF1-334, Transcript 20 June 2005, pp. 14-15; TF1-184, Transcript 27 September 2005, pp. 19-21; George Johnson, Transcript 15 September 2005, pp. 39-48; TF1-153, Transcript 22 September 2005, pp. 32, 57.
[672] DAB-033, Transcript 25 September 2006, pp. 49-51; DAB-059, Transcript 27 September 2006, pp. 70-72; DAB-142, Transcript 19 September 2006, pp. 18-19.
[673] TF1-334, Transcripts 17 June, 2005, pp. 45-46, 20 June 2005, pp. 14, 15; TF1 184, Transcript 27 September 2006, pp. 19-21; George Johnson., Transcript 15 September 2005, pp. 39-47.
[674] TF1-334, Transcript 19 May 2005, pp. 7-8; Transcript 20 May 2005, pp. 27, 51; Transcript 17 June 2005, pp. 45-46; Transcript 20 June 2005, pp. 14-15.
[675] TF1 334, Transcript 19 May 2005, pp. 7-8, Transcript 20 June 2005, pp. 14- 15; George Johnson, Transcript 15 September 2005, pp. 39-47; TF1 184, Transcript 27 September 2006, pp. 19-21.
[676] TF1-334, Transcript 20 May 2005, pp. 20, 38; George Johnson, Transcript 15 September 2005, p. 39.

Sierra Leone, including but not limited to, attacks on civilians in Bombali District between about May 1998 and 31 July 1998."[677]

345. In its Final Brief, the Prosecution submits that the Accused Brima maintained his position as overall commander of the AFRC soldiers that arrived in Koinadugu District in late April or early May 1998 as this group moved through Koinadugu and Bombali Districts.[678]

(a) Brima's Alibi for Koinadugu and Bombali Districts

346. The Brima Defence introduced an alibi covering the period between May 1998 and around November 1998 when the AFRC troops were in Koinadugu and Bombali Districts.[679] The Accused testified that following his release from RUF detention in Kailahun, he spent a short time in Koidu Town before moving on to his family's village of Yarya in Kono District, where he went into hiding from July until September 1998.[680]

347. The Accused further testified that in September 1998 approximately 110 men in uniforms carrying weapons and led by AFRC commander '0-Five' came to Yarya and arrested him. According to the Accused, he was told that SAJ Musa had ordered the arrest of all 'Honourables' and said that the AFRC was extinct but that the Sierra Leone Army remained. The Accused further testified that following his arrest 'O-Five' established radio contact with Musa, who was in Koinadugu District, and Musa instructed 'O-Five' to take the Accused with him to 'Colonel Eddie Town'.[681]

348. The Accused Brima testified that Witness DBK-012 was one of the guards who arrested him in his family's home town of Yarya in Kono District. Witness DBK-012 testified that he was a member of a group of AFRC soldiers who travelled from Koinadugu District to 'Colonel Eddie Town.'[682] However, this witness did not state that he arrested Brima in Kono District. Instead, he testified that when he reached 'Colonel Eddie Town' he was informed that the Accused Brima was in detention, and that he had been arrested by other AFRC soldiers.[683]

349. The Defence called three other witnesses to testify regarding the alleged arrest of the Accused, but their evidence was inconsistent. Witness DAB-109 testified that the Accused Brima

[677] Indictment, para. 24.
[678] Prosecution Final Brief, para. 626.
[679] Brima Defence Final Brief, para. 208.
[680] Alex Tamba Brima, Transcript 12 June 2006, p. 42.
[681] Alex Tamba Brima, Transcript 12 June 2006, pp. 43-51.
[682] DBK-012, Transcript 5 October 2006, pp. 107.
[683] DBK-012, Transcript 5 October 2006, pp. 107-108; DBK-012, Transcript 9 October 2006, pp. 12-13.

was in Yarya during the rainy season of 1998 and that he was arrested by a group of men. However, the witness testified that the Accused Brima was arrested in June or July of 1998, not in September as claimed by the Accused. In addition, the witness said that the Accused was arrested by four men, two wearing combat clothing and two wearing civilian clothes, and not by scores of soldiers as claimed by the Accused. Finally, the witness testified that he did not see any weapons on these men.[684]

350. Witness DAB-111 testified that there were two men named 'Tamba Brima' in Yarya. One was the Accused and the second was the elder brother of the Accused.[685] One day during the rainy season in 1998,[686] the witness was in Yarya with a third brother of the Accused named Komba when a group of soldiers wearing headbands attacked the town and demanded that the civilians hand over their money. The soldiers approached Komba Brima and ordered him to tell them the whereabouts of his elder brother. A soldier named 'Junior' then shot Komba in the knee.[687] Soon after this incident, the witness saw the Accused arrive in a vehicle looking for his brother Komba.[688] The witness did not see the Accused again, but he later heard that the Accused had been arrested. He could not say precisely when the Accused was arrested, but said it was "some months" after his arrival in Yarya.[689]

351. The Trial Chamber notes that both Defence witnesses DAB-109 and DAB-111 testified that the brother of the Accused, Komba Brima, was shot by a man named 'Junior'. This was corroborated by Prosecution witness TF1-334 who testified that Komba Brima was shot by Prosecution witness George Johnson aka 'Junior Lion'.[690] The Defence argued that George Johnson bore ill will towards the Accused on account of this incident and his evidence is therefore unreliable.[691] The Trial Chamber, however, is of the view that if Johnson did indeed shoot Komba Brima, that is reason for the Accused to bear ill will towards George Johnson but no self-evident rationale for Johnson to do so towards the Accused.

352. Witness DAB-159 testified that she was raped and abducted by witness George Johnson in Kono District and taken to Koinadugu District.[692] She left Koinadugu with a group of soldiers who were travelling to join the advance team. That group included commanders named 'O-Five' and

[684] DAB-109, Transcript 28 September 2006, pp. 87-88.
[685] DAB-111, Transcript 27 September 2005, p. 21.
[686] DAB-111, Transcript 27 September 2005, pp. 21-23.
[687] DAB-111, Transcript 27 September 2005, pp. 23-24.
[688] DAB-111, Transcript 27 September 2005, p. 28.
[689] DAB-111, Transcript 27 September 2005, p. 29.
[690] TF1-334, Transcript 20 June 2005, p. 18.
[691] Brima Defence Final Trial Brief, para. 199.

'Kehforkeh.'[693] The group left from Kurubonla and passed through Mansofinia in Koinadugu District and Yarya in Kono District. When they arrived in Yarya, the soldiers preceded the civilians. The soldiers told the women, including the witness, that they had gone to a farm in Yarya and arrested a soldier. Although the witness did not see the detained soldier, she was told that his name was Tamba Brima.[694]

353. While the discrepancies between the accounts of events in Yarya as described by the Accused and Witnesses DAB-109 and DAB-110 are not significant enough on their own to discredit the alibi of the Accused, witnesses placed the Accused Brima in Koinadugu and Bombali Districts between late April/early May 1998 and July to September 1998, asserting that he was the commander of an advance team sent by SAJ Musa to set up a base camp in Bombali District.[695]

(b) Command of the Advance Troops from Mansofinia to Rosos

354. The Prosecution submits that the Accused was the overall commander of the advance team of AFRC troops that travelled from Mansofinia in Koinadugu District to Rosos in Bombali District.[696] The Defence position is that other known individuals, specifically, FAT Sesay, Colonel Eddie, and others, were the Commanders of this advance team.[697]

355. Before reaching its conclusions, the Trial Chamber will consider the credibility of the following key witnesses.

(i) The Credibility of Witnesses

a. Prosecution Witnesses

356. Several prosecution witnesses provided varying amounts of detail regarding the journey of the advance team from Mansofinia in Koinadugu District to Camp Rosos in Bombali District.

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[692] DAB-159, Transcript 29 September 2005, pp. 43-49.
[693] DAB-159, Transcript 29 September 2005, pp. 50-51.
[694] DAB-159, Transcript 29 September 2005, pp. 52-55.
[695] TF1-334, Transcript 23 May 2005, p. 32; TF1-184, Transcript 27 September 2005, pp. 58-59; George Johnson, Transcript 15 September 2005, p. 41; DAB-095, Transcript 20 September 2006, pp. 55-56.
[696] Prosecution Final Brief, paras 1419, 1421. *See* TF1-334, Transcript 23 May 2005, p. 32; Gibril Massaquoi, Transcript 7 October 2005, p. 115; TF1-184, Transcript 27 September 2005, pp. 58-59; George Johnson, Transcript 15 September 2005, p. 41; *corroborated by Defence* Witness DAB-095, Transcript 20 September 2006, pp. 55-56.
[697] DBK-113, Transcript 13 October 2006, pp. 18-19, 100; DBK-037, Transcript 3 October 2006, pp. 94-96; DBK-131, Transcript 26 October 2006, p. 41; DBK-012, Transcript 5 October 2006, pp. 105-106; DAB-033, Transcript 25 September 2006, pp. 55-56; DAB-095, Transcript 20 September 2006, pp. 56-58; DAB-156, Transcript 29 September 2006, pp. 78-79.

i. TF1-334

357. The Brima Defence submits that Prosecution witness TF1-334 was not in a sufficiently high position within the AFRC structure to have access to the types of details he described in his evidence.[698] The Defence argues that the witness was not credible because he derived benefits from testifying.[699]

358. The witness revealed that he sought and received an assurance from the Office of the Prosecutor that he would not be prosecuted for any crimes he had committed.[700] The witness explained in detail that he was privy to substantially more information than his rank would suggest because his superior, a high ranking AFRC soldier, was illiterate and relied on the witness to read and understand all relevant documentation.[701] The Trial Chamber notes that the Defence did not raise this issue in its cross-examination of the witness.

359. The Trial Chamber observes that witness TF1-334 spent 16 days on the stand, including five days of cross-examination in which his testimony in chief was not shaken. The witness provided a substantial amount of detail corroborated by other witnesses as well as plausible explanations for his knowledge of such information. The Trial Chamber finds that his evidence throughout was consistent and any discrepancies minor. In addition, the witness presented a truthful demeanour. Thus, the Trial Chamber finds that he was a credible and reliable witness.

360. Witness TF1-334 testified that the Accused Brima was the overall commander of the AFRC advance team that moved from Mansofinia to Camp Rosos.[702]

ii. TF1-184

361. The Brima Defence submits that the Witness TF1-184 is unreliable because there were significant discrepancies between his evidence at trial and the evidence he provided to the Prosecution in a prior statement, and because "he harbour[ed] a deep dislike for the 1st Accused which is manifested by his belief that the 1st Accused was responsible for the death of SAJ Musa."[703]

[698] Brima Final Brief, paras 196-197.
[699] Brima Final Brief, para. 197.
[700] TF1-334, Transcript 16 June 2005, p. 17.
[701] TF1-334, Transcript 16 May 2005, pp. 12-13.
[702] TF1-334, Transcript 20 May 2005, pp. 86-88.
[703] Brima Final Brief, para. 192.

362. The Trial Chamber notes that Prosecution witness TF1-184 was one of SAJ Musa's closest associates and that he believed that the Accused Brima deliberately killed SAJ Musa at Benguema because he wanted to regain command over the AFRC troops. [704] The witness further believed that Brima, unlike Musa, was not loyal to the Army.[705] However, numerous witnesses testified that Musa's death was an accident.[706] It is the view of the Trial Chamber that although the evidence in chief of the witness was unclear at times, in its cross-examination of the witness the Defence raised no significant inconsistencies between his evidence in chief and his prior statement to the Prosecution. In addition, the Trial Chamber finds that the witness was not shaken on cross-examination and was generally corroborated by other witnesses.

363. Witness TF1-184 testified that the Accused Brima was the "senior man" of the team that SAJ Musa sent to establish a base camp in Bombali District. He added that 'Bazzy' and 'Five-Five' went with him but did not specify their positions.[707]

iii. TF1-033

364. The Brima Defence argues that the evidence given by Witness TF1-033 "was full of exaggerated accounts," that his evidence was never corroborated by other witnesses and that there were significant discrepancies between his evidence at trial and the evidence he provided to the Prosecution in a prior statement.[708]

365. The Trial Chamber observes that there were occasional significant discrepancies between the evidence witness TF1-033 gave at trial and his prior statements to the Prosecution. For example, the witness testified at trial that he was abducted by the Accused Brima in Kono District following the fall of the AFRC Government. In a prior statement to the Prosecution, however, the witness said that he was concerned for his safety during the ECOMOG recapture of Freetown in February 1998 and decided to flee with the AFRC troops departing Freetown.[709] The witness also testified at trial that the Accused Brima ordered a massacre at Tombodu in Kono District at a time when all other witnesses put the Accused elsewhere. More significantly, in a prior statement to the Prosecution, the witness said that a former soldier named "Savage" ordered the massacre. When asked by the

[704] TF1-184, Transcript 29 September 2005, pp. 56.
[705] TF1-184, Transcript 29 September 2005, p. 61.
[706] TF1-153, Transcript 22 September 2005, pp. 93-94; George Johnson, Transcript 16 September 2005, p. 10; DAB-095, Transcript 21 September 2006, pp. 9-10; DAB-156, Transcript 29 September 2006, pp. 59-61; DAB-023, Transcript 31 July 2006, pp. 77-79; DBK-131, Transcript 10 October 2006, pp. 87-88.
[707] TF1-184, Transcript 27 September 2005, pp. 19-21; Transcript 29 September 2005, p. 40.
[708] Brima Final Brief, para. 189.
[709] TF1-033, Transcript 11 July 2005, pp. 139-142. *See further* Factual Findings, Enslavement, paras 1319-1322 *infra*.

Prosecution investigator whether "Savage" was the "sole operator" of events at Tombodu and whether he answered to any other commander, Witness TF1-033 said that "Savage" was in charge of Tombodu and that he did not answer to anyone.[710] The Trial Chamber also notes that Prosecution witnesses TF1-334 and George Johnson gave accounts of events at Tombodu, which differed substantially from the account provided by witness TF1-033.[711]

366. The evidence of the witness regarding the troop restructure at Mansofinia suffered from the deficiencies typical in his testimony: it was overly general in comparison to the testimony of other witnesses present at the same events, but became specific when the presence or actions of one of the Accused were concerned. The Trial Chamber is satisfied, however, that while the witness appears on occasion to have exaggerated figures and was unclear on dates, he did not fabricate events. The Trial Chamber further found the witness truthful at trial, and is unwilling to conclude that his evidence overall is not credible or reliable.

367. Witness TF1-033 travelled with the AFRC soldiers as they moved from Kono District to Koinadugu and on to Camp Rosos.[712] The witness described the Accused Brima during this period saying "he was always at the helm of our affairs when he says 'move' everybody is on his toes."[713]

iv. TF1-153

368. The Brima Defence submits that witness TF1-153 was not credible or reliable, arguing that there were significant discrepancies between his evidence at trial and the evidence he provided to the Prosecution in a prior statement.[714] Although the witness was not entirely clear in his examination in chief, the Trial Chamber finds that inconsistencies between the evidence he gave at trial and his prior statement to the Prosecution were not of sufficient gravity to cast doubt as to his credibility.

369. Witness TF1-153, another soldier close to SAJ Musa, was not present during the journey from Mansofinia to Rosos.[715] The witness testified that Musa told him that he had instructed the Accused Brima and Kamara to find a base camp between Makeni and Port Loko[716] and that he had

[710] TF1-033, Transcript 11 July 2005, pp. 144-148.
[711] *See* Factual Findings, Unlawful Killings, paras 851-854 *infra* for discussion of this evidence.
[712] TF1-033, Transcript 11 July 2005, pp. 9-26.
[713] TF1-033, Transcript 11 July 2005, p. 20.
[714] Brima Final Brief, para. 191.
[715] TF1-153, Transcript 22 September 2005, p. 64.
[716] TF1-153, Transcript 22 September 2005, pp. 55-59.

sent the Accused Kanu along to support them.[717] Musa referred to the Accused Brima as the commander of this advance team.[718]

v. George Johnson

370. The Trial Chamber has considered the objections raised by the Defence on the credibility and reliability of George Johnson.[719] The Trial Chamber observes that the witness provided consistent and detailed evidence during his examination in chief and that he was not shaken on cross-examination. The Trial Chamber further found that his overall demeanour on the stand indicated candour. Thus, it concludes that the witness was generally credible and reliable.

371. George Johnson was present throughout the journey from Mansofinia to Rosos and he described the Accused Brima as overall commander of the advance team.[720]

b. Defence Witnesses

372. DBK-131,[721] DAB-012, [722] DAB-033,[723] DAB-095[724] and DAB-156[725] all testified that the top commanders leading the advance team were FAT Sesay, 'Major Eddie', George Johnson and/or 'O-Five' and 'Captain King'. However, none of these witnesses were part of the advance group and thus their evidence on the command structure during this period constitutes hearsay.

373. Two Defence witnesses - DBK-113 and DBK-037 - were present during the journey from Mansofinia to 'Colonel Eddie Town'.

374. Witnesses DBK-113 testified that FAT Sesay was the senior AFRC soldier at Mansofinia and that he was the overall commander of the AFRC troops during the journey to Rosos.[726] At

[717] TF1-153, Transcript 22 September 2005, p. 57.
[718] TF1-153, Transcript 22 September 2005, p. 57.
[719] Brima Final Brief, paras 198-200.
[720] George Johnson, Transcript 15 September 2005, pp. 50, 59.
[721] DBK-131, Transcript 26 October 2006, p. 41-44. The witness said that FAT Sesay was the overall commander, and that King, Eddie, George Johnson and Tito were part of the group.
[722] DBK-012, Transcript 5 October 2006, pp. 105-106. The witness testified that FAT was the overall commander of the advance team, that Col. Eddie was his adjutant and that Captain King was the third in command.
[723] DAB-033, Transcript 25 September 2006, pp. 55-56. The witness testified that FAT Sesay, George Johnson, and Eddie were the overall commanders of the advance team.
[724] DAB-095, Transcript 20 September 2006, pp. 56-58. The witness testified that Eddie was the overall commander of the advance team, and that he left with George Johnson and O-Five.
[725] DAB-156, Transcript 29 September 2006, pp. 78-79. The witness testified that George Johnson was the overall commander of the advance team.
[726] DBK-113, Transcript 13 October 2006, 28-29.

Rosos, FAT remained the overall commander and Col. Eddie was his Deputy.[727] However, the witness said that the troops were split up into several groups. The first group, the 'fighting force', was followed by a second group of persons carrying supplies. The witness was part of a third group that was made up of civilians and followed the 'fighting force' at a distance. Thus, by the time his group reached villages the population had already fled, meaning that any crimes would have been committed by the first or second groups.[728]

375. In addition, the evidence of witness DBK-113 regarding the journey is much less detailed than that of Prosecution witnesses TF1-334 and George Johnson. The Trial Chamber also has concerns about the witness's credibility because he testified that no child soldiers were abducted between Mansofinia and Rosos, that he did not see child soldiers at Rosos[729] and that he did not hear of rapes or 'bush wives'.[730] The Trial Chamber observes that both Prosecution and Defence witnesses described crimes committed by troops as they advanced from Mansofinia to Rosos. Thus, the Trial Chamber concludes that Witness DBK-113's testimony on the command structure of the advance team is unreliable.

376. Defence witness DBK-037 also testified that the overall commander of the advance team was FAT Sesay. Sesay was deputised by 'Col. Eddie', a man named 'King', and Prosecution witness George Johnson.[731] Although the witness was a member of the advance team, apart from providing this information about the command structure and insisting that the Accused Kamara was not present at Camp Rosos, he provided very little detail about the journey from Mansofinia to 'Colonel Eddie Town'.[732] The witness also testified that he saw no children or civilians at Camp Rosos,[733] although on cross-examination he stated that he saw the children of the fighting forces there.[734] The Trial Chamber therefore concludes that the evidence of witness DBK-037 with regard to the command structure of the advance team is unreliable.

377. The parties have submitted conflicting evidence on the command structure of the advance team, an issue fundamental to both the Prosecution and Defence cases. The Trial Chamber finds the evidence of the Prosecution witnesses who placed the Accused in Koinadugu and Bombali Districts

[727] DBK-113, Transcript 13 October 2006, pp. 25-27, 103. The witness testified that he was at Mandaha with Joseph Tamba, Bioh, FAT, Junior Lion and Arthur.
[728] DBK-113, Transcript 13 October, pp. 20-21.
[729] DBK-113, Transcript 13 October 2006, p. 77.
[730] DBK-113, Transcript 13 October 2006, pp. 78, 84.
[731] DBK-037, Transcript 3 October 2006, pp. 94-96.
[732] DBK-037, Transcript 3 October 2006, pp. 95-97.
[733] DBK-037, Transcript 4 October 2006, p. 57.
[734] DBK-037, Transcript 5 October 2006. p. 26.

during the relevant Indictment period significantly more reliable, consistent and compelling, and thus more persuasive, than that of the Defence witnesses.

(c) Findings

378. The Trial Chamber finds that the Prosecution has proven beyond reasonable doubt its case that the Accused Brima was overall commander of the AFRC advance team that travelled from Mansofinia in Koinadugu District to Camp Rosos in Bombali District.

379. The Trial Chamber is satisfied that upon arrival in Koinadugu District, a number of AFRC commanders including the Accused Brima and Kamara went to meet with SAJ Musa,[735] who had remained in Koinadugu District in the period following the February 1998 intervention. While the witnesses are inconsistent regarding the precise location of the meeting,[736] all agree that it was decided at the meeting that Brima would lead an advance team north east to establish an AFRC base in Bombali District and that SAJ Musa and his troops would follow later.[737] Musa informed Brima that Kanu would accompany the advance team.[738] Numerous witnesses, both for the Prosecution and for the Defence, testified that SAJ Musa's stated purpose in regrouping his forces and planning a new attack on Freetown was to reinstate the Army which had been reorganised by President Kabbah.[739]

380. Following this meeting, the Accused Brima called a muster parade at which he reorganised the troops and promoted individual officers.[740] The promotions were based on the ability of the commanders to control their men.[741] Brima promoted himself and the Accused Kamara to the rank of Brigadier.[742] He also appointed the Accused Kanu as Chief of Staff, and promoted him to the rank of Colonel.[743] The Accused Kamara remained Brima's second in command.[744]

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[735]TF1-334, Transcript 20 May 2005, pp. 83-84; George Johnson, Transcript 15 September 2005, pp. 47-48; TF1-184, Transcript 27 September 2005, p. 20; TF1-153, Transcript 22 September, p. 57.
[736] TF1-334 stated that the meeting took place at Mongor Bendu: Transcript 20 May 2005, pp. 86-87. Witnesses George Johnson and TF1-184 recalled the meeting being at Krubola/Kurubonla: George Johnson, Transcript 15 September 2005, pp. 47-48, TF1-184, Transcript 29 September 2005, p. 20; TF1-153 was not present at the time. He testified that SAJ Musa told him that he met 'Gullit' and 'Bazzy' at Krubola but organised to meet them subsequently at Yiraia: Transcript 22 September 2005, p. 57.
[737] TF1-184, Transcript 27 September 2005, pp. 19-21; TF1-334, Transcript 20 May 2005, pp. 86-87.
738 TF1-334, Transcript 20 May 2005, pp. 86-87; TF1-153, Transcript 22 September 2005, p. 57.
[739] TF1-334, Transcript 13 June 2005, pp. 26-27, 49; TF1-184, Transcript September 2005, p. 8; George Johnson, Transcript 19 September 2005, p. 128; DBK-113, Transcript 13 October 2006, p. 128; DBK-037, Transcript 3 October 2006, p.104; DAB-095, Transcript 20 September 2006, p. 51; DAB-033, Transcript 25 September 2006, p. 89; DBK-012, Transcript 6 October 2006, p.4; DBK-131, Transcript 10 October 2006, p. 43.
[740] TF1-334, Transcript 20 May 2005, pp. 88-99; George Johnson, Transcript 15 September 2005, p. 48.
[741] George Johnson, Transcript 19 September 2005, p. 65.
[742] TF1-334, Transcript 20 May 2005, p. 88.
[743] TF1-334, Transcript 20 May 2005, pp. 92,100-102.

381. Approximately three days after the meeting with Musa, Brima and the troops under his command left Mansofinia and headed south back into Kono District before heading north-west towards a region in Bombali district bordering Port Loko and Kambia districts.[745] In Kono District, the troops passed through Tombodu, Peyama, Kayima, Kondea, Worodu and Yarya. From Yarya, the 'hometown' of Brima, the troops went back into Koinadugu District to Yifin and from there moved eastwards, passing Kumala and Bendugu towards the area near Bumbuna (Tonkolili district). The troops then headed further north east into Bombali district, passing through Kamagbengbeh,[746] Bornoya, Karina, Pendembu[747] and Mateboi before arriving at Rosos.[748]

382. The evidence suggests that a second group of AFRC troops, led by a commander named 'O-Five,' followed a route similar to the one taken by the Accused Brima's group when it came to reinforce the advance team in July or August 1998.[749] In its factual findings on the crimes committed in Bombali District, the Trial Chamber has made findings only on crimes clearly associated with the advance team led by Brima.

383. While SAJ Musa appears to have been the overall strategist for the AFRC, once Brima left Mansofinia he had no contact with Musa until he reached Camp Rosos and even then communication was cursory.[750] Thus, the Trial Chamber concludes that the Accused Brima was not subject to higher level supervision or command during this period.

384. The Trial Chamber concludes that the AFRC arrived in Camp Rosos in or about July 1998. Following ECOMOG attacks on Camp Rosos in or about September 1998, the troops moved to another base at the village of Gberematmatank, more commonly referred to as 'Colonel Eddie Town,' located either in Bombali or Port Loko Districts.[751]

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[744] TF1-334, Transcript 20 May 2005, pp. 89, 94, 100-102.
[745] Exhibit P-30(a), "Map of Sierra Leone", indicating the approximate route of the troops as testified by witness George Johnson, Transcript 15 September 2005, pp. 52, 59. *See also* TF1-033, Transcript 11 July 2005, p. 31.
[746] Also referred to as Magbengbeh.
[747] Also referred to as Gbendembu.
[748] Exhibit P-30(a), "Map of Sierra Leone"; George Johnson, Transcript 15 September 2005, p. 44.
[749] TF1-334, Transcript 24 May 2005, pp. 91-92, 97, 107; George Johnson, Transcript 15 September 2005, p. 74.
[750] TF1-334, Transcript 24 May 2005, pp. 31-32; TF1-153, Transcript 22 September 2005, p. 61.
[751] George Johnson, Transcript 15 September 2005, p. 68; TF1-334, Transcript 24 May 2005, pp. 72-73.

(d) Brima's Alleged Detention at 'Colonel Eddie Town'

385. The joint Defence case is that the three Accused remained under arrest at 'Colonel Eddie Town' until the Accused Brima and Kanu escaped at Goba Water, immediately after SAJ Musa's death at Benguema.[752]

386. The Prosecution submission is that the three Accused maintained their positions during their time at 'Colonel Eddie Town' and that they were never under arrest there. The Prosecution argues in the alternative that if the Accused were under arrest, it was only for a very short period after the arrival of the AFRC commander 'O-Five' and they were released prior to the arrival of SAJ Musa at 'Colonel Eddie Town'.[753]

387. While a number of Defence witnesses testified that the Accused were under arrest in 'Colonel Eddie Town',[754] these witnesses gave substantially different accounts, thereby casting doubt on their credibility and reliability.[755]

388. Prosecution witness George Johnson testified that on an indeterminate date, a group of AFRC soldiers led by 'O-Five' arrived at 'Colonel Eddie Town' and ordered the arrest of the three Accused. The witness was among those charged with implementing the order. SAJ Musa arrived subsequently and became the overall commander of the AFRC troops, followed by 'O-Five' and 'Junior Mavin'.[756] Johnson further testified that in Newton, on the outskirts of Freetown, SAJ Musa held a meeting in which he reinstated "the honourables Alex Tamba Brima, Ibrahim Bazzy Kamara [and] Santigie Kanu."[757] The Trial Chamber is satisfied that the witness's account of events is reliable.

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[752] Brima Final Brief, paras 219-222; Kamara Final Brief, para. 107; Kanu Final Brief, para. 443.
[753] Prosecution Final Brief, para. 660.
[754] DAB-095, Transcript 20 September 2006, pp. 58-65; Transcript 21 September 2005, pp. 2-5; DAB-156, Transcript 29 September 2006, pp. 55-56; DBK-012, Transcript 5 October 2006, p. 109; DAB-023, Transcript 31 July 2006, pp. 63-66; DBK-131, Transcript 10 October 2006, pp. 58-60.
[755] For example, witness DAB-033 testified that he saw the Accused in a hut blocked by a rice box one day, and that the following day they were released into open detention: Transcript 25 September 2006, pp. 61-62, 66; DBK-131 testified that he saw Brima and Kanu detained in a 'box' at Eddie Town, but that SAJ Musa had them released into open detention: Transcript 10 October 2006, pp. 58-59; DBK-012 said that when he arrived in Eddie Town in August 1998, the three Accused had been tortured and locked in a wooden box for rice bags: Transcript 5 October 2006, pp. 108-109; DBK-037 testified that the Accused were detained in a 'booth house' in August 1998: Transcript 3 October 2007, pp. 98-99. Witness DBK-113 testified that three soldiers were arrested at Eddie Town in October/November 1998: Transcript 13 October 2006, p. 27; DAB-023 testified that George Johnson arrested the three Accused for 'bewitching the movement" and sent them to be held in a dungeon: Transcript 31 July 2006, pp. 63-66; DAB-096 said that George Johnson said that the Accused had been arrested for trying to escape and that they were held in chains: Transcript 18 September 2006, pp. 110, 118.
[756] George Johnson, Transcript 21 September 2005, p. 59.
[757] George Johnson, Transcript 16 September 2005, p. 3.

(e) Advance on Freetown

389. From Colonel Eddie Town, the AFRC forces moved towards Freetown, passing through Mange, Lunsar, Sumbuya and Masiaka in Port Loko District and then Newton and Benguema in the Western Area.[758]

390. On 23 December 1998, the troops attacked a weapons depot in Benguema. SAJ Musa was killed when a bomb exploded during this operation.[759]

391. The Prosecution submits that following the death of SAJ Musa, the Accused Brima re-established his position as overall commander of the AFRC troops.[760]

392. Brima testified that following Musa's death at Benguema, 'O-Five' ordered him and others to go to a village named Goba Water. According to Brima, he and the Accused Kanu managed to escape from Goba Water and they moved towards Makeni, where they arrived in January 1999[761] and stayed with Brima's family.[762] Therefore, the Accused Brima and Kanu were not in Freetown during the January 1999 invasion.

7. Brima's Role in Freetown and the Western Area (January 1999 – February 1999)

393. The Prosecution submits that the three Accused were the senior commanders of the 6 January 1999 invasion of Freetown. The Accused Brima was the overall commander; the Accused Brima his Deputy; and the Accused Kanu was third in command.[763]

394. The position of the Defence is two-fold: first, that the Accused was not present during the January 1999 invasion of Freetown,[764] and second, that the AFRC troops were led by other known individuals, specifically FAT Sesay,[765] George Johnson also known as 'Junior Lion',[766] or 'O-Five'.[767]

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[758] Exhibit P-30(a), "Map of Sierra Leone", indicating the approximate route of the troops as testified by witness George Johnson.
[759] TF1-184, Transcript 27 September 2005, p. 49; TF1-153, Transcript 22 September 2005, pp. 93-94; George Johnson, Transcript 16 September 2005, p. 10; TF1-334, Transcript 13 June 2005, pp. 51-55; DAB-095, Transcript 21 September 2006, pp. 9-10; DAB-156, Transcript 29 September 2006, pp. 59-61; DAB-023, Transcript 31 July 2006, pp. 77-79; DBK-131, Transcript 10 October 2006, pp. 87-88.
[760] Prosecution Final Brief, para. 694.
[761] Alex Tamba Brima, Transcript 15 June 2006, pp. 27-31.
[762] Alex Tamba Brima, Transcript 15 June 2006, pp. 83-85.
[763] Prosecution Final Brief, para. 1576.
[764] DAB-095, Transcript 21 September 2006, p. 21; DAB-156, Transcript 29 September 2006, p. 21.
[765] DAB-033, Transcript 25 September 2006, p. 73; DBK-005, Transcript 5 October 2006, pp. 58-59; DBK-131, Transcript 10 October 2006, pp. 88-91; DBK-012, Transcript 6 October 2006, pp. 22, 36; DBK-037, Transcript 3

395. In addition to the concerns regarding the credibility of Prosecution witnesses discussed above, the Brima Defence submits that Prosecution witness Gibril Massaquoi "painted a false picture" of events "designed to blame others and exonerate himself."[768]

(a) Prosecution Witnesses

396. Prosecution witness TF1-334 testified that despite rumours among the troops that the Accused Brima had killed SAJ Musa, Brima became overall commander following Musa's death and began to organise the movement of the troops around the region.[769] On Christmas Day, Brima called his commanders and told them that a woman had had a dream that SAJ Musa was crying in his grave and urging the troops to continue on towards Freetown. He took the opportunity to remind the AFRC soldiers that he was now overall commander and promoted himself to the rank of Lieutenant General.[770] He then restructured the troops.[771] The witness estimated the troop strength to be about 1500 men.[772]

397. George Johnson testified that following the death of SAJ Musa, there was a short power struggle between the Accused Brima and the Accused Kamara, but this was quickly resolved in favour of the Accused Brima, who became overall commander of the troops.[773] The witness corroborated the evidence of witness TF1-334 that Brima restructured the troops. The witness was promoted from the rank of Major to the rank of Lieutenant Colonel.[774]

398. According to witness TF1-334, on 5 January 1999 the Accused Brima gathered the troops in Allen Town and told them the time had come to attack Freetown.[775] At this meeting he further instructed his troops to capture State House, burn police stations, release the prisoners held at Pademba road prison and execute 'collaborators,' meaning anyone who did not support the troops. He further informed his troops that as he did not have the wherewithal to pay them, they were free

October 2006, p. 110; DBK-113, Transcript 13 October 2006, pp. 41, 85; DBK-005, Transcript 5 October 2006, pp. 61-63; DBK 113, Transcript 13 October 2006, pp. 42, 52.
[766] George Johnson, Transcript 15 September 2005, p. 4.
[767] DAB-023, Transcript 31 July 2006, pp. 79-81; Transcript 3 August 2006, pp. 103-104.
[768] Brima Final Brief, para. 202.
[769] TF1-334, Transcript 13 June 2005, pp. 57-58.
[770] TF1-334, Transcript 13 June 2005, p. 59.
[771] TF1-334, Transcript 13 June 2005, pp. 60-85; *See* Military Structure of the AFRC Fighting Force, paras 602-608 *infra*.
[772] TF1-334, Transcript 13 June 2005, p. 85.
[773] George Johnson, Transcript 16 September 2005, pp. 11-13.
[774] George Johnson, Transcript 16 September 2005, p. 15.
[775] TF1-334, Transcript 13 June 2005, p. 100.

to loot from the civilian population although he expected his troops to hand any 'government property', meaning diamonds or dollars, to the Brigade.[776]

399. George Johnson corroborated the evidence that the Accused Brima chaired a meeting prior to the attack on Freetown at which he announced the attack and instructed that certain crimes be committed.[777] While George Johnson testified that this meeting took place at Orugu village rather than Allen Town, the Trial Chamber is satisfied that both witnesses were referring to the same meeting as very little distance separates the two locations.

400. According to Witness TF1-334, State House, the seat of the government, was captured by AFRC troops on 6 January 1999 at 6 a.m and the three Accused arrived there approximately half an hour later.[778] The witness alleged that throughout the time that the AFRC headquarters were at State House, the Accused Brima committed and ordered the commission of crimes, and that his orders were implemented.[779]

401. George Johnson corroborated evidence that crimes were committed by the troops at State House and that the Accused Brima ordered the release of prisoners held at Pademba Road prison.[780] Johnson provided a great deal of detail about troop movements around the city during the invasion.[781] He also corroborated the evidence of the witness TF1-334 that the Accused Brima was the overall commander of the troops, and that as Commander he communicated on at least one occasion with Sam Bockarie[782] while he was at State House. The witness also detailed the commission of crimes by troops associated with the Accused.[783] While there were discrepancies between this witness's evidence and that of witness TF1-334 regarding the commission of these crimes, most were minor.

402. Witness TF1-153 also testified that the Accused Brima became overall commander of the troops at Benguema following the death of SAJ Musa.[784] The witness confirmed that Brima met with the troops at Orugu village before the final onslaught on Freetown and that he ordered the

[776] TF1-334, Transcript 13 June 2005, pp. 101-103.
[777] George Johnson, Transcript 16 September 2005, pp. 16-17.
[778] TF1-334, Transcript 13 June 2005, p. 104.
[779] TF1-334, Transcript 14 June 2005, pp. 4-47, 54-73, 82-89, 96-100, 115-121; Transcript 15 June 2005, pp. 3-4, 14.
[780] George Johnson, Transcript 16 September 2005, pp. 22, 27.
[781] George Johnson, Transcript 16 September 2005, pp. 22-26, 29-34.
[782] George Johnson, Transcript 16 September 2005, p. 41; TF1-334, Transcript 14 June 2005, pp. 48-49.
[783] George Johnson, Transcript 16 September 2005, pp. 21-22, 38, 43-44, 52-57.
[784] TF1-153, Transcript 22 September 2005, p. 94.

release of the prisoners at Pademba Road prison.[785] The witness also testified about the commission of crimes by AFRC troops during this period.[786]

403. Witnesses TF1-184 and TF1-033 also gave evidence that the Accused Brima became Commander in Chief of the AFRC forces at Benguema following the death of SAJ Musa[787] and described the commission of crimes by AFRC troops in Freetown.[788]

404. Prosecution Witness Gibril Massaquoi was incarcerated at Pademba Road Prison from 17 October 1997 until 6 January 1999.[789] Upon his release, he was informed that the Accused Brima had led the troops into Freetown.[790] He then saw the three Accused at State House.[791] The witness participated in a meeting at State House, attended by the Accused, at which he learned that the Accused Brima was the Commander in Chief of the troops, the Accused Kanu was the army chief of staff and the Accused Kamara was the "commander in charge of the men and all their weapons."[792] The witness corroborated evidence that while at State House the Accused Brima on at least one occasion spoke to Sam Bockarie. Indeed, on this occasion Brima asked the witness to plead with Bockarie to send reinforcements to assist the AFRC soldiers.[793] The witness also corroborated evidence on the commission of crimes in the Freetown area by AFRC troops.[794]

405. The Trial Chamber takes into account that the witness was a high-ranking member of the RUF who may have participated in the commission of crimes during Sierra Leone's civil war.[795] The Trial Chamber further observes that the witness obfuscated on cross-examination in response to questions about Prosecution promises of immunity in return for the witness' testimony in proceedings.[796] Moreover, the witness testified that he blamed the AFRC Government for his 14 month imprisonment.[797] However, there is no evidence that the witness held a particular animus against the Accused in this case. The Trial Chamber has no doubt that the witness was released from Pademba Road prison on 6 January 1999 and was thereafter in a position to observe events.

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[785] TF1-153, Transcript 22 September 2005, p. 97.
[786] TF1-153, Transcript 22 September 2005, p. 100; Transcript 23 September 2005, pp. 9, 18, 22-25.
[787] TF1-184, Transcript 27 September 2005, p. 56; TF1-033, Transcript 11 July 2005, pp. 53-55.
[788] TF1-184, Transcript 27 September 2005, pp. 61-65, 71-75, 80-84; TF1-033, Transcript 11 July 2005, pp. 63-67.
[789] Gibril Massaquoi, Transcript 7 October 2005, pp. 108-110.
[790] Gibril Massaquoi, Transcript 7 October 2005, p. 114.
[791] Gibril Massaquoi, Transcript 7 October 2005, p. 115.
[792] Gibril Massaquoi, Transcript 7 October 2005, pp. 119-121.
[793] Gibril Massaquoi, Transcript 10 October 2005, pp. 6-9.
[794] Gibril Massaquoi, Transcript 10 October 2005, pp. 12-13, 17-24, 27-28.
[795] Gibril Massaquoi, Transcript 11 October 2005, p. 145.
[796] Gibril Massaquoi, Transcript 11 October 2005, pp. 50-55.
[797] Gibril Massaquoi, Transcript 11 October 2005, p. 101.

(b) Defence Witnesses

406. Witness DAB-095 testified that he did not see the three Accused after the troops left Waterloo, in the weeks prior to the Freetown invasion.[798] However, the Trial Chamber observes that this witness said he was injured on 24 December 1998 and that he was taken to Makeni for medical treatment. He was therefore not present during the invasion of Freetown.[799]

407. Witness DAB-156 testified that she was present during the advance to Freetown and throughout the invasion and that she did not see the Accused after the troops left Waterloo in late December 1998 or early January 1999.[800] On examination in chief, the witness appeared to testify that 'Junior Lion,' 'King', and 'O-Five' were the commanders of the troops leading the Freetown invasion, although her evidence was not clear.[801] In cross-examination, she clearly stated that it was 'O-Five' and 'Eddie.'[802] The Trial Chamber notes that the witness did not provide a great deal of detail about her journey from Koinadugu District to Freetown, but that she was not shaken on cross-examination.

408. Witnesses DBK-113, DBK-037, DBK-113, DAB-095, DAB-033, DBK-005 testified that they did not see any of the three Accused at State House or during the invasion of Freetown.[803] The Trial Chamber will briefly consider the evidence of each of these witnesses on the command structure in Freetown.

409. Witness DBK-113 testified that the commanders in the attack on Freetown were Col. FAT, Junior Lion, Col. Tito, Col. Eddie, Colonel Foday Bah, Colonel Sesay, "Changa Bulunga" and "many more".[804] He does not refer to any discussion among the troops regarding who took over command after SAJ Musa's death.[805] Under cross-examination, the witness stated that Colonel FAT was the overall commander and his deputy was Colonel Eddie. The witness testified that he knew this because "during my stay at State House, Colonel FAT was usually at the place, in order to organise soldiers, to put them in the truck, to send them to the various areas where the ECOMOGs

[798] DAB-095, Transcript 21 September 2006, p. 21.
[799] DAB-095, Transcript 21 September 2006, pp. 15-18.
[800] DAB-156, Transcript 29 September 2006, pp. 61, 85.
[801] DAB-156, Transcript 29 September 2006, pp. 62-63.
[802] DAB-156, Transcript 29 September 2006, p. 83.
[803] DBK-113, Transcript 16 October 2006, pp. 46, 49-52; DBK-037, Transcript 4 October 2006, pp. 30, 45; DSK-113, Transcript 12 October 2006, pp. 117-119; DAB-095, Transcript 21 September 2006, pp. 15, 38, 64; DAB-033, Transcript 25 September 2006, pp. 67-68, 70-71; DBK-005, Transcript 12 October 2006, pp. 32-33. *See also* DAB-156, who testified that she did not see the accused after leaving Waterloo, although it is not clear from her evidence precisely where she went after Waterloo: Transcript 29 September 2006, p. 21.
[804] DBK-113, Transcript 16 October 2006, pp. 38-41, 85.
[805] DBK-113, Transcript 16 October 2006, pp. 38-40.

used to attack."[806] He knew that Colonel Eddie was the deputy because he was close to Colonel FAT and "whenever he would pass an order for something to be done, to take soldiers to the front, to take up responsibilities, it was Colonel Eddie he would pass it on to. Then he would tell the junior soldiers."[807] The Trial Chamber notes that in a combat situation, any number of commanders may be observed giving orders. The Trial Chamber thus finds these observations vague and insufficient *per se* to substantiate the witness' conclusion.

410. The Trial Chamber is of the view that the same comment is applicable to the testimony of Witness DBK-005, who testified that he went to State House and that he knew 'FAT' was the commander since he saw other men showing him respect and he saw 'FAT' give instructions to 'Junior Lion'.[808] He also testified that 'Junior Lion' gave orders during the retreat, although FAT Sesay was there, and then stated that at Benguema he didn't really know who was in charge because he was concentrating on escaping to Makeni.[809]

411. Witnesses DBK-037 testified that FAT Sesay was made commander of the troops following the death of SAJ Musa and that he was the commander at State House, although 'O-Five' led the troops into Freetown.[810] 'Eddie' was the Adjutant and 'O-Five' was the Operations Commander, while 'Junior Lion' was MP Commander.[811] Witness DBK-037 testified that FAT Sesay's military rank was lieutenant.[812]

412. Witness DAB-095, who claimed to be 'FAT's security, testified that at Eddie Town 'FAT' was a colonel.[813] The witness testified that 'Colonel Eddie' was the 'main commander' in Freetown, although the witness subsequently stated that 'Colonel Eddie' and FAT Sesay were both commanders in Freetown.[814] He explained that positions would change and admitted that he was not very 'au fait' with the details of the positions.[815] The Trial Chamber notes that this witness also asserted that he was one of 'JPK's securities, but stated that 'JPK's full name was John *Patrick*

[806] DBK-113, Transcript 16 October 2006, p. 85.
[807] DBK-113, Transcript 16 October 2006, p. 85.
[808] DBK-005, 5 October 2006, pp. 58-59.
[809] DBK-005, 5 October 2006, pp. 62-63.
[810] DBK-037, Transcript 3 October 2006, pp. 108-110; DBK-037, Transcript 4 October 2006, pp. 12-14, 16-18.
[811] DBK-037, Transcript 3 October 2006, pp. 108-110.
[812] DBK-037, Transcript 4 October 2006, p. 39.
[813] DAB-095, Transcript 20 September 2006, p. 66.
[814] DAB-095, Transcript 28 September 2006, p. 64.
[815] DAB-095, Transcript 28 September 2006, pp. 60-61.

Koroma rather than Johnny Paul Koroma.[816] He also did not know that the Accused were members of the AFRC.[817]

413. Witness DAB-033's testimony regarding the troop structure was clearer. He testified that following SAJ Musa's death at Benguema, there was a 'shake in the command'. FAT Sesay took command, but 'Junior Lion' initially refused to be subordinate to him.[818] FAT Sesay was ultimately the overall commander to Freetown.[819] The Trial Chamber notes that at trial the witness stated four times that he did not see the three Accused after the death of SAJ Musa,[820] but agreed that in a prior statement that he saw the three Accused in Makeni after the retreat was correct.[821]

414. Witness DBK-012 testified that after SAJ Musa's death, 'FAT' became the overall commander. 'Eddie' was second in command and adjutant, while 'King' was third in command and MP. 'Junior Lion' was fourth in command and task force commander.

415. Witness DAB-023 testified that 'O-Five" became overall commander of the troops in the wake of SAJ Musa's death at Benguema.[822] The witness said that he heard 'O-Five' order the attack on Freetown[823] but that immediately after arriving in Freetown 'O-Five' sent him to the hospital for treatment of a wound. He spent four or five days in the hospital before joining the troops at State House.[824] The witness said that he did not see the three Accused after the troops passed through Masiaka on the way to Freetown.[825]

416. According to Witness DBK-131, FAT Sesay became overall commander of the troops following the death of SAJ Musa at Benguema. 'Eddie' was second in command followed by 'O-Five,' 'Junior Lion,' and 'Tito' in descending order. [826] The witness added that FAT led the troops to State House and then made an announcement over the radio informing the population that his troops had taken Freetown. The witness was with the troops during the week they occupied State House and then retreated to Kissy.[827] The Witness added that he did not see the Accused after the

[816] DAB-095, Transcript 28 September 2006, pp. 15-17.
[817] DAB-095, Transcript 28 September 2006, pp. 57-58.
[818] DAB-033, Transcript 25 September 2006, pp. 66-67, 99-100.
[819] DAB-033, Transcript 25 September 2006, p. 73.
[820] DAB-033, Transcript 2 October 2006, pp. 33-34.
[821] DAB-033, Transcript 25 September 2006, pp. 110-112.
[822] DAB-023, Transcript 31 July 2006, pp. 79-81.
[823] DAB-023, Transcript 31 July 2006, pp. 83-84.
[824] DAB-023, Transcript 31 July 2006, pp. 85-86.
[825] DAB-023, Transcript 31 July 2006, p. 87.
[826] DBK-131, Transcript 10 October 2006, p. 88
[827] DBK-131, Transcript 10 October 2006, pp. 90-91.

troops left Waterloo meaning that he did not see them during the Freetown invasion or at State House.[828]

417. Witnesses DBK-037, DBK-113, DSK-113, DAB-033, DBK-005, DBK-126 and DAB-023 testified that they did not see or hear of any civilians being killed, civilians having their limbs amputated, houses being burned or civilians being raped in Freetown.[829] Witness DBK-012 made similar statements, testifying that he did not see or hear of rapes at State House or burning of houses during the retreat.[830] Witness DBK-037 and DAB-033 stated that AFRC soldiers always aimed for military targets and did not attack civilians.[831]

418. The Trial Chamber has found that extensive evidence proves beyond reasonable doubt that the violence inflicted on civilians and that the destruction of civilian property in Freetown in January 1999 was extreme.[832] The Trial Chamber is of the view that this overwhelming evidence cannot be reconciled with the Defence evidence to the contrary.

419. Witnesses DBK-005, DBK-012 and DBK-131 testified that the crimes committed in Freetown were committed by disgruntled prisoners released from Pademba Road prison on the morning of 6 January 1999, rather than the troops that invaded the city.[833] The Trial Chamber accepts that it is plausible that some of the released prisoners were responsible for some of the damage to Freetown and its inhabitants. However, the Trial Chamber also regards this evidence as one factor which undermines the credibility of these witnesses. It emerged in cross examination that none of these witnesses had mentioned this explanation to the investigators taking their prior written statements. Witness DBK-012 explained that this was because the investigator didn't ask about it. Witness DBK-005 asserted that he had told investigators. Witness DBK-131 explained that it was because if he recounted every aspect of his war experience to investigators, the interview would have taken one to two months.[834] The Trial Chamber is not satisfied with these explanations.

(c) Findings

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[828] DBK-131, Transcript 10 October 2006, p. 91.
[829] DBK-037, Transcript 4 October 2006, pp. 32-34, 37; DBK-113, Transcript 16 October 2006, pp. 114-116; DSK-113, Transcript 12 October 2006, p. 110; DAB-033, Transcript 2 October p. 103; DBK-005, Transcript 12 October 2006, pp. 35-36; DBK-126, Transcript 25 October 2006, pp. 57-58; DAB-023, Transcript 3 August 2006, pp. 120-121.
[830] DBK-012, Transcript 9 October 2006, p. 46; DBK-012, Transcript 6 October 2006, p. 80.
[831] DBK-037, Transcript 4 October 2006, pp. 32-34, 37; DAB-033, Transcript 2 October pp. 100-105.
[832] General Requirements of Articles 2, 3 and 4 of the Statute, para 236 *supra*.
[833] DBK-005, 5 October 2006, pp. 53-58; DBK-012, Transcript 6 October 2006, pp. 31-36; DBK-012, Transcript 9 October 2006, pp. 40-43; DBK-131 Transcript 26 October 2006, pp. 53-54.
[834] DBK-005, Transcript 12 October 2006, p. 27; DBK-012, Transcript 18 October 2006, p. 56; DBK-131 Transcript 26 October 2006, pp. 55-56.

420. The Trial Chamber is satisfied that following the death of SAJ Musa in Benguema the Accused Brima became the overall commander of the troops that invaded Freetown in January 1999. He remained in this position throughout the invasion and retreat from Freetown. Both Witness TF1-334 and George Johnson described the subsequent movement of the troops towards State House on 6 January 1999, as a steady, organised advance pursuant to the orders of the Accused Brima. [835] Although the climate became increasingly chaotic once the troops lost State House, the evidence is consistent that the Accused Brima remained the overall commander of the retreating forces.

421. Following the retreat from Freetown, the Accused Brima took part in a second attack on Freetown with the participation of RUF commanders.[836] This operation was unsuccessful. The Accused Brima and his troops then retreated to Newton and Benguema in the Western Area.[837]

8. Brima's Role in Port Loko District (February 1999 – July 1999)

422. The Trial Chamber notes that in its closing arguments the Prosecution conceded that "both Brima and Kanu were absent [from Port Loko District]" when crimes were committed there.[838]

423. The Accused Brima testified that he escaped from the troops before the invasion of Freetown and made his way to Makeni in Bombali District where he remained with his family.[839]

(a) Findings

424. On the basis of the evidence of Prosecution witnesses TF1-334,[840] George Johnson,[841] Gibril Massaquoi[842] and TF1-153[843] regarding the movement of AFRC troops after leaving Freetown, the Trial Chamber is satisfied that the three Accused retreated from Freetown to Newton and Benguema in the Western Area in late January 1999. The Trial Chamber is further satisfied that in approximately early April 1999, the AFRC troop separated into two groups, with the Accused Brima and Kanu moving with some fighters to Makeni in Bombali District. Insufficient evidence has been adduced for any findings to be made on the Accused Brima's activities in this period.

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[835] TF1-334, Transcript 13 June 2005, pp. 104-112; George Johnson, Transcript 16 September 2005, pp. 20-26.
[836] TF1-334, Transcript 15 June 2005, pp. 108-112.
[837] TF1-334, Transcript 15 June 2005, pp. 108-112; George Johnson, Transcript 15 September 2005, pp. 60-62.
[838] Prosecution Closing Arguments, Transcript 7 December 2006, pp. 46-47.
[839] *See* Role of Accused, Brima, para 391, *supra*.
[840] TF1-334, Transcript 14 June 2005, pp. 108-133; Transcript 15 June 2005, pp. 10-19, 24-25.
[841] George Johnson, Transcript 16 September 2005, pp. 58-67.
[842] Gibril Massaquoi, Transcript 10 October 2005, pp. 38-44.
[843] TF1-153, Transcript 23 September 2005, pp. 26-28.

C. Ibrahim Bazzy Kamara

1. Allegations and Submissions

425. The Indictment alleges that "at all times relevant to the Indictment" the Accused Kamara was a "senior member of the AFRC, Junta and AFRC/RUF forces..",[844] and that he was a "Public [sic] Liaison Officer (PLO)"[845] and a member of the "Junta governing body."[846] It further charges that the Accused Kamara was a "commander of AFRC/RUF based in Kono District,"[847] "a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998"[848] and "a commander of AFRC/RUF forces which attacked Freetown on 6 January 1999."[849]

426. In its Pre-Trial Brief, the Kamara Defence submitted that the Accused Kamara was a junior officer on duty, and that "his duties were [...] predominantly confined to the task of receiving and executing orders from his immediate superiors in line with military discipline, not otherwise as claimed by the Prosecution.[850] In its Final Brief, the Kamara Defence submits that the Accused Kamara played 'no active part in combat' during the AFRC government period.[851] It further argues that although it has not presented a defence of alibi, witnesses testified that the Accused was in his village in Port Loko during the period that Prosecution witnesses alleged he was in other areas,[852] and that he was under arrest in 'Colonel Eddie Town.'[853] It also contends that the Accused Kamara was not present at the 'Westside' in Port Loko District, and that the Commander in charge there was Prosecution Witness George Johnson.[854] Finally, the Defence asserts that the main Prosecution witnesses were neither credible nor reliable,[855] and refers to the numerous witnesses wno supported the alibi of the Accused Brima thereby challenging the credibility of prosecution witnesses.[856]

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[844] Indictment para. 26.
[845] Indictment para. 26.
[846] Indictment para. 26.
[847] Indictment para. 27.
[848] Indictment para. 27.
[849] Indictment para. 27.
[850] Kamara Pre-Trial Brief, para. 17.
[851] Kamara Final Brief, para. 105.
[852] Kamara Final Brief, para. 105.
[853] Kamara Final Brief, para. 105.
[854] Kamara Final Brief, para. 105.
[855] Kamara Final Brief, para. 106.
[856] Kamara Final Brief, para. 107.

2. Personal Background of Kamara

427. Ibrahim 'Bazzy' Kamara was born on 7 May 1968[857] or 1970.[858] He joined the Sierra Leone Army in 1991 and was deployed at Daru Military Barracks in Kailahun District. At the time of the coup in May 1997 he had attained the rank of Sergeant.[859] He is married and has two children.[860]

428. Although the Accused Brima denied that the Accused Kamara was also known as "Bazzy," the Kamara Defence does not deny that 'Bazzy' was the nickname of the Accused.[861] Both Prosecution[862]and Defence witnesses[863] referred to him by this name. The Accused Kamara was also known as 'IB'[864] and his radio call sign was 'Dark Angel'.[865]

3. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998)

429. The Indictment states that the Accused Kamara was a senior member of the AFRC Government, a member of the "Junta governing body" and a PLO in that Government.[866]

430. In its Final Brief, the Prosecution argues that the Accused Kamara was superseded in the AFRC hierarchy only by Johnny Paul Koroma, SAJ Musa, the PLO 1 and the Accused Brima (PLO 2). The Prosecution also notes that he had "numerous" ministries under his control and that he attended meetings of the Supreme Council.[867]

431. In its Final Brief, the Kamara Defence argues that the Prosecution failed to adduce evidence suggesting that the Accused Kamara was present in Bo or Kenema Districts during the period of the

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[857] Indictment, para. 3.
[858] Kamara Defence Opening Statement, Transcript 5 June 2006, pp. 43-44.
[859] TF1- 334, Transcript 17 May 2005, p.28.
[860] Alex Tamba Brima, Transcript 19 June 2006, p. 38.
[861] Kamara Defence Opening Statement, 5 June 2006, p. 44. The Accused Brima denies that the Accused Kamara was called Ibrahim *Bazzy* Kamara: Transcript 19 June 2006, p. 32; Transcript 20 June 2006, p. 13; Transcript 29 June 2006, p. 71.
[862] *See* TF1-334, Transcript 16 May 2005, p. 100; TF1-033, Transcript 11 July 2005, pp. 6, 12; George Johnson, Transcript 15 September 2005, pp. 8-9; TF1-184, Transcript 29 September 2005, p. 97; Gibril Massaquoi, Transcript 7 October 2005, p. 77. Documentary evidence also refers to Kamara as 'Bazzy': Exhibit P-6, "The Sierra Leone Gazette," 4 September 1997, listing members of the Armed Forces Revolutionary Council *Secretariat*; Exhibit P- 7, "The Sierra Leone Gazette," 18 September 1997, listing members of the Armed Forces Revolutionary Council; Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC", 16 August 1997; Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC", 16 August 1997; Exhibit P-69, "AFRC-Secretariat, Minutes of Meeting held on the 9th December 1997."
[863] DAB-018, Transcript 7 September 2006, p. 70; DAB-123, Transcript 12 September 2006, pp. 21-22; DAB-042, Transcript 15 September 2006, p. 90; DAB-096, Transcript 18 September 2006, p. 112; DAB-156, Transcript 29 September 2006, p. 56; DBK-037, Transcript 4 October 2006, p. 73; DBK-129, Transcript 9 October 2006, p. 27; DAB-005, Transcript 12 October 2006, p. 9; DBK-012, Transcript 9 October 2006, pp. 55, 61; TRC-01, Transcript 16 October 2006, p. 104.
[864] TF1-334, Transcript 16 May 2005, p. 75; Alex Tamba Brima, Transcript 19 June 2006, p. 34.
[865] TF1-334, Transcript 18 May 2005, p. 31; George Johnson, Transcript 15 September 2005, p. 9.
[866] Indictment paras 25-26.

AFRC government, or that he planned, instigated, ordered, committed or otherwise aided and abetted the crimes committed in Bo and Kenema Districts. Nor did the Prosecution adduce any evidence that the Accused Kamara had effective control over the perpetrators of these crimes.[868]

(a) Involvement in the 25 May 1997 Coup

432. The Trial Chamber notes that numerous witnesses, both for the Prosecution and for the Defence, testified that the Accused Kamara was one of the individuals who planned and took part in the coup.[869] The Trial Chamber is therefore satisfied that Kamara was involved in the 1997 coup.

433. The Trial Chamber is satisfied that in return for his participation in the coup, the Accused Kamara was rewarded with specific functions in the AFRC Government. He remained in those positions until the Government was ousted by the ECOMOG forces in February 1998.

(b) Council Membership

434. The Trial Chamber finds that the Accused Kamara was a member of the Supreme Council of the AFRC Government.[870] It further concludes that Kamara was an 'Honourable'.[871]

(c) Principal Liaison Officer 3

435. The Accused Kamara does not deny that he held the position of PLO3. The Trial Chamber is satisfied that the Accused Kamara was PLO 3 during the Junta period.[872]

436. As PLO 3, Kamara was responsible for supervising the following ministries: Agriculture, Forestry, Fisheries, Energy and Power, Lotto and Income Tax. The Accused was also responsible for a government office called 'Queen Elizabeth Quay'.[873]

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[867] Prosecution Final Brief, para. 508.
[868] Kamara Final Brief, paras 116-117, 134-135.
[869] TF1-033, Transcript 11 July 2005, p. 6; Gibril Massaquoi, Transcript 7 October 2006, p. 76; TF1-334, Transcript 17 June 2005, p. 69; TF1-114, Transcript 14 July 2005, p. 118-119; DAB-079, Transcript 28 July 2006, p. 62, DAB-025, Transcript 28 July 2006, p. 112; TRC-01, Transcript 16 October 2006, p. 101; DAB-085, Transcript 20 July 2005, p. 52; DAB-079, Transcript 28 July 2006, pp. 62, 68, 69; DAB-085, Transcript 20 July 2006, p. 52; DAB-063, Transcript 2 August 2006, pp. 60-62.
[870] Exhibit P-6, "The Sierra Leone Gazette," 4 September 1997, listing members of the Armed Forces Revolutionary Council *Secretariat;* Exhibit P-7, "The Sierra Leone Gazette," 18 September 1997, listing members of the Armed Forces Revolutionary *Council*; Gibril Massaquoi, Transcript 7 October 2005, p. 77.
[871] DAB-063, Transcript 2 August 2006, pp. 60-62; DAB-005, 12 October 2006, pp. 17-18.
[872] Exhibit P-34 "Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11 August 1997"; Exhibit P-69 "AFRC-Secretariat Minutes of Meeting held on 9 December 1997"; 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; Alex Tamba Brima, Transcript 3 July 2006, p. 41; George Johnson, Transcript 15 September 2005, p. 20.
[873] George Johnson, Transcript 15 September 2005, p. 20; Transcript 20 September 2005, p. 9.

437. The Trial Chamber is satisfied that that the Accused Kamara attended coordination meetings of high level members of the AFRC and RUF.[874] The Trial Chamber notes that Prosecution witness TF1-045 testified that he attended one such meeting in September 1997 at Wilberforce at which the Accused Kamara and Kanu were present.[875] It emerged in cross-examination that in a prior statement to the Prosecution the witness had omitted any mention of the presence of 'Bazzy' and 'Five-Five' at the meeting, referring only to the presence of Johnny Paul Koroma, 'Gullit,' SFY Koroma, 'Kowas' and Tamba Gborie. The witness explained that during his 2003 interview with the Prosecutor he was not concerned about 'Bazzy' and 'Five-Five' and that he only mentioned "the top commanders, their superiors."[876]

(d) Findings

438. The Trial Chamber is satisfied that the Accused Kamara was a member of the group that organised the 25 May 1997 coup, that he was a member of the AFRC Supreme Council, that he was an "Honourable" and that he was PLO 3 in the AFRC Government.

439. However, no evidence was adduced regarding his activities, if any, in those positions. The Trial Chamber is therefore unable to establish whether the Accused Kamara had any *de facto* powers beyond his *de jure* titles.

4. Kamara's Role in Kono and Kailahun Districts (14 February – 30 June 1998)

440. The Indictment alleges that the Accused Kamara was "a commander of the AFRC/RUF forces in Kono District."[877] In its Final Brief, the Prosecution argues more concretely that the Accused Kamara was present in Kono from around mid-February to mid-May 1998 and that during that period he was not *one of the senior* commanders but *the top* 'SLA' Commander in the District, second only in the District wide chain of command to Denis Mingo of the RUF.[878] The Prosecution in its closing arguments stated that "it is the case of the Prosecution that only Kamara was present [in Kono District] when the crimes were committed."[879]

[874] TF1-045, Transcript 19 July 2005, pp. 71-72; Gibril Massaquoi, Transcript 7 October 2005, pp. 37, 83, 86, 93; Exhibit P-34, "Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11 August 1997"; Exhibit P-69, "AFRC Secretariat, Minutes of Meeting held on 9 December 1997."
[875] TF1-045, Transcript 19 July 2005, pp. 58-59.
[876] TF1-045, Transcript 21 July 2005, pp. 21-24.
[877] Indictment, para. 27.
[878] Prosecution Final Brief, paras 1270-1272.
[879] Prosecution Closing Arguments, Transcript 7 December 2006, p. 34.

441. The Prosecution concedes that the Accused Kamara was not in Kailahun District during this period.[880]

442. Numerous Defence witnesses testified that they were in Kono during the relevant period and did not see or hear of the Accused Kamara.[881] The Prosecution responds that since the Defence has adduced no evidence placing the Accused elsewhere during the relevant period, the testimony of these witnesses is of no consequence.[882]

443. A significant number of Defence witnesses testified that it was the RUF who were in control of Kono District during the relevant period and that if AFRC fighting forces participated in operations in the region, they did so on the orders of the RUF and not of their own volition.[883]

(a) Kamara's Role prior to the Departure of Johnny Paul Koroma from Kono District

444. The Prosecution's case on the role of the Accused Kamara during this period relies exclusively on the testimonies of witnesses George Johnson and TF1-334. George Johnson was the Chief Security Officer to the Accused Kamara during the AFRC government[884] and travelled with the Accused Kamara during the February 1998 retreat from Freetown until the 1999 invasion of Freetown. Witness TF1-334 was a senior assistant to a close associate of the Accused Kamara[885] throughout the period covered in the Indictment. Thus, the witness was familiar with Kamara's activities.

445. While Prosecution witness George Johnson testified that the Accused Kamara participated in the attack on Koidu Town,[886] witness TF1-334 does not place Kamara in Kono District until Johnny Paul Koroma had departed from Kailahun District.[887]

446. Witness TF1-334 testified that the Accused Kamara was present at a meeting of senior AFRC and RUF commanders in early March 1998 in Kabala, Koinadugu District, at which the

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[880] Prosecution Final Brief, paras 1397-1405.
[881] DBK-113, Transcript 13 October 2006, p. 48; DAB-098 Transcript 4 September 2006, pp. 47 48; DAB-018, Transcript 7 September 2006, p. 44-45; DAB-023, Transcript 31 July 2006, p. 105; DAB-095, Transcript 28 September 2006, p. 26. The following witnesses were unaware of Kamara's whereabouts: DAB-107, Transcript 8 September 2006, pp. 79-80; DAB-039,Transcript 5 September 2006, p. 90.
[882] Prosecution Final Brief, para. 1275.
[883] DBK-113, Transcript 13 October 2006, p. 66; DAB-098, Transcript 4 September 2006, p. 28; DAB-018, Transcript 7 September 2006, pp.7-9, 12-15; DAB-023, Transcript 31 July 2006, p. 105.
[884] George Johnson, Transcript 15 September 2005, p. 9.
[885] Name admitted under seal: Exhibit P-12.
[886] George Johnson, Transcript 15 September 2005, p. 31.
[887] TF1-334, Transcript 17 May 2005, pp. 108-114.

takeover of Kono District was planned. The commanders agreed to attack Koidu Town.[888] RUF commander Denis Mingo, the witness, the Accused Kamara and other soldiers then collected Johnny Paul Koroma from his village and moved to Makeni, Bombali District.[889]

447. From Makeni, the troops moved towards Kono District. The witness was in an advance convoy which cleared the way of Kamajor ambushes. He testified that when the troops met Kamajor resistance at Five-Five Spot in Koidu Town, Johnny Paul Koroma withdrew to Masingbeh, a safer location nearby.[890] The witness testified that the AFRC/RUF soldiers captured Koidu Town and that RUF commander Denis Mingo assumed the position of overall commander of both factions.[891]

448. Witness TF1-334 does not mention the presence of the Accused Kamara during the attack on Koidu Town; rather, there is some indication from the Witness's testimony that the Accused Kamara may have remained in Makeni. The witness testified that following the attack, he and other soldiers went to Makeni to collect RUF commander Issa Sesay. He stated that the Accused Kamara was in Makeni when he arrived there and that Kamara remained in Makeni after he returned to Kono.[892]

449. Witness George Johnson also gave evidence on the attack on Koidu Town. He corroborated the testimony of witness TF1-334 regarding the meeting of senior AFRC/RUF commanders in Kabala. However, George Johnson testified that the Accused Kamara and Dennis Mingo attacked Kono together; specifically that Dennis Mingo commanded the troops and the Accused Kamara was his Deputy.[893]

450. The Trial Chamber considers the above evidence regarding the presence and role of the Accused Kamara during this short period to be inconclusive. The Trial Chamber will therefore make no determination on his role during the period in which Johnny Paul Koroma was overall commander in Kono District.

(b) Kamara's Role after the Departure of Johnny Paul Koroma from Kono District

(i) Prosecution Witnesses

[888] TF1-334, Transcript 17 May 2005, pp. 81-83.
[889] TF1-334, Transcript 17 May 2005, pp. 85- 86.
[890] TF1-334, Transcript 17 May 2005, pp. 90-100.
[891] TF1-334, Transcript 17 May 2005, pp. 100-103, 108.
[892] TF1-334, Transcript 17 May 2005, pp. 108-114.
[893] George Johnson, Transcript 15 September 2005, pp. 30-32, 38.

451. Both Witnesses TF1-334 and George Johnson testified that following the departure of Johnny Paul Koroma for Kailahun, Denis Mingo aka 'Superman' of the RUF became the overall commander of the rebel forces in Kono District, while the Accused Kamara became the overall commander of the AFRC fighting forces.[894] Although Denis Mingo was superior to the Accused Kamara,[895] witness TF1-334 and the other AFRC soldiers began to receive their orders from him.[896] Kamara remained the most senior commander of the AFRC soldiers in Kono until the arrival of the Accused Brima in mid-May 1998.[897]

452. Witness George Johnson testified that at a meeting held after Koroma's departure to Kailahun, Mingo promoted some of the men in rank, including the witness, with these promotions being endorsed by the Accused Kamara.[898] Witness TF1-334 similarly testified that after the capture of Kono, Kamara took over the authority for giving promotions to AFRC fighters from Johnny Paul Koroma.[899] He gave promotions to Lieutenant Lagah, Lieutenant 'Tito', Lieutenant 'Savage', Lieutenant Kallay, Lieutenant Bakarr and Lieutenant 'Mosquito'.[900]

453. While the AFRC fighting forces in Kono were subordinate to the RUF, Prosecution witnesses provided significant evidence of cooperation between the AFRC troops subordinate to the Accused Kamara and the RUF troops. The two factions planned and participated in joint operations,[901] and Sam Bockarie, who was based in Kailahun, sent weapons and ammunition to the troops in Kono which were distributed among both factions.[902] Thus, according to Prosecution witnesses, the AFRC and the RUF had "cordial relations" and worked together.[903]

(ii) Defence Witnesses

454. In contrast, Defence witnesses suggest that there was less cooperation and greater intimidation and subordination between the AFRC and the RUF during this period.

455. Witness DAB-018 testified that AFRC soldiers in Kono District were completely subordinate to the RUF, and that any AFRC soldier who refused to take orders from the RUF would

[894] George Johnson, Transcript 15 September, p. 38. TF1-334, Transcript 18 May pp. 21-24.
[895] TF1-334, Transcript 18 May 2005, p. 24.
[896] TF1-334, Transcript 18 May 2005, pp. 21-22.
[897] TF1-334, Transcript 19 May 2005, p. 7; Transcript 20 May 2005, p.56; George Johnson, Transcript 15 September 2005, p. 39.
[898] George Johnson, Transcript 15 September 2005, pp. 35-36, 46-47; George Johnson, Transcript 20 September 2005, p. 14.
[899] TF1-334, Transcript 19 May 2005, p. 50.
[900] TF1-334, Transcript 19 May 2005, p. 51.
[901] TF1-334, Transcript 18 May 2005, pp. 24-33; Transcript 19 May 2005, pp. 3-4.
[902] George Johnson, Transcript 15 September 2005, p. 43.
[903] TF1-334, Transcript 19 May 2005, pp. 5-7.

be shot and killed. The witness said he saw the RUF capture members of the AFRC fighting forces and that he later saw their dead bodies. Any former soldier who referred to himself as a 'soldier' rather than as a member of the RUF would "have problems" as an order had been issued saying that there was no "SLA".[904] The RUF would issue passes on which was written United Front of Sierra Leone allowing members of the AFRC fighting force to travel from one area to another.[905]

456. Witness DAB-059 testified that members of the AFRC were unwilling to take orders from the RUF during this period because the RUF had been attacking, disarming, and looting from them. As a result, AFRC soldiers were afraid of the RUF, and while some surrendered others fled to Kabala in Koinadugu District.[906]

457. Witness DAB-095 explained that soon after Johnny Paul Koroma left for Kailahun District there was no relationship at all between the two factions. He asserted that the RUF had harassed AFRC soldiers by disarming its officers and their men and ordering them to the war front. The witness added that this had happened to him among others. The rebel soldiers who went to the front voluntarily were provided with weapons, and those who refused to volunteer were sent without.[907]

458. Witness DBK-117 testified that in Kono District the AFRC had no direct command and that they only took orders from the RUF.[908] In addition, he described an incident in which Denis Mingo discovered a former soldier using a portable communications handset. Believing that they were using it to communicate with ECOMOG, Mingo ordered an attack on the AFRC faction based at Konomanyi Park. The former soldiers fired back but were outnumbered by the RUF.[909] Witness TF1-334 corroborated the evidence regarding use of the communications set, testifying that while former soldiers were allowed to listen in on communications, they were not permitted to engage in communications of their own.[910]

459. Despite their evidence of a period of cooperation, even the Prosecution witnesses point to a deterioration of relations between the two factions during the latter part of the relevant period in Kono District. According to witness TF1-334, on one occasion Morris Kallon (RUF) informed the AFRC fighting force that they could not hold military muster parades and that they had no right to call themselves 'SLAs' because there was only one faction in Kono and it was the RUF. During the

[904] DAB-018, Transcript 7 September 2006, pp. 11-13.
[905] DAB-018, Transcript 7 September 2006, p. 14. *See also* witness DBK-113, who testified that the relationship between the two factions was "complicated": Transcript 13 October 2006, p. 14.
[906] DAB-059, Transcript 27 September 2006, pp. 92-93. *See also* DAB-033, Transcript 25 September 2006, p. 52-53.
[907] DAB-095, Transcript 20 September 2006, pp. 42-44.
[908] DBK-117, Transcript 16 October 2006, pp. 19, 114-116.
[909] DBK-117, Transcript 16 October 2006, pp. 16-17.

ensuing melee Kallon shot two soldiers of the AFRC faction.[911] The witness concluded that although there was no outright fighting between the two factions relationship the rapport was "not good. The relationship was no longer cordial."[912]

(c) Findings

460. The Trial Chamber finds that the Defence witness evidence is not inconsistent with that of witness TF1-334 who similarly testified that there were a number of RUF commanders operating in Kono District who reported to Denis Mingo.[913]

461. The Trial Chamber concludes that the Accused Kamara was the overall commander of the AFRC forces based in Kono District from early March 1998 to mid-to-late April 1999. While Kamara was subordinate to Denis Mingo, and the AFRC troops were subordinate to those of the RUF, the Trial Chamber is not persuaded by those Defence witnesses who testified that the AFRC troops had no choice but to participate in this arrangement. Whether the Accused Kamara had effective control over the AFRC troops in Kono District will be discussed elsewhere in the Judgement.[914]

(d) The Return of the Accused Brima

462. The Accused Kamara remained overall commander of the AFRC troops until the return of Brima from Kailahun. However, the evidence of crimes committed in Kono District related to crimes committed before Brima assumed command. Upon arrival in Kono District, Brima took overall command of the AFRC troops. The Accused Kamara became Brima's second in command,[915] and travelled with him to Koinadugu District where both men met with SAJ Musa. There the two Accused and Musa defined the new objectives of the AFRC rebel movement.[916]

5. Kamara's Role in Koinadugu and Bombali Districts (June 1998 – November 1998)

463. The Indictment alleges that the Accused Kamara was "a commander of the AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and

[910] TF1-334, Transcript 19 May 2005, pp. 3-4.
[911] TF1-334, Transcript 19 May 2005, pp. 9-10.
[912] TF1-334, Transcript 21 June 2005, p. 14.
[913] TF1-334, Transcript 19 May 2005, p. 37.
[914] Responsibility of the Accused, Kamara, paras 1864-1887.
[915] George Johnson, Transcript 15 September 2007, p. 39. TF1-334, Transcript 20 May 2005, p. 57.
[916] *See* Context of the Alleged Crimes, para. 190.

Bombali Districts between mid February 1998 and 31 December 1998."[917] In its Final Brief, the Prosecution submits that during the advance from Mansofinia to Camp Rosos, the Accused Brima was at all times the commander of the AFRC troops who formed a part of his brigade, whilst the Accused Kamara was his second in command and the Accused Kanu held a senior command position.[918]

464. The Defence submits that another group of named individuals were the Commanders during this journey. This evidence has been assessed in the section of the Judgement on Brima's role in Koinadugu and Bombali Districts.[919]

(a) Kamara's Command Position within the AFRC Troops from Mansofinia to Rosos

465. The Prosecution evidence shows that Accused Kamara was Brima's Deputy at Mansofinia and throughout the journey to Eddie Town.[920]

466. The Prosecution provided little substantive evidence on the *de facto* role, authority, and contributions of the Accused Kamara to the activities of the AFRC troops during this period. However, it did establish that the Accused Kamara was one of the senior AFRC faction commanders present at the meeting with SAJ Musa where the restructuring of the troops was discussed.[921] In the new structure established following the meeting the Operations Commander and the Provost-Marshal were required to report to the Accused Kamara.[922] At Rosos, the Accused Kamara was based at 'headquarters', from where operations were planned and orders issued. [923] Witness TF1-334 also testified that the Accused Kamara was one of the commanders who made decisions regarding the brigade.[924]

467. Witness TF1-334 testified that at Rosos, the Accused Kamara oversaw one of the companies of AFRC troops as well as being deputy chief in command, although the witness does not explain further what this supervisory role entailed.[925]

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[917] Indictment, para. 27.
[918] Prosecution Final Trial Brief, para. 626.
[919] Role of Accused, Brima, paras 372-377, *supra*.
[920] TF1-334, Transcript 20 May 2005, pp. 87-88; TF1-334, Transcripts 23 and 24 May 2005; George Johnson, Transcript 15 September 2005, pp. 51, 59.
[921] George Johnson, Transcript 15 September 2005, p. 47.
[922] *See* Military Structure of AFRC Fighting Force, para 576, *supra*; George Johnson, Transcript 15 September 2005, p. 49.
[923] George Johnson, Transcript 15 September 2005, p. 60.
[924] TF1-334, Transcript 20 May 2005, pp. 95, 98-99.
[925] TF1-334, Transcript 23 May 2005, p. 107.

468. In conclusion, the Trial Chamber is satisfied that the Accused Kamara was the Deputy Commander of the AFRC fighting forces in Koinadugu and Bombali Districts. It further recalls its finding in the section of the Judgement on the Military Structure of these forces, that while the structure was not one of a traditional army the forces were nevertheless well-structured and organised.

(b) Kamara's Alleged Detention in 'Colonel Eddie Town'

469. The Trial Chamber has found that, while the three Accused were arrested for an indeterminate period at Colonel Eddie Town, they were released and reinstated by SAJ Musa at Newton, on the outskirts of Freetown.[926]

6. Kamara's Role in Freetown and the Western Area (January 1999 – February 1999)

470. The Prosecution submits that the Accused was the Second in Command of the forces invading Freetown in January 1999.[927]

471. The Kamara Defence submits that other known individuals were the overall commanders of these forces, and that several Defence witnesses who were in Freetown during the invasion said they did not see Kamara during this period.[928]

472. As noted above, the Trial Chamber has found that following the death of SAJ Musa at Benguema, the Accused Brima became the overall commander of the AFRC fighting forces invading Freetown. Based on the same assessment of witness reliability and credibility, the Trial Chamber is satisfied that the Accused Kamara was Brima's Deputy.[929] He remained in this position throughout the Freetown invasion and the retreat of the troops.

473. The Prosecution adduced evidence establishing that on 5 January 1999, the Accused Kamara was present at a meeting chaired by Brima at Orugu Village[930] in which the invasion of Freetown was discussed.[931] The Accused Kamara was present at headquarters at State House immediately following its capture on 6 January 1999.[932] He attended a meeting of senior commanders when an

[926] Role of Accused, Brima, paras 385-388, *supra*.
[927] Prosecution Final Brief, para. 1588.
[928] Kamara Final Brief, paras 210-218.
[929] TF1-334, Transcript 13 June 2005, p. 60. George Johnson, Transcript 16 September 2005, pp. 12-13. TF1-184, Transcript 27 September 2005, p. 56.
[930] Referred to by witness TF1-334 as 'Allentown.'
[931] George Johnson, Transcript 16 September 2005, pp. 16-17.
[932] TF1-334, Transcript 14 June 2005, pp. 3-4; George Johnson, Transcript 16 September 2005, p. 39.

attack on Wilberforce, where ECOMOG forces were based, was discussed.[933] After the capture of the State House, the Accused Brima ordered that Pademba Road Prison should be opened and the prisoners released. The Accused Kamara participated in the release of the prisoners. The Accused Kamara ordered that the released prisoners should move to State House. Some prisoners followed this order, others did not.[934] The Accused Kamara spoke with Sam Bockarie on the radio prior to the capture of State House.[935] The Accused Kamara was present at the State House when the Accused Brima announced to the battalion commanders and others, that they were likely to lose "the ground totally" and that the burning of Freetown should start.[936] After the loss of State House, the Accused Kamara gave an order to the AFRC troops to burn houses.[937] Following the retreat from Freetown, the Accused Kamara took part in a second attack on Freetown that took place with the participation of RUF commanders.[938]

(a) Findings

474. The Trial Chamber concludes that the Accused Kamara was Deputy Commander of the forces invading Freetown on 6 January 1999, and that he remained in that position throughout. It is further satisfied that in this position he had a significant degree of authority.

7. Kamara's Role in Port Loko District (February 1999 – July 1999)

475. The Prosecution submits that the Accused Kamara was the overall Commander of the fighters in the area commonly referred to as "the West Side."[939] The Defence position is that other known individuals were the commanders in the area.[940]

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[933] Gibril Massaquoi, Transcript 7 October 2005, pp. 119-120.
[934] George Johnson, Transcript 16 September 2005, pp. 27-29.
[935] TF1-184, Transcript 29 September 2005, p. 61.
[936] TF1-334, Transcript 14 June 2005, p. 47.
[937] TF1-184 Transcript 30 September 2005, p. 9
[938] George Johnson, Transcript 16 September 2005, pp. 60-61.
[939] *See for example*, Prosecution Final Brief, paras 1753-1754; Gibril Massaquoi, Transcript 10 October 2005, p. 44: the witness testified that when he arrived on the West Side in early June 1999, 'Bazzy' was the commander there. TF1-334, Transcript 15 June 2005, pp. 13-24: The witness testified that following the retreat from Freetown the Accused Brima remained the commander of the retreating troops, including during the month that the troops spent at Newton on the West Side. Soon after ECOMOG attacked, the Accused Brima and Kamara went to join Denis Mingo (Superman) in Makeni. Soon after the Accused Kamara received a phone call from Sam Bockarie telling him that the Accused Brima was no longer commander and that he, the Accused Kamara, would now be commander on the West Side. During this short period Kamara moved from Newton in the Western Area to Port Loko District. George Johnson, Transcript 16 September 2006, pp. 62-64: the witness corroborated the evidence that from Newton, the Accused Brima and the Accused Kanu went to Makeni, and the Accused Kamara moved to Mamah/Mamamah in Port Loko District. At this point he became overall commander of these troops. TF1-153, Transcript 23 September 2005, p. 27: witness says that he saw Brima and Kanu at Masiaka following the retreat from Freetown. At this time, Bazzy was at Gberibana, at a place called the West Side with Tito, Bomb Blast, and Junior Lion. Bazzy separated from Brima and Kanu because he was disgruntled with the RUF, and decided it was better to work without them

(a) The Presence of the Accused in Port Loko District

(i) Prosecution Witnesses

476. Witness George Johnson testified that all three Accused retreated with the troops to Benguema in the Western Area.[941] They then moved to Waterloo where together with the RUF they planned a second attack on Freetown.[942] The attack was unsuccessful and from Waterloo the RUF pulled back to Lunsar, while Brima and Kanu went to Makeni with a group of RUF commanders.[943] George Johnson testified that he accompanied the Accused Kamara and a group of troops to Four Mile, to Mamamah,[944] near Mile 38.[945] At this point the Accused Kamara was in command and he gave orders to the troops at Mamamah which were obeyed.[946] From Mamamah they went to Gberibana, an area in Port Loko District colloquially known as the 'West Side'.[947]

477. Witness Gibril Massaquoi retreated from Freetown to Waterloo. On his arrival he met with RUF troops and approximately a week later he went to Lunsar with Denis Mingo.[948] He testified that while he was at Waterloo, troops from Freetown arrived in successive groups and all three Accused eventually came to Waterloo.[949]

478. From Lunsar, the witness travelled to Waterloo with Mingo on several occasions.[950] He also testified about the second unsuccessful attack on Freetown. Subsequently, at Lunsar in early April, infighting broke out between Issa Sesay and Denis Mingo of the RUF, the eventual result of which

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[940] DAB-033, Transcript 25 September 2006 p. 10: stating that the overall commander at Westside was Foday Kallay and his second in command was George Johnson (Junior Lion). DBK-012, 6 October 2006, pp: 43-44: the Witness and George Johnson (Junior Lion) led the troops in Rogberi on the West Side. However, once there FAT Sesay was the overall commander and Junior Lion was second in command. DBK-131, Transcript 10 October 2006: witness said he arrived on the West Side during May/June 1999. At that time, George Johnson (Junior Lion) was the overall commander in the area, and Tito was the second in command. Foday Kallay arrived later and took over command when he arrived. DBK-037, Transcript 4 October 2006, p. 42: the commanders on the West Side were FAT Sesay, George Johnson (Junior Lion) and Junior Sherriff. DBK-129, Transcript 9 October 2006, pp. 19, 85, 88-90, 95: The Witness arrived at Four Mile on the West Side in February 1999. George Johnson (Junior Lion) was the overall commander in the area and did not report to the Accused Kamara. Johnson issued the order to make the area of Mamamah fearful. The witness was present when he issued the order. The second in command was Tito. Johnson remained in charge of the West Side until Foday Kallay arrived. Witness was there until the ceasefire was announced. The witness never saw Kamara and said Kamara had no command over any troops on the West Side. DAB-095, Transcript 28 September 2006, pp. 71-72: the witness stated that Foday Kallay was the commander of the West Side

[941] George Johnson, Transcript 16 September 2005, p. 58-59.

[942] George Johnson, Transcript 16 September 2005, pp. 60-61. Gibril Massaquoi corroborated the evidence of George Johnson regarding the second and unsuccessful attempt to capture Freetown: Transcript 10 October 2005, pp. 34-35.

[943] George Johnson, Transcript 16 September 2005, pp. 62-63.

[944] Also referred to as Mammah.

[945] George Johnson, Transcript 16 September 2005, p. 63.

[946] George Johnson, Transcript 16 September 2005, pp. 64-66.

[947] George Johnson, Transcript 16 September 2005, p. 67.

[948] Gibril Massaquoi, Transcript 10 October 2005, pp. 30-32.

[949] Gibril Massaquoi, Transcript 10 October 2005, pp. 31-32.

[950] Gibril Massaquoi, Transcript 10 October 2005, pp. 33-34.

was that Mingo controlled Lunsar and Makeni and Sesay fled to Kono.[951] At an unspecified time in April, Mingo contacted the Accused Brima and requested his assistance in the fight against Sesay. The Accused Brima and Kanu, as well as 'O-Five' and others then travelled to Masiaka and Makeni in Bombali District to assist.[952]

479. Massaquoi testified that around this time, Kamara's troops were pushed back by ECOMOG from Mile 38 to the Okra Hills Area.[953] Witness Gibril Massaquoi subsequently travelled to Okra Hills in June and said that at that time Kamara was the commander of the troops there known as 'the West Side Boys'.[954]

480. Witness TF1-153 corroborates evidence of a split between the Accused Brima and Kanu and the Accused Kamara stating that the Accused Brima and Kanu went to Masiaka while Kamara went to the Westside because he was 'disgruntled' and did not want to assist the RUF.[955]

(ii) Defence Witnesses

481. As with Bombali and the Freetown areas, Defence witnesses on Port Loko District described an alternate command structure involving FAT Sesay, Junior Lion and Foday Kallay. Witness DBK-037 testified that Foday Kallay was not in the West Side.[956] Witness DAB-095 testified that Foday Kallay was the commander in the West Side.[957] Witness DAB-033 testified that Foday Kallay was the overall commander and Junior Lion was second in command.[958] However, under cross examination he conceded that he only went once to the West Side and did not know who the commander was in that location.[959] Witnesses DBK-037 and DBK-012 were in the West Side and testified that Junior Lion was second in command to overall commander FAT Sesay.[960] Witnesses DBK-131 and DBK-129 were in the West Side and testified that Junior Lion was the overall commander and Tito was second in command but Foday Kallay arrived later and took over command.[961] Witness DBK-129 stated that he never saw Kamara and said Kamara had no command over any troops in the West Side.[962]

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[951] Gibril Massaquoi, Transcript 10 October 2005, pp. 35-38.
[952] Gibril Massaquoi, Transcript 10 October 2005, pp. 39-40.
[953] Gibril Massaquoi, Transcript 10 October 2005, pp. 40.
[954] Gibril Massaquoi, Transcript 10 October 2005, p. 44.
[955] TF1-153, Transcript 23 September 2005, pp. 26-28.
[956] DBK-037, Transcript 4 October 2006, p. 42.
[957] DAB-095, Transcript 28 September 2006, p. 74
[958] DAB-033, Transcript 25 September 2006, pp. 108-109.
[959] DAB-033, Transcript 2 October 2006.
[960] DBK-037, Transcript 4 October 2006, pp. 18-19, 50-51; DBK-012, Transcript 6 October 2006, pp. 43-44.
[961] DBK-131, Transcript 10 October 2006, p. 93; DBK-129, Transcript 9 October 2006, pp. 19, 85, 88-90, 95.
[962] DBK-129, Transcript 9 October 2006, pp. 19, 85, 88-90, 95.

482. Witness DBK-012 testified that Prosecution Witness George Johnson, also known as 'Junior Lion.' was the commander who organised the attack on Port Loko, calling a muster parade and selecting the commanders to go on the attack, including Junior Lion, who was the Operations Commander, the witness and Sheriff alias 'Cambodia'. They went on the operation around 27 April 1999.[963] This witness denied that AFRC troops attacked Mamamah, stating that they bypassed it to avoid ECOMOG forces stationed there.[964]

(iii) Findings

483. As the witnesses who testified about Port Loko are the same witnesses who testified about parts of the journey of the three Accused over the period covered by the Indictment, the Trial Chamber refers to its previous assessments on the credibility and reliability of relevant Defence and Prosecution witnesses.[965]

484. The Trial Chamber is satisfied that upon withdrawing from Newton in late February or early March 1999, the Accused Kamara retreated to the region of Okra Hills in Port Loko District. During this same period, the Accused Brima and the Accused Kanu went to Makeni, Bombali District.

(b) Command of the AFRC troops in the 'West Side'

(i) Prosecution Witnesses

485. Witness TF1-334 testified that in approximately early April 1999, after the retreat from Mamamah and Mile 38, the Accused Kamara called a meeting at Magbeni at which he created a new command structure for the AFRC troops in the 'West Side'.[966] The AFRC fighting forces then under the Accused Kamara, including the abducted civilians, numbered over 700.[967] 'Bazzy' appointed himself the Chief Commander.[968] The witness added that Prosecution witness George Johnson, known as 'Junior Lion,' was the Operational Commander.[969]

486. George Johnson's testimony on the command structure in Port Loko District, although less detailed, generally corroborates that of witness TF1-334. He testified that Kamara was in command

[963] DBK-012, Transcript 6 October 2006, pp. 44-45.
[964] DBK-012, Transcript 6 October 2006, p. 93.
[965] *See* Role of the Accused, Brima, paras 355-377, *supra*.
[966] TF1-334, Transcript 15 June 2005, pp. 24-25.
[967] TF1-334, Transcript 15 June 2005, p. 31.
[968] TF1-334, Transcript 15 June 2005, pp. 25-27.
[969] TF1-334, Transcript 15 June 2005, p. 26.

of a group of AFRC troops that went to Four Mile and Mamamah, near Mile 38.[970] The witness describes a series of orders given by the Accused Kamara to the troops at Mamamah which were obeyed.[971] From Mamamah they went to Gberibana, in the 'West Side.'[972] At the 'West Side', Kamara called a meeting at which he restructured the troops and made appointments.[973]

487. The Trial Chamber notes that Witness TF1-153 also testified that 'Bazzy' was the commander in the West Side. In cross-examination it emerged that the witness, in a prior statement, stated that 'Papa' was the commander and 'Bazzy' and Bio were his deputies, although he also stated that all three were commanders.[974] The Trial Chamber notes that witness TF1-153 was not present in Port Loko District and therefore relies on the more detailed and consistent evidence of witnesses George Johnson and TF1-334.

(ii) Defence Witnesses

488. Defence witnesses DAB-095, DAB-033, DBK-037, DBK-012, DBK-131 and DBK-129 testified that FAT Sesay, George Johnson and Foday Kallay were the senior commanders at the West Side and not the Accused Kamara.

489. Witness DAB-095, an SLA infantry soldier,[975] in cross-examination stated that he did not know whether the Accused Kamara was the commander of the West Side Boys but that he knew Foday Kallay was the commander in the West Side.[976] The witness testified that he only travelled to Port Loko District to surrender, an assertion which casts some doubt on his credibility as Port Loko remained a rebel stronghold.[977]

490. Witness DAB-033, a soldier with the SLA promoted to the rank of corporal in 1996,[978] testified that in February 1999, he went together with Prosecution witness George Johnson to Four Mile.[979] George Johnson was in charge of the troops at Four Mile. A religious council requested that the AFRC release child soldiers, and the witness testified that he sought permission to do so from Johnson. The children were released although other commanders, including 'Gunboot' disagreed and threatened the witness. The witness subsequently travelled to Makeni, Bombali

[970] George Johnson, Transcript 16 September 2005, p. 63.
[971] George Johnson, Transcript 16 September 2005, pp. 64-67.
[972] George Johnson, Transcript 16 September 2005, p. 67.
[973] George Johnson, Transcript 16 September 2005, p. 69.
[974] TF1-153, Transcript 23 September 2005, pp. 90-91.
[975] DAB-095, Transcript 20 September 2006, pp. 4-7.
[976] DAB-095, Transcript 28 September 2006, pp. 70-74.
[977] DAB-095, Transcript 20 September 2006, pp. 15-18.
[978] DAB-033, Transcript 25 September 2006, pp. 38, 83.
[979] DAB-033, Transcript 25 September 2006, pp. 77-78.

District where he stayed for two months.[980] On cross-examination, the witness testified that he went to the West Side after the Lomé Peace Accord was signed and at that time Foday Kallay was the overall commander and George Johnson was his second in command. The witness testified that he knew this from radio communications he heard from February through April 1999.[981] However, the witness also testified in cross-examination that as he was not at the West Side, he did not know if Kamara was the commander.[982]

491. Witness DBK-037, a soldier in the SLA[983] testified that at Four Mile, "FAT" was the overall commander but that he was not at the "point section" which he left for Junior Lion to command. He knew this because the appointment was made by FAT Sesay in public and the witness was present.[984] On cross-examination, the witness stated that after the retreat from Freetown, he worked with George Johnson in the area known as the 'West Side' in Port Loko District up until the day the Lomé Peace Accord was signed in Togo.[985] According to the witness, during that time Junior Lion was under the authority of "FAT" who was the commander at West Side, not Kamara.[986]

492. Considering the structure of the AFRC troops at that time, the Trial Chamber notes the evidence of Defence witness DBK-012 who testified that he was both present in Port Loko District throughout the relevant period and held a relatively important position within the AFRC forces at that time.

493. The witness, a member of the SLA since 1989/1990,[987] testified that after the invasion of Freetown in 1999, he retreated to Benguema for 2 to 4 weeks, went on an operation in Tumbo, and then went to Lumpa for two weeks before moving to Four Mile with Junior Lion, "05" and other AFRC commanders,[988] placing him in Port Loko District in approximately mid-March or early April 1999. He testified that the Accused Kamara was not at Four Mile at this time.[989] The witness testified that he was a company commander and he, together with Junior Lion, led civilians and troops through Magbeni to Rogberi, also known as the 'West Side'.[990] The witness testified that at West Side, it was FAT Sesay who was in command and George Johnson who was second in

[980] DAB-033, Transcript 25 September 2006, pp. 80-81.
[981] DAB-033, Transcript 25 September 2006, pp. 108-110.
[982] DAB-033, Transcript 2 October 2006, p. 106.
[983] DBK-037, Transcript 3 October 2006, pp. 75-80.
[984] DBK-037, Transcript 4 October 2006, pp. 18-19.
[985] DBK-037, Transcript 4 October 2006, p. 51.
[986] DBK-037, Transcript 4 October 2006, pp. 50-54.
[987] DAB-012, Transcript 5 October 2006, pp. 74-75.
[988] DAB-012, Transcript 6 October 2006, pp. 38-41.
[989] DAB-012, Transcript 6 October 2006, p. 41.

command;[991] however, on cross-examination he testified that Johnson was overall commander at the West Side.[992] He testified that Johnson organised the operation to Port Loko to combat ECOMOG, called a muster parade prior to the attack, gave the order to launch the offensive at Manaarma, ordered the witness to kill a woman who was suspected of having distributed arms and ammunition to the Gbethis, and was present during the offensive against ECOMOG in Port Loko.[993] The witness testified that he did not see the Accused Kamara at West Side nor did he hear that he was there.[994]

494. DBK-131 testified that he was a commander with the AFRC fighting forces during the attack on Freetown and thereafter.[995] On cross-examination he testified that he was one of the "West Side Boys" under the command of Foday Kallay and that he did not hear that Kamara was a commander in the West Side.[996]

495. Witness DBK-129 testified that he was present in the 'West Side' and that George Johnson was the overall commander, that 'Tito' was second in command, but that Foday Kallay arrived later and took over command. He stated that he never saw the Accused Kamara and that Kamara did not have command over any troops on the 'West Side'.[997]

496. In reconciling the evidence examined above, the Trial Chamber generally accords greater weight to the evidence of witnesses who were present in Port Loko District over that of witness DAB-095 who testified that he was only present in Port Loko District immediately prior to the cease fire and DAB-033 who testified that he was primarily in Makeni, Bombali District during the relevant period.

497. Defence witnesses DAB-095, DAB-033, DBK-131 and DBK-129 all testified that Foday Kallay was overall commander at the West Side. However, the Trial Chamber is satisfied that the evidence only indicates Foday Kallay may have assumed the position of senior command but only following the relevant period. Witness DAB-095 testified that Foday Kallay was the commander in the West Side, but the witness only arrived in Port Loko District immediately prior to the ceasefire. Witness DAB-033 testified that he went to the West Side after the Peace Accord was signed and that Foday Kallay was overall commander at that time. Witness DBK-129 testified that initially

[990] DAB-012, Transcript 6 October 2006, pp. 41-43.
[991] DAB-012, Transcript 6 October 2006, pp. 43-44.
[992] DAB-012, Transcript 9 October 2006, p. 76.
[993] DAB-012, Transcript 6 October 2006, pp. 44-49
[994] DAB-012, Transcript 6 October 2006, p. 49.
[995] DBK-131 26 October 2006, p. 59.
[996] DBK-131 26 October 2006, pp. 61-62.

Junior Lion was overall commander and that Foday Kallay arrived later and took over command. Witness DBK-131 testified that he was a "West Side Boy" under the command of Foday Kallay which the Trial Chamber finds consistent with the evidence of Prosecution Witness TF1-334 who testified that "Kallay" was a battalion commander at the time but which does not suggest that Foday Kallay was a senior commander.

498. The Trial Chamber notes further that none of the witnesses described the presence of Foday Kallay in Port Loko District outside of the 'West Side' nor did any of the witnesses provide evidence of the day to day exercise of authority or active role played by Foday Kallay. The evidence thus amounts to the mere assertion of his position, late in the relevant period, which the Trial Chamber gives little weight in light of more detailed evidence which suggests a different command structure.

499. Defence witness DBK-037 stated that FAT Sesay was the overall commander at Four Mile and the 'West Side'. Witness DBK-012 testified that FAT Sesay was the overall commander at the 'West Side'. However, the Trial Chamber finds the evidence of Witness DBK-012 unreliable on this point as on cross-examination he accepted that it was Junior Lion who was overall commander at the 'West Side'.[998] The Trial Chamber finds the testimony of witness DBK-037 regarding the command structure unreliable in that he insisted throughout his testimony that FAT Sesay was the overall commander from the death of SAJ Musa in Benguema throughout the invasion and retreat from Freetown in January 1999. While the Trial Chamber does not discount the possibility that FAT Sesay was a commander during these periods, it finds that more senior commanders were also active.

(iii) Findings

500. The Trial Chamber is satisfied beyond reasonable doubt that the Accused Kamara was the overall commander of the AFRC forces in Port Loko District, and that he had substantial authority in this position.

[997] DBK-129, Transcript 9 October 2006, pp. 19, 85, 88-90, 95.
[998] DBK-012, Transcript 18 October 2006, p.17.

D. Santigie Borbor Kanu

1. Allegations and Submissions

501. The Indictment alleges that "at all times relevant to the Indictment" the Accused Kanu was a "senior member of the AFRC, Junta and AFRC/RUF forces."[999] It also alleges that he was a "member of the Junta governing body, the AFRC Supreme Council."[1000] It further charges that he was "a senior commander of the AFRC/RUF forces in Kono District"[1001] between mid February 1998 and about 30 April 1998[1002] and "a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali District between about mid February 1998 and 31 December 1998."[1003] Finally, it alleges that the Accused Kanu, together with the Accused Brima and Kamara "was also one of three commanders of AFRC/RUF forces during the attack on Freetown on 6 January 1999."[1004]

502. In its Final Brief, the Kanu Defence submits that the Prosecution failed to establish that Kanu had any form of command and control over the perpetrators of the crimes outlined in the Indictment[1005] It further argues that from the arrival of the Accused in Koinadugu District, the Accused Kanu was responsible for protecting and taking care of civilians, particularly family members of soldiers.[1006]

2. Personal Background of Kanu

503. The Defence did not challenge the personal information adduced by the Prosecution regarding the Accused Kanu. The Prosecution alleges that Kanu was born in March 1965 in Maforki Chiefdom, Port Loko District or in Freetown.[1007] Kanu joined the Sierra Leone Army on 3 December 1990 at the Benguema Training Camp, Freetown, Western Area.[1008] He was a Corporal at the time of the coup in May 1997.[1009]

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[999] Indictment para. 28.
[1000] Indictment para. 29.
[1001] Indictment para. 30.
[1002] Indictment para. 30.
[1003] Indictment para. 30.
[1004] Indictment para. 30.
[1005] Kanu Final Brief, para. 366.
[1006] Kanu Final Brief, paras 267-279.
[1007] Indictment, para. 5.
[1008] Exhibit D 11, "Discharge Book".
[1009] Exhibit D 11, "Discharge Book".

504. The Kanu Defence does not dispute that the Accused Kanu was nicknamed 'Five-Five' after the last two digits of his regimental identification number SLA/18164955. The Kanu Defence does, however, argue that 'Five-Five' was an extremely common nickname, and therefore that any Prosecution witnesses referring to 'Five-Five' should have been required to specify whether or not they were referring to the Accused Santigie Kanu.[1010]

3. Positions of Responsibility in the AFRC Government (25 May 1997 – 14 February 1998)

505. The Indictment alleges that the Accused was a senior member of the Junta government, and a member of the Junta governing council.[1011] The Prosecution, in its Final Trial Brief, submits that as a member of the Supreme Council "the third Accused was only beneath Johnny Paul Koroma, SAJ Musa, and the three PLOs in the Junta hierarchy."[1012] It therefore asks the Chamber to find that the Accused was liable for planning, instigating or otherwise aiding and abetting enslavement and the crimes committed in Kenema, Bo and Kailahun Districts.[1013]

506. In its Final Trial Brief, the Kanu Defence submits that the Prosecution failed to adduce evidence that the Accused Kanu was ever present in Bo, Kenema or Kailahun Districts.[1014] In addition, he was not in a position to command and/or control the individuals responsible for the commission of the crimes.[1015]

(a) Involvement in the 25 May 1997 Coup

507. The Trial Chamber notes that numerous witnesses, both for the Prosecution and for the Defence, testified that the Accused Kanu was one of the individuals who planned and took part in the coup.[1016] The Trial Chamber is therefore satisfied that Kanu was involved in the 1997 Coup.

508. The Trial Chamber is satisfied that in return for his participation in the coup, the Accused Kanu was rewarded with a position on the AFRC Supreme Council. He remained in this position until that government was ousted by the ECOMOG forces in February 1998.

[1010] Kanu Defence Closing Arguments, Transcripts 8 December 2006, p. 3-6.
[1011] Indictment, paras 29-30.
[1012] Prosecution Final Brief, para. 515.
[1013] Prosecution Final Brief, para, 520.
[1014] Kanu Defence Final Brief, para. 367.
[1015] Kanu Defence Final Brief, paras 366-384.
[1016] TF1-033, Transcript 11 July 2005, p. 6; Gibril Massaquoi, Transcript 7 October 2006, p. 76; TF1-334, Transcript 17 June 2005, p. 69; TF1-114, Transcript 14 July 2005, p. 118-119; DAB-079, Transcript 28 July 2006, p. 62, DAB-025, Transcript28 July 2006, p. 112; TRC-01, Transcript 16 October 2006, p. 101; DAB-085, Transcript 20 July 2005, p. 52; DAB-079, Transcript 28 July 2006, pp. 62, 68, 69; DAB-085, Transcript 20 July 2006, p. 52; DAB-063, Transcript 2 August 2006, pp. 60-62.

(b) Council Membership

509. The Trial Chamber finds that the Accused Kanu was a member of the Supreme Council during the AFRC junta.[1017] It further concludes the Accused was an 'Honourable.'[1018]

(c) Other Activities

510. There is further evidence of the presence of the Accused Kanu at coordination meetings between high level members of the AFRC and RUF in Freetown.[1019] In addition, TF1-019 testified that he saw Sam Bockarie and "Honourable Five-Five" address a meeting at the Koidu community centre during the Junta period. The men told those present that they were now in control of the government and that they wanted the support of the youth.[1020] Defence witness DAB-042 also testified that Kanu addressed a meeting in Koidu town in which he encouraged the cleaning and upkeep of the town.[1021] The Trial Chamber concludes that while this evidence corroborates documentary evidence that the Accused had a position in the AFRC government, it provides no indication of his seniority within that government.

511. The Prosecution has adduced no evidence that the Accused Kanu held a ministerial or other high ranking government position. In addition, there is no evidence regarding his role and/or contributions at coordination meetings. Thus, while the Trial Chamber concludes that the Accused Kanu was a member of the Supreme Council, and that he attended coordination meetings with high level members of the AFRC and RUF, it is unable to determine whether he played an influential role in the running or policy-making of the AFRC Government

512. The Accused Kanu was in Freetown during the February attack of ECOMOG on Freetown and on 13 February 1998 retreated along the same route as the Accused Kamara. He was present when the troops reconvened at Masiaka and later at Makeni.[1022]

[1017] Exhibit P- 6, "The Sierra Leone Gazette," 4 September 1997, listing members of the Armed Forces Revolutionary Council *Secretariat;* exhibit P- 7, "The Sierra Leone Gazette," 18 September 1997, listing members of the Armed Forces Revolutionary *Council*; Gibril Massaquoi, Transcript 7 October 2005, p. 77;
[1018] DAB-063, Transcript 2 August 2006, pp. 60-62; DAB-005, 12 October 2006, pp. 17-18.
[1019] TF1-045, Transcript 19 July 2005, pp. 64-66, 71-72; Gibril Massaquoi, Transcript 7 October 2005, pp. 37, 83, 86, 93 ; exhibit P-69, "AFRC Secretariat, Minutes of Meeting held on 9 December 1997." TF1-184, Transcript 30 September 2005, p. 36.
[1020] TF1-019, Transcript 30 June 2005, pp. 85-87.
[1021] DAB-042, Transcript 15 September 2006, pp. 89, 96.
[1022] TF1-334, Transcript 17 May 2005, pp. 70-71, 86.

4. Kanu's Role in Kono and Kailahun Districts (February 1998 – May 1998)

513. The Indictment alleges that the Accused Kanu was "a senior commander of the AFRC/RUF forces in Kono District. In addition, Santigie Borbor Kanu was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone [...]".[1023] However, in its closing arguments, the Prosecution stated that "it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu, however, can still be held liable for those crimes under a theory of joint criminal enterprise,"[1024] a point it reiterates in its Final Brief.[1025]

514. In its Final Brief, the Kanu Defence argues that the Prosecution evidence fails to prove that the Accused stayed more than a few days in Kono after the fall of the AFRC regime.[1026]

515. Both parties have agreed that the Accused Kanu was not present during the relevant period. The Prosecution does not argue that Kanu had command responsibilities. Thus, having dismissed Joint Criminal Enterprise as a mode of individual criminal responsibility, the Trial Chamber makes no findings on the Role of the Accused in Kono District.

5. Kanu's Role in Koinadugu and Bombali Districts (June 1998 – November 1998)

516. The Indictment alleges that the Accused Kanu was "a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid-February 1998 and 31 December 1998."[1027] In its Final Brief, the Prosecution clarifies that the case of the Prosecution is that from the advance to Mansofinia to Camp Rosos, the First Accused was at all times the commander of the SLA troops, while the Second Accused was second in command to the First Accused and the Third Accused held a senior command position.

517. The Kanu Defence submits that Kanu was not part of the advance team moving with Prosecution witness George Johnson from Mansofinia to Camp Rosos further arguing that several groups of AFRC soldiers passed through the area over a period of months.[1028] The Kanu Defence

[1023] Indictment, para. 30.
[1024] Prosecution Closing Arguments, Transcript 7 December 2006, pp. 34-35.
[1025] Prosecution Final Trial Brief, para. 1279.
[1026] Kanu Final Brief, para. 386.
[1027] Indictment, para. 30.
[1028] Kanu Final Brief, para. 392-394.

also contends that the Accused Kanu was responsible for protecting civilians and not for exploiting them.[1029]

(a) Kanu's Position within the AFRC Troops from Mansofinia to Rosos

(i) Prosecution Witnesses

518. The Trial Chamber recalls that following the retreat of the AFRC fighting forces from Kono District, SAJ Musa instructed the Accused Brima to find a base in Bombali district.[1030] Kanu joined Brima on SAJ Musa's instructions.[1031]

519. Witness TF1-334 testified that the Accused Kanu was Chief of Staff during this journey and that he was directly subordinate to the Accused Kamara and superior to the battalion commanders.[1032]

520. Witness George Johnson testified that the Accused Kanu held the G-5 position, and that he was in charge of all abductees.[1033] While George Johnson corroborated TF1-334's evidence that at Mansofinia the Accused Brima was the overall commander and the Accused Kamara his Deputy, his testimony suggests that FAT Sesay was third in command, and that a known AFRC commander[1034] was fourth in command. The Trial Chamber observes that in cross-examination it emerged that the witness had given conflicting information about the G5 position in Mansofinia.[1035] The Trial Chamber has found that the evidence of witness George Johnson in relation to the G4 and G5 positions in Kono District was unreliable, and in the absence of the corroboration of other witnesses it does not accept this aspect of the witnesses' evidence in relation to Bombali District.

(ii) Defence Witnesses

521. The Trial Chamber refers to its findings above on the credibility and reliability of witnesses testifying about the command structure during the advance of the AFRC fighting forces from Mansofinia in Koinadugu to Camp Rosos in Bombali District. [1036]

[1029] Kanu Final Brief, para. 267.
[1030] Context of Alleged Crimes, para. 379, *supra*.
[1031] TF1-334, Transcript 20 May 2005, p. 87.
[1032] TF1-334, Transcript 20 May 2005, pp. 92-93, 100-101; TF1-334, Transcript 16 June 2005, pp. 20-21.
[1033] George Johnson, Transcript 15 September 2005, pp. 50, 59.
[1034] Named admitted under seal: Exhibit P-12.
[1035] George Johnson, Transcript 21 September 2005, pp. 15-16.
[1036] Role of the Accused, Brima, paras 356-377, *supra*.

(b) Findings

522. The Trial Chamber finds that the Prosecution evidence with regard to Kanu being third in command in Koinadugu and Bombali Districts was insufficient. Witness TF1-334 does not specifically state that as Chief of Staff, the Accused Kanu was third in command in Bombali District. He testified that the Accused Kanu was third in command while Chief of Staff in Freetown.[1037] Moreover, the other witnesses who testify that the Accused Kanu was Chief of Staff in Bombali District do not state that this made him third in command.[1038] In his testimony on Bombali District, witness TF1-334 stated that as Chief of Staff the Accused Kanu passed on orders from the Accused Brima to the Operations Commander.[1039] However, he also stated in cross-examination that the Accused Kanu's role as Chief of Staff was to enforce orders given by the Accused Brima, the Accused Kamara and the Operations Commander.[1040] The Operations Commander reported to the Accused Kamara and Brima.[1041]

523. Prosecution Witnesses TF1-334 testified that the Accused Kanu was "in total control" of abducted women.[1042] After the operation at Karina, in which women were abducted, the Accused Kanu informed commanders that they would have to "sign for these women."[1043] The witness also explained that any man who had a problem with his "wife" would notify Kanu, and vice-versa. As will be described in further detail below, in cases in which a soldier had a problem with his "wife," the Accused would contact the "Mammy Queen." If the Accused Kanu found that the "wife" was guilty of misbehaviour, she would either be beaten or locked "for some time" in a box in which bags of rice were usually stored.[1044]

524. The witness further explained that the Accused Kanu issued written disciplinary orders for abducted women which he gave to the Mammy Queen." The witness recalled one such disciplinary order for women who were alleged to have "misbehave[d] to her husband."[1045] Kanu implemented the disciplinary system on at least one occasion, ordering the "Mammy Queen" to give a woman he

[1037] TF1-334, Transcript 13 June 2005, pp. 58-61. *See also* George Johnson, Transcript 16 September 2005, pp. 12-13; TF1-184, Transcript 27 September 2005, pp. 55-56.
[1038] Role of Accused, para 522, *supra*.
[1039] TF1-334, Transcript 20 May 2005, p.100- 101.
[1040] TF1-334, Transcript 16 June 2005, p. 67.
[1041] TF1-334, Transcript 20 May 2005, pp. 99-100, 102.
[1042] TF1-334, Transcript 24 May 2005, pp. 62.
[1043] TF1-334, Transcript 24 May 2005, pp. 62.
[1044] TF1-334, Transcript 24 May 2005, 62-64.
[1045] TF1-334, Transcript 24 May 2005, pp. 65-66.

found guilty "twelve lashes' which she received.[1046] No evidence has been adduced suggesting that this system also applied to former soldiers who treated their abducted wives badly.

525. Witness TF1-334 testified that the Accused Kanu was also in charge of military training at Camp Rosos, including the training of abducted civilians.[1047] George Johnson testified that Kanu and FAT Sesay were in charge of providing military training to civilians, including children, at Camp Rosos.[1048]

526. The Trial Chamber is satisfied that regardless of whether the Accused Kanu held the post of G-5, or was third in command in Koinadugu and Bombali Districts, he was a senior commander of the AFRC fighting force. In addition, he was the Commander of the AFRC fighting force in charge of abducted civilians including women and children. Whether he had effective control over the AFRC fighting forces will be assessed elsewhere in this Judgement.[1049]

(c) Kanu's Alleged Detention in 'Colonel Eddie Town'

527. The Trial Chamber has found that, while the three Accused were arrested for an indeterminate period at Colonel Eddie Town, they were released and reinstated by SAJ Musa at Newton, on the outskirts of Freetown.[1050]

6. Kanu's Role in Freetown and the Western Area (January 1999 – February 1999)

528. The Prosecution, in its Final Brief submits that the Accused Kanu was present in Freetown during the January 1999 invasion and that the invasion was planned. As the third in command, it asks the Trial Chamber to infer that he actively participated in the planning phase.[1051] It further alleges that the Accused Kanu personally committed at least two unlawful killings in the Freetown area, ordered the commission of specific crimes, and aided and abetted others.[1052]

529. In its Final Brief, the Kanu Defence makes no specific submissions on Kanu's role in Freetown and the Western Area.

[1046] TF1-334, Transcript 24 May 2005, pp. 68-69.
[1047] TF1-334, Transcript 24 May 2005, p. 24.
[1048] George Johnson, Transcript 15 September 2005, pp. 64-65.
[1049] Responsibility of Accused, Kanu, paras 2034-2040, *infra*.
[1050] Role of Accused, Brima, paras 385-388, *supra*.
[1051] Prosecution Final Brief, para. 1629.
[1052] Prosecution Final Brief, paras 1630-1636.

530. The Trial Chamber refers to its discussion above about the credibility and reliability of the witnesses who testified about the invasion of Freetown in January 1999.[1053]

531. Witness TF1-184 testified that while SAJ Musa was alive, 'Five-Five' was one of a number of commanders and his rank was lieutenant colonel.[1054] Both witnesses TF1-184 and TF1-334 testified that following the death of SAJ Musa, Five-Five was promoted to brigadier and made army Chief of Staff.[1055] Witness Gibril Massaquoi testified that after his release from Pademba Road prison on 6 January 1999, he attended a meeting at State House at which he learnt that the Accused Kanu was "Chief of Army Staff". [1056] Witness TF1-334 testified that on 6 January 1999, he heard the Accused Kanu on the local radio. Kanu identified himself as the Chief of Staff and stated that the army had taken over the government of President Kabbah and their commander was Lieutenant General Alex Tamba Brima.[1057] Witness TF1-334 stated that this made him third in command.[1058]

532. The Trial Chamber finds that he was active in his position as Chief of Staff. George Johnson testified that at the meeting in Orugu village, chaired by Brima and attended by the AFRC commanders, in which the movement to Freetown was planned, Kanu reiterated Brima's orders to the commanders. Kanu specifically reminded them about Brima's order that police stations should be burnt down and that targeted persons should be executed.[1059]

533. As will be discussed elsewhere in this Judgement, there is credible evidence that the Accused Kanu personally committed crimes during this period and that he ordered the commission of crimes and that his orders were obeyed.[1060]

534. The Trial Chamber notes that the Accused Kanu was based at State House, the headquarters of the AFRC fighting forces.[1061] He attended the meeting of commanders held there on the evening of 6 January at which an attack on Wilberforce was discussed.[1062] The Trial Chamber further observes that the evidence shows that Kanu was almost always at Brima's side during the Freetown invasion and retreat.[1063]

[1053] *See* Role of the Accused, Brima, paras 396-419, *supra*.
[1054] TF1-184, Transcript 27 September 2005, pp. 42-43.
[1055] TF1-184, Transcript 27 September 2005, p. 56; TF1-334, Transcript 13 June 2005, pp. 58-60.
[1056] Gibril Massaquoi, Transcript 7 October 2005, p. 120.
[1057] TF1-334, Transcript 14 June 2005, pp. 19-20.
[1058] TF1-334, Transcript 13 June 2005, p. 60.
[1059] George Johnson, Transcript 16 September 2005, pp. 16-17.
[1060] Responsibility of Accused, paras 2050-2061, *infra*.
[1061] TF1-334, Transcript 14 June 2005, pp. 4-5; Transcript 13 June 2005 p. 105; Gibril Massaquoi, Transcript 7 October 2005, p. 122; Transcript 10 October 2005, p. 3; TF1-153, Transcript 23 September 2005, p. 3.
[1062] Gibril Massaquoi, Transcript 7 October 2005, p. 120; Transcript 11 October 2005, pp. 5, 65.
[1063] George Johnson, Transcript 16 September 2005, pp. 13, 17.

(a) Findings

535. The Trial Chamber is satisfied that the Accused Kanu was Chief of Staff and also the commander in charge of civilian abductees throughout the attack on Freetown on 6 January 1999 and the retreat to Newton.

7. Kanu's Role in Port Loko District (February 1999 – July 1999)

536. In its Final Brief, the Prosecution concedes that the Accused Kanu was not present in Port Loko during the Indictment period, and alleges instead that during this period he and the Accused Brima "fled with the RUF leadership to Makeni" in Bombali District.[1064]

537. The Trial Chamber is satisfied that the Accused Kanu remained in the Western Area until early April 1999 when he went to Makeni, Bombali District. The Trial Chamber therefore makes no findings with regards to the Role of the Accused Kanu in Port Loko District.

[1064] Prosecution Final Brief, para. 34.

VIII. MILITARY STRUCTURE OF THE AFRC FIGHTING FORCE

A. Preliminary Remarks

538. All three Accused are charged with individual criminal responsibility for the crimes alleged in the Indictment pursuant to Article 6(3) of the Statute, which provides that:

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

It is established in the jurisprudence that one of the requisite elements for a finding of superior responsibility pursuant to Article 6(3) is the existence of a superior-subordinate relationship between the accused and the perpetrator/s of the crime. This requirement has been widely referred to as the 'effective control test'.[1065]

539. The doctrine of effective control was traditionally applied to commanders in regular armies, which tend to be highly structured and disciplined forces. The AFRC was less trained, resourced, organised and staffed than a regular army. However, it mimicked one.[1066] It was largely composed of former government soldiers. As will be seen below, it had a command structure, although this underwent change as the authority of key personalities, including RUF commanders when the two groups worked together, waxed and waned. Rules and systems facilitating the exercise of control existed, yet these rules and systems were legitimated not by law but by the authority of the individual commanders. The commanders were not ultimately accountable to any individual or body external to the AFRC, as it existed independently of any State structure.

540. This does not mean that individual AFRC commanders were necessarily less effective in their control of their subordinates. The three Accused were senior members of the AFRC and any ability they had to control their subordinates would have been derived at least in part by virtue of their positions within this organisation. As a result, the Trial Chamber is of the view that analysing the structure of the AFRC is necessary in determining whether the three Accused are liable as superiors pursuant to Article 6(3). The Trial Chamber will examine the evidence relevant to this

[1065] *See* Applicable Law, paras 784-790, *infra*.
[1066] *See further* Exhibit D36, Major-General Prins, "Military Expert Witness Report on the Armed Forces Revolutionary Council Faction" [hereinafter "Prins Report"], para. 65.

question below, without predetermining the individual criminal responsibility of the three Accused, the Trial Chamber's findings on which are set out elsewhere in this Judgement.[1067]

B. Submissions of the Parties

541. The Prosecution submits that the AFRC faction was a military organisation with effective command and control in the context of the Sierra Leone war. It contends that although the AFRC was not a perfect military organisation, it was nonetheless a military organisation with a clearly recognisable military hierarchy and structure upon which a strong command capability was based. The AFRC, it is alleged, had the functional characteristics of a military organisation, and it had internal coherence as a military organisation.[1068] According to the Prosecution, the AFRC as a military organisation was probably the most 'effective' one in Sierra Leone prior to the 6 January 1999 invasion.[1069]

542. The Defence jointly submit that the history of the SLA prior to May 1997 shows a total breakdown of military organisation and as the AFRC faction consisted mostly of former members of this dysfunctional SLA, it too had only the semblance of a military structure and hierarchy.[1070] The Defence jointly submit that these fundamental military deficiencies form a *prima facie* basis for the absence of effective command and control within the AFRC faction.[1071]

543. The Defence jointly submit that the AFRC faction was an irregular military force which lacked the strong, clearly defined chain of command and disciplinary system evident in regular armies and that by virtue of this the three Accused did not have the material ability to control their subordinates.[1072] The Kanu Defence argues that forces engaged in guerrilla combat generally do not have a proper disciplinary system and chain of command and without these features, a commander's authority remains merely "a powerful influence over an unstructured, intimidating and oppressive force".[1073]

[1067] Responsibility of the Accused, *infra*.
[1068] Prosecution Final Brief, para 802; Exhibit P-36, Iron Report, para.E6.2.
[1069] Prosecution Final Brief, para 801, Colonel Iron, Transcript 13 October 2005, p. 65.
[1070] Kanu Final Brief, paras 243-247; Brima Final Brief, para. 103; Kamara Final Brief, para. 64.
[1071] Brima Final Brief, para. 323; Kamara Final Brief, paras 64, 67; Kanu Final Brief, para. 247.
[1072] Brima Final Brief, paras 100-102; Kamara Final Brief, paras 64-65; Kanu Final Brief, paras 228-247.
[1073] Kanu Final Brief, para. 228.

544. The Kanu Defence also submitted that the Prosecution Military Expert Report lacks probative value since he relied on a selection of the Prosecution witnesses, some of whom were clearly inconsistent with each other.[1074]

C. Military Uniforms

545. In conflicts involving irregular forces or non-formal militaries, international criminal jurisprudence has relied in some cases on distinctive uniforms, patches or insignia worn by personnel to identify groups as military organisations. In the Trial Chamber's view, the wearing of military uniforms or identifying insignia may also have identified the AFRC as a separate military organisation within the conflict. This is so because the AFRC soldiers were mostly former members of the SLA who retained their military uniforms as long as possible.

546. In the conflict in Sierra Leone it was sometimes difficult for the public to identify with certainty the group responsible for crimes committed in their communities. Many of the witnesses referred to persons wearing combat uniform as 'soldiers'[1075] and those wearing mixed civilian and combat, often with red headbands, as 'rebels'.[1076] However, the witnesses' conclusions were not always accurate, as members of both factions regularly wore civilian clothes or mixed civilian/combat clothes.[1077] Some even wore stolen ECOMOG uniforms.[1078]

547. The Trial Chamber is often able to distinguish actions committed by the various groups during the conflict, as many witnesses were able to identify members of the AFRC/SLA, RUF and CDF that were personally known to them. The use of unique pseudonyms such as 'Superman' and 'Savage' also facilitated identification of the faction responsible for particular incidents. Even where the witness only knew the participant in the conflict by their ordinary name, the Trial

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[1074] Kanu Final Brief, para. 260.
[1075] Witness TF1-072 stated that "the soldiers were dressed in soldier uniforms": Transcript 1 July, p. 7. Witness TF1-216 also testified that "the soldiers all had uniforms and were armed": Transcript 27 June 2005, pp. 78-79.
[1076] Witness DBK-089 described a rebel as someone who does not wear a uniform, who attacks and cuts people: Transcript 14 July 2006, pp. 20, 45-46. Witness DAB-123 stated that the rebels who attacked his village were wearing a mix of military and civilian clothing. He was referring to the RUF: Transcript 12 September 2005, pp. 24-28; DAB-090 stated that the rebels wore mixed civilian and combat clothes: Transcript 17 July 2006, p.55.
[1077] George Johnson testified during the February 1998 retreat from Freetown, members of the RUF were mainly wearing civilian clothes, but some wore military clothes. Some of the AFRC troops were dressed in military fatigues, but some wore civilian attire: Transcript 15 September 2005, p. 27. Witness Gibril Massaquoi testified that in the January 1999 attack on Freetown, fighters wore a mixture of clothing. Some wore ECOMOG military uniforms and others wore T-shirts with military trousers. He stated that it was difficult to distinguish between RUF and AFRC unless you knew them before: Transcript 7 October 2005, p. 125. *See also* TF1-062, Transcript 27 June 2005, p. 8; TF1-206, Transcript 28 June 2005, p. 88; DAB-098, Transcript 4 September 2006, p. 14; DSK-103, Transcript 13 September 2006, p. 10.
[1078] Witness TF1-334 testified that AFRC commander 'Savage' and his men wore Nigerian ECOMOG uniforms during the attack on Tombodu: Transcript 20 May 2005, p. 12.

Chamber is often able to infer to which group that participant belonged through other pieces of evidence, such as the location and timing of the relevant incident.

D. Evidentiary Considerations

(a) Military Expert Witnesses

548. Both the Prosecution and the Defence commissioned Military Expert Reports on the structure of the AFRC faction, which were admitted as evidence under Rule 89(c) of the Rules, and both experts gave oral evidence.[1079] Prosecution Military Expert was Colonel Richard Iron, an officer in the British Army currently assigned to NATO. The Defence Military Expert was Major-General Prins of the Royal Netherlands Marine Corps. While both witnesses had impressive military backgrounds,[1080] the Trial Chamber found Colonel Iron to be a more credible expert witness for the following reasons.

549. First, Colonel Iron had more experience in land forces than Major-General Prins, whose experience was mostly naval.[1081] Secondly, Colonel Iron had more operational experience than Major-General Prins.[1082] Thirdly, Major-General Prins visited none of the places or battle sites to which Colonel Iron referred. Fourthly, Colonel Iron's report was based primarily on interviews with witnesses who appeared before the court, whereas Major-General Prins' report relied heavily on secondary sources. Fifthly, the primary sources which Major-General Prins did rely on were all high ranking officers, because in his view junior ranked officers have only limited knowledge of matters such as the overall structure of a military organisation.[1083] In the context of the AFRC, the Trial Chamber disagrees. The AFRC coup was a coup by junior ranks and, as a result, the AFRC in the jungle was made up of lower ranking officers. In contrast, Colonel Iron interviewed lower ranking AFRC members who were actually involved in the fighting, although most of his report was based on interviews with only three such individuals.[1084]

550. Moreover, Major-General Prins' evidence was largely discredited in cross-examination. Throughout cross-examination he was inflexible in shifting from the position taken in his report, even when confronted with new evidence which, had he been aware of it previously, may have

[1079] Exhibit P-36, Iron Report; Exhibit D-36, Prins Report. Col. Iron testified on 12, 13 and 14 October 2005 and Major-General Prins testified on 17, 19, 20 and 24 October 2006.
[1080] Col. Iron, Transcript 12 October 2005, pp. 5-8; Major-General Prins, Transcript 17 October 2006, p. 3-18.
[1081] Major-General Prins, Transcript 19 October 2006, pp. 41-43.
[1082] Major-General Prins, Transcript 19 October 2006, p. 37.
[1083] Major-General Prins, Transcript 17 October 2006, pp. 55 – 56.
[1084] Witnesses George Johnson, TF1-334 and TF1-184.

altered his findings. For instance, he was reluctant to accept the new evidence of witness TRC-01 and other Defence witnesses which contradicted his own position.[1085]

551. Ultimately, however, the Trial Chamber considers both military expert reports to be of limited use in examining the organisational structure of the AFRC faction. This is firstly because their reports are primarily relevant for only a short temporal and geographic period in the Indictment, as both experts focused on the organisation of the AFRC troops from Colonel Eddie Town to Freetown (November 1998 through January 1999). However, throughout the Indictment period (May 1997 through January 2000), the AFRC underwent significant organisational changes at certain key points and it is therefore erroneous to assume that the structure at one point in time is reflective of the structure throughout the entire period.

552. In addition, the Trial Chamber found the methodology used by the experts of little assistance. Both experts examined the AFRC with a view to determining whether it was a traditional military organisation, using a four pronged test devised by Colonel Iron.[1086]

553. The experts defined a number of structural features of traditional military organisations which, in the Trial Chamber's view, were present in the AFRC in only a rudimentary form. For example, the experts discussed the importance of the span of command, which refers to the number of units or sub-units at any one level that one person might command.[1087] Colonel Iron explained that the establishment of sub-units at each hierarchical level of command increases the control that each individual commander possesses.[1088] The evidence indicates that AFRC troops were divided into battalions, but the number of battalions varied at different times and the number of men in each battalion appears to have fluctuated.[1089] In a regular army, a "staff" is appointed to assist the commander.[1090] While SAJ Musa established some kind of staff structure at Colonel Eddie Town,[1091] the evidence establishes that the AFRC officers lacked sufficient military training to properly fulfil staff functions.[1092]

[1085] Major-General Prins, Transcript 24 October 2006, p. 53.
[1086] Major-General Prins adopted Colonel Iron's methodology: Exhibit D-36, Prins Report para. 10. The four elements of the test were whether the AFRC had a recognisable military hierarchy and structure; whether it exhibited the characteristics of a traditional military organisation; whether there was coherent linkage between strategic, operational and tactical levels; and whether command was effective.
[1087] Exhibit D-36, Prins Report, para. 66; Exhibit P-36, Iron Report, para. B3.1.
[1088] Iron report, p. B-2, para. B3.1.
[1089] TF1-334, Transcript 16 June 2005, p. 48.
[1090] 'Staff' is the generic term for those officers and other personnel who support and assist the commander: Exhibit P-36, Iron Report, paras B3.2 – B3.7; Colonel Iron, Transcript 12 October 2005, p. 18.
[1091] Exhibit D-36, Prins Report, paras 71 and 89.
[1092] Exhibit D-36, Prins Report, paras 74-80, 89; Colonel Iron, Transcript 13 October 2005, p. 83; George Johnson, Transcript 15 September 2005, p. 10.

554. The experts also considered whether the characteristics typically present in a traditional army were exhibited by the AFRC. The characteristics which they discussed included the intelligence process; communications system; lessons learnt system; recruitment and training; system for promotions and appointments; logistic supply; repair and maintenance of equipment; medical system; pay or reward system for soldiers; religious welfare system and fundraising and finance system.[1093] In the Trial Chamber's view it is of doubtful value to examine some of these characteristics, since they are inapplicable to most irregular militaries. For instance, instead of a pay or reward system for soldiers, AFRC commander Johnny Paul Koroma announced 'Operation Pay Yourself' in February 1998, encouraging soldiers to loot civilian property since the AFRC could not pay them wages.[1094] Other characteristics - intelligence process,[1095] communications system,[1096] lessons learnt system,[1097] recruitment and training[1098] and medical system[1099] – were present in the AFRC only to a limited extent.

555. The Prins Report also examined the SLA prior to May 1997, concluding that it was in a state of disarray when SLA officers staged the coup and established the AFRC.[1100] Evidence was adduced which established that the main cause of this deterioration was the government's decision in 1992 to rapidly expand the army, as a result of which some ten thousand new soldiers were recruited over four years without adequate background checking or personality profiling.[1101] The level of recruits was poor and the organisation was not capable of training these recruits into effective, disciplined soldiers.[1102] The Trial Chamber accepts that the dysfunctional state of the SLA at the time of the coup in 1997 had a detrimental impact on the future military organisation of the AFRC faction.

[1093] Exhibit P-36, Iron Report, paras B4.1-B4.14; Exhibit D-36, Prins Report, paras 94-140.
[1094] TF1-334, Transcript 17 May 2005, pp. 72-73. Witness TF1-334 testified that the operation continued up to Kono District: Transcript 20 June 2005, pp. 104-105. Witness TF1-216 testified that soldiers referred to 'Operation Pay Yourself' following the capture of Koidu Town in March 1998: Transcript 27 June 2005, pp. 78-80, 96. Witness TF1-157 testified that looting AFRC soldiers referred to 'Operation Pay Yourself' in Bombali District in April/May 1998: Transcript 22 July 2005, p. 68.
[1095] Exhibit D-36, Prins Report, paras 95-97;
[1096] Exhibit P.36, Irons Report, paras E3.1-E3.2; Exhibit D.36, Prins Report, paras 98-105.
[1097] Exhibit P.36, Irons Report, paras E3.1-E3.2; Exhibit D-36, Prins Report, paras 112-115.
[1098] Exhibit P.36, Irons Report, paras E3.1-E3.2; Exhibit D-36, Prins Report, paras 120-122.
[1099] Exhibit P.36, Irons Report, paras E3.1-E3.2; Exhibit D-36, Prins Report, paras 131-132.
[1100] Exhibit P.36, Irons Report, paras E3.1-E3.2; Exhibit D.36, Prins Report, para. 172.
[1101] TRC-01, Transcript 16 October 2006, pp. 62, 73. These numbers included both regular forces, trained to serve in the SLA, and irregular forces, namely the Sierra Leone border guards and vigilantes and the CDF.
[1102] Prins report para 26; TRC-01, Transcript 16 October 2006, p. 89.

556. Both experts ultimately agreed that the AFRC was an irregular military force, that is, not a traditional army.[1103] Neither Colonel Iron nor Major-General Prins are experts in irregular military conflict. However, an irregular force can also be an organised force, and it can act in a structured and co-ordinated way.[1104] The fact that the AFRC was not a traditional army does not *per se* permit inferences to be drawn regarding the ability of the AFRC commanders to effectively control their men. Insofar as a developed structure exists within an organisation, this is an important indicium of the superior's ability to exercise effective control and weight must be given to it accordingly. The Trial Chamber therefore considers that the conclusion of the experts' reports is the starting point for an analysis of the structure of the AFRC.

557. In the Trial Chamber's view, three of the structural factors which the experts considered are generic features which are critical to facilitating control and may be equally present in irregular armed groups such as the AFRC. These factors are a functioning chain of command, a sufficiently developed planning and orders process,[1105] and a strong disciplinary system[1106]

558. The Trial Chamber will therefore consider the evidence pertaining to each of these three structural features during four separate periods, which correspond with major changes in the AFRC as the troops moved through the different Districts.[1107] These periods are Kono District (14 February 1998 through approximately end April 1998); Bombali District (approximately May 1998 through November 1998); Freetown and Western Area District (January through approximately February 1999); and Port Loko District (approximately February through April 1999).

559. The Trial Chamber recalls that throughout certain periods covered by the Indictment, the AFRC was operating in separate factions in different geographical areas.[1108] The Trial Chamber will only consider the evidence concerning the military organisation of the AFRC factions associated with the Accused – that is, the military organisation of SAJ Musa's faction during the time he was not accompanied by any of the Accused will not be considered.

560. Given that the AFRC was not a regular army and its organisational structure was somewhat unique, the best evidence on its command structure came from Prosecution and Defence witnesses

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[1103] Exhibit D-36, Prins Report, paras 174, 179; Colonel Iron, Transcript 13 October 2005, pp. 83-84, Major-General Prins, Transcript 17 October 2006, p. 68.
[1104] *See* Major-General Prins, Transcript 20 October 2006, pp. 95, 75.
[1105] Colonel Iron explained that military activity is usually the result of a coherent plan that all or parts of the organisation will attempt to implement. The key part is the decision – the selection of a course of action. Once a decision has been made, it is transmitted to those responsible for its implementation through an orders process: Exhibit P-36, Iron Report, para. B4.4
[1106] Exhibit P-36, Iron Report, p. B-6, para. B4.6.
[1107] *See* Context of Alleged Crimes, *supra*.

who were members of the AFRC in the jungle or associated with it. In its findings below, the Trial Chamber therefore relies primarily on the factual witnesses and considers the opinions of the experts where these are deemed of assistance in analysing the witnesses' testimony.

(b) Factual Witnesses

561. The Trial Chamber notes that the evidence of Prosecution witnesses on the military structure of the AFRC, in particular witnesses TF1-334 and George Johnson, was much more detailed than that of the Defence witnesses. Prosecution witnesses were able to describe a hierarchy with identified positions ascribed to particular commanders, while Defence witnesses tended to state that one individual was the overall commander, another was the deputy and then other individuals were referred to collectively as 'commanders'.[1109] The Trial Chamber correspondingly placed more weight on the evidence of the Prosecution witnesses as they were able to give an overall view of the dynamics and functioning of the troop.

562. Another factor leading the Trial Chamber to place more weight on the evidence of Prosecution witnesses' evidence regarding the command structure was that even the lower ranked witnesses had access to the commanders. For instance, Witnesses TF1-334 and TF1-184 were close assistants to senior AFRC commanders.[1110] Witness George Johnson was the Chief Security Officer to the Accused Kamara in Kono District and later a senior commander himself.[1111] These positions required them to remain close to the commanders and gave them the opportunity to regularly observe their interactions. The Trial Chamber observes that this opportunity was heightened by the environment in which the troops functioned. In contrast to a traditional army, the AFRC commanders were generally located together in the one camp and nearly all decisions were taken orally. Witness TF1-334 explained that "[t]he jungle is not like the city. Myself and other immediate soldiers that we are under the other commanders, they were present whenever there was a meeting in which decisions were taken."[1112]

563. In light of these considerations, the Trial Chamber found the Prosecution witnesses generally more reliable than those of the Defence in arriving at its findings on the military structure of the AFRC.

[1108] *See* Context of Alleged Crimes, *supra*.
[1109] *See for example* DBK-113, Transcript 16 October 2006, pp. 28-29, 32; DBK-131, Transcript 10 October 2006, pp. 88-91. The Defence witness to give the most detail was witness DBK-012, who was himself a senior AFRC commander: Transcript 5 October 2006, pp. 107-112; Transcript 6 October 2006, pp. 6-18.
[1110] The names of these commanders were provided to the Trial Chamber: Exhibit P-12 (under seal); Transcript 26 September 2005, p. 71 (closed session).

E. Findings on the Military Structure of the AFRC Fighting Force

(a) Kono District (14 February 1998 through 30 June 1998)

(i) The Chain of Command

564. While the AFRC faction in Kono District was subordinate to RUF command,[1113] the two forces retained separate command structures. Witness George Johnson testified that the AFRC command structure for Kono was decided at a meeting in Koidu Town chaired by RUF commander Denis Mingo, who was the overall commander in the District.[1114] The Accused Kamara, as the senior most AFRC member in Kono District, "automatically" became the commander in charge of the AFRC troops upon the departure of Johnny Paul Koroma.[1115] A known AFRC commander, whose name was given to the Court in closed session, was the Operations Commander, subordinate to Kamara.[1116] The Accused Kamara appointed Colonel Foday Kallay as Deputy Operations Commander.[1117] George Johnson corroborated the existence of a Deputy Operations Commander, but he ascribed this role to RUF commander 'Rambo'.[1118] Witness TF1-334 testified that 'Rambo' was initially an RUF battalion commander, but when Denis Mingo subsequently became the Operations Director for both the RUF and the AFRC, 'Rambo' became acting RUF Operations Commander. The Trial Chamber is satisfied that the position of Deputy Operations Commander existed within the AFRC, and it appears that the discrepancy between the testimonies is explicable on the basis that George Johnson failed to recall the changes in position.

565. The AFRC troops were divided into six battalions which also included some RUF soldiers.[1119] Witness TF1-334 testified that the battalion commanders were Captain 'Junior', 'Savage', Lieutenant Kallay, SLA Lieutenant 'Mosquito', Lieutenant 'Tito' and Lieutenant Bakarr. Each commander had a soldier appointed as their second in command.[1120] Witness TF1-334 stated that the number of men in a battalion was not stable, as over time men would be added or

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[1111] George Johnson, Transcript 15 September 2005, pp. 7-11.
[1112] TF1-334, Transcript 15 June 2005, pp. 67-68.
[1113] Context of the Alleged Crimes, paras 183-185, *supra*.
[1114] George Johnson, Transcript 15 September 2005, pp. 35-36, 46-47; George Johnson, Transcript 20 September 2005, p. 14.
[1115] TF1-334, Transcript 18 May 2005, pp. 21-22; George Johnson, Transcript 15 September 2005, pp. 37-38. *See further* Role of Accused, Kamara, paras 451-452, 461, *supra*.
[1116] TF1-334, Transcript 18 May 2005, pp. 22-23, Transcript 19 May 2005, p. 15; George Johnson, Transcript 15 September 2005, pp. 39-40.
[1117] TF1-334, Transcript 19 May 2005, p. 16.
[1118] George Johnson, Transcript 15 September 2005, pp. 39-40.
[1119] George Johnson, Transcript 15 September 2005, pp. 37-38.
[1120] TF1-334, Transcript 19 May 2005, pp. 16-26; George Johnson, Transcript 15 September 2005, pp. 37-38.

withdrawn from battalions depending on the changing military threats in each location. He estimated that a battalion could range in size from 55 to 100 men.[1121]

566. Witness TF1-334 testified that the battalion commanders were subordinate to the Operations Commander and reported directly to him.[1122] In addition, the witness named several AFRC military supervisors as well as an AFRC artillery commander, Lieutenant Lagah, that reported to the Operations Commander.[1123] The Accused Kamara also appointed a Political Adviser, 'Coachy Borno'.[1124]

567. Witness George Johnson testified that the Accused Kamara was the G4 in charge of arms and ammunition, the Accused Kanu was the G5 in charge of civilians and FAT Sesay was the G1 in charge of administration.[1125] Colonel Iron explained that this terminology is a very widely used shorthand, which began as standard NATO and US Army practice, for the various positions in the team which acts as support staff to the commander.[1126]

568. The Trial Chamber notes that the existence of positions according to this NATO terminology was not put to witness TF1-334, whose account of the command structure was otherwise significantly more detailed than that of George Johnson. However, George Johnson was not the only witness to employ the terminology. There is evidence of a G5 and G4 position within the RUF.[1127] The Trial Chamber notes that in one of Johnson's prior statements, introduced in cross-examination, he stated that the AFRC adopted the NATO system from the RUF.[1128] Other witnesses refer to a G5 position existing in the AFRC structure at various points in time.[1129]

569. The Trial Chamber notes that witnesses who did not use the NATO nomenclature described positions in the same substantive terms, for example, referring to FAT Sesay as the 'Brigade

[1121] TF1-334, Transcript 19 May 2005, p. 18.
[1122] TF1-334, Transcript 19 May 2005, p. 21.
[1123] TF1-334, Transcript 19 May 2005, pp. 27-28, 36-37.
[1124] TF1-334, Transcript 19 May 2005, pp. 48.
[1125] George Johnson, Transcript 15 September 2005, pp. 39-41.
[1126] Colonel Iron explained the system as follows: "G1 branch, for example, looks after personnel issues; everything to do with administration, recruitment, pay, welfare issues. G2 looks after the intelligence function, providing intelligence advice to the commander. G3 helps to run operations on behalf of the commander; he coordinates operational activity. G4 is responsible for logistics; ensuring, for example, that troops do not run out of ammunition during a battle. And G5 is called civil military relations...[in the AFRC] the G5 is essentially the staff branch responsible for looking after civilians, abducted civilians usually, and their care for -- deal with welfare and the tasking of abducted civilian who were used by these organisations": Colonel Iron, Transcript 12 October 2005, pp. 17-18. *See also* Exhibit P36, Iron Report, para. B3.4.
[1127] TF1-114, Transcript 14 July 2005, p. 130; TF1-113, Transcript 18 July 2005, p. 76; Gibril Massaquoi, Transcript 7 October 2005, pp. 8-9.
[1128] George Johnson, Transcript 21 September 2005, p. 42.

Administrator' instead of the G1.[1130] While witness George Johnson stated that G2 and G3 positions did not exist in the AFRC,[1131] Colonel Iron testified that the Operations Commander in the AFRC was equivalent to the G3 position.[1132] In light of the occasional use of the terminology by several different witnesses; the apparent existence of some of the staff positions (G1, G4 and G5) but not others (G2 and G3); and the fact that similar positions existed with different names (Brigade Administrator, Operations Commander), the Trial Chamber considers it plausible that the terminology may have been employed by persons who were familiar with its use, while others referred to the same position without the NATO-style title. In this regard, the Trial Chamber recalls that witness TF1-334 was a low ranked soldier, without extensive training, who may well not have been cognisant of the common nomenclature.

570. Accordingly, the Trial Chamber finds that the testimony of George Johnson regarding the existence of staff positions is generally consistent with witness TF1-334's evidence regarding the command structure.

571. The foregoing evidence establishes that the AFRC faction had an overall commander, who was superior to the Operations Commander, who was superior to the Deputy Operations Commander. Subordinate to the Operations Commander were the military supervisors and six battalion commanders, who were deputised by their '2IC's. The Trial Chamber therefore finds that the AFRC faction in Kono District had a chain of command.

(ii) Planning and Orders Process

572. The evidence adduced does not provide substantial detail on the processes by which orders were given and operations planned within the AFRC faction. Witness TF1-334 testified that the Accused Kamara gave orders through the Operations Commander.[1133] It appears from the available evidence, in particular that of Defence witnesses present throughout this period,[1134] that much of the planning and decision making may have been the prerogative of the RUF. Witness TF1-334 stated that whenever an operation took place, 'Superman' would call 'Bazzy' and the AFRC commanders

[1129] Witness TF1-153 testifying that during the advance to Freetown, he assisted 'Coachy Gibono' with G5 responsibilities: Transcript 23 September 2005, p. 100. *See also* TF1-184, Transcript 29 September 2005, p. 69; DBK-012, Transcript 6 October 2005, p. 42.
[1130] TF1-334, Transcript 14 June 2005, pp. 20-21 ; George Johnson, Transcript 16 September 2005, p. 39.
[1131] George Johnson, Transcript 15 September 2005, p. 41; Transcript 21 September 2005, pp. 38-39. *See also* Colonel Iron, Transcript 13 October 2005, p. 12.
[1132] Colonel Iron, Transcript 13 October 2005, pp. 12.
[1133] TF1-334, Transcript 18 May 2005, pp. 22-23, Transcript 19 May 2005, p. 15.
[1134] *See* discussion of their evidence: Role of Accused, Kamara, paras 454-459 *supra*.

to his residence and they would listen to whatever he told them.[1135] The two factions participated in a number of joint operations.[1136] One example is the joint attack to Sewafe to destroy a bridge in order to prevent ECOMOG forces advancing to Koidu Town.[1137] In addition, commanders went on patrols and maintained contact with battalion commanders situated in different villages.[1138]

573. In the Trial Chamber's view, despite the absence of specific evidence detailing the process by which orders were transmitted in the AFRC faction, it is inferable from the fact that operations were successfully coordinated in cooperation with the RUF that a functioning planning and orders process existed. The Trial Chamber finds it unnecessary to determine the extent to which the AFRC commanders were actively involved in high level strategic planning of AFRC/RUF operations, as the mere implementation of orders from the RUF commanders would have required an effective process in place to ensure that these orders reached lower level commanders and troops.

(iii) Disciplinary System

574. The evidence adduced provides no detail on specific rules in place among the AFRC faction in Kono District, nor systems or personnel responsible for enforcing such rules. The Trial Chamber is thus unable to conclude that a disciplinary system existed among the AFRC faction in Kono.

(iv) Conclusion

575. The Trial Chamber accordingly finds that the AFRC faction in Kono District had a functioning chain of command and a planning and orders process.

(b) Bombali District (May 1998-November 1998)

(i) The Chain of Command

576. Witness TF1-334 testified that he attended an open meeting at Mansofinia at which the Accused Brima, in front of all the soldiers, restructured the troops, made promotions and delineated the responsibilities of the various commanders. The Accused Brima promoted himself to Brigadier and announced that he was Chief in Command. He promoted the Accused Kamara to Brigadier and made him Deputy Chief in Command.[1139] The Accused Kanu, who was already a Colonel, was

[1135] TF1-334, Transcript 18 May 2005, p. 24.
[1136] TF1-334, Transcript 18 May 2005, pp. 24-33; Transcript 19 May 2005, pp. 3-4; TF1-019, Transcript 30 June 2005, p. 89; TF1-217, Transcript 17 October 2005, pp. 4-7, 14, 32; TF1-074, Transcript 05 July 2005, pp. 9, 11, 27-30.
[1137] TF1-334, Transcript 18 May 2005, pp. 33-34.
[1138] George Johnson, Transcript 15 September 2005, pp. 45-46.
[1139] TF1-334, Transcript 20 May 2005, pp. 87-91; TF1-334, Transcript 23 May 2005, pp. 5-6.

promoted to Chief of Staff.[1140] Witness TF1-334's superior was the Operations Commander and he reported to the Accused Brima and Kamara.[1141] The Operations Commander's deputy was Captain 'Junior Sheriff'.[1142]

577. The troops were divided into four companies, namely Company A, B, C and D. Brima appointed Lieutenant 'Tito', Foday Bah Marah, Captain Arthur and 'Junior Lion' as the respective commanders for each company.[1143] It is apparent from the witness' testimony that, as in Kono District, each company also had a '2IC' or second in command.[1144] Military supervisors were appointed for each company and their role was to brief the troops before they left on any operation. The military supervisors worked closely with the Operations Commander, to whom they would report any problems that arose in the company. If the Operations Commander could not resolve the problem, the military supervisors would then take it to the Brigade Commander 'Gullit'.[1145]

578. Witness TF1-334 testified that there was a chain of command in which the Chief of Command gave orders to the Chief of Staff, who then told the Operations Commander, who then passed on orders to the company commanders. [1146] The witness testified that the military supervisors were inferior to the Chief of Staff and equal in rank but inferior in appointment to the Operations Commander.[1147]

579. Witness TF1-334 also testified about a number of individuals being part of the 'brigade administration', which he explained to be the persons responsible for direct command of the brigade. The individuals were 'Gullit', Ibrahim 'Bazzy' Kamara, 'Five-Five', Colonel Woyoh, Colonel Ibrahim Bioh Sesay, Colonel Abdul Sesay and the Operations Commander.[1148] Major FAT Sesay was appointed as Brigade Administrator.[1149] The witness detailed a number of other more minor appointments, including a Brigade Adjutant; Military Police Commander; Brigade Major;

[1140] TF1-334, Transcript 20 May 2005, pp. 92-93.
[1141] TF1-334, Transcript 20 May 2005, pp. 99-100, 102. The name of the Operations Commander was admitted under seal: Exhibit P-12.
[1142] TF1-334, Transcript 23 May 2005, pp. 38-39.
[1143] TF1-334, Transcript 20 May 2005, pp. 103-105; Transcript 23 May 2005, pp. 25-26. George Johnson, Transcript 15 September 2005, p. 38.
[1144] TF1-334, Transcript 23 May 2005, pp. 82-83.
[1145] TF1-334, Transcript 23 May 2005, pp. 4, 6, 20, 26.
[1146] TF1-334, Transcript 20 May 2005, p. 101, 107.
[1147] TF1-334, Transcript 23 May 2005, pp. 4-5.
[1148] TF1-334, Transcript 20 May 2005, p. 90; Transcript 23 May 2005, pp. 2-3, 6, 26. The name of the Operations Commander was admitted under seal: Exhibit P-12.
[1149] TF1-334, Transcript 23 May 2005, pp. 32-33.

Intelligence Officer; Task Force Commander; Brigade Regimental Sergeant Major ("RSM") and Political Advisor.[1150]

580. The testimony of witness George Johnson corroborates in large part the account of witness TF1-334. He stated that the Accused Brima publicly restructured the troop into four 'battalions' at Mansofinia.[1151] He confirmed that the Accused Kamara was second in command and named the same individual as Operations Commander. He states that FAT Sesay was the 'G1 commander' in charge of administration, while the 'G4' in charge of arms and ammunition was the Accused Kamara and the 'G5' in charge of civilian abductees was the Accused Kanu.[1152] The Trial Chamber recalls its discussion of this terminology and reiterates its conclusion that the available evidence does not prove that these positions were additional to those described by witness TF1-334.

581. The Trial Chamber notes that Witness George Johnson testified that the brigade was divided into four 'battalions', while witness TF1-334 referred to the creation of four 'companies'. Witness TF1-334 stated that both battalions and companies are composite units of a brigade, with the difference being that battalions are larger than companies.[1153] On occasion, witness TF1-334 used the two words interchangeably.[1154] He explained that when reinforcements from SAJ Musa joined the troop at Rosos, the companies became battalions by virtue of their increased size.[1155] Colonel Iron refers to this change and opines that 'this retitling was less to do with size, but more an opportunity to promote the commanders'.[1156] Be that as it may, the Trial Chamber is satisfied that the different terminology used by the witnesses, neither of whom had received substantial military training,[1157] does not affect the substance of their evidence, which the Trial Chamber finds to be reliable.

582. Finally, the witnesses also differ on the point in time at which 'Junior Lion' assumed command of the fourth battalion or company. Witness TF1-334 testified that 'Junior Lion' was appointed commander of Company D at Mansofinia. However, 'Junior Lion' stated that the Accused Brima appointed him Provost-Marshal, in which capacity he was responsible for taking

[1150] TF1-334, Transcript 23 May 2005, pp. 28-38.
[1151] George Johnson, Transcript 15 September 2005, p. 48.
[1152] George Johnson, Transcript 15 September 2005, pp. 50-51.
[1153] TF1-334, Transcript 20 May 2005, p. 91.
[1154] TF1-334, Transcript 23 May 2005, p. 5.
[1155] TF1-334, Transcript 20 May 2005, pp. 91- 92.
[1156] Exhibit P-36, Iron Report, para. E2.1.
[1157] George Johnson had received only basic training in tactics and weapons handling while in the SLA: Transcript 15 September 2006, p. 6. Witness TF1-334 was a low-ranked soldier: Transcript 16 May 2005, pp. 6-10 (closed session).

disciplinary action against fighters who disobeyed the laws in place.[1158] He testified that he was appointed commander of the fourth battalion by Brima upon arrival at Rosos.[1159]

583. The Trial Chamber notes that witness George Johnson, in a prior statement to the Court introduced by the Defence in cross-examination, corroborated witness TF1-334's evidence regarding the identity of the other three commanders but does not state who the fourth commander was.[1160] Further, witness TF1-033 named the same four individuals as company commanders as witness TF1-334.[1161] The Trial Chamber is of the view that witness George Johnson was evasive on occasion with regard to his own role in the conflict and finds that, in addition to being Provost-Marshal, he was also the commander of the fourth company of troops throughout the journey to Rosos.

584. Finally, witness TF1-033 corroborated generally the evidence of witnesses George Johnson and TF1-334, although he stated that the troop restructure occurred at Yaya, from where the troops moved to attack Yifin.[1162] The Trial Chamber notes that according to witness TF1-334, the first stop of the troops after Mansofinia was a village called Yaya.[1163] Given that witness TF1-033 omits mention of Mansofinia, the Trial Chamber is of the view that witness TF1-033's recollection of the location is mistaken. This conclusion is supported by the fact that the witness was also confused in relation to the home town of the Accused Brima, which he stated was the village 'Yaya', when in fact it is 'Yarya', one of a number of villages the troops passed through on their way to Mansofinia.[1164]

585. The foregoing evidence establishes that the AFRC faction had an overall commander, a deputy commander, a Chief of Staff, who was superior to the Operations Commander, who in turn was superior to the Deputy Operations Commander. Subordinate to the Operations Commander were the military supervisors and four battalion commanders, who were deputised by their '2IC's. In addition, the Brigade, as the troop was collectively known, was supported by numerous individuals in more minor positions. The Trial Chamber therefore finds that the AFRC faction in Bombali District had a well-developed chain of command.

(ii) Planning and Orders Process

[1158] George Johnson, Transcript 15 September 2005, pp. 48-49.
[1159] George Johnson, Transcript 15 September 2005, p. 67.
[1160] George Johnson, Transcript 21 September 2005, pp. 52-55.
[1161] TF1-033, Transcript 11 July 2005, pp. 13-15.
[1162] TF1-033, Transcript 11 July 2005, pp. 13-15.
[1163] TF1-334, Transcript 23 May 2005, p. 39.
[1164] George Johnson, Transcript 15 September 2005, p. 44.

586. Witness George Johnson testified that the three Accused were based at headquarters at Rosos with the other senior commanders. The headquarters was in charge of planning all operations and giving military orders.[1165] In the AFRC faction, planning was conducted by the Operations Commander, who would approve his plan through the Commander in Chief.[1166] As Chief of Staff, Kanu's role was to enforce orders given by Brima, Kamara and the Operations Commander.[1167] There is also evidence of the Operations Commander ordering operations.[1168]

587. Witness TF1-334 described in detail various incidents from which it is evident that an orders process functioned effectively. On one occasion near Mateboi, prior to arriving at Rosos, troops reported an enemy threat at their rear to the Accused Brima. The Accused Brima sent a message to the Operations Commander and the witness to gather troops and report to him. The Operations Commander called on the Deputy Operations Commander, Captain Junior Sheriff. The Accused Brima ordered the Deputy Operations Commander to take the troops, including the witness, to the rear and dislodge the enemy threat.[1169] The operation was completed and the troops reported to Gullit on their return.[1170]

588. On one occasion while at Rosos, the Accused Brima called together the Deputy Brigade Commander 'Bazzy', the Chief of Staff 'Five-Five', the Operations Commander, the military supervisors and the company commanders and informed them that he wanted the troops to go on an operation to Gbomsamba to prove to the outside world that they were active.[1171] 'Gullit' ordered the company commanders to send men to headquarters for this operation. Witness TF1-334 stated that by that evening, all the company commanders and their men had reported to headquarters.[1172] 'Gullit' then issued a public order in front of the assembled troops that they should attack Gbomsamba and return with no civilians but with military equipment. He also stated that civilians should be amputated and the town burned down to record their presence there.[1173] The Accused Brima did not go on this operation, but rather the troops were led by Kamara and four other commanders.[1174]

[1165] George Johnson, Transcript 15 September 2005, p. 60.
[1166] George Johnson, Transcript 16 September 2005, pp. 3, 16-17.
[1167] TF1-334, Transcript 16 June 2005, p. 67.
[1168] George Johnson, Transcript 15 September 2005, p. 63.
[1169] TF1-334, Transcript 23 May 2005, pp. 91-93.
[1170] TF1-334, Transcript 23 May 2005, p. 94.
[1171] TF1-334, Transcript 24 May 2005, pp. 5-6.
[1172] TF1-334, Transcript 24 May 2005, p. 9.
[1173] TF1-334, Transcript 24 May 2005, pp. 9-10.
[1174] TF1-334, Transcript 24 May 2005, pp. 9-10.

589. The attack on Gbinti while the troops were at Rosos was similarly orchestrated. In the presence of witness TF1-334, 'Gullit' ordered the Operations Commander to order the company commanders to report. The company commanders reported to the Operations Commander who then took them to the Accused Brima.[1175] 'Gullit', in the presence of 'Bazzy', 'Five-Five' and the military supervisors, ordered the company commanders to burn down Gbinti using the tactic of pretending to surrender, favoured by SAJ Musa.[1176] The company commanders returned later that evening with their men and 'Gullit' addressed them publicly in the field used on such occasions.[1177] After the operation, the soldiers returned to Rosos and reported to the Accused Brima.[1178] This evidence is corroborated by that of witness TF1-033, who also stated that 'Gullit' ordered an attack on Gbinti in July 1998 and the troops reported back to him at its completion.[1179]

590. As is apparent from the above evidence, orders were not written, but given orally in briefings.[1180] Orders were usually given to the command group, but it was not unusual for the Accused Brima to brief the entire force.[1181]

591. In the Trial Chamber's view, the above evidence establishes beyond reasonable doubt that the AFRC faction had a planning and orders process while they were in Bombali District.

(iii) Disciplinary System

592. According to witness TF1-334, the Accused Brima gave a strict warning to the troops at Mansofinia that as they moved onwards throughout Bombali District, the rule applied would be "minus you, plus you".[1182] The witness stated that this meant that the troop would continue with or without anyone who was disobedient, explaining that "when an order is given and you refuse to obey that order you're declared an enemy. And at that time if you say you were going to retreat to go to the ECOMOG forces, you will be considered an enemy and you'll be killed. So there was no way you could disobey".[1183]

593. The witness referred to the phrase "minus you, plus you" several times in his evidence, from which the Trial Chamber infers that it was not a one-off warning to the troops, but rather a well-

[1175] TF1-334, Transcript 24 May 2005, pp. 45-46.
[1176] TF1-334, Transcript 24 May 2005, pp. 46-47.
[1177] TF1-334, Transcript 24 May 2005, pp. 47-48.
[1178] TF1-334, Transcript 24 May 2005, p. 50.
[1179] TF1-033, Transcript 11 July 2005, pp. 29-30.
[1180] George Johnson, Transcript 16 September 2005, pp. 3, 16-17.
[1181] Iron report, p. E-2 para E3.1; TF1-334, Transcript 23 May 2005, pp. 16-17; TF1-033, Transcript 11 July 2005, p. 14. *See further* Responsibility of Accused, para. 1724, *infra*.
[1182] TF1-334, Transcript 23 May 2005, p. 16.
[1183] TF1-334, Transcript 14 June 2005, p. 90.

known rule of the Accused Brima.[1184] The Accused Brima denied any knowledge of this phrase.[1185] However, in light of the evidence below, which establishes that a brutal disciplinary system was employed against troops and abducted civilians, the Trial Chamber does not give weight to the evidence of the Accused Brima.

594. Laws existed at Rosos which prohibited the theft of 'government properties', meaning arms and ammunition and medical supplies belonging to the troops, and the commission of rapes during operations, as this would distract the troops from the operation. Punishments for disobeying these laws included public flogging and killing.[1186] Upon arrival at Colonel Eddie Town these laws, which had been in existence at Rosos, were written on cards by the Accused Brima and distributed to the various commanders. In addition to the laws prohibiting rape and theft, the witness recalled another law which stipulated that fighters reluctant to go on ambush would be publicly flogged.[1187] This system was known as 'jungle justice'.[1188]

595. Extensive evidence was adduced on the established system at Rosos which governed relationships between the soldiers and the abducted women.[1189] If soldiers wanted a woman, they had to sign for her beforehand. Any problem with the women was to be reported to the AFRC command. If a soldier abused a woman, and a complaint was made, then the AFRC command could take the woman back.[1190] Witness TF1-033 testified that according to the "jungle justice" rules, any fighter who raped another fighter's 'wife' would be killed. The witness recalled an incident in which Alhaji Kamanda alias 'Gunboat' killed a fighter for raping another fighter's 'wife'.[1191]

596. The Trial Chamber recalls that a Military Police Commander was appointed at Mansofinia.[1192] While no further evidence was adduced on his functions, the Trial Chamber infers from this fact that a military police force of some type existed within the AFRC faction. In addition, the Provost-Marshal, George Johnson, testified that he was responsible for making sure the soldiers stayed 'on the right path' and attacked only designated villages.[1193]

[1184] TF1-334, Transcript 23 May 2005, p. 16; TF1-334, Transcript 14 June 2005, p. 90; Transcript 16 June 2006, p. 16; Transcript 17 June 2005, p. 92.
[1185] Alex Tamba Brima, Transcript 13 June 2006, p. 3.
[1186] George Johnson, Transcript 15 September 2005, pp. 48-49, 76-77.
[1187] George Johnson, Transcript 15 September 2005, p. 78.
[1188] George Johnson, Transcript 15 September 2005, pp. 48-49.
[1189] *See* Factual Findings, Outrages on Personal Dignity, paras 1137-1141, *infra* for more detail on the rules applied to the women at Camp Rosos.
[1190] TF1-334, Transcript 23 May 2005, pp. 76-77.
[1191] TF1-033, Transcript 12 July 2005, p. 9.
[1192] *See* Military Structure of AFRC Fighting Force, para 578, *supra*.
[1193] George Johnson, Transcript 15 September 2005, pp. 48-49.

597. Major-General Prins opined that it is unlikely the Provost-Marshal ever functioned properly because there were no trained staff officers who could establish a system to try and punish offenders.[1194] The Trial Chamber agrees that, on the evidence adduced, the AFRC commanders dispensing "jungle justice" were not trained in military law and no formal procedures were in place for trying offenders and determining appropriate penalties. Rather, the system appears to have been fairly arbitrary. 'Junior Lion' testified that he ordered the arrest of one of his troops in Colonel Eddie Town on the suspicion that the man had been stealing ammunition. However, a confrontation broke out and so 'Junior Lion' simply shot him.[1195]

598. This evidence supports Colonel Iron's view that the practice of justice in the AFRC faction was based on the whim of the commander: if the commander wanted to exert discipline to control the behaviour of his officers and men, the system was there for him to do it. If he decided not to, then wrongdoings could go unpunished.[1196] 'Junior Lion' testified that no discipline was ever imposed for carrying out amputations, for instance, those carried out by 'Adama Cut Hand'.[1197] The Trial Chamber notes in this regard that the selective application of the disciplinary system did not undermine its effectiveness.

599. The evidence establishes that the AFRC faction had 'laws' in place; penalties for disobedience; and individuals responsible for meting out discipline. The Trial Chamber accordingly finds that despite its brutal nature, the AFRC faction in Bombali District had a functioning disciplinary system.

(iv) Conclusion

600. The Trial Chamber finds that a well-developed chain of command, an effective planning and orders process and a functioning disciplinary system existed within the AFRC faction in Bombali District.

(c) Freetown and the Western Area (January 1999)

(i) Chain of Command

601. The Trial Chamber recalls that during the month or so between SAJ Musa's arrival at Colonel Eddie Town and his death on 23 December 1998 at Benguema, he was the overall

[1194] Exhibit D-36, Prins Report, para. 118.
[1195] George Johnson, Transcript 15 September 2005, p. 77.
[1196] Exhibit P-36, Iron Report, para. E3.1.
[1197] George Johnson, Transcript 15 September 2005, p. 83.

commander of the AFRC.[1198] Brima himself testified to a clearly identified hierarchy in this period, established by SAJ Musa at Colonel Eddie Town, with a Deputy Commander, an Operations Commander, four company commanders, a Task Force Commander, an Adjutant and an OC military police.[1199] Most of these appointments correlated to positions in the traditional army.[1200]

602. Prosecution witnesses testified that following the death of SAJ Musa and prior to the advance on Freetown, the Accused Brima restructured the troops. He appointed himself Commander in Chief and promoted himself to Lieutenant-General. The Accused Kamara became second in command, with his rank remaining Brigadier General. Brima promoted the Accused Kanu to Brigadier. He remained Chief of Staff and was third in command.[1201] The battalion commanders were each promoted to colonel.[1202]

603. The Accused Brima created a new position, called the Operations Director. He promoted Colonel Woyoh to Brigadier and appointed him to this position, in which capacity he would be in charge of all operations and report directly to the Chief of Staff.[1203] 'O-Five' remained the Operations Commander, to whom the Missions Commander Foyoh reported.[1204] 'O-Five' in turn reported to Operations Director Woyoh.[1205] Colonel 'Junior Sheriff' remained Deputy Operations Commander.[1206] The Brigade Administrator was FAT Sesay.[1207] This last appointment was corroborated by witness Gibril Massaquoi, who testified that on arrival at State House on 6 January he saw FAT Sesay and was told that he was "Colonel Admin" for the AFRC.[1208]

604. The Accused Brima stated that the battalions were to remain the same as under SAJ Musa. The 1st battalion was commanded by Lieutenant Colonel Tito; the 2nd battalion by Lieutenant Colonel Kallay; the 3rd battalion by Colonel Osman Sesay, alias 'Changabulanga'; the 4th battalion by Lieutenant Colonel Foday Marah, alias 'Bulldoze', the 5th battalion by Colonel Saidu Kambolai, alias 'Basky'; and the 6th battalion by a commander whose name witness TF1-334 could not recall. In addition, there were two battalions created under SAJ Musa, named the Red Lion Battalion and

[1198] *See* Context of Alleged Crimes, paras 198-201 *infra*.
[1199] Alex Tamba Brima, Transcript 13 June 2006, pp. 6-11.
[1200] Colonel Iron, Transcript 13 October 2005, p. 4.
[1201] TF1-334, Transcript 13 June 2005, pp. 58-61; George Johnson, Transcript 16 September 2005 pp. 12-13; TF1-184, Transcript 27 September 2005, pp. 55-56. *See also* Gibril Massaquoi, Transcript 7 October 2005,p. 120-121.
[1202] TF1-334, Transcript 13 June 2005, p. 60.
[1203] TF1-334, Transcript 13 June 2005, p. 62.
[1204] TF1-334, Transcript 13 June 2005, pp. 63-66; Gibril Massaquoi, Transcript 7 October 2005,p. 120-121.
[1205] TF1-334, Transcript 13 June 2005, pp. 66-67.
[1206] TF1-334, Transcript 13 June 2005, p. 76.
[1207] TF1-334, Transcript 13 June 2005, p. 79; TF1-184, Transcript 27 September 2005, p. 59.
[1208] Gibril Massaquoi, Transcript 7 October 2005, p. 115.

the RDF Battalion, which were commanded by 'Med Bajehjeh' and 'NPFL' respectively.[1209] The battalion commanders were to report to the Operations Commander.[1210] The Accused Brima also appointed 'Colonel Junior Lion' as Task Force Commander and Colonel Ibrahim, alias 'Road Block', as Military Police Commander, both of whom were to report to the Chief of Staff.[1211]

605. The Trial Chamber notes that witnesses DAB-033 and DBK-012, who gave the most detailed testimony regarding the command structure in this period out of the Defence witnesses, corroborated to a large extent the identity of the battalion commanders.[1212]

606. In addition, witness TF1-334 named the various members of the Brigade Administration, which included the three Accused, the Operations Director, the Military Police Commander and the Task Force Commander, as well as the military supervisors, a Brigade Adjutant and a Brigade RSM. Most of these individuals were required to report to the Chief of Staff. A number of other minor appointments were made.[1213] Brima then ordered that the other positions would remain the same as under SAJ Musa, although he promoted several individuals in rank.[1214] He clarified that individuals who reported to SAJ Musa now reported directly to him.[1215]

607. While the Defence witnesses testified that different individuals occupied the senior command positions,[1216] Defence witnesses also testified that there was structure within the troop. Witness DBK-131, a battalion commander during the Freetown invasion, testified that during the advance on Freetown his battalion, and all other battalions, had their own battalion staff as well as three companies.[1217] Companies were divided into platoons and every platoon had four sections.[1218] The witness stated he kept an effective chain of command in his battalion.[1219] Witness DBK-131 said that each battalion had its own structure.[1220]

[1209] TF1-334, Transcript 13 June 2005, pp. 67-69. 'NPFL' is also the acronym for Charles Taylor's fighters, the National Patriotic Front of Liberia. The witness clearly used the term in reference to an individual and the Trial Chamber therefore presumes that it was this person's pseudonym. The Trial Chamber notes in this regard that there were a number of Liberian fighters in Sierra Leone throughout the conflict.
[1210] TF1-334, Transcript 13 June 2005, p. 73.
[1211] TF1-334, Transcript 13 June 2005, pp. 70-71; George Johnson, Transcript 16 September 2005, p. 14.
[1212] DAB-033, Transcript 25 September 2006, pp. 63-68, 70-71; Transcript 2 October pp. 94-95; DBK-012, Transcript 6 October 2006, pp. 4-6, 22-23.
[1213] TF1-334, Transcript 13 June 2005, pp. 78-84.
[1214] TF1-334, Transcript 13 June 2005, pp. 62-63.
[1215] TF1-334, Transcript 13 June 2005, p, 63.
[1216] *See* Role of Accused, paras 406-419, *supra*, for discussion of this testimony.
[1217] DBK-131, Transcript 26 October 2006, pp. 59-60.
[1218] DBK-131, Transcript 26 October 2006, p. 8.
[1219] DBK-131, Transcript 26 October 2006, p. 59.
[1220] DBK-131, Transcript 26 October 2006, p. 60.

608. The above evidence establishes that, as it advanced on Freetown, the AFRC had a first, second and third in command, followed by the Operations Director, who was superior to the Operations Commander, who was superior to the Deputy Operations Commander and the Missions Commander. The senior command was supported by the other members of the Brigade Administration. The individual battalion commanders presided over battalions with their own sub-units.

609. The troops captured the seat of government in Freetown, State House, on 6 January 1999. However, ECOMOG recaptured it several days later and the following days saw the AFRC troops in continual retreat throughout eastern Freetown. Colonel Iron's report notes that the command structure began to break down in Freetown, resulting in the failure of the chain of command, after the capture of State House, since commanders gave orders to soldiers nearest them without using the battalion structure.[1221] This conclusion is supported by the testimony of factual witnesses.

610. Witness TF1-334, who remained mostly with the brigade administration while in Freetown, stated that after the loss of State House, 'the troops were all scattered, everybody was just about'.[1222] If the commanders needed reinforcements to go on a battle, the witness and his supervisor were forced to move around raising soldiers to go on the mission.[1223] This evidence was corroborated by witness TF1-184, who was ordered by 'Gullit' to find manpower to carry out a mission[1224] and witness Gibril Massaquoi, who recalled 'Five-Five' issuing a similar order.[1225] George Johnson stated that after the headquarters lost State House, arms and ammunition were nearly finished and were no longer being distributed by the responsible commander, but 'everybody had his or her own arms and ammunition'.[1226] Witness TF1-184 agreed with Colonel Iron's conclusion that the battalion structure was no longer operating. He stated that 'everyone was disorganised' and 'everybody was just doing what he want [sic]'.[1227]

611. In light of this evidence, the Trial Chamber is satisfied beyond reasonable doubt that from the death of SAJ Musa until around the time the troops lost control of State House, the AFRC faction had a chain of command. However, the Trial Chamber finds that after the loss of State House, this chain of command was interrupted until the troops regrouped. In the interim, individual commanders gave orders to the troops in their proximity.

[1221] Exhibit P-36, Iron Report, para. D4.
[1222] TF1-334, 14 June 2005, p. 41.
[1223] TF1-334, 14 June 2005, pp. 41-42.
[1224] TF1-184, Transcript 30 September 2005, pp. 8-9.
[1225] Gibril Massaquoi, Transcript 7 October 2005, pp. 13-15.

(ii) Planning and Orders Process

612. Brima 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.[1228] The rest of the troop would include the "headquarters" team – including family members, a medical team or medical orderly, and the signallers – secured by a company at the rear.[1229] They successfully engaged in major battles, including at Lunsar, Benguema, Hastings and Kossoh Town, where complex military planning and manoeuvres were required.[1230]

613. Witness TF1-334 described operations to Waterloo and York from which it is apparent that there was a planning and orders process. On both occasions, the Accused Brima called one of his subordinate members of the brigade administration and ordered the attack. The subordinate then issued orders to implement the attack. After each operation, the commander of the returning troops reported to the Accused Brima.[1231] The troops conducted several other small operations, the execution of which involved commanders including the Accused Brima issuing orders which were obeyed.[1232]

614. A number of witnesses testified that 'Gullit' chaired a meeting of commanders at Orugu village on 4 January 1999 at which he gave the order to attack Freetown.[1233] The Chief of Staff, the Accused Kanu, ran the meeting and reiterated the orders to the troops.[1234] Specifically, the troops were ordered to loot Freetown and burn down the Kissy and Eastern police stations, capture State House, open Pademba Road prison, kill anyone who opposed the troops and abduct civilians in

[1226] George Johnson, Transcript 16 September 2005, p. 48.
[1227] TF1-184, Transcript 29 September 2005, pp. 104-105.
[1228] Alex Tamba Brima, Transcript 13 June 2006, pp. 16-17; DBK-012, Transcript 6 October 2006, p. 9.
[1229] Alex Tamba Brima, Transcript 13 June 2006, p. 18. *See also* DBK-012, Transcript 6 October 2006, p. 9; TF1-033, Transcript 11 July 2005, pp. 114 – 115; and TF1-153, Transcript 22 September 2006, p. 86.
[1230] *See* Exhibit P-36, Iron Report, pp. C-13 – D-1; TF1-033, Transcript 11 July 2005, p. 45; DBK-131, Transcript 10 October 2006, p. 72; George Johnson, Transcript 22 September 2005, p. 86; George Johnson, Transcript 16 September 2006, pp. 14 and 16; TF1-033, Transcript 11 July 2005, p. 55.
[1231] TF1-334, Transcript 13 June 2005, pp. 85-87, 89-90.
[1232] TF1-334, Transcript 13 June 2005, pp. 93-100; TF1-184, Transcript 27 September 2005, pp. 57-61; TF1-153, Transcript 22 September 2005, pp. 95-98; George Johnson, Transcript 16 September 2005, pp. 14-16.
[1233] TF1-334, Transcript 13 June 2005, p. 100, 110-112; George Johnson, Transcript 16 September 2005, pp. 16-17; TF1-153, Transcript 22 September 2005, pp. 97-98; TF1-033, Transcript 11 July 2005, p. 59.
[1234] George Johnson, Transcript 16 September 2005, p. 17.

order to attract the attention of the international community.[1235] As discussed in greater detail below, these orders were carried out.[1236]

615. The Trial Chamber considers that the transmission of these orders to the troops and their subsequent implementation, in addition to the smaller operations described immediately above, proves the existence of a functioning planning and orders process within the AFRC faction from Colonel Eddie Town to State House in Freetown.

616. However, it is apparent from the evidence pertaining to the break down in the chain of command that at this point commanders began issuing orders to whomever was nearest to them and willing to listen.[1237] The Trial Chamber accordingly finds that the planning and orders process was also interrupted around the time that the troops lost control of State House.

(iii) Disciplinary System

617. The Trial Chamber recalls that a disciplinary system was in place in Colonel Eddie Town, from where the troops departed towards Freetown.[1238] The structure established by the Accused Brima after the death of SAJ Musa included a Military Police Commander.[1239] There is evidence of the military police at State House receiving civilian complaints regarding the troops' conduct, but no evidence of any disciplinary action being taken.[1240] There was also a special unit named Task Force whose role it was to ensure that troops did not escape from the front to the rear.[1241] It seems, however, that this unit was ineffective. Colonel Iron testified that the disciplinary system broke down in Freetown and soldiers attempted to slip away to the east to avoid fighting.[1242]

618. Commanders in Freetown responded to the misconduct of their troops with force rather than relying on any formal disciplinary system. For instance, 'Gullit' shot one of his commanders, Colonel 'Road Block' in the foot at Shankardass.[1243] In a prior written statement introduced in

[1235] TF1-334, Transcript 13 June 2005, pp. 100-104; TF1-334, Transcript 14 June 2005, pp. 62-64; TF1-033, Transcript 11 July 2005, pp. 59-64; TF1-153, Transcript 22 September 2005, p. 98; George Johnson, Transcript 16 September 2005, pp. 22, 24, 27, 29, 31; TF1-184, 27 September 2005, p. 76.
[1236] Responsibility of Accused, Brima, paras 1767-1780, *infra*.
[1237] *See* Military Structure of the AFRC Fighting Force, para. 609, *supra*.
[1238] *See* Military Structure of the AFRC Fighting Force, paras 591-598, *supra*.
[1239] TF1-334, Transcript 13 June 2005, pp. 70-71; George Johnson, Transcript 16 September 2005, p. 14.
[1240] Gibril Massaquoi, Transcript 10 October, pp. 10-12.
[1241] Gibril Massaquoi, Transcript 7 October 2005, pp. 126-127; Gibril Massaquoi, Transcript 10 October 2005, pp. 21-22.
[1242] Exhibit P-36, Iron Report, para. D4-7.
[1243] Witness TF1-334 stated this was for allegedly passing on information to Tina Musa (the wife of SAJ Musa): TF1-334, Transcript 14 June 2005, p. 95. Witness TF1-184 testified that 'Road Block' was shot because he refused to obey 'Gullit's order to burn down a nearby oil refinery on the ground that this would be too dangerous: TF1-184, Transcript 27 September 2005, pp. 79-80.

cross-examination, witness TF1-153 stated that if the soldiers did not follow Brima's commands in Freetown, he would shoot them and he did this many times.[1244] Witness TF1-184 describes one of the commanders throwing a grenade at a soldier accused of stealing money.[1245] When asked in cross-examination about the penalty for disobeying orders, witness TF1-334 reiterated that Brima's rule was "plus you, minus you".[1246] The witness explained that this meant "[i]f you fail to obey then if you are lucky they will fire you on the leg. But if you are not lucky…you are killed. Indeed, if you are not fired on the leg, you will have the big task which will be given to you".[1247]

619. It is clear from this evidence that punishment was meted out for disobedience. While the disciplinary system in Bombali District sanctioned the use of violence by commanders on their subordinates, in contrast, the evidence adduced in relation to Freetown is insufficient to prove that any sort of system was operational. Accordingly, the Trial Chamber is of the view that the evidence is insufficient to make a finding that a disciplinary system existed within the AFRC in Freetown and the Western Area.

(iv) Conclusion

620. In light of the foregoing evidence, the Trial Chamber finds beyond reasonable doubt that the AFRC had a functioning chain of command and an effective planning and orders process throughout the advance on Freetown, until the troops lost control of State House several days after its capture on 6 January 1999. After this point, the chain of command and the planning and orders process was interrupted. The Trial Chamber further finds that the Prosecution has failed to establish beyond reasonable doubt that a disciplinary system was in place within the AFRC in Freetown and the Western Area.

(d) Port Loko District (February through April 1999)

621. Following the retreat from Freetown, the three Accused regrouped with their troops at Benguema in the Western Area.[1248] They then moved to Waterloo where, together with the RUF, they planned a second attack on Freetown.[1249] The attack was unsuccessful.[1250]

[1244] TF1-153, Transcript 23 September 2005, p. 52.
[1245] TF1-184, Transcript 27 September 2005, p. 63; TF1-184, Transcript 30 September 2005, p. 18 (closed session).
[1246] *See* Military Structure of the AFRC Fighting Force, paras 592-593, *supra* for discussion of this rule.
[1247] TF1-334, Transcript 17 June 2005, p. 92.
[1248] George Johnson, Transcript 16 September 2005, pp. 58-59.
[1249] George Johnson, Transcript 16 September 2006, pp. 59-62; Gibril Massaquoi, Transcript 10 October 2005, pp. 31-32.
[1250] George Johnson, Transcript 16 September 2005, pp. 62-63.

622. Subsequently, in Lunsar in early April, infighting broke out between Issa Sesay and Denis Mingo of the RUF.[1251] Mingo contacted the Accused Brima and requested his assistance. As a result, the Accused Brima and Kanu, as well as 'O-Five' and others then travelled to Masiaka and Makeni in Bombali District.[1252] Witness TF1-153 corroborates evidence that the Accused Brima and Kanu separated from the Accused Kamara, stating that Brima and Kanu went to Masiaka, while Kamara went to the Westside because he was 'disgruntled' and did not want to assist the RUF.[1253]

623. Around this time, the Accused Kamara was based with some troops in the area around Mile 38. These troops were pushed back by ECOMOG to Mamamah and from there to Gberibana, an area in Port Loko District colloquially known as the 'West Side'.[1254]

624. There was no evidence adduced on the structure of the AFRC troops who accompanied the Accused Brima and Kanu to fight with the RUF. The Trial Chamber will therefore focus solely on the structure of the AFRC faction associated with the Accused Kamara in Port Loko District.

(i) Chain of Command

625. The evidence shows that early April 1999, the Accused Kamara called a meeting, attended by witnesses TF1-334 and George Johnson, as well as other commanders, at which he created a new command structure for the AFRC troops in the 'West Side'.[1255] 'Bazzy' appointed himself the Chief Commander. A known AFRC member was appointed second in command and Director of Operations.[1256] Ibrahim Bioh Sesay was third in command. 'Junior Lion' was promoted to Lieutenant-Colonel and appointed the Operations Commander, in which position he was subordinate to the Operations Director. 'Colonel Tito' was 'Camp Commandant' and 'Bio' was appointed medical officer.[1257] The Accused Kamara structured the troops into three battalions and appointed battalion commanders.[1258]

[1251] Gibril Massaquoi, Transcript 10 October 2005, pp. 35-38.
[1252] Gibril Massaquoi, Transcript 10 October 2005, pp. 39-40; George Johnson, Transcript 16 September 2005, pp. 62-63.
[1253] TF1-153, Transcript 23 September 2005, pp. 26-28.
[1254] Gibril Massaquoi, Transcript 10 October 2005, pp. 40, 44; George Johnson, Transcript 16 September 2005, pp. 63, 67. Witness TF1-334 testified that the AFRC faction in the West Side numbered around 700 people, including abducted civilians: TF1-334, Transcript 15 June 2005, p. 31.
[1255] TF1-334, Transcript 15 June 2005, pp. 24-25; George Johnson, Transcript 16 September 2005, p. 69.
[1256] George Johnson, Transcript 16 September 2005, pp. 69-72. The name of this commander was admitted under seal: Exhibit P-12.
[1257] TF1-334, Transcript 15 June 2005, p. 26.
[1258] George Johnson, Transcript 16 September 2005, pp. 69-72; TF1-334, Transcript 15 June 2005, pp. 31-32.

626. The Trial Chamber notes that Defence witnesses testified that different known AFRC commanders occupied the senior command positions in Port Loko District. Critically, however, the testimony of these witnesses supports the conclusion that there was a structure in place.[1259]

627. The Trial Chamber finds that there was a basic chain of command within the AFRC faction in Port Loko District.

(ii) Planning and Orders Process

628. Witness George Johnson testified that in the West Side, the Operations Commander and the Operations Director planned operations together and both reported to the Accused Kamara. In his position as Operations Commander, he went on all operations personally or sent one of his subordinates to go on his behalf. [1260]

629. There was relatively little evidence adduced on the day-to-day functioning of the troops in the West Side. Witness George Johnson testified about a meeting that was held to plan a major attack on Port Loko to capture arms and ammunition from the Malian ECOMOG soldiers stationed there.[1261] Among those present were battalion commander Tamba Foyo and his second in command, 'Sheriff', as well as battalion commander Stanty aka 'Cake'.[1262] Kamara selected George Johnson to lead the operation.[1263] The operation was a success and while the troops were returning, Johnson established communication with 'Bazzy' who sent 'Tito' with some civilians to collect the arms and ammunition. Upon the troops' return to the West Side, Johnson reported to Kamara.[1264]

630. In the Trial Chamber's view, the evidence regarding the attack on Port Loko establishes that the AFRC commanders employed an effective planning and order process in their operations in Port Loko District.

(iii) Disciplinary System

631. The evidence adduced establishes that the Accused Kamara imposed disciplinary measures on his troops. Witness TF1-334 testified about an incident involving one of the commanders, Lieutenant Kallay. According to the witness, Kallay went on an operation to Gberi Junction and returned with stolen items. 'Bazzy' ordered an investigation and it was discovered that Kallay had

[1259] *See* Role of Accused, paras 488-499, *supra* for discussion of their testimony.
[1260] George Johnson, Transcript 16 September 2005, pp. 69-72.
[1261] George Johnson, Transcript 16 September 2005, pp. 72-74, 79.
[1262] George Johnson, Transcript 16 September 2005, pp. 72-73.
[1263] TF1-334, Transcript 15 June 2005, p. 35.
[1264] George Johnson, Transcript 16 September 2005, pp. 76-79.

not attacked Gberi Junction as instructed but had gone looting instead. 'Bazzy' ordered that Lieutenant Kallay should be beaten as punishment and in the presence of the witness, Lieutenant Kallay was given 24 'lashes'.[1265]

632. However, there is no evidence that specific positions, such as Military Police Commander or Provost-Marshal, existed for the enforcement of discipline. It also appears that there were no defined rules governing the soldiers' conduct. Witness George Johnson testified that "[o]n arrival at Gberibana there were not laws that were placed. No laws were given by the senior commander. There were no laws that were given to fighters at Gberibana like us, Mansofinia to Camp Rosos".[1266]

633. Johnson testified that on another occasion, he reported misbehaviour on the part of one of the troops and the Accused Kamara did nothing in response.[1267] It is therefore clear from the evidence that the imposition of discipline was solely at the discretion of Kamara and there was no established system that governed incidences of misconduct.

634. In the Trial Chamber's view, the AFRC faction did not have a disciplinary system in Port Loko District.

(iv) Conclusion

635. In light of the foregoing evidence, the Trial Chamber finds that the AFRC faction in Port Loko District had a basic chain of command and a planning and orders process effective for its needs. The Trial Chamber further finds that the AFRC faction did not have an established disciplinary system.

[1265] TF1-334, Transcript 15 June 2005, pp. 32-34.
[1266] George Johnson, Transcript 20 September 2005, p. 59.
[1267] George Johnson, Transcript 16 September 2005, pp. 76, 78-79.

IX. APPLICABLE LAW

A. Introduction

636. Article 1(1) of the Statute empowers the Special Court to prosecute persons

> who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

It is not in dispute between the Parties that the offences alleged in the Indictment fall within the requirements of time and place prescribed by Article 1.

637. Rule 72*bis* of the Rules provides that the applicable laws of the Special Court include

> (i) the Statute, the Agreement[1268], and the Rules;
>
> (ii) where appropriate, other applicable treaties and the principles and rules of international customary law;
>
> (iii) general principles of law derived from national laws or legal systems of the world, including, as appropriate, the national laws of the Republic of Sierra Leone, provided that those principles are not inconsistent with the Statute, the Agreement, and with international customary law and internationally recognised norms and standards.

638. The crimes over which the Special Court has jurisdiction are specified in Articles 2, 3, 4, and 5 of the Statute. In the instant case, only Articles 2, 3 and 4 of the Statute, which deal with crimes under international law, are relevant. Regarding such crimes, the Secretary-General of the United Nations ("Secretary-General") in his "Report on the Establishment of a Special Court for Sierra Leone" noted that

> In recognition of the principle of legality, in particular *nullum crimen sine lege*, and the prohibition on retroactive criminal legislation, the international crimes enumerated, are crimes considered to have the character of customary international law at the time of the alleged commission of the crime.[1269]

639. The Trial Chamber is entirely in agreement with that statement and recognizes that the elements of the crimes charged in the Indictment are to be interpreted in accordance with customary

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[1268] Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2000, annexed to the Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, UN Doc. S/2000/915, entered into force on 12 April 2002 pursuant to Article 21 of the Agreement.

[1269] Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, 4 October 2000, UN Doc. S/2000/915, para. 12.

international law.[1270] Since the ICTY and ICTR also apply customary international law, the Special Court will, where appropriate, be guided by decisions of those tribunals for their persuasive value[1271], with necessary modifications and adaptations in view of the particular circumstances of the Special Court.[1272]

B. The 'Greatest Responsibility Requirement'

640. As mentioned above, Article 1(1) of the Statute empowers the Special Court to prosecute "persons who bear the greatest responsibility" for the crimes over which it has jurisdiction. The Special Court consists of 3 organs: the Chambers, the Prosecutor and the Registry.[1273] Pursuant to Article 15(1) of the Statute, the Prosecutor is the organ responsible for prosecuting the persons mentioned in Article 1(1). Article 15(1) provides:

> The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.

1. Jurisdictional Requirement or Prosecutorial Discretion

641. The question of whether the reference to 'persons who bear the greatest responsibility' creates a jurisdictional requirement rather than a prosecutorial discretion is a subject of dispute between the parties.

(a) Submissions

642. At the close of the Prosecution case, the Prosecution disputed that the qualification of the 'greatest responsibility requirement' was a jurisdictional requirement.[1274] In its Final Brief, the

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[1270] Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, 1 April 2004, para. 24. See also Prosecutor v. Sam Hinga Norman, Case No. SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004, paras 17 et seq.

[1271] See Article 20(3) of the Statute. Although it explicitly addresses only the Appeals Chamber, the Trial Chamber finds that as a matter of course, the provision equally applies to triers of fact at first instance. Regarding the ICTY's application of customary international law, see Blaškić Appeal Judgement, paras 110, 139, 141; Prosecutor v. Hadžihasanović et al., Case No IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 ("Hadžihasanović Appeal Decision of Command Responsibility"), paras 12, 35, 44-46, 55.

[1272] Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, 1 April 2004, paras 24-25.

[1273] Article 11 of the Statute.

[1274] Prosecution Response to Defence Motion for Judgement of Acquittal Pursuant to Rule 98, 23 January 2006, para. 14.

Prosecution submits that "the evidence establishes that the three Accused were all senior members of the AFRC holding leadership positions within that organisation. 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."[1275]

643. The Prosecution further explained its position in its closing argument. It submits that in order to convict an accused it is not necessary to prove that he was one of those bearing the greatest responsibility. That is because the determination of who bears the greatest responsibility is a discretion that is exercised by the Prosecutor based on investigations and evidence gathered, together with sound professional judgement. Such a discretion could not, for example, be exercised by the designated judge who approves the indictment, because the designated judge would not have before him or her all of the evidence gathered by the Prosecution. The Prosecution concedes that this discretion might be reviewable in extreme cases, such as abuse of process, but excepting that kind of review, the discretion is one that falls to the Prosecutor. The Prosecution points out that it would be 'inconceivable' for a long and expensive trial to proceed to its end and for the Trial Chamber to then conclude that serious crimes have been proved beyond reasonable doubt, but that the accused should be acquitted because it has not been shown that they were among those bearing the greatest responsibility. As an alternative, the Prosecution submits that even if this were a matter that the Trial Chamber could look at, the Accused in this case clearly do fall within the category of 'persons who bear the greatest responsibility'[1276].

644. Both the Kanu and Kamara Defence submit that the 'greatest responsibility requirement' should be understood to be a jurisdictional requirement.[1277]

645. The Kanu Defence adopts the finding of Trial Chamber I, which held that

> the issue of personal jurisdiction is a jurisdictional requirement, and while it does of course guide the prosecutorial strategy, it does not exclusively articulate prosecutorial discretion, as the Prosecution has submitted.[1278]
>
> In the ultimate analysis, whether or not in actuality the Accused is one of the persons who bears the greatest responsibility for the alleged violations of international humanitarian law and Sierra Leonean law is an evidentiary matter to be determined at the trial stage.[1279]

[1275] Prosecution Final Brief, para. 153.
[1276] See Prosecution closing arguments, transcript 7 December 2006 pages 63 – 66.
[1277] Kamara Final Brief, paras 73-75; Kanu Final Brief, paras 107-109.
[1278] Kanu Final Brief, para. 107, which contains an incorrect statement that "Trial Chamber 1 in the case of Prosecutor v. Norman held that the issue of personal jurisdiction is a jurisdictional requirement. This was affirmed by Trial Chamber II in the Rule 98 Decision"; see also Prosecutor v. Sam Hinga Norman, Moinina Fofana and Allieu Kondewa, Case No. SCSL-04-14-PT, Decision on the Preliminary Motion on the Lack of Personal Jurisdiction Filed on Behalf of the Accused Fofana, 3 March 2004 ("Fofana Decision on Lack of Personal Jurisdiction"), para. 27.

646. On this basis, the Kanu Defence submits that the Prosecution has not satisfied its burden of establishing that Kanu was part of the group characterised as "at a minimum, political and military leaders and implies an even broader range of individuals."[1280] The Kanu Defence thereby submits that the Trial Chamber should either find that it does not have jurisdiction over Kanu, or that Kanu should be acquitted on the basis that the Prosecution has not met the evidentiary threshold of 'greatest responsibility'.[1281]

647. The Kamara Defence submits that, although the Prosecution has a wider discretion to investigate and prosecute persons who bear the greatest responsibility, the Court has "the ultimate decision of determining, based on available evidence at the end of the trial, whether the Prosecution in fact satisfied that threshold requirement of selecting the three Accused among many senior military officers in the AFRC government and 'faction', as bearing that utmost liability."[1282]

648. According to the Kamara Defence, the 'greatest responsibility requirement' is within the exercise of the Prosecution's discretion under the control of the Trial Chamber. The Kamara Defence submits that the Trial Chamber's role, at this stage of the proceedings, is "to determine the selective application, prudent use and evidential efficacy" of the Prosecution's exercise of discretion and strategy.[1283] It concludes that Kamara does not, either legally or factually, qualify as one of those who bear the 'greatest responsibility'.[1284]

649. The Brima Defence does not make any legal submission as to the nature of 'the greatest responsibility requirement'. As to the scope of this requirement, it submits that it covers only 'political or military leaders' and under no circumstance can it stretch to include low ranking military personnel such as Brima.[1285]

(b) Findings

650. The Special Court was established by an agreement between the United Nations and the Government of Sierra Leone and is therefore treaty-based, unlike the ICTY and ICTR, which were established by resolution of the Security Council.[1286] It is a well established principle of

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[1279] Fofana Decision on Lack of Personal Jurisdiction, para. 44.
[1280] Kanu Final Brief, para. 108, referring to Rule 98 Decision, para. 34.
[1281] Kanu Final Brief, para. 109.
[1282] Kamara Final Brief, para. 73.
[1283] Kamara Final Brief, para. 75, citing incorrectly Rule 98 Decision, para. 39.
[1284] Kamara Final Brief, para. 88.
[1285] Brima Final Brief, para. 114.
[1286] See Report of the Secretary General on the establishment of a Special Court for Sierra Leone, 4 October 2000, S/2000/915, para. 9; see also Prosecutor v. Morris Kallon, Sam Hinga Norman and Brima Bazzy Kamara, Case No.

international law, codified in the "Vienna Convention on the Law of Treaties" of 23 May 1969, that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and *purpose*."[1287] In interpreting the meaning of 'the greatest responsibility requirement', it is helpful to look at the drafting history of Article 1 of the Statute.

651. When, initially, the United Nations Security Council ("Security Council") made recommendations as to the 'personal jurisdiction' of the Special Court,[1288] the United Nations Secretary General ("Secretary General") saw the personal requirement, which he suggested should be 'those most responsible', not as "a test criterion or a distinct jurisdictional threshold, but as a guidance to the Prosecutor in the adoption of a prosecution strategy and in making decisions to prosecute in individual cases."[1289] The Security Council maintained its view that the *personal jurisdiction* of the Special Court should be restricted, and rejected the 'most responsible' formulation in favour of the 'greatest responsibility' formulation.[1290]

652. Finally, the intentions of the Secretary General, the Security Council and the Government of Sierra Leone coincided in three stages. First, the Secretary General acknowledged that while "the determination of the meaning of the term 'persons who bear the greatest responsibility' in any given case falls initially to the prosecutor", it is ultimately a matter for the Special Court itself.[1291] The President of the Security Council then confirmed that

> [t]he members of the Council share your analysis of the importance and role of the phrase 'persons who bear the greatest responsibility'. The members of the Council, moreover, share your view that the words beginning with 'those leaders who [...]' are intended as guidance to the Prosecutor in determining his or her prosecutorial strategy.[1292]

Thereafter, the Government of Sierra Leone accepted this position.[1293]

SCSL-2004-15-AR72(E)/SCSL-2004-14-AR72(E)/SCSL-2004-16-AR72(E), Decision on Constitutionality and Lack of Jurisdiction, 13 March 2004, para. 42.

[1287] Vienna Convention on the Law of Treaties, signed in Vienna on 23 May 1969, entered into force on 27 January 1980, Article 31(1), emphasis added; see also Prosecutor v. Moris Kallon, Sam Hinga Norman and Brima Bazzy Kamara, Case No. SCSL-2004-15-AR72(E)/SCSL-2004-14-AR72(E)/SCSL-2004-16-AR72(E), Decision on Constitutionality and Lack of Jurisdiction, 13 March 2004, para. 43.

[1288] Resolution 1315(2000), 14 August 2000, p. 2.

[1289] Report of the Secretary General on the Establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000 ("Secretary General's 2000 Report"), para. 30.

[1290] Letter dated 22 December 2000 from the President of the Security Council to the Secretary General, S/2000/1234, p. 1.

[1291] Letter dated 12 January 2001 from the Secretary General to the President of the Security Council, S/2001/40.

[1292] Letter dated 31 January 2001 from the President of the Security Council to the Secretary General, S/2001/95.

[1293] Letter dated 12 July 2001 from the Secretary General to the President of the Security Council, S/2001/693, p. 1.

653. In the opinion of the Trial Chamber, the intent of the drafters of the Statute clearly emanates from the aforementioned extracts. The 'greatest responsibility requirement' (initially 'the requirement of those most responsible') solely purports to streamline the focus of prosecutorial strategy. The Trial Chamber, with the greatest respect, does not agree with the finding of Trial Chamber I in the 'CDF Decision on Lack of Personal Jurisdiction' referred to earlier that "the issue of personal jurisdiction is a jurisdictional requirement, and while it does of course guide the prosecutorial strategy, it does not exclusively articulate prosecutorial discretion, as the Prosecution has submitted."[1294] The Trial Chamber cannot accept the idea that the drafters of the Statute purported to make 'the greatest responsibility requirement' a jurisdictional threshold which, if not met, would oblige a Trial Chamber to dismiss the case without considering the merits.

654. Article 15 of the Statute vests the Prosecutor with responsibility "for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law [...]". In doing so, the Prosecutor shall "act independently as a separate organ of the Special Court". The Trial Chamber is therefore not called upon to review the prosecutorial discretion in bringing a case against the Accused, nor would it be in a position to do so. Therefore, no issue arises for the Trial Chamber's determination as to whether, within the meaning of Article 1 of the Statute, the Accused in the present case bear the 'greatest responsibility' for the crimes alleged against them.

2. Scope of "the greatest responsibility requirement'

655. Although it is not necessary to do so, the Trial Chamber will nevertheless examine the scope the drafters purported to give to Article 1 of the Statute, when the initial 'most responsible' requirement developed into a 'greatest responsibility' requirement.

656. While the Security Council recommended 'the greatest responsibility requirement' from the start of the discussions on the Statute, the Secretary General first preferred the requirement of 'persons most responsible', understood to

> include the political and military leadership, others in command authority down the chain of command may also be regarded 'most responsible' judging by the severity of the crime or its massive scale. 'Most responsible', therefore, denotes both a leadership or authority position of the accused, and a sense of gravity, seriousness or massive scale of the crime.[1295]

[1294] Fofana Decision on Lack of Personal Jurisdiction, para. 44.
[1295] Secretary General's 2000 Report, para. 30.

657. The Security Council maintained its position that 'the greatest responsibility requirement' limited the "focus of the Special Court to those who played a leadership role".[1296] Acknowledging the choice of the 'greatest responsibility requirement', the Secretary General subsequently expressed the view that Article 1 of the Statute was not limited to political and military leaders only. The Security Council, and later the Government of Sierra Leone, concurred with this approach.[1297]

658. The Trial Chamber notes that in light of the foregoing that the 'greatest responsibility' requirement necessarily was intended to restrict the number of accused to appear before the Special Court to a small category of individuals. Yet, the Statute needs to be read in its totality. Indeed, Article 7 of the Statute provides for the jurisdiction of the Special Court over alleged perpetrators between the age of 15 and 18 years.[1298] 'The greatest responsibility requirement' set out in Article 1 must therefore be interpreted in a manner broad enough to include such alleged perpetrators.

659. It is the Trial Chamber's view that 'the greatest responsibility requirement' could potentially apply to an array of individuals ranging from military and political leaders down to individuals as young as 15 years of age.

C. Law on the Charges

1. Count 1: Acts of Terrorism (Article 3(d) of the Statute)

660. The Prosecution alleges that the Accused committed the crimes set forth in paragraphs 42 to 79 of the Indictment, and charged in Counts 3 to 14, "as part of a campaign to terrorise the civilian population of the Republic of Sierra Leone, and [which] did terrorise that population." Count 1 thus

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[1296] Letter dated 22 December 2000 from the President of the Security Council addressed to the Secretary General, S/2000/1234, p. 1.

[1297] Letter dated 31 January 2001 from the President of the Security Council addressed to the Secretary General, S/2001/95; Letter dated 12 July 2001 from the Secretary General addressed to the President of the Security Council, S/2001/693, p. 1.

[1298] Statute, Article 7, "Jurisdiction over Persons of 15 Years of Age": "1. The Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the court, he or she shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child. 2. In the disposition of a case against a juvenile offender, the Special Court shall order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and as appropriate, any programmes of disarmament and reintegration or programmes of child protection agencies."

charges the Accused with acts of terrorism, a violation of Common Article 3 and Additional Protocol II, punishable under Article 3(d) of the Statute.[1299]

661. Article 3(d) of the Statute, which is the verbatim reproduction of Article 4(2)(d) of Additional Protocol II, prohibits acts of terrorism. The latter provision is tied to Article 13(2) of Additional Protocol II, which provides that "[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

662. The prohibition and criminalisation of the intentional use of 'terror violence' in armed conflict against a civilian population for strategic purposes is well settled in customary international law.[1300] Such prohibition was first explicitly evoked after the First World War, when a deliberate use of a "system of general terrorisation" of the population to secure control of a region was found to be contrary to the rules of civilised warfare.[1301] Later, the prohibition of terror as a means of warfare was gradually introduced in a number of international conventions as well as in domestic military manuals.[1302]

663. Terror against a civilian population was first referred to as a war crime in a report published in 1919 by the Commission of Responsibilities.[1303] While 'terrorism' was not explicitly criminalised by the Nuremberg Charter, evidence of terror violence was considered in the context of

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[1299] Indictment, para. 41; see also Indictment, para. 20, explaining that "[t]he words civilian or civilian population used in this Indictment refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities."

[1300] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 ("*Galić* Appeal Judgement"), para. 86, holding that "it is satisfied that 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, was a part of customary international law from the time of its inclusion in those treaties. The Appeals Chamber, by majority, Judge Schomburg dissenting, is further satisfied that a breach of the prohibition of terror against the civilian population gave rise to individual criminal responsibility pursuant to customary international law at the time of the commission of the offences for which Galić was convicted [1992-1993]."

[1301] Report of the Bryce Committee, 1914, extract in E. Stowell, H. Munro, *International Cases* (Boston: Hougton Mifflin Company, 1916), p. 173; *see also* United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: HMSO, 1948), pp. 34-35, stating that "[n]ot even prisoners, or wounded, or women, or children have been respected by belligerents who deliberately sought to strike terror into every heart for the purpose of repressing all resistance."

[1302] With regard to international conventions, *see* Draft Convention for the Protection of Civilian Populations Against New Engines of War, Amsterdam, 1938; Declaration of Minimum Humanitarian Standards, reprinted in Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 46th Session, Commission on Human Rights, 51st Session., Provisional Agenda Item 19, at 4, U.N. Doc. E/CN.4/1995/116 (1995); with regard to domestic military manuals, *see Galić* Appeal Judgement, fn. 286, referring to, *inter alia*, Germany, Humanitarian Law in Armed Conflicts, Manual DSK VV207320067, edited by the Federal Ministry of Defence of the Federal Republic of Germany, VRII 3, August 1992; Nigeria, The Laws of War, by Lt. Col. L. Ode PSC, Nigerian Army, Lagos, undated (*Manuals on the Laws of War*), para. 20; Russia, Instructions on the Application of the Rules of International Humanitarian Law by the Armed Forces of the USSR, Appendix to Order of the USSR Defence Minister No. 75, 1990 (*Military Manual*), para. 5(n).

[1303] UN War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: HSMO, 1948), Chapter III, *see also Galić* Appeal Judgement, para. 93, explaining that the

murder and mistreatment of the civilian population under Article 6 of the Nuremberg Charter.[1304] Further, post World War II domestic tribunals incorporated the crimes of 'systematic terrorism'[1305] and 'systematic terror'[1306] in their statutes. Finally, provisions criminalising terror against the civilian population as a method of warfare were incorporated into numerous domestic legislations.[1307]

Commission on Responsibilities was created by the Peace Conference of Paris to inquire into breaches of the laws and customs of war committed by Germany and its allies during the First World War.

[1304] London Agreement and Annexed Charter of the International Military Tribunal for the Prosecution and Punishment of the German Major War Criminals, London, 8 August 1945 ("Nuremberg Charter").

[1305] United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (London: HSMO, 1947-1948), Vol. 5, pp. 94-97; Vol. 14, pp. 35-38.

[1306] Decree No. 44 91946), in *Staatsblad van Nederlandsch-Indië*, Article 2 1(2), Trial of *Shigeki Motomura*, United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (London: HSMO, 1947-1948), Vol. 13, p. 138.

[1307] *Galić* Appeal Judgement, fn. 297: "Czech Republic, Trestní zákon (Criminal Code), Act No. 140/1961 Coll. 29 November 1961, as amended by Act No. 305/1999 Coll. of 18 November 1999, art. 263(a)(1); Slovakia, Trestní zákon (Criminal Code), Act. No. 140/1961 Coll. 29 November 1961, as amended, art. 263(a)(1). The Appeals Chamber notes the continuing trend of nations criminalising terror as a method of warfare. See, e.g., Argentina, Draft Code of Military Justice (1998), art. 291, introducing a new article 875(1) in the Code of Military Justice as amended (1951): punishes "acts or threats of violence whose primary aim is to terrorise"; Bosnia & Herzegovina, Criminal Code of the Federation of Bosnia and Herzegovina No. 327, adopted on 29 July 1998, published in Službene Novine Federacije Bosne i Hercegovine, No. 43/98, 20 November 1998, art. 154(1): criminalises "the application of measures of intimidation and terror" against civilians (1998); Colombia, Ley 599 de 2000 (julio 24) por la cual se expide el Código Penal (Penal Code), published in Diario Oficial, No. 44.097, 24 July, 2000, art. 144: imposes criminal sanction on "anyone who, during an armed conflict, carries out or orders the carrying out of [...] acts or threats of violence whose primary purpose is to terrorise the civilian population"; Croatia, Criminal Code (1997), art. 158(1): imposes criminal sanctions on "whoever, in violation of the rules of international law, at a time of war, armed conflict or occupation, [...] orders [...] the imposition of measures of intimidation and terror"; El Salvador, Código Penal de la Republica de El Salvador, Decreto No. 1030, Título XIX, (Criminal Code, as amended 1998), art. 362: criminalises violations of "international laws [...] of war" (El Salvador ratified Additional Protocols I and II, in their entireties, on November 23, 1978); Finland, Penal Code, Act. No. 39/1889, as amended by Act No. 578/1995 of the Finnish legislative gazette (Suomen säädöskokoelma), issued 21 April 1995, Chapter 11, art. 1: imposes criminal sanction on "a person who in an act of war [...] otherwise violates the provisions of an international agreement on warfare binding on Finland" (Finland ratified Additional Protocols I and II, in their entireties, on August 7, 1980); Ireland, Geneva Conventions Act (1962), as amended by Act No. 35 of 13 July 1998, published in The Acts of the Oireachtas as promulgated, sec. 4: criminalises any "minor breach" of Additional Protocol I, including violations of Article 51(2), as well as any "contravention" of Additional Protocol II, including violations of Article 13(2) (Ireland ratified Additional Protocols I and II, in their entireties, on May 19, 1999); Lithuania, Lietuvos Respublikos baudziamas kodeskas (Criminal Code of the Republic of Lituania), 26 June 1961, published in Valstybes zinios, No. 18-147, 1961, as amended 9 June 1998, art. 336: criminalises "the use of intimidation and terror" in time of war, armed conflict or occupation; Mauritius, Geneva Conventions (Amendment) Act, Act No. 2 of 2003, Government Gazette, 17 May 2003, General Notice 722, section 4(e), amending section 3 of the Geneva Conventions Act of 1970: criminalises breaches of the Additional Protocols under Mauritian law (Mauritius ratified Additional Protocols I and II, in their entireties, on March 22, 1983); Mexico, Código Penal Federal (Federal Criminal Code as amended 2006), First Book, Preliminary Title, art. 6: criminalises acts which are an offence under an international treaty to which Mexico is a party (Mexico ratified the entirety of Additional Protocol I on March 10, 1983); Russia, Criminal Code of the Russian Federation, No. 63-FZ, 13 June 1996, promulgated in Collection of legislation of the Russian Federation, No. 25, 17 June 1996, art. 356(1): punishes the "cruel treatment of [...] the civilian population" and the use in an armed conflict of "means and methods prohibited by an international treaty of the Russian Federation" (Russia ratified Additional Protocols I and II, in their entireties, on September 29, 1989); Spain, Ley Orgánica 10/1995, de 23 de Noviembre, del Código Penal (Penal Code), published in Boletín Oficial del Estato, No. 281, 24 November 1995, art. 611(1): punishes anyone who, during an armed conflict, makes the civilian population the object of "acts or threats of violence whose primary purpose is to terrorise them"; Yemen, Military Criminal Code, Law No. 21/1998 relative to military offences and penalities, 25 July 1998, published in Official Gazette of the Republic of Yemen, No. 18, 20 September 1999: criminalises all acts which constitute an

664. In the wake of the Second World War, Article 33 of Geneva Convention IV was adopted. It provides that "all measures of intimidation or of terrorism are prohibited." As Article 33 is applicable only to persons in the hands of a party to the conflict, it was subsequently complemented by Article 51(2) of Additional Protocol I and Articles 4(2)(d) and 13(2) of Additional Protocol II, to include acts of terrorism committed against the civilian population in international and internal armed conflict, respectively.

665. A provision prohibiting acts of terrorism can be found in Article 4(2) of the ICTR Statute.[1308] Although not expressly included in the ICTY Statute, the infliction of terror upon the civilian population has been adjudicated in a number of cases before that Tribunal.[1309]

666. In light of the foregoing, the Trial Chamber finds that customary international law imposed individual criminal liability for violations of the prohibition of terror against the civilian population at the time relevant to the Indictment.

(a) Elements of the Crime

667. In addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber adopts the following elements of the crime of acts of terrorism:

1. Acts or threats of violence directed against persons or their property;

2. The perpetrator wilfully made persons or their property the object of those acts and threats of violence; and

3. The acts or threats of violence were committed with the primary purpose of spreading terror among those persons.[1310]

668. The ICTY Appeals Chamber in the *Galić* case provided further clarification as to these elements of the crime. With regard to the *actus reus*, it held that

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offence against persons or property protected under international agreements to which Yemen is a party (Yemen ratified Additional Protocols I and II, in their entireties, on April 17, 1990)."

[1308] No charges of terrorism have been adjudicated before the ICTR to date.

[1309] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Judgement, 5 December 2003 ("*Galić* Trial Judgement"); *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006; *Prosecutor v. Zejnil Delalić, Zdravko Mucić aka "Pavo", Hazim Delić and Esad Landzo aka "Zenga"*, Case No. IT-96-2-T, 16 November 1998 ("*Čelebići* Trial Judgement"); *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 3 March 2000 ("*Blaškić* Trial Judgement"); *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 2 August 2001 ("*Krstić* Trial Judgement").

> the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population can comprise attacks or threats of attacks against the civilian population. The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. [...] Further, the crime of acts or threats of violence the primary purpose of which it to spread terror among the civilian population is [...] rather a case of "extensive trauma and psychological damage" being caused by "attacks which were designed to keep the inhabitants in a constant state of terror." Such extensive trauma and psychological damage form part of the acts or threats of violence.[1311]

669. Actual terrorisation of the civilian population is not an element of the crime. The requisite *mens rea* is composed of the specific intent to spread terror among the civilian population. In the words of the ICTY Appeals Chamber,

> [t]he fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration.[1312]

670. The Kanu Defence argues that the crime of acts of terrorism does not encompass acts or threats of violence targeted at protected *property* but only protected *persons*.[1313] While the Trial Chamber agrees that it is not the property as such which forms the object of protection from acts of terrorism, the destruction of people's homes or means of livelihood and, in turn, their means of survival, will operate to instil fear and terror. The attacks on, or destruction of, property thus plays an important role in defining the contours of this crime. What places acts of terrorism apart from other crimes directed against property is the specific intent to spread terror among the population. The acts or threats of violence committed in furtherance of such a purpose are innumerable and may well encompass attacks on property through which the perpetrators intend to terrorise the population.[1314]

671. Therefore, this Trial Chamber endorses the finding of Trial Chamber I that the ambit of acts of terrorism "extends beyond acts or threats of violence committed against protected persons to acts

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[1310] See Rule 98 Decision, para. 49; see also *Prosecutor v. Norman et al.*, SCSL-2004-14-T-473, Decision on Motions for Judgement of Acquittal Pursuant to Rule 98, 21 October 2005, para. 112.
[1311] *Galić* Appeal Judgement, para. 102 (footnotes omitted), referring to *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Indictment, paras 4(b), 4(c).
[1312] *Galić* Appeal Judgement, para. 104.
[1313] Kanu Defence Trial Brief, paras 7-18.
[1314] In this regard, *see* Kanu Defence Trial Brief, para. 16, submitting that "another reason why the definition should exclude the 'property' element is that terrorism should be directed at sowing terror. The question raised here is whether an attack on someone's property can actually be categorised as terrorising people." As demonstrated above, the Trial Chamber holds that it can.

directed against installations [...]" where such acts were committed with the primary purpose of spreading terror amongst the civilian population.[1315]

2. Count 2: Collective Punishments (Article 3(b) of the Statute)

672. The Indictment alleges that the Accused committed the crimes set forth in paragraphs 42 to 79 of the Indictment, and charged in Counts 3 to 14, "to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF." Count 2 thus charges the Accused with collective punishments, a violation of Common Article 3 and of Additional Protocol II, punishable under Article 3(b) of the Statute.[1316]

673. Article 3(b) of the Statute, which is based on Article 4(2)(b) of Additional Protocol II, prohibits collective punishments. The notion of 'collective punishments' goes back to Article 50 of the 1899 Hague Regulations, according to which "[n]o general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible."[1317] This prohibition was later incorporated in Article 33(1) of Geneva Convention IV,[1318] Article 75(2)(d) of Additional Protocol I and Article 4(2)(b) of Additional Protocol II. It is now firmly enshrined in a variety of international documents[1319] and in domestic military legislations.[1320]

[1315] *Prosecutor v. Sam Hinga Norman, Moinina Fofana, Allieu Kondewa*, Case No. SCSL-04-14-T, Decision on Motions for Judgement of Acquittal Pursuant to Rule 98, 21 October 2005, para. 112. *See also* Prosecution Final Brief, para. 978.

[1316] Indictment, para. 41.

[1317] Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, 29 July 1899, The Hague ("1899 Hague Regulations").

[1318] "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited."

[1319] Hague Convention (IV), Respecting the Laws and Customs of War on Land, and its annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 ("1907 Hague Regulations"), Article 50: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible [...]"; see also Declaration on the Protection of Women and Children in Emergency and Armed Conflict, United Nations General Assembly, Res. 3318 (XXIX), 14 December 1975, para. 5, according to which "[a]ll forms of [...] collective punishment [...] committed by belligerents in the course of military operation or in occupied territories shall be considered criminal [...]"; African Charter on Human and People's Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 LL.M 58 (1982), entered into force on 21 October 1986 ("African Charter on Human Rights"), Article 7(2) providing that "[p]unishment is personal and can be imposed only on the offender [...]"; Doc A/46/10, Report of the International Law Commission on the Work of its 43rd Session, 29 April-19 July 1991, Official Records of the General Assembly, 46th Session, Supplement No. 10, extract from the Yearbook of the International Law Commission-1991, vol. II(2), the Draft Code of Crimes Against the Peace and Security of Mankind, Article 22(2)(a), wherein 'collective punishment' is characterised as an 'exceptionally serious war crime'.

[1320] United Kingdom Military Manual (1958), para. 647, stating that "the Hague Rules forbid collective punishment, in the form of a general pecuniary or other penalty, of the population for acts of individuals for which the population as a whole cannot be regarded as jointly or severally responsible [...]"; Argentina, Law of War Manual (1969), para. 4.012,

674. Upon the inception of the Special Court, the United Nations Secretary General ("Secretary General") declared that "[v]iolations of common Article 3 of the Geneva Conventions and of Article 4 of Additional Protocol II thereto committed in an armed conflict not of an international character have long been considered customary international law, and in particular since the establishment of the two International Tribunals, have been recognised as customarily entailing the individual criminal responsibility of the accused."[1321]

675. In light of the foregoing, the Trial Chamber finds that at the time relevant to the Indictment, customary international law imposed individual criminal liability for the crime of collective punishments, as a violation of Common Article 3 and of Additional Protocol II.

(a) Elements of the Crime

676. In addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber adopts the following elements of the crime of collective punishments:

1. A punishment imposed indiscriminately and collectively upon persons for acts that they have not committed; and

2. The intent on the part of the perpetrator to indiscriminately and collectively punish the persons for acts which form the subject of the punishment.[1322]

677. In respect of the first element, The Kanu Defence submits that the Prosecution is obliged to lead evidence that the punishment was imposed for acts which the victims did not in actual fact commit.[1323] In contrast, the Prosecution argues that "[c]ivilian victims were punished arbitrarily by the AFRC because part of the population was, in the AFRC's view, supposedly failing to support them" and that "the punishments inflicted in the present instance are equally unlawful when committed against civilians who might have indeed resisted against the AFRC/RUF."[1324]

678. The prohibition of collective punishments in international humanitarian law is based on one of the most basic tenets of criminal law, the principle of individual responsibility. This principle

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wherein "collective punishments of the civilian population" is prohibited; Belgium, Law of War Manual (1983), p. 50, according to which 'it is prohibited to impose collective punishments."

[1321] United Nations Secretary General, Report on the Establishment of a Special Court for Sierra Leone, UN. Doc. S/2000/915, 4 October 2000 ("Secretary General's 2000 Report"), para. 14.

[1322] See also Rule 98 Decision, para. 62.

[1323] Kanu Final Brief, para. 22. *See also Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-04-14-T, Decision on Motions for Judgement of Acquittal Pursuant to Rule 98, 21 October 2005 ("CDF Rule 98 Decision"), para. 118.

[1324] Prosecution Final Brief, para. 986.

affirms that responsibility is personal in nature and that no one may be punished for an act he or she has not personally committed.[1325]

679. Article 3 of the Statute is a reproduction of Article 4(2) of Additional Protocol II (which includes 'collective punishments' – Article 4(2)(b) - among its fundamental guarantees). Article 4(2)(b) of Additional Protocol II is based on Article 33 of the Fourth Geneva Convention, which provides that: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." Thus punishments imposed upon protected persons who are not individually responsible for the act which forms the object of the punishment are absolutely prohibited.

680. The first element mentioned above concerns punishments which are not based on individual responsibility but which are inflicted upon persons by wrongfully ascribing collective guilt to them. Such punishments are imposed upon persons for acts which they may or may not have committed. In other words, the punishments are imposed indiscriminately without establishing individual responsibility through some semblance of due process and without any real attempt to identify the perpetrators, if any. It is in this context that the first element is understood to mean: "A punishment imposed upon protected persons for acts that they have not committed." The Trial Chamber therefore rejects the submission of the Kanu Defence that the Prosecution is obliged to prove that the victims of the punishment did not actually commit the acts for which they were punished.

681. The Trial Chamber further notes that this crime covers an extensive range of possible 'punishments'.[1326] The ICRC Commentary of Article 75.2(d) of Additional Protocol I advocates an extensive interpretation of the crime of collective punishments, to include

> not only penalties imposed in the normal judicial process, but also any other kind of sanction (such as confiscation of property) [...]. [I]t is based on the intention to give the rule the widest possible scope, and to avoid any risk of a restrictive interpretation.[1327]

[1325] See International Committee of the Red Cross, Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, J. Pictet ed., (Geneva: Martinus Nijhoff Publishers, 1958) at 225.

[1326] See ICRC Commentary of the Additional Protocols, para. 1374 regarding Article 75.2(d) of Additional Protocol I: "[Collective punishments include] not only penalties imposed in the normal judicial process, but also any other kind of sanction (such as confiscation of property) [...]. [I]t is based on the intention to give the rule the widest possible scope, and to avoid any risk of a restrictive interpretation."

[1327] ICRC Commentary of the Additional Protocols, para. 1374; *see also* ICRC Commentary of Geneva Convention IV, Article 33, para. 225, stating that "[the term of collective punishments] does not refer to punishments inflicted under penal law, i.e. sentences pronounced by a court after due process of law, but penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed."

3. Counts 3, 4 and 5: Unlawful Killings

682. In Count 3, the Prosecution charges the Accused with extermination as a crime against humanity, punishable under Article 2(b) of the Statute. In addition, or in the alternative, Count 4 charges the Accused with murder, a crime against humanity, punishable under Article 2(a) of the Statute. In addition, or in the alternative, Count 5 charges the Accused with violence to life, health and physical or mental well-being of persons, in particular murder, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute.[1328]

(a) Count 3: Extermination (Article 2(b) of the Statute)

683. Extermination as a crime against humanity has been defined in international humanitarian law as "the intentional mass killing or destruction of part of a population as part of a widespread or systematic attack upon a civilian population."[1329] The Trial Chamber endorses the view expressed by the ICTR that a perpetrator may be guilty of the crime of Extermination if he kills or destroys one individual as long as that killing of that individual is part of a mass killing event.[1330] However, knowledge of a "vast scheme of collective murder" is not an element required for extermination.[1331] Unlike the crime of Genocide, the crime of Extermination does not require a discriminatory intent.[1332]

684. In addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the Trial Chamber adopts the following elements of the crime of extermination:

1. The perpetrator intentionally 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 a population; and

2. The killing or destruction constituted part of a mass killing of members of a civilian population.[1333]

[1328] Indictment, paras 42-50.
[1329] *Akayesu* Trial Judgement, paras 590-592; *Kayishema* Trial Judgement, paras 137-147; *Rutaganda* Trial Judgement, paras 82-84; *Prosecutor v. Krstić*, ICTY IT-98-33-T, Trial Chamber Judgement, 2 August 2001, ("*Krstić* Trial Judgement"), para. 503.
[1330] Kayishema Trial Judgement, para. 147.
[1331] *Prosecutor v. Milomir Stakić*, IT-97-24-A, Judgement, 22 March 2006, ("*Stakić* Appeal Judgement"), para. 259; Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Judgement, 29 October 2003 ("*Stakić* Trial Judgement"), para. 640.
[1332] *Krstić* Trial Judgement, para. 500.
[1333] Rule 98 Decision, para. 73.

685. With regard to the *actus reus* of extermination, it must be demonstrated that a large number of individuals were killed. The accused's participation may be remote or indirect, and include conduct which creates conditions provoking the victim's death and ultimately mass killings, such as the deprivation of food and medicine, calculated to cause the destruction of part of the population.[1334] Further, the Prosecution is not required to establish that the accused had *de facto* control over a large number of individuals because of his position of authority.[1335]

686. The requisite scale of killings for extermination has been described as 'vast', 'massive' or 'large'.[1336] In this context, the Kanu Defence submits that the Prosecution carries the burden of establishing that 'mass' killings occurred.[1337] The Trial Chamber notes that, although most cases from the Second World War employed the term of 'extermination' to address thousands of killings,[1338] no minimum number of victims is required as long as it is a numerically significant part of any given population.[1339] Furthermore, the element of massiveness required for a finding of extermination may result from an aggregate of all killing incidents charged in an indictment. It is not required that the mass murder occur in a concentrated manner and over a short period.[1340]

687. The *mens rea* for extermination clearly reflects the *actus reus*, in so far that the Prosecution is required establish the intent either to kill on a large scale or to systematically subject a large number of individuals to living conditions which would, more likely than not, result in their

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[1334] *Brđanin* Trial Judgement, para. 389; *Vasiljević* Trial Judgement, para. 227.
[1335] *Prosecutor v. Radoslav Brđanin,* Case No. IT-99-36-T, Decision on Motion for Acquittal Pursuant to Rule 98*bis*, 28 November 2003, para. 74; but *see Vasiljević* Trial Judgement, para. 222.
[1336] *Vasiljević* Trial Judgement, para. 228 ('vast'); *Brđanin* Trial Judgement, para. 388 ('massive'); *Brđanin* Trial Judgement, para. 389 ('large').
[1337] Kanu Defence Trial Brief, para. 40; *see also* Kamara Final Trial Brief, para. 109.
[1338] *Vasiljević* Trial Judgement, fn. 587, wherein the Trial Chamber states that "in one case, the court used the expression 'extermination' when referring to the killing of 733 civilians (Unites States v. Ohlendorf and others ("Einsatzgruppen case"), IV Trials of War Criminals before the Nuremberg Military Tribunal under Control Council Law No 10, 421). The Trial Chamber is not aware of cases which, prior to 1992, used the phrase 'extermination' to describe the killing of less than 733 persons. The Trial Chamber does not suggest, however, that a lower number of victims would disqualify that act as 'extermination' as a crime against humanity, nor does it suggest that such a threshold must necessarily be met."
[1339] *Brđanin* Trial Judgement, para. 465, being satisfied that the killing of 1669 Bosnian Muslims fulfils the massiveness requirement of 'extermination'; Stakić Trial Judgement, paras 654, 655, finding that the killing of more than 1500 individuals also fulfil the element of massiveness; *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006 ("*Krajišnik* Trial Judgement"), para. 720, finding that an incident in which 17 people were killed reached the requisite element of massiveness of extermination. See also *Ntakirutimana* Appeal Judgement, para. 516; *Stakić* Appeal Judgement, paras 260-261; *Brđanin* Appeal Judgement, para. 471, stating that there is "no numerical threshold" with respect to the *actus reus* of extermination.
[1340] *Brđanin* Trial Judgement, para. 391; *Stakić* Trial Judgement, para. 640; but see *Krajišnik* Trial Judgement, para. 716, according to which "[t]he killings constituting the extermination must form part of the same incident, taking into account such factors as the time and place of the killings, the selection of the victims and the manner in which they are targeted." Applying this rationale, the *Krajišnik* Trial Chamber, para. 720, found that "the element of mass scale is fulfilled, considering the number of deaths in each incident and the circumstances surrounding the deaths [...]" in respect of specific locations, including a village where 17 people were killed.

death.[1341] Consistent with the approach that a numerical minimum does not exist to establish the *actus reus* of extermination, there is no further requirement of an intent to kill a certain number of individuals.[1342]

(b) Count 4 (Article 2(a) of the Statute) and Count 5 (Article 3(a) of the Statute): Murder

688. Murder is charged under Article 2(a) of the Statute (Count 4 - Crime against Humanity) and Article 3(a) of the Statute (Count 5 - Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II). The Trial Chamber observes that the elements defining murder are identical regardless of the provision under which it is charged.[1343] Thus, in addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute (for Count 4) and the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute (for Count 5), the Trial Chamber adopts the following elements of the crime of murder:

1. The perpetrator by his acts or omission caused the death of a person or persons; and

2. The perpetrator had the intention to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.[1344]

689. For the *actus reus* of murder to be satisfied, the Prosecution is required to establish beyond reasonable doubt that the perpetrator's conduct substantially contributed to the death of the person.[1345] This does not necessarily require proof that the dead body of that person has been recovered.[1346] The death of the victim may be demonstrated through circumstantial evidence, provided it is the only inference that may reasonably be drawn from the acts or omissions of the perpetrator.[1347] Such circumstantial evidence may include factors such as proof of incidents of mistreatment against the alleged victim, pattern of mistreatment and disappearances of individuals

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[1341] *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 ("*Stakić* Appeal Judgement"), para. 260; *Prosecutor v. Elizaphan Ntakirutimana and Gerard Ntakirutimana*, Cases No. ICTR-97-10-A and ICTR-97-14-A, 13 December 2004 ("*Ntakirutimana* Appeal Judgement"), para. 522.
[1342] *Stakić* Appeal Judgement, paras 260-261; *Ntakirutimana* Appeal Judgement, para. 516.
[1343] *Krstić* Trial Judgement, paras 484-485; *Stakić* Trial Judgement, para. 631; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Judgement, 1 September 2004 ("*Brđanin* Trial Judgement"), para. 380; Prosecutor v. Naser Orić, Case No. IT-03-68-T, Judgement, 30 June 2006 ("*Orić* Trial Judgement"), para. 345; *Krajišnik* Trial Judgement, para. 848.
[1344] Rule 98 Decision, para. 74.
[1345] *Orić* Trial Judgement, para. 347; see also *Čelebići* Trial Judgement, fn. 435, providing the results of its examination of various domestic legal systems, including that of England, Australia, Belgium and Norway.
1346 See *Krnolejac* Trial Judgement, para. 326; *Tadić* Trial Judgement, para. 240.
[1347] *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR77, Judgement on Allegation of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 91; *Čelebići* Appeal Judgement, para. 458; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-T, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement"), para. 327; *Vasiljević* Appeal Judgement, para. 120.

in the location in question, general climate of lawlessness, length of time which has elapsed since the person disappeared and the fact that the alleged victim has not been in contact with others whom he would have been expected to contact.[1348]

690. The *mens rea* required for murder is intent to kill or cause serious bodily harm in the reasonable knowledge that it would likely result in death. Premeditation is not a *mens rea* requirement.[1349]

4. Counts 6, 7, 8 and 9: Sexual Crimes

691. In Count 6, the Prosecution charges the Accused with rape, a crime against humanity, punishable under Article 2(g) of the Statute. Count 7 charges the Accused with "sexual slavery and any other form of sexual violence", a crime against humanity, punishable under Article 2(g) of the Statue. In Count 8, the Prosecution charges the Accused with other inhumane acts, a crime against humanity, punishable under Article 2(i) of the Statute. In addition, or in the alternative, Count 9 charges the Accused with outrages upon personal dignity, a violation of Common Article 3 and of Additional Protocol II, punishable under Article 3(e) of the Statute.[1350]

(a) Count 6: Rape (Article 2(g) of the Statute)

692. The prohibition of the crime of rape in armed conflict is firmly enshrined in customary international law.[1351] Rape was proscribed as a crime against humanity in the Allied Control

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[1348] Krnojelac Trial Judgement, para. 327, fn. 857, providing an extensive list of case-law from the European Court of Human Rights, the Inter-American Court of Human Rights and domestic legal systems.

[1349] *Akayesu* Trial Judgement, para. 588; *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-A, Judgement, 1 June 2001 ("*Kayishema* Appeal Judgement"), para. 151; Brđanin Trial Judgement, para. 386; Oric Trial Judgement, para. 348.

[1350] Indictment, paras 51-57. With regard to the law on Count 8 (Other Inhumane Acts), see para. 697 et. seq, *infra*.

[1351] The prohibition against rape is codified as far back at the Lieber Code of 1863, Francis Lieber, *Laws of War: Instructions for the Government of Armies of the United States in the Field*, General Orders No: 100, Adjutant General's Office, 24 April 1863 ("Lieber Code"), Articles 44, 47. Rape was implicitly prohibited in the *1907 Hague Regulations* which state at Article 46 that [f]amily honour and rights [...] must be respected, *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land*, 3 Martens Nouveau Recueil (ser. 3) 461, 187 Consol. T.S. 227, entered into force 26 January, 1910.; Article 27 of *Geneva Convention IV, 1949*, states, "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. *Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287,* entered into force 21 October 1950.; Rape is prohibited by Article 76(1) of Additional Protocol I, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, 1125 U.N.T.S. 3, entered into force 7 December 1978, and by Article 4(2)(e) of Additional Protocol II, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*, 1125 U.N.T.S. 609, entered into force 7 December 1978. Rape was recognised as a "grave breach" of the Geneva Conventions by the UN Security Council in 1994, *Final Report of the Commission of experts established pursuant to Security Council Resolution 780,* UN Doc. S/1994/674, paras 58-60 and 232-253.

Council Law No. 10 and prosecuted as 'inhuman acts' before the Tokyo Tribunal.[1352] Rape as a crime against humanity is found in the statutes of the ICTY, the ICTR and the ICC[1353] and has been defined largely through the jurisprudence of the ICTY and the ICTR.[1354]

693. In addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the Trial Chamber adopts the following elements of the crime of rape:

1. The non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator; and

2. The intent to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.[1355]

694. Consent of the victim must be given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances.[1356] Force or threat of force provides clear evidence of non-consent, but force is not an element per se of rape and there are factors other than force which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.[1357] This is necessarily a contextual assessment. However, in situations of armed conflict or detention, coercion is almost universal. 'Continuous resistance' by the victim, and physical force, or even threat of force by the perpetrator are not required to establish coercion.[1358] Children below the age of 14 cannot give valid consent.[1359]

[1352] Control Council Law No. 10, Article II(1)(c); M. Boot, C.L. Hall, R. Dixon, "Article 7, Crimes Against Humanity" in Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 1999, pp. 140-141.

[1353] ICTY Statute, Article 5(g); ICTR Statute, Article 3(g); Rome Statute, Article 7(1)(g). Rape is also designated as a crime against humanity in Article 18(j) of the Draft Code of Crimes Against the Peace and Security of Mankind, adopted by the International Law Commission ("ILC|") at its 48th session, 1996, submitted to the General Assembly as part of ILC Report covering the work of that session.

[1354] See *Prosecutor v. Jean-Paul Akayesu,* Case No. ICTR-96-4-T, Judgement, 2 September 1998, paras 596-598; *Prosecutor v. Zejnil Delalić, Zdravko Mučić, Hazim Delić and Esad Landžo,* Case No. IT-96-21-T, Judgement, 16 November 1998; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998, para. 185; *Prosecutor v. Alfred Musema,* Case No. ICTR-96-13-T, Judgement and Sentence, 27 January 2000, paras 228-229; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001, paras 438 *et seq.*; *Kunarac* Appeal Judgement, 12 June 2002, paras 128-130; *Prosecutor v. Laurent Semanza,* Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003, paras 344-45.

[1355] Rule 98 Decision, para. 106, referring to Kunarac Appeal Judgement, para. 127.

[1356] *Kunarac* Appeal Judgement, para. 127.

[1357] *Kunarac* Appeal Judgement, paras 129-130.

[1358] *Kunarac* Appeal Judgement, paras 128-130, 133; see also Gay J. McDougall, Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict, Final Report submitted to the Commission on Human Rights Sub-commission on Prevention of Discrimination and Protection of minorities, 50th session, UN Doc. E/CN.4/Sub.2/1998/13, 22 June 1998, para. 25, stating that "[t]he manifestly coercive circumstances that exist in all

695. The Trial Chamber acknowledges that the very specific circumstances of an armed conflict where rapes on a large scale are alleged to have occurred, coupled with the social stigma which is borne by victims of rape in certain societies, render the restrictive test set out in the elements of the crime difficult to satisfy. Circumstantial evidence may therefore be used to demonstrate the *actus reus* of rape.[1360]

(b) Count 7: Sexual Slavery and Any Other Form of Sexual Violence (Article 2(g) of the Statute)

696. As detailed above in *Chapter II, Defects in the Indictment*, Count 7 is duplicitous and has been struck out.[1361]

(c) Count 8: Other Inhumane Acts (Article 2(i) of the Statute)

(i) Elements of the Crime

697. The offence of 'other inhumane acts' pursuant to Article 2(i) of the Statute is a residual clause which covers a broad range of underlying acts not explicitly enumerated in Article 2(a) through (h) of the Statute. In light of the exhaustive category of sexual crimes particularised in Article 2(g) of the Statute, the offence of 'other inhumane acts', even though residual, must logically be restrictively interpreted as applying only to acts of a non-sexual nature amounting to an affront to human dignity.[1362] Listing the underlying acts exhaustively would only create undesirable opportunities to evade the letter of the prohibition.[1363] The crime of 'other inhumane

armed conflict situations establish a presumption of non-consent and negates the need for the prosecution to establish the lack of consent as an element of the crime."

[1359] See Article 5.a. of the Statute, which provides that "[t]he Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law: a. Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31): i. Abusing a girl under 13 years of age, contrary to section 6; ii. Abusing a girl between 13 and 14 years of age, contrary to section 7; iii. Abduction of a girl for immoral purposes, contrary to section 12."

[1360] *Prosecutor v. Mikaeli Muhimana*, Case No. ICTR-95-1B-A, Judgement, 21 May 2007 ("*Muhimana* Appeal Judgement"), para. 49; *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("*Gacumbitsi* Appeal Judgement"), para. 115.

[1361] Alleged Defects in the Form of the Indictment, paras 92-95, *supra*.

[1362] *Prosecutor v. Norman et al.*, SCSL-04-14-PT, Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence, 24 May 2005, para. 19(iii).

[1363] *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić aka "Vlado"*, Case No. IT-95-16-T, Judgement, 14 January 2000 ("*Kupreškić* Trial Judgement"), para. 563; *Akayesu* Trial Judgement, para. 582; *Rutaganda* Trial Judgement, para. 76; *see also* Report of the ILC on the work of his 40th session, 6 May-26 June 1996, UNGAOR 51st Session Supp. No. 10 (A/51/10) (Crimes against the Peace and Security of Mankind), para. 17, p. 103, commenting that "[t]he Commission recognised that it was impossible to establish an exhaustive list of the inhumane acts which might constitute crimes against humanity. First, this category of acts is intended to include only additional acts that are similar in gravity to those listed in the preceding subparagraphs. Second, the act must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity."

acts' was first inserted in Article 6(c) of the Nuremberg Charter and Article II(1)(i) of Control Council Law No. 10 and its prohibition is well-established in customary international law.[1364]

698. In addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the Trial Chamber adopts the following elements of the crime of other inhumane acts:

1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;

2. The act was of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute; and

3. The perpetrator was aware of the factual circumstances that established the character of the gravity of the act.[1365]

699. The seriousness of a particular act or omission and the sufficiency of its gravity must be examined on a case-by-case basis, taking into consideration the personal circumstances of the victim including age, sex and health as well as the physical and mental consequences of the conduct.[1366] The act or omission must have a direct and seriously damaging, though not necessarily long-term, effect on the victim.[1367]

700. As regards *mens rea*, it must be established that the perpetrator had the intent to inflict serious physical suffering, or serious injury to body or to mental or physical health, or to conduct a serious attack on human dignity. This includes situations where the perpetrator knew that his acts or omissions would more likely than not cause serious physical suffering, or serious injury to body or to mental or physical health, or constituted a serious attack on human dignity and nevertheless accepted that risk.[1368]

(ii) Submissions on the alleged crime of 'forced marriage'

[1364] *Stakić* Appeal Judgement, para. 315, with further references.
[1365] *See* Rome Statute, Elements of Crimes, Article 7(1)(k).
[1366] *Kayishema* Trial Judgement, para. 148-151; *Čelebići* Trial Judgement, para. 536; *Kunarac* Trial Judgement, para. 504.
[1367] *Re P.*, Appellate Court, Judgement of 20 May 1948, Criminal Chamber 3/48: "[T]he act which was committed must affect the human being in the depths of his being. That is the physical and spiritual domain of being and acting which constitutes the value and dignity of the person according to the moral convictions of civilised humanity [...]"; *Kunarac* Trial Judgement, para. 501; *Krnojelac* Trial Judgement, para. 144.
[1368] *Vasiljević* Trial Judgement, para. 236; *Prosecutor v. Zlatko Aleksovski,* Case No. IT-95-14/1-T, Judgement, 25 June 1999 ("*Aleksovski* Trial Judgement"), para. 56; *Kayishema* Trial Judgement, para. 153.

701. The Prosecution submits that 'forced marriages' qualify as 'Other Inhumane Acts' punishable under Article 2(i) of the Statute and are of similar gravity to existing crimes within the Special Court's jurisdiction. In its Final Brief, the Prosecution claims that this crime "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."[1369] According to the Prosecution, such acts are distinct from sexual acts, because they force a person into the appearance of marriage by threat or other coercion. Thus, even if forced marriage usually involves sex, it has its own distinctive features and is sufficiently serious to qualify as an inhumane act. The Prosecution submits that sexual slavery does not necessarily amount to forced marriage, in that a sexual slave is not necessarily obliged to pretend that she is the wife of the perpetrator. Similarly, a victim of sexual violence is not necessarily obliged to perform all the tasks attached to a marriage. Thus, says the Prosecution, forced marriage as an "inhumane act" can include sexual violence or slavery, but it involves distinct elements as well. The Prosecution maintains that the question of the status of forced marriage as a crime under customary international law does not arise, since the crime charged is "other inhumane acts", the customary law status of which is clearly established.

702. The Kanu Defence, by contrast, submits that "forced marriages cannot be qualified as an international crime (against humanity), as it is not of 'a gravity similar to any other act referred to in Article 2(a) to (h) of the Statute'."[1370] The Kanu Defence is "of the view that if the conduct described by the Prosecution cannot be categorized as sexual slavery, this conduct will not constitute a crime against humanity. The exercising of force on a woman to enter into a relationship similar to marriage, is not of 'a gravity similar to any other act referred to in Article 2(a) to (h) of the Statute' especially in view of the more nuanced and complicated relation between the 'husband' and 'wife' as discussed in the expert report of Dr. Thorsen."[1371]

(iii) Findings

703. As described above, the crime of 'other inhumane acts' exists as a residual category in order not to unduly restrict the Statute's application with regard to crimes against humanity.[1372] "Forced

[1369] *See* Prosecution Final Brief, para. 1009-1012.
[1370] Kanu Final Brief, para. 56.
[1371] Kanu Final Brief, para. 48.
[1372] See, e.g., *Stakić* Appeal Judgement, paras 313-316; *Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement, 16 May 2003 ("Niyitegeka Trial Judgement), para. 460; *Prosecutor v. Juvenal Kajelijeli*, Case No. ICTR-

marriage" as an 'other inhumane act' must therefore involve conduct not otherwise subsumed by other crimes enumerated under Article 2 of the Statute.

704. At the Motion for Acquittal Stage, the Trial Chamber found that there was *prima facie* evidence of a non-sexual nature relating to the abduction of women and girls forced to submit to 'marital' relationships and to perform various conjugal duties.[1373] Having now examined the whole of the evidence in the case, the Trial Chamber by a majority[1374] is not satisfied that the evidence adduced by the Prosecution is capable of establishing the elements of a non-sexual crime of "forced marriage" independent of the crime of sexual slavery under article 2(g) of the Statute.

705. Sexual slavery is a specific form of slavery.[1375] The prohibition against slavery is a customary norm of international law and the establishment of enslavement as a crime against humanity is firmly entrenched.[1376] Thus, slavery for the purpose of sexual abuse is a *jus cogens* prohibition in the same manner as slavery for the purpose of physical labour.[1377]

706. While sexual slavery is not specifically contained in the statutes of the ICTY or the ICTR, the underlying crimes of enslavement and rape are included in both statutes and have been developed through a significant body of jurisprudence. The accused in the *Kunarac* case were charged with and convicted of enslavement as a crime against humanity for holding girls in slavery-like conditions for the purpose of sex.[1378]

707. The jurisprudence of the ICTY and the ICTR is reflected in the Rome Statute of the International Criminal Court which, like the Statute of the Special Court, now separates gender crimes into an isolated paragraph and codifies sexual slavery as a crime against humanity.[1379]

(iv) Elements of the Crime of Sexual Slavery

98-44A-T, Judgement and Sentence, 1 December 2003 ("*Kajelijeli* Trial Judgement"), para. 931; *Kupreškić* Trial Judgement, para. 563.

[1373] Rule 98 Decision, para. 165.

[1374] Dissenting Opinion of Justice Doherty, Separate and Concurring Opinion of Justice Sebutinde.

[1375] Special Rapporteur on Contemporary forms of Slavery, *Final report on Contemporary forms of Slavery: Systemic rape, sexual slavery and slavery-like practices during armed conflict*, E/CN.4/Sub.2/1998/13, 22 June 1998, at para. 29.

[1376] The state of the law of slavery is discussed in relation to Count 13 (enslavement) at paras 739-749, *infra*.

[1377] Special Rapporteur on Contemporary Forms of Slavery, *Update to the final report on Systematic rape, sexual slavery and slavery-like practices during armed conflict* E/CN.4/Sub.2/2000/21, 6 June 2000, at para 51.

[1378] The Prosecution in the *Kunarac* case grouped charges of enslavement and rape as crimes against humanity together due to the inter-related factual basis (systemic rape and enslavement of women in the city of Foča) of the crimes, *Kunarac*, Case No. IT-96-23-PT, Amended Indictment, 1 December 1999, Counts 14 to 17. A conviction was entered for enslavement as a crime against humanity involving rape, treatment of girls as private property and forced performance of household chores: *Kunarac* Trial Judgement paras 542, 543, 728 *et seq*. The definition of the crime of enslavement was upheld on appeal, *Kunarac* Appeal Judgement paras 106-124.

708. In addition to the chapeau requirements of Crimes Against Humanity pursuant to Article 2 of the Statute, the elements of the crime of sexual slavery are as follows:

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 by imposing on them a similar deprivation of liberty.

2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature;

3. The perpetrator committed such conduct intending to engage in the act of sexual slavery or in the reasonable knowledge that it was likely to occur.[1380]

709. The powers of ownership listed in the first element of sexual slavery are non-exhaustive. There is no requirement for any payment or exchange in order to establish the exercise of ownership.[1381] Deprivation of liberty may include extracting forced labour or otherwise reducing a person to servile status.[1382] Further, ownership, as indicated by possession, does not require confinement to a particular place but may include situations in which those who are captured remain in the control of their captors because they have no where else to go and fear for their lives.[1383] The consent or free will of the victim is absent under conditions of enslavement.[1384]

[1379] Rome Statute, Article 7(1)(g)-2 (crime against humanity). The Rome Statute also recognises sexual slavery as a war crime in Article 8(2)(b)(xxii)-2 (other serious violation of the laws or customs of an international armed conflict) and Article 8(2)(e)(vi)-2 (serious violation of Common Article 3).

[1380] *See* Rome Statute Elements of Crimes, Article 7(1)(g)-2.

[1381] Special Rapporteur on Contemporary Forms of Slavery, Update to the Final Report on Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, E/CN.4/Sub.2/2000/21, 6 June 2000, para 50.

[1382] With reference to the Rome Statute Article 8(2)(b)(xxii) - which lists sexual slavery as a crime against humanity - delegates to the Working Group on the Elements of Crime took the view that the word "similar" in the first element (i) of the crime should not be interpreted as referring only to commercial character of the examples of selling, purchasing, or bartering. These delegates insisted that Footnote 18 be appended to the Article, which states "[i]t is understood that such a deprivation of liberty may, in some circumstances, include extracting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.", Rome Statute of the International Criminal Court, Elements of Crimes, Art. 8(2)(b)(xxii), fn. 18.; Commentary documented by Eve La Haye, Article 8(2)(b)(xxii) – 2 – Sexual Slavery, in Roy S. Lee, Ed., The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence (2001: Transnational Publishers, Ardsley) at p. 191.

[1383] This distinction was also insisted upon by some delegations to the Rome Statute Working Group on Elements of Crimes to ensure that the provision did not exclude from prohibition situations in which sexually abused women were not locked in a particular place but were nevertheless "deprived of their liberty" because they have no where else to go and fear for their lives, Commentary documented by Eve La Haye, Article 8(2)(b)(xxii) – 2 – Sexual Slavery, in Roy S.

710. The Prosecution evidence in the present case does not point to even one instance of a woman or girl having had a bogus marriage forced upon her in circumstances which did not amount to sexual slavery. Not one of the victims of sexual slavery gave evidence that the mere fact that a rebel had declared her to be his wife had caused her any particular trauma, whether physical or mental. Moreover, in the opinion of the Trial Chamber, had there been such evidence, it would not by itself have amounted to a crime against humanity, since it would not have been of similar gravity to the acts referred to in Article 2(a) to (h) of the Statute.

711. The Trial Chamber finds that the totality of the evidence adduced by the Prosecution as proof of "forced marriage" goes to proof of elements subsumed by the crime of sexual slavery. As exhaustively examined in *Chapter X, Factual Findings, infra*,[1385] so-called "forced marriages" involved the forceful abduction of girls and women from their homes or other places of refuge and their detention with the AFRC troops as they attacked and moved through various districts. The girls and women were taken against their will as "wives" by individual rebels.[1386] The evidence showed that the relationship of the perpetrators to their "wives" was one of ownership and involved the exercise of control by the perpetrator over the victim, including control of the victim's sexuality, her movements and her labour; for example, the "wife" was expected to carry the rebel's possessions as they moved from one location to the next, to cook for him and to wash his clothes.[1387]. Similarly, the Trial Chamber is satisfied that the use of the term "wife" by the perpetrator in reference to the victim is indicative of the intent of the perpetrator to exercise ownership over the victim, and not an intent to assume a marital or quasi-marital status with the victim in the sense of establishing mutual obligations inherent in a husband wife relationship. In fact, while the relationship of the rebels to their "wives" was generally one of exclusive ownership, the victim could be passed on or given to another rebel at the discretion of the perpetrator.[1388]

712. None of the witnesses gave evidence that they considered themselves to be in fact "married". (One witness testified that she had been "married" to her rebel "husband" in a

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Lee, Ed., The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence (2001: Transnational Publishers, Ardsley) pp. 191-192.

[1384] *Kunarac* Trial Judgement, para. 542; *Kunarac* Appeal Judgement, paras 129-131; Special Rapporteur on Contemporary Forms of Slavery, Update to the Final Report on Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict E/CN.4/Sub.2/2000/21, 6 June 2000, para. 51.

[1385] Factual Findings, Sexual Slavery, *infra*.

[1386] Factual Findings, Sexual Slavery, *infra*.

[1387] Exhibit P-32, Mrs. Zainab Bangura, "Expert Report on Phenomenon of 'Forced Marriages' in the Context of the Conflict in Sierra Leone and, more specifically, in the Context of the Trials against the RUF and AFRC Accused Only", p. 14.

[1388] Exhibit P-32, "Expert Report of on phenomenon of 'forced marriages' in the context of the conflict in Sierra Leone and, more specifically, in the context of the trials against the RUF and AFRC Accused only", pp. 13, 15.

ceremony,[1389] but no consent could be inferred given the environment of violence and coercion.) Rather, the repeated assertion of the witnesses was that they had been "taken as wives".[1390] They were held against their will and a number tried to escape.[1391] There was no evidence that any of the women taken as "wives" stayed on with their rebel "husbands" following the end of hostilities.[1392]

713. In light of the foregoing, the Trial Chamber finds, by a majority,[1393] that the evidence adduced by the Prosecution is completely subsumed by the crime of sexual slavery and that there is no lacuna in the law which would necessitate a separate crime of "forced marriage" as an 'other inhumane act'. In view of the Trial Chamber's findings that Count 7 is bad for duplicity, the Trial will in the interests of justice consider the evidence of Sexual Slavery under Count 9.

714. The Trial Chamber further finds that alleged offences of a residual, non-sexual nature do not belong under the part of the Indictment entitled "Counts 6-9: Sexual Violence". The Trial Chamber finds by a majority[1394] that Count 8 is redundant insofar as the crime of sexual slavery will be dealt with in Count 9. Other residual crimes of a non-sexual nature are dealt with in Count 11. Count 8 is therefore dismissed. [1395]

(d) Count 9: Outrages Upon Personal Dignity (Article 3(e) of the Statute)

(i) Elements of the Crime

715. Article 3(e) of the Statute safeguards the highly important value of human dignity[1396] by prohibiting "[o]utrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault". The crime of outrages upon personal dignity must be interpreted in light of the purpose behind Common Article 3 of the Conventions, which is: "to uphold the inherent human dignity of the individual";[1397] or to safeguard "the principles of humane treatment."[1398] The said crime is formulated in a manner which ensures broad and flexible interpretation. The list of offences subsumed under outrages against personal dignity

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[1389] TF1-085, Transcript 7 April 2005, p. 37.
[1390] Factual Findings, Sexual Violence, *infra*.
[1391] *See for example*, Witness TF1-085, Transcript 7 April 2005, pp. 43-44, 121; Witness TF1-334, Transcript 20 May 2005, pp. 4-5; TF1-282, Transcript 13 April 2005, pp. 15-18; Transcript 14 April 2005, p.39.
[1392] Factual Findings, Sexual Violence, *infra*.
[1393] Justice Doherty dissenting.
[1394] Justice Doherty dissenting.
[1395] *See* Rule 98 Decision, Separate Concurring Opinion of Hon. Justice Julia Sebutinde, paras 10-14.
[1396] *See Prosecutor v. Aleksovski*, Case No. IT-95-14/1-T, Judgement, 25 June 1999, at para. 54.
[1397] *Aleksovski Appeal Judgement*, para. 56.
[1398] Patricia Viseur Sellers in: O. Triffterer, ed., Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article, (Baden-Baden: Nomos Verl.-Ges, 1999),(Commentary on Rome Statute), at

constitutes a "non-exhaustive list of conduct", with humiliating and degrading treatment, rape, enforced prostitution and indecent assaults of any kind given by way of example."[1399] The *ICRC Commentary on the Fourth Geneva Convention* notes that: "[i]t seems useless and even dangerous to attempt to make a list of all the factors that make treatment 'humane'" and that treatment which degrades human dignity can take innumerable forms[1400]. The crime of outrages upon personal dignity was first articulated in the 1949 Geneva Conventions and is firmly entrenched in customary international law.

716. In addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber adopts the following elements of the crime of outrages upon personal dignity:

1. The perpetrator committed an outrage upon the personal 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 perpetrator intentionally committed or participated in an act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity; and

4. The perpetrator knew that the act or omission could have such an effect.[1401]

(ii) Findings

717. Count 9 has been charged in addition to or in the alternative to Count 6 (Rape), Count 7 (Sexual Slavery and Any Other Form of Sexual Violence) and Count 8 (Other Inhumane Act, Forced Marriage).[1402]

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margin No. 195. The ICRC's Commentary on Geneva Convention IV also notes: "What [common] Article 3 guarantees such persons is *humane treatment*."

[1399] Commentary on Rome Statute, note 2 at margin No. 190.

[1400] Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Commentary, Common Article 3, online: International Committee of the Red Cross.

[1401] Rule 98 Decision, para. 115; *see* also Rome Statute, Elements of Crimes, Article 8(2)(b)(xxi).

[1402] Indictment, paras 51-57.

718. Rape (Count 6) is an offence which is specified in Article 3(e) of the Statute as being an outrage upon personal dignity . As stated by the ICTR Trial Chamber in *Akayesu*, "[l]ike torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity".[1403]

719. With reference to the elements of sexual slavery set out in the discussion of Count 8 above, the Trial Chamber is similarly satisfied that sexual slavery is an act of humiliation and degradation so serious as to be generally considered an outrage upon personal dignity. The Trial Chamber in *Kvočka* held that "perform[ing] subservient acts," and "endur[ing] the constant fear of being subjected to physical, mental or sexual violence" in camps were outrages upon personal dignity.[1404] Sexual slavery, which may encompasses rape and/or other types of sexual violence as well as enslavement, entails a similar humiliation and degradation of personal dignity.

720. "Any other form of Sexual Violence" in the context of crimes against humanity is a residual category of sexual crimes listed under Article 2(g) of the Statute, and may encompass an unlimited number of acts. The Trial Chamber agrees with the conclusion of the ICTY Trial Chamber in *Kvočka* that "sexual violence is broader than rape".[1405] The prohibition embraces all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation.[1406]

721. The Indictment fails to provide any particulars as to the specific form of sexual violence alleged. One of the fundamental rights guaranteed to an accused under Article 17(4)(a) of the Statute is the right to be informed "of the nature and cause of the charge against him". An Indictment is defective if it does not state the material facts underpinning the charges with enough detail to enable an accused to prepare his or her defence.[1407] In the present case, given the broad scope of the offence of 'any other form of sexual violence', it was essential for the Indictment to clearly identify the specific offence or offences which the Accused are required to answer. The Trial Chamber finds that the Indictment is defective in this respect because it fails to plead material facts with sufficient specificity. For this reasons, the charge of 'any other form of sexual violence' is dismissed and thus will not be considered additionally or alternatively under Count 9.

[1403] *Akayesu* Trial Judgement, para. 597.
[1404] *Kvočka* Trial Judgement, para. 173.
[1405] *Kvočka* Trial Judgement, para. 180.
[1406] *Furundžija* Trial Judgement, para. 186; *Akayesu* Trial Judgement, para. 688.
[1407] *See Kamuhanda* Appeal Judgement, para. 17; *Kupreškić* Appeal Judgement, para. 88; *see also* Alleged Defects in the Form of the Indictment.

722. Finally, as Count 8 has been dismissed for redundancy, the Trial Chamber will not consider it additionally or alternatively under Count 9.

5. Counts 10 and 11: Crimes Relating to Physical Violence (Articles 3(a) and 2(i) of the Statute)

723. In Count 10, the Accused are charged with violence to life, health and physical or mental well-being of persons, in particular mutilation, a violation of Common Article 3 and of Additional Protocol II, punishable under Article 3(a) of the Statute. In addition, or in the alternative, Count 11 charges the Accused with other inhumane acts, a crime against humanity, punishable under Article 2(i) of the Statute.[1408]

(a) Count 10 – Violence to Life, Health and Physical or Mental Well-Being of Persons, in Particular Mutilation

(i) Elements of the Crime of 'Mutilation'

724. Regarding the specific act of mutilation, in addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber adopts the following elements of the crime of 'mutilation':

1. The perpetrator intentionally subjected the victim to mutilation, in particular by permanently disfiguring the victim, or by permanently disabling or removing an organ or appendage of the victim;

3. The perpetrator's conduct was neither justified by the medical, dental or hospital treatment of the victim, nor carried out in the victim's interest.[1409]

725. The Trial Chamber notes that in its 'Rule 98 Decision' an additional element was given requiring that "the perpetrator's conduct caused death or seriously endangered the physical or mental health of the victim". The Prosecution submits that this additional element is superfluous and should not been retained.[1410] The Trial Chamber agrees that such a requirement is superfluous and will not retain it.

[1408] Indictment, paras 58-64.
[1409] Rule 98 Decision, para. 172; see also Elements of Crime for art. 8(2)(c)(i)-2 of the Rome Statute of the International Criminal Court, 17 July 1998, UN Doc. A/CONF. 183/9 (entered into force 1 July 2002), arts. 7(1)(f), 8(2)(c)(i)-2.
[1410] Prosecution Final Brief, para. 1020.

(b) Count 11 – Other Inhumane Acts

726. The elements of Count 11, a crime against humanity as "other inhumane acts", have been discussed earlier.[1411] With regard to particular acts of physical violence, the seriousness of the act or omission and its degree of gravity must be examined on a case-by-case basis. The Trial Chamber notes that the particulars mentioned in paragraphs 58 through 64 mainly identify acts of mutilations which are covered by Count 10. Paragraph 60 of the Indictment particularises beatings and ill-treatment. The Trial Chamber will consider these acts solely under Count 11, as considering mutilations and ill-treatment under the same count would result in a duplicitous charge. Therefore, with regard to acts of violence other than 'mutilation', such as beatings and ill-treatment,[1412] the Trial Chamber will assess the seriousness of a particular conduct and its sufficient gravity on a case-by-case basis. In that regard consideration must be given to all the factual circumstances, including the nature of the act or omission which forms the factual basis of the charges, the context in which it occurred, including the personal circumstances and the effects on the victim.[1413]

6. Count 12: Crimes Relating to Child Soldiers (Article 4(c) of the Statute)

727. In Count 12, the Indictment alleges that the AFRC/RUF "at all times relevant to this Indictment, throughout the Republic of Sierra Leone routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities." The Accused are thus charged with conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities ("conscripting, enlisting or using child soldiers"), an 'other serious violation of international humanitarian law', punishable under Article 4(c) of the Statute.[1414]

728. The question of whether this crime is recognised as a crime entailing individual criminal responsibility under customary international was examined by the Appeals Chamber,[1415] which found that, prior to November 1996, the crime had crystallised as customary law, regardless of whether committed in internal or international armed conflict,[1416] and held that

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[1411] See para 698, *supra*.
[1412] Indictment, para. 60.
[1413] *Čelebići* Trial Judgement, para. 536; *Kunarac*, Trial Judgement, para. 501; *see Brđanin* Trial Judgement, para. 1005: "The Trial Chamber finds that 'physical violence' may comprise treatment that does not amount to torture as defined above", and para. 481.
[1414] Indictment, para. 65.
[1415] *Prosecutor v. Norman*, Case No. SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004 ("Appeal Decision on Child Recruitment").
[1416] Appeal Decision on Child Recruitment, paras 10-24, referring to the 187 States parties to the 1949 Geneva Conventions, including Sierra Leone, the 137 States parties to Additional Protocol II, including Sierra Leone, the fact

> [c]hild recruitment was criminalised before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time frame relevant to the indictments. As set out above, the principle of legality and the principle of specificity are both upheld.[1417]

(a) Elements of the Crime

729. Guided once more by the Rome Statute, the Trial Chamber adopts the following elements of the crime of conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities:

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 should have known 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 factual circumstances that established the existence of an armed conflict.[1418]

(b) Submissions

730. The Kanu Defence submits that the age of 15 years is 'arbitrary' as "the ending of childhood [in the traditional African setting] has little to do with achieving a particular age and more to do with physical capacity to perform acts reserved for adults."[1419] Moreover, the Kanu Defence claims that the age for recruitment into the military in Sierra Leone is flexible, and that there has been a

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that all but six States had ratified the Conventions on the Rights of the Child, including Sierra Leone, the adoption of the African Charter on the Rights and Welfare of the Child, and the widespread prohibition of recruitment or voluntary enlistment of children under the age of 15 in domestic legislations; *see also* Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S.3; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), adopted on 11 July 1990, entered into force on 29 November 1999.

[1417] Appeal Decision on Child Recruitment, para. 53; *but see* Appeal Decision on Child Recruitment, Dissenting Opinion of Justice Robertson, para. 45, finding "that it would breach the *nullen crimen* rule to impute the necessary intention to create an international law crime of child enlistment to states until 122 of them signed the Rome Treaty [...]; para. 47, holding "that the crime of non-forcible enlistment did not enter international criminal law until the Rome Treaty in July 1998. That it exists for all present and future conflicts is declared for the first time by the judgements in this Court today."

[1418] See Rome Statute, Elements of Crimes, Article 8(2)(b)(xxvi); see also Rule 98 Decision, para. 194.

practice by various governments in Sierra Leone of recruiting persons under the age of 15 into the military prior to the Indictment period.[1420] According to the Kanu Defence, this practice impacts on the Accused Kanu's awareness as to the unlawfulness of conscripting, enlisting or using child soldiers below the age of 15. As such conduct was not, it is submitted, on its face manifestly illegal, no conviction should be entered on Count 12 on the grounds of mistake of law.[1421]

(c) Findings

731. The Trial Chamber recalls that the Appeals Chamber has found that the crime charged in Count 12 of the Indictment has attained the status of customary international law. The Appeals Chamber also confirmed the customary status of the requirement that the victim must be below the age of 15.[1422] Moreover, the Trial Chamber notes that the domestic law of Sierra Leone defines a 'child' as a person under 16 years of age.[1423] Therefore, the Trial Chamber dismisses what appears to be an argument by the Kanu Defence to construe the age requirement flexibly.

732. Furthermore, the Trial Chamber is not persuaded that the defence of mistake of law can be invoked here. The rules of customary international law are not contingent on domestic practice in one given country.[1424] Hence, it cannot be argued that a national practice creating an appearance of lawfulness can be raised as a defence of conduct violating international norms. The submission by the Kanu Defence is therefore dismissed.

733. The *actus reus* of the crime can be satisfied by 'conscripting' or 'enlisting' children under the age of 15, or by 'using' them to participate actively in the hostilities.

734. 'Conscription' implies compulsion, in some instances through the force of law.[1425] While the traditional meaning of the term refers to government policies requiring citizens to serve in their armed forces,[1426] the Trial Chamber observes that Article 4(c) allows for the possibility that children be conscripted into "[armed] groups". While previously wars were primarily between well-established States, contemporaneous armed conflicts typically involve armed factions which may

[1419] Kanu Final Brief, para. 75, referring to exhibit D-37, Expert report on Child Soldiers by Mr. Gbla, paras 9-11, 39.
[1420] Kanu Final Brief, paras 76, 124, referring to exhibit D-37, Expert report on Child Soldiers by Mr. Gbla, paras 33-39.
[1421] Kanu Final Brief, paras 124-132.
[1422] Appeals Chamber Decision on Child Recruitment, para. 53.
[1423] Prevention of Cruelty to Children Act (1926), which states in Article 1.2. that "For the purposes of this Ordinance, unless the context otherwise requires, 'child' means a person under the age of sixteen years; [...]".
[1424] See *Orić* Trial Judgement, para. 563.
[1425] Dissenting Opinion of Justice Robertson to Appeals Chamber Decision on Child Recruitment, para. 5.
[1426] See, e.g., Australia: Defence Act, No 20 of 1903 (as amended by Defence Legislation Amendment Act 1992, No. 91 of 1992), Art. 59(c); Germany: Wehrpflichtgesetz, BGBl. I 1956, 651, § 1.

not be associated with, or acting on behalf, a State. To give the protection against crimes relating to child soldiers its intended effect, it is justified not to restrict 'conscription' to the prerogative of States and their legitimate Governments, as international humanitarian law is not grounded on formalistic postulations.[1427] Rather, the Trial Chamber adopts an interpretation of 'conscription' which encompasses acts of coercion, such as abductions[1428] and forced recruitment[1429], by an armed group against children, committed for the purpose of using them to participate actively in hostilities.

735. 'Enlistment' entails accepting and enrolling individuals when they volunteer to join an armed force or group.[1430] Enlistment is a voluntary act, and the child's consent is therefore not a valid defence.[1431]

736. 'Using' children to "participate actively in the hostilities" encompasses putting their lives directly at risk in combat.[1432] As a footnote attached to the Preparatory Conference on the establishment of the International Criminal Court states

> The words "using" and "participate" have been adopted in order to cover both participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and use of children as decoys, couriers or at military checkpoints."[1433]

737. It is the Trial Chamber's view that the use of children to participate actively in hostilities is not limited to participation in combat. An armed force requires logistical support to maintain its operations. Any labour or support that gives effect to, or helps maintain, operations in a conflict constitutes active participation. Hence carrying loads for the fighting faction, finding and/or acquiring food, ammunition or equipment, acting as decoys, carrying messages, making trails or finding routes, manning checkpoints or acting as human shields are some examples of active participation as much as actual fighting and combat.

738. The elements of 'armed forces or groups' entail that the armed forces or groups must be under responsible command, which entails a degree of organization which should be such as to

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[1427] See *Tadić* Appeal Judgement, para. 96.
[1428] See Secretary-General's Report on the Establishment of the Special Court, UN Doc. S/2000/915, para. 18: "While the definition of the crime as 'conscripting' or 'enlisting' connotes an administrative act of putting one's name on a list and formal entry into the armed forces, the elements of the crime under the proposed Statute of the Special Court are: (a) abduction, which in the case of children of Sierra Leone was the original crime and is in itself a crime under common article 3 of the Geneva Conventions; [...]". This proposal was however rejected by the Security Counsel.
[1429] See *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Decision on the confirmation of charges, 29 January 2007 ("*Dyilo* Confirmation Decision"), para. 246.
[1430] Dissenting Opinion of Justice Robertson to Appeals Chamber Decision on Child Recruitment, para. 5; see also French Code of National Service, Art. L111-3; Military Selective Act (US), 10 USC ¶ 513.
[1431] *Dyilo* Confirmation Decision, para. 247.
[1432] Dissenting Opinion of Justice Robertson to Appeals Chamber Decision on Child Recruitment, para. 5.
[1433] Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF. 183/2/Add. 1, 14 April 1998, p. 21 at footnote 12.

enable the armed groups to plan and carry out concerted military operations and to impose discipline within the armed group.

7. Count 13: Abductions and Forced Labour (Article 2(c) of the Statute)

(a) Introduction

739. Count 13 alleges the crime of enslavement by abductions and forced labour, not sexual slavery. Although sexual slavery can lead to a conviction for enslavement, the Trial Chamber has considered the crime of sexual slavery under Count 9 (Outrages upon Personal Dignity).

740. The Accused are charged under Count 13 with enslavement, a crime against humanity, punishable under Article 2(c) of the Statute, in that "[at] all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use as diamond miners."

741. The Indictment alleges that the abductions and forced labour included the districts of Kenema, Kono, Koinadugu, Bombali, Kailahun, Freetown and the Western Area and Port Loko. It is alleged that the Accused, by their acts or omissions in relation to these events, pursuant to Article. 6(1) and, or alternatively, Article 6(3) of the Statute, are individually criminally responsible for the said crimes.

742. The crime of 'enslavement' has long been criminalised under customary international law.[1434] The Slavery Convention of 1926 defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."[1435] Being an

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[1434] Art. 4(2)(f) of Additional Protocol II prohibits 'slavery' and 'slave trade' in all their forms. Both 'enslavement' and 'slavery' are constituted of the same elements: *Krnojelac* Trial Judgement, para. 356.

[1435] Slavery Convention, 25 September 1926 (entry into force on 9 March 1927), Article 1(1), Article 2(b): "The High Contracting Parties undertake [...], so far as they have not already taken the necessary steps to bring about , progressively and as soon as possible, the complete abolition of slavery in all its forms"; *see also* Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956, entered into force on 30 April 1957, Article 6(1): "The act of enslaving another person or inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the State parties to this convention and persons convicted thereof shall be liable to punishment"; Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 (A)(III) of 10 December1948, Article 4: "No one shall be held in slavery or servitude; servitude and the slave trade shall be prohibited in all their forms"; International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A(XXI) of 16 December1966, entered into force on 23 March 1976, Article 8(1): "No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited. (2) No one shall be held in servitude. (3) No one shall be required to perform forced or compulsory or forced labour"; African Charter on Human and Peoples Rights, adopted on 27 June 1981, entered into force on 21 October 1986, Article 5: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly [...] slavery, slave trade [...] shall be prohibited."

indication of 'enslavement',[1436] forced labour has been defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[1437]

743. 'Enslavement' was listed both as a war crime and a crime against humanity in the Nuremberg Charter,[1438] with convictions entered on this count in a number of cases. [1439] The International Law Commission consistently included 'enslavement' as a crime against humanity in its Draft Codes of Crimes Against the Peace and Security of Mankind.[1440] The ICTY Trial Chamber in the *Krnojelac* case held that

> the express prohibition of slavery in Additional Protocol II of 1977, which relates to internal armed conflicts, confirms the conclusion that slavery is prohibited by customary international humanitarian law outside the context of a crime against humanity. The Trial Chamber considers that the prohibition against slavery in situations of armed conflict is an inalienable, non-derogable (sic) and fundamental right, one of the core rules of general customary and conventional international law.[1441]

(b) Elements of the crime

744. In *Kunarac*, the ICTY Trial Chamber held that "enslavement as a crime against humanity in customary international law consisted of the exercise of any or all of the powers attaching to the right of ownership over a person"[1442] (*actus reus*), while the *mens rea* of the violation consists in the intentional exercise of such powers".[1443]

[1436] *Krnojelac* Trial Judgement, para. 359.
[1437] Convention Concerning Forced or Compulsory Labour, International Labour Organisation ("ILO"), No. 29, 39 U.N.T.S. 55 (entry into force 1 May 1932), Article 2(1): "For the purposes of this convention, the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"; *see also* Convention Concerning the Abolition of Forced Labour, adopted on 25 June 1957 by the General Conference of the ILO at its fortieth session, (entry into force 17 January 1959).
[1438] Nuremberg Charter, Article 6, providing, *inter alia*, that "[t]he following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: (b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, [...] deportation to slave labour: (c) Crimes against Humanity: namely [...] enslavement[...]"
[1439] *United States v. Erhard Milch* (Case II), Judgement of 31 July 1948, reprinted in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, Vol. II (1997), p. 773; *United States v. Oswald Pohl and Others* (Case IV), Judgement of 3 November 1947, reprinted in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, Vol. V (1997), pp. 958-970. *See also* M. Lippman, War Crimes Trials of German Industrialists: the "other Schindlers", 9 Temple International and Comparative Law Journal, p. 180.
[1440] Draft Code of Crimes Against the Peace and Security of Mankind, Yearbook of the ILC (1954), Vol. II, Documents of the sixth session including the report of the Commission to the General Assembly, p. 150; Report of the ILC on the work of its 43rd session, 29 April-19 July 1991, GA, Supplement No. 10 (A/46/10), p. 265; Report of the ILC on the work of its 48th session, 6 May-26 July 1996, GA, Supplement No. 10 (A/51/10), p. 93.
[1441] *Krnojelac* Trial Judgement, para. 353.
[1442] *Kunarac* Judgement, para. 540.
[1443] *Kunarac* Judgement, para. 540.

745. The *Kunarac* Trial Chamber held that "[u]nder this definition, indications of enslavement include elements of control and ownership; the restriction or control of an individual's autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator. The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim's position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions. Further indications of enslavement include exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking."[1444]

746. The ICTY Appeals Chamber further clarified this definition by finding that "lack of consent" is not an element of the crime of enslavement, although it may be a significant issue in terms of evidence of the status of the alleged victim.[1445]

747. The definition set forth in *Kunarac* was later reiterated in *Krnojelac*, in which it was stated that enslavement as a crime against humanity was the "exercise of any or all of the powers attaching to the right of ownership over a person. The *actus reus* of enslavement is the exercise of those powers, and the *mens rea* is the intentional exercise of such powers."[1446]

748. In *Krnojelac*, the allegations concerned enslavement for the purpose of forced labour.[1447] It was held by the Chamber that to establish forced labour constituting enslavement, the Prosecutor must demonstrate that "the Accused (or persons for whose actions he is criminally responsible) forced the detainees to work, that he (or they) exercised any or all of the powers attaching to the right of ownership over them, and that he (or they) exercised those powers intentionally."[1448]

749. In addition to the chapeau requirements of Crimes against Humanity pursuant to Article 2 of the Statute, the Trial Chamber therefore adopts the following elements of the crime of enslavement:

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 by imposing on them a similar deprivation of liberty;

[1444] *Kunarac* Judgement, para. 542.
[1445] *Kunarac* Appeal Judgement, para. 120.
[1446] *Krnojelac* Trial Judgement, para. 350.
[1447] *Krnojelac* Trial Judgement, para. 357.
[1448] *Krnojelac* Trial Judgement, para. 358.

2. the intentional exercise of such powers.[1449]

8. Count 14: Pillage (Article 3(f) of the Statute)

750. In Count 14 of the Indictment, the Prosecution alleges that "[a]t all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful taking and destruction by burning of civilian property." The Accused are thus charged with pillage, a violation of Common Article 3, punishable under Article 3(f) of the Statute.[1450]

751. The prohibition of the unlawful appropriation of public and private property in armed conflict is well-established in customary international law where it has been variously referred to as 'pillage'[1451], 'plunder'[1452] and 'looting'[1453]. It was charged both as a war crime and as a crime against humanity in many of the trials based on the Nuremberg Charter and Control Council Law No. 10, including the trial of the major war criminals in Nuremberg.[1454] Pillage has been adjudicated in a number of cases before the ICTY.[1455]

[1449] *See* Rule 98 Decision, paras 212-215; see also *Krnojelac* Trial Judgement, para. 350; Report of the Preparatory Commission for the International Criminal Court, Finalised Draft Text for the Elements of the Crimes, New-York, 13-31 March 2000/12-30 June 2000 ("ICC Elements of the Crimes"), p. 10, noting that "[i]t is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956."

1450 Indictment, paras 74-79.

[1451] 1907 Hague Regulations, Article 47: "Pillage is formally prohibited"; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 2 ("Geneva Convention IV"), Article 33(2): "Pillage is prohibited"; Additional Protocol II, Article 4 prohibits pillage of "all persons who do not take a direct part or who have ceased to take part in hostilities whether or not their liberty has been restricted"; Statute of the ICTR, Article 4(f).

[1452] Nuremberg Charter, Article 6: "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: b) War Crimes, namely violations of the laws and customs of war. Such violations shall include, but not be limited to, [...] plunder of public or private property"; Allied Control Council Law No. 10, 20 December 1945, reprinted in 1 CCL No. 10 Trials, at xvi ("Control Council Law No. 10"), Article 2: "Each of these is recognised as a crime, (1)(b) War Crimes. Atrocities or offences against persons or property, constituting violations of the laws or customs of war, including but not limited to [...] plunder of public or private property."

[1453] Article 103 of the United States Uniform Code for Military Justice provides for punishment of persons engaged in "looting or pillaging'.

[1454] Indictment in the case *United States et al. v. Hermann Göring et al.*, International Military Tribunal (6 October 1945), in 1 Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945 – 1 October 1946, Nuremberg 1947, pp. 27, 55-60, 65; indictment in the case *United States v. Ulrich Greifelt et al.* (*RuSHA* case), American Military Tribunal (July 1947), in 4 TWC 608, 610, 616, 618; indictment in the case *United States v. Oswald Pohl et al.* (*Pohl* case), American Military Tribunal (Indictment, 13 January 1947), in 5 TWC 200, 204, 207.

[1455] *Čelebići* Trial Judgement, para. 591; *Kordić* Trial Judgement, para. 352; *Prosecutor v. Mladen Naletilić aka "Tuta" and Vinko Martinović aka "Stela"*, Case No. IT-98-34-T, Judgement, 31 March 2003 ("*Naletilić* Trial Judgement"), para. 612.

(a) Elements of the Crime

752. Trial Chamber I was of the opinion that the crime of pillage included the following constitutive elements in addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute :

(1) The perpetrator appropriated private or public property;

(2) The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use;

(3) The appropriation was without the consent of the owner.[1456]

753. That definition of the crime of pillage is apparently based on the Rome Statute, Elements of Crimes, Article 8(2)(b)(xvi). The inclusion of the words "private or personal use" excludes the possibility that appropriations justified by military necessity might fall within the definition. Nevertheless, the definition is framed to apply to a broad range of situations. As was stated by Trial Chamber I,

> "the ICTY in the case of *Čelebići* noted that 'plunder' should be understood as encompassing acts traditionally described as 'pillage', and that pillage extends to cases of 'organised' and 'systematic' seizure of property from protected persons as well as to 'acts of looting committed by individual soldiers for their private gain'".[1457]

754. Inclusion of the element of "private or personal use" in the definition appears to be at variance with *Čelebići*, since it may not include 'organized' and 'systematic' seizure of property. The Trial Chamber is therefore of the view that the requirement of "private or personal use" is unduly restrictive and ought not to be an element of the crime of pillage.

755. Accordingly and in addition to the chapeau requirements of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II pursuant to Article 3 of the Statute, the Trial Chamber concludes that the crime of pillage within the meaning of Article 3(f) of the Statute is comprised of the following specific elements:

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.

(b) Submissions

756. The Prosecution submits 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 'wilful and unlawful appropriation of property'."[1458] All three Accused contend that 'burning' does not fall under the definition of 'pillage'.[1459]

(c) Findings

757. In its Rule 98 Decision, the Trial Chamber deferred a final decision on this issue until the end of the trial.[1460] Having carefully examined all relevant sources, the Trial Chamber is of the opinion that the inclusion of 'burning' in the crime of 'pillage', as suggested by the Prosecution, is untenable. First, a review of military manuals shows that most countries do not regard the destruction of enemy property as pillage.[1461] Second, the jurisprudence is unambiguous in requiring that the property be *appropriated*,[1462] an element which is not satisfied in the event that property is burned and destroyed. The Rome Statute also makes a distinction between appropriation and destruction of property.[1463]

758. Moreover, the destruction of civilian property may be brought and adjudged under a number of other provisions,[1464] which the Prosecution has not done in this case.

[1456] *See Norman* Judgement of Acquittal , para. 102.
[1457] See *Norman* Judgement of Acquittal, para. 102; and *Čelebići* Trial Judgement, para. 590.
[1458] Prosecution Final Brief, para. 1037.
[1459] Brima Final Brief, para. 319; Kamara Final Brief, para. 332, Kanu Final Brief, paras 98-104.
[1460] Rule 98 Decision, paras 262-268.
[1461] Canada, Law of Armed Conflict Manual, Glossary, p. GL-15, pp. 5-6, para. 50, stating that "pillage, the violent acquisition of property for private purposes, is prohibited. Pillage is theft."; France, Law of Armed Conflict Manual, 2001, pp. 36, 85, stating that "pillage constitutes an act of spoliation by which one or several military personnel appropriate objects for a personal or private use, without the consent of the owners of that object"; Netherlands, Military Manual (1993), p. IV-5: "Pillage is the taking of goods belongings to civilians during an armed conflict It is a form of theft [...]"; Socialist Federal Republic of Yugoslavia, Military Manual (1988), p. 92: "The manual considers unlawful appropriation of private property as pillage [...]; Georgia, Criminal Code, 1999, Article 413(a), stating that "[p]illage, i.e seizure in a combat situation of the private property of civilians left in the region of hostilities, in an internal or international armed conflict is a crime [...]"; Algeria, Code of Military Justice, 1971, Article 286, punishing pillage and damage to commodities, goods or belongings committed by soldiers as a group; see also Burkina Faso, Code of Military Justice, 1994, Article 193; Cameroon, Code of Military Justice, 1928, Article 221; ICRC Archive Document, Commentary, p. 114, fn. 809, reporting "looting by the armed forces of a State in government controlled areas" and that "pillage has become systematic and much more vicious. What is not pillaged is destroyed or burnt [...]".
[1462] *Naletilić* Trial Judgement, para. 612; *Kordić* Trial Judgement, para. 352; *Jelisić* Trial Judgement, para. 48.
[1463] See Art. 8(2)(a)(iv) of the Rome Statute refers to "[e]xtensive destruction and appropriation of property"; Art. 8(2)(b)(xiii) refers to "[d]estroying or seizing the enemy's property".
[1464] Rule 98 Decision, paras 263-264, referring to Article 4(a) of the Statute (attacks against the civilian population), which is not charged in the instant case, and to the non-exhaustive nature of Common Article 3 (see *Tadić* Jurisdiction Decision, paras 87, 127), and by extension, Article 3 of the Statute.

D. Law on Individual Criminal Responsibility

1. Introduction

759. The Indictment cumulatively charges each of the Accused for the crimes in counts 1 through 14 under different modes of liability. These are:

1. Individual criminal responsibility pursuant to Article 6(1) of the Statute in that
   a. each of the Accused planned, instigated, ordered, or committed the said crimes, or
   b. each Accused otherwise aided and abetted in the planning, preparation, or execution of the said crimes, or
   c. the said crimes were within a joint criminal enterprise, or were a reasonably foreseeable consequence of the joint criminal enterprise, in which each Accused participated;
2. In addition, or in the alternative, individual criminal responsibility pursuant to Article 6(3) of the Statute for the crimes committed by their subordinates whilst each of the Accused was holding a position of authority.[1465]

2. Individual Criminal Responsibility Pursuant to Article 6(1) of the Statute

760. Article 6(1) of the Statute lists the forms of criminal conduct which, provided that all other necessary conditions are satisfied, may result in an accused incurring individual criminal responsibility for one or more of the crimes provided for in the Statute.[1466] Article 6(1) of the Statute provides:

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

761. The principle that an individual may be held criminally responsible under one of these modes of responsibility is enshrined in customary international law.[1467] The Trial Chamber in the

[1465] Indictment, paras 35-36.
[1466] *Vasiljević* Appeal Judgement, para. 95.
[1467] *Kvočka* Appeal Judgement, para. 79; *Vasiljević* Appeal Judgement, para. 95.

ICTY case of *Kordić*[1468] made the following observations on the object of the ICTY equivalent to Article 6(1) (that is, Article 7(1) of the International Statute):

> The principle that an individual may be held criminally responsible for planning, assisting, participating or aiding and abetting in the commission of a crime is firmly based in customary international law. Article 7(1) reflects the principle of criminal law that criminal liability does not attach solely to individuals who physically commit a crime but may also extend to those who participate in and contribute to a crime in various ways, when such participation is sufficiently connected to the crime, following principles of accomplice liability. The various forms of liability listed in Article 7(1) may be divided between principal perpetrators and accomplices. Article7(1) may thus be regarded as intending to ensure that all those who either engage directly in the perpetration of a crime under the Statute, or otherwise contribute to its perpetration, are held accountable.

(a) Committing

762. The *actus reus* of 'committing' primarily covers "the physical perpetration of a crime by the offender himself."[1469] An accused will be held responsible under Article 6(1) of the Statute for having committed a crime charged enumerated in the Statute when he "participated, physically or otherwise directly, in the material elements" of the said crime.[1470] Committing also covers situations where the accused engenders "a culpable omission in violation of a rule of criminal law."[1471] There can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence.[1472]

763. In addition, an accused must either possess the relevant *mens rea* for the crime in question, or be aware that the act or omission will more likely than not result in the commission of a crime in the Statute and accept this risk.[1473]

764. In light of the foregoing, the Trial Chamber rejects the argument of the Brima and Kamara Defence that in the absence of physical perpetration of a crime by an accused, any submission that the accused should be held culpable for 'committing' a crime ought to be dismissed, or at least weakened.[1474]

[1468] *Kordić* Trial Judgement, para. 373.
[1469] *Tadić* Appeal Judgement, para. 188; *Krnojelac* Trial Judgement, para. 73.
[1470] *Galić* Trial Judgement, para. 168; *Kvočka* Trial Judgement, para. 250.
[1471] Prosecution Final Brief, para. 427; *Orić* Trial Judgement, para. 302; *Kunarac* Trial Judgement, para. 390; *Krstić* Trial Judgement, para. 601; *Vasiljević* Trial Judgement, para. 62.
[1472] *Kunarac* Trial Judgement, para. 390.
[1473] *Kvočka* Trial Judgement, para. 251; *Orić* Trial Judgement, para. 279; *Galić* Trial Judgement, para. 172.
[1474] Brima Final Brief, para. 89; Kamara Final Brief, para. 29.

(b) Planning

765. "Planning" implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.[1475] Proof of the existence of a plan may be provided by circumstantial evidence.[1476] Responsibility is incurred when the level of the accused's participation is substantial, even when the crime is actually committed by another person.[1477]

766. The *actus reus* requires that the accused, alone or together with others, designated the criminal conduct constituting the crimes charged. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.[1478] The *mens rea* requires that the accused acted with direct intent in relation to his or her own planning or with the awareness of the substantial likelihood that a crime would be committed a in the execution of that plan. Planning with such awareness has to be regarded as accepting that crime.[1479]

767. Where an accused is found guilty of having *committed* a crime, he or she cannot at the same time be convicted of having *planned* the same crime,[1480] even though his or her involvement in the planning may be considered an aggravating factor.[1481]

768. Both the Brima and the Kamara Defence, relying on the *Brđanin* Trial Judgement, contend that responsibility for planning a crime only arises when an accused is "substantially involved at the preparatory stage of the crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance."[1482] The Trial Chamber does not agree with such a narrow construction of the responsibility for planning, although it cannot be denied that there must be a sufficient link between the planning of a crime both at the preparatory and the execution phases. In the opinion of the Trial Chamber, it is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct.[1483]

[1475] *Akayesu* Trial Judgement, para. 477; *Brđanin* Trial Judgement, para. 268; *Stakić* Trial Judgement, para. 443; Krstić Trial Judgement, para. 601.
[1476] *Blaškić* Trial Judgement, para. 279.
[1477] *Bagilishema* Trial Judgement, para. 30.
[1478] *Kordić* Appeal Judgement, para. 26.
[1479] *Kordić* Appeal Judgement, paras 29, 31.
[1480] Rule 98 Decision, para. 285, referring to *Kordić* Trial Judgement, para. 386; see also *Brđanin* Trial Judgement, para. 268.
[1481] Prosecution Final Brief, para. 416; *Stakić* Trial Judgement, para. 443.
[1482] Brima Final Brief, para. 80; Kamara Final Brief, para. 17, referring to *Brđanin* Trial Judgement, para. 357.
[1483] Rule 98 Decision, paras 284, 290-291.

(c) Instigating

769. "Instigating" means prompting another to commit an offence.[1484] This requires more than merely facilitating the commission of the principal offence, which may suffice for aiding and abetting. It requires some kind of "influencing the principal perpetrator by way of inciting, soliciting or otherwise inducing him or her to commit the crime".[1485] Both acts and omissions may constitute instigating, which covers express as well as implied conduct.[1486] A nexus between the instigation and the perpetration must be proved, but it is not necessary to demonstrate that the crime would not have been perpetrated without the involvement of the accused.[1487]

770. The *actus reus* requires that the accused prompted another person to commit the offence[1488] and that the instigation was a factor substantially contributing to the conduct of the other person(s) committing the crime.[1489] The *mens rea* requires that the accused acted with direct intent or with the awareness of the substantial likelihood that a crime would be committed in the execution of that instigation.[1490]

771. If a principal perpetrator has definitely decided to commit the crime, further encouragement or moral support may still qualify as aiding and abetting.[1491]

(d) Ordering

772. The *actus reus* of 'ordering' requires that a person in a position of authority uses that authority to instruct another to commit an offence.[1492] No formal superior-subordinate relationship between the accused and the perpetrator is necessary; it is sufficient that the accused possessed the authority to order the commission of an offence and that such authority can be reasonably inferred.[1493] The order need not be given in writing or in any particular form,[1494] nor does it have to

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[1484] *Akayesu* Trial Chamber Judgement, para. 482.
[1485] *Orić* Trial Judgement, paras 270-271; *Kordić* Appeal Judgement, para. 27; *Kajelijeli* Trial Judgement, para. 762.
[1486] *Brđanin* Trial Judgement, para. 269.
[1487] *Brđanin* Trial Judgement, para. 269; *Galić* Trial Judgement, para. 168; *Orić* Trial Judgement, para. 274-276; *Akayesu* Trial Judgement, para. 482.
[1488] *Kordić* Appeals Judgement, para. 27.
[1489] *Kordić* Appeals Judgement, para. 27.
[1490] *Kordić* Appeals Judgement, paras 29, 32. See also *Orić* Trial Judgement, para. 279.
[1491] *Orić* Trial Judgement, para. 271.
[1492] Rule 98 Decision, para. 295, referring to *Krstić* Trial Judgement, para. 601; *Brđanin* Trial Judgement, para. 270.
[1493] *Strugar* Trial Judgement, para. 331; *Kordić* Appeal Judgement, para. 28; *Brđanin* Trial Judgement, para. 270; see also *Akayesu* Trial Judgement, para. 480.
[1494] *Blaškić* Trial Judgement, para. 281.

be given directly to the perpetrator.[1495] The existence of an order may be proven through circumstantial evidence.[1496]

773. The *mens rea* for ordering requires that the accused acted with direct intent in relation to his own ordering or with the awareness of the substantial likelihood that a crime will be committed in the execution of that order.[1497] The state of mind of an accused may also be inferred from the circumstances, provided that it is the only reasonably inference to be drawn.[1498]

774. The Trial Chamber agrees with the Prosecution that an accused may be responsible for "reissuing illegal orders", *i.e.*, for receiving a criminal order from a superior and, in turn, instructing subordinates to act upon it.[1499]

(e) Aiding and abetting

775. The *actus reus* of 'aiding and abetting' requires that the accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of a crime.[1500] "Aiding and abetting" may be constituted by contribution to the planning, preparation or execution of a finally completed crime.[1501] Such contribution may be provided directly or through an intermediary[1502] and irrespective of whether the participant was present or removed both in time and place from the actual commission of the crime.[1503] Mere presence at the scene of crime without preventing its occurrence does not *per se* constitute aiding and abetting.[1504]. However, the presence

[1495] *Brđanin* Trial Judgement, para. 270; *Blaškić* Trial Judgement, para. 282, fn. 508, noting "the High Command Case in which the military tribunal considered that 'to find a field commander criminally responsible for the transmittal of such an order, he must have passed the order to the chain of command and the order must be one that is criminal upon its face, or one which he is shown to have known was criminal'", see USA v. Wilhelm von Leeb et al. in Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 ("High Command Case"), Vol. XI, p. 511.
[1496] *Blaškić* Trial Judgement, para. 281; *Akayesu* Trial Judgement, para. 480; see also *Galić* Trial Judgement, para. 171, providing factors from which the existence of an order may be inferred, including the number of illegal acts, the amount, identity and type of troops involved, the effective command and control exercised over these troops, the widespread occurrence of the illegal acts, the location of the superior at the time and his or her knowledge that criminal acts were committed.
[1497] *Kordić* Appeal Judgement, paras 29, 30; *Blaškić* Appeal Judgement, para. 42.
[1498] *Vasiljević* Appeal Judgement, para. 120; see also *Strugar* Trial Judgement, para. 333.
[1499] Prosecution Final Brief, para. 423, referring to *Kupreškić* Trial Judgement, para. 862.
[1500] *Blaškić* Appeal Judgement, para.46.
[1501] *Blaškić* Appeal Judgement, paras 45, 48; *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Judgement, 23 January 2003 ("*Kamuhanda* Trial Judgement"), para. 597; Orić Trial Judgement, para. 282.
[1502] *Limaj* Trial Judgement, para. 516; *Orić* Trial Judgement, para. 282.
[1503] *Orić* Trial Judgement, para. 282; *Blaškić* Appeal Judgement, para. 48.
[1504] *Orić* Trial Judgement, para. 283.

at a crime scene of a person who is in a position of authority may be regarded as an important indication for encouragement or support.[1505]

776. The *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator. However, it is not necessary that the aider and abettor had knowledge of the precise crime that was intended and which was actually committed, as long as he was aware that one of a number of crimes would probably be committed, including the one actually committed.[1506]

777. The Prosecution contends that a "persistent failure to prevent or punish crimes by subordinates over time may also constitute aiding or abetting."[1507] The Trial Chamber agrees that, while such failure entails a superior's responsibility under Article 6(3) of the Statute, it may also be a basis for his liability for aiding and abetting, subject to the *mens rea* and *actus reus* requirements being fulfilled.[1508]

(f) Participation in a Joint Criminal Enterprise

778. The Trial Chamber has already found that the pleading of common purpose in the Indictment was defective and that joint criminal enterprise as a mode of liability cannot be relied upon by the Prosecution.

3. Individual Criminal Responsibility Pursuant to Article 6(3) of the Statute

779. In addition, or alternatively, the Indictment charges pursuant to Article 6(3) of the Statute that the Accused, while holding positions of superior responsibility and exercising effective control over their subordinates, are each individually criminally responsible for the said crimes in that each Accused is responsible for the criminal acts of his subordinates which he knew or had reason to know that the subordinate was about to commit or had done so and which each Accused failed to take the necessary and reasonable measures to prevent or to punish the perpetrators thereof.[1509]

780. Article 6(3) of the Statute provides:

[1505] *Kayishema* Appeal Judgement, para. 201; *Orić* Trial Judgement, para. 283; see also *Aleksovski* Trial Judgement, para. 65; *Kajelijeli* Trial Judgement, para. 769; see also Brima Final Brief, para. 92; Kamara Final Brief, para. 31.
[1506] *Blaškić* Appeal Judgement, para. 50.
[1507] Prosecution Final Brief, para. 431.
[1508] On the relationship between Article 6(1) and 6(3), see para. 800 *infra*.
[1509] Indictment, para. 36.

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

(a) Elements of Superior Responsibility

781. As is evident from its terms, Article 6(3) of the Statute requires a three-pronged test for criminal liability to attach:

1. The existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime;

2. The accused knew or had reason to know that the crime was about to be or had been committed; and

3. The Accused failed to take necessary and reasonable measures to prevent the crime or punish the perpetrators thereof.[1510]

782. The principle that an individual may be held responsible as a superior in the course of an armed conflict is enshrined in customary international law.[1511] The scope of Article 6(3) does not only include military commanders, but also political leaders and other civilian superiors in possession of authority.[1512]

783. Under Article 6(3) of the Statute, a superior is held responsible for an omission, *i.e.*, for the failure to perform an act required by international law.[1513] The culpable omission of a superior consists of his or her failure to prevent or punish crimes under the Statute committed by subordinates. Hence, a superior is responsible not for the principal crimes, but rather for what has been described as a 'dereliction' or 'neglect of duty' to prevent or punish the perpetrators of serious

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[1510] Rule 98 Decision, para. 328, referring to *Čelebići* Trial Judgement, para. 346.
[1511] *Čelebići* Trial Judgement, para. 333, stating "[t]hat military commanders and other persons occupying positions of superior authority may be held criminally responsible for the unlawful conduct of their subordinates is a well-established norm of customary international law." See also *Prosecutor v. Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 ("*Hadžihasanović* Appeal Decision on Jurisdiction"), para. 31, holding that "[i]n the opinion of the Appeals Chamber, the Trial Chamber was correct in holding, after a thorough examination of the matter, that command responsibility was at all times material to this case a part of customary international law in its application to war crimes committed in the course of an internal armed conflict."
[1512] *Aleksovski* Appeal Judgement, para. 76; *Stakić* Trial Judgement, para. 459; *Orić* Trial Judgement, para. 308; *Bagilshema* Appeal Judgement, para. 51; *Kajelijeli* Appeal Judgement, para. 85.
[1513] *Halilović* Trial Judgement, para. 54.

crimes.[1514] Responsibility of a superior is not limited to crimes committed by subordinates in person, but encompasses any modes of criminal liability proscribed in Article 6(1) of the Statute. It follows that a superior can be held responsible for failure to prevent or punish a crime which was planned, ordered, instigated or aided and abetted by subordinates.[1515]

(i) Existence of a Superior-Subordinate Relationship

784. The doctrine of command responsibility is "ultimately predicated upon the power of the superior to control the acts of his subordinates."[1516] It is immaterial whether the power of the superior over the subordinates is based on *de jure* or on *de facto* authority,[1517] as long as the superior possessed the material ability to prevent or punish the commission of the offence.[1518] This requirement has been widely referred to as the exercise of 'effective control'.[1519] It may be presumed that the existence of *de jure* authority *prima facie* results in effective control unless proof to the contrary is produced.[1520] Substantial influence over the conduct of others falls short of effective control.[1521]

785. Indications for effective control include the formality of the procedure used for appointment of a superior,[1522] the power of the superior to issue orders[1523] or take disciplinary action,[1524] the fact

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[1514] *Halilović* Trial Judgement, paras 42-54; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, Judgement, 15 March 2006 ("*Hadžihasanović* Trial Judgement"), para. 75; see Judge Shahabuddeen's partly dissenting opinion in the *Hadžihasanović* Appeal Decision on Jurisdiction, stating that "[t]he position of the appellants seems to be influenced by their belief that Article 7(3) of the Statute has the effect, as they say, of making the commander 'guilty of an offence committed by others even he neither possessed the applicable mens rea nor had any involvement whatsoever in the actus reus.' No doubt, arguments can be made in support of that reading of the provision, but I prefer to interpret the provision as making the commander guilty for failing in his supervisory capacity to take the necessary corrective action after he knows or has reason to know that his subordinate was about to commit the act or had done so"; *Orić* Trial Judgement, para. 293. See also Brima Final Brief, para. 65.

[1515] *Orić* Trial Judgement, paras 301-302; see also *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-PT, Decision on Prosecution's Motion to Amend the Indictment, 26 May 2006, paras 18 et seq.

[1516] *Čelebići* Trial Judgement, para. 377.

[1517] *Orić* Trial Judgement, para. 309, stating that "the broadening of this liability as described above is supported by the fact that the borderline between military and civil authority can be fluid. This is particularly the case with regard to many contemporary conflicts where there may be only de facto self-proclaimed governments and/or de facto armies and paramilitary groups subordinate thereto" (footnotes omitted); see also *Kordić* Trial Judgement, paras 419, 422; Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 ("*Kajelijeli* Appeal Judgement"), para. 87; *Prosecutor v. Mladen Naletilić aka "Tuta" and Vinko Martinović aka "Štela"*, Case No. IT-98-34-T, Judgement, 31 March 2003 ("*Naletilić* Trial Judgement"), para. 67.

[1518] *Čelebići* Appeal Judgement, para. 256; see also *Halilović* Trial Judgement, para. 58.

[1519] *Čelebići* Appeal Judgement, para. 256; *Brđanin* Trial Judgement, para. 276; *Orić* Trial Judgement, para. 311; *Limaj* Trial Judgement, para. 522.

[1520] *Čelebići* Appeal Judgement, para. 197; Prosecution Final Brief, para. 437.

[1521] *Čelebići* Appeal Judgement, para. 266; *Blagojević* Trial Judgement, para. 791; *Ntagerura* Trial Judgement, para. 628; Brima Final Brief, para. 100; Kamara Final Brief, para. 61.

[1522] *Halilović* Trial Judgement, para. 58.

[1523] *Aleksovski* Trial Judgement, paras 101, 104; *Blaškić* Trial Judgement, para. 302; *Kordić* Trial Judgement, para. 421; see also *Kajelijeli* Trial Judgement, paras 403-404.

[1524] *Blaškić* Trial Judgement, para. 302; *Hadžihasanović* Trial Judgement, paras 83 et seq.

that subordinates show greater discipline in the superior's presence,[1525] the level of profile, manifested through public appearances and statements,[1526] or the capacity to transmit reports to competent authorities for the taking of proper measures.[1527]

786. A superior may be held responsible for crimes committed by individuals temporarily subordinated to him, provided he exercises effective control over them.[1528] Further, superior responsibility is not excluded by the concurrent responsibility of other superiors in a chain of command.[1529] If a superior has functioned as a member of a collegiate body with authority shared among various members, the power or authority actually devolved on an accused may be assessed on a case-by-case basis, taking into account the cumulative effect of the accused's various functions.[1530]

787. However, in a conflict characterised by the participation of irregular armies or rebel groups, the traditional indicia of effective control provided in the jurisprudence may not be appropriate or useful. As the Trial Chamber has observed, the formality of an organisation's structure is relevant to, but not determinative of, the question of the effective control of its leaders. The less developed the structure, the more important it becomes to focus on the nature of the superior's authority rather than his or her formal designation.

788. The Trial Chamber considers that indicia which may be useful to assess the ability of superiors in such irregular armies to exercise effective control over their subordinates, include that the superior had first entitlement to the profits of war, such as looted property and natural resources; exercised control over the fate of vulnerable persons such as women and children; the superior had independent access to and/or control of the means to wage war, including arms and ammunition and communications equipment; the superior rewarded himself or herself with positions of power and influence; the superior had the capacity to intimidate subordinates into compliance and was willing to do so; the superior was protected by personal security guards, loyal to him or her, akin to a modern praetorian guard; the superior fuels or represents the ideology of the movement to which the subordinates adhere; and the superior interacts with external bodies or individuals on behalf of the group.

[1525] *Čelebići* Appeal Judgement, para. 206, endorsing the findings of *Čelebići* Trial Judgement, para. 743.
[1526] *Kordić* Trial Judgement, para. 424; *Stakić* Trial Judgement, para. 454.
[1527] *Aleksovski* Trial Judgement, para. 78; *Blaškić* Trial Judgement, para. 302.
[1528] *Halilović* Trial Judgement, paras 61, 62; *Kunarac* Trial Judgement, para. 399; *Orić* Trial Judgement, para. 313; *Aleksovski* Trial Judgement, para. 106; Prosecution Final Brief, para. 438.
[1529] *Blaškić* Trial Judgement, paras 296, 302, 303; *Krnojelac* Trial Judgement, para. 93; *Naletilić* Trial Judgement, para. 69; *Halilović* Trial Judgement, para. 62; Prosecution Final Brief, paras 439, 440.

789. Nonetheless, the key traditional indicia of effective control remain central, although they may be more loosely defined. For example, the power of the superior to issue orders is crucial, although these orders may be criminal in nature. Similarly, the superior must be capable of taking disciplinary action, even though the measures taken may be more brutal and arbitrarily utilised.

790. Identification of the principal perpetrator, particularly by name, is not required to establish a superior-subordinate relationship. It is sufficient to identify the subordinates as belonging to a unit or group controlled by the superior.[1531]

(ii) Actual or Imputed Knowledge

791. For a superior to be held responsible pursuant to Article 6(3) of the Statute, it must be established that he knew or had reason to know that the subordinate was about to commit or had committed such crimes.

a. Actual Knowledge

792. Actual knowledge may be defined as the awareness that the relevant crimes were committed or about to be committed.[1532] There is no presumption of such knowledge but, in the absence of direct evidence, it may be established through circumstantial evidence.[1533] Factors indicative of actual knowledge include, first of all, an individual's superior position and the superior's geographical and temporal proximity to the crimes;[1534] also, the type and scope of crimes, the time during which they occurred, the number and type of troops and logistics involved, the widespread occurrence of crimes, the tactical tempo of operations, the *modus operandi* of similar illegal acts and the officers and staff involved.[1535]

793. The evidence required to demonstrate actual knowledge may differ depending on the position of authority held by a superior and the level of responsibility in the chain of command. The membership of the accused in an organised and disciplined structure with reporting and monitoring

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[1530] *Brđanin* Trial Judgement, para. 277, referencing *Bagilishema* Appeal Judgement, para. 51; *Musema* Trial Judgement, para. 135; *Stakić* Trial Judgement, para. 494.
[1531] *Blaškić* Appeal Judgement, para. 217; referring to *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 46; *Orić* Trial Judgement, para. 311; see also Prosecution Final Brief, para. 444.
[1532] *Kordić* Trial Judgement, para. 427.
[1533] *Kordić* Trial Judgement, para. 427; *Čelebići* Trial Judgement, para. 386; see also *Brđanin* Trial Judgement, para. 278; *Hadžihasanović* Trial Judgement, para. 94.
[1534] *Aleksovski* Trial Judgement, para. 80.
[1535] *Čelebići* Trial Judgement, para. 386; *Galić* Trial Judgement, para. 174; *Limaj* Trial Judgement, para. 524; *Bagilishema* Trial Judgement, para. 968; see also Prosecution Final Brief, para. 446; Brima Final Brief, para. 107.

mechanisms has been found to facilitate proof of actual knowledge. Conversely, the standard of proof of the actual knowledge of a superior exercising a more informal type of authority will be higher.[1536]

b. Imputed Knowledge

794. In determining whether a superior "had reason to know", or imputed knowledge, that his or her subordinates were committing or about to commit a crime, it must be shown that specific information was available which would have put the superior on notice of crimes committed or about to be committed.[1537] The superior may not be held liable for failing to acquire such information in the first place.[1538] However, it suffices for the superior to be in possession of sufficient information, even general in nature, written or oral, of the likelihood of illegal acts by subordinates.[1539] In other words: failure to conclude, or conduct additional inquiry, in spite of alarming information amounts to imputed knowledge.[1540] It is not necessary that the information would compel the conclusion of the existence of concrete crimes.[1541] Rather, the information must have put the accused on notice of the 'present and real risk' that crimes under the Statute were committed, or about to be committed.[1542] Examples of such information include that a subordinate has a violent or unstable character and that a subordinate has been drinking prior to being sent on a mission.[1543] Furthermore, reports addressed to the superior, the level of training and instruction of subordinate officers are factors to be taken into account when determining imputed knowledge.[1544]

795. The Brima Defence objects to an expansive interpretation of the imputed knowledge standard, especially to hold "a commander [...] liable for the most serious of crimes under a mere negligence standard."[1545] Similarly, the Kamara and Kanu Defences oppose the application of strict

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[1536] *Kordić* Trial Judgement, para. 428; *Galić* Trial Judgement, para. 174; *Orić* Trial Judgement, para. 320; see also Prosecution Final Brief, para. 446.
[1537] *Blaškić* Appeal Judgement, para. 62; *Čelebići* Appeal Judgement, para. 241.
[1538] *Blaškić* Appeals Judgement, paras 62-63, *Čelebići* Appeals Judgement, para 226.
[1539] *Čelebići* Appeal Judgement, para. 238; *Čelebići* Trial Judgement, para. 393; *Kordić* Trial Judgement, para. 437; *Strugar* Trial Judgement, para. 370.
[1540] *Čelebići* Appeal Judgement, para. 232.
[1541] *Čelebići* Trial Judgement, para. 393; *Naletilić* Trial Judgement, para. 74; *Halilović* Trial Judgement, para. 68; *Orić* Trial Judgement, para. 322.
[1542] *Brđanin* Trial Judgement, para. 278, referring to *Čelebići* Appeal Judgement, paras 223, 241; see also *Strugar* Trial Judgement, paras 417-420, wherein it was considered insufficient that the information known to the commander at the time of the offence indicated that illegal acts might occur but rather required that the information indicates that such crimes would occur.
[1543] *Čelebići* Appeal Judgement, para. 238.
[1544] International Committee of the Red Cross ("ICRC"), Commentary to the Additional Protocols, para. 3545.
[1545] Brima Final Brief, para. 65, 69-75.

liability.[1546] The Kamara Defence says that superiors are not under a duty to know, and are only liable when they had "information which should have enabled them to conclude in the circumstances at the time, that [the perpetrator] was committing or was going to commit such a breach and if they did not take feasible measures within their power to prevent or repress the breach".[1547]

796. It is clear from the case law referred to above that solely negligent ignorance is insufficient to attribute imputed knowledge. What is required is the superior's factual awareness of information which should have prompted him or her to acquire further knowledge.[1548] Responsibility pursuant to Article 6(3) of the Statute will attach when the superior remains wilfully blind to the criminal acts of his or her subordinates.[1549]

(iii) Failure to Prevent or Punish

797. It must be established that the superior failed to take the necessary and reasonable measures to prevent or punish the crimes of his or her subordinates. These are two distinct duties: it is the superior's primary duty to intervene as soon as he or she becomes aware of crimes about to be committed, while taking measures to punish will only suffice if the superior did not become aware of these crimes until after they were committed.[1550]

798. As regards the duty to prevent the crimes of subordinates, the type of necessary and reasonable measures a superior must take is a matter of evidence rather than one of substantive law.[1551] Generally, it can be said that the measures required of the superior are limited to those within his or her material ability under the circumstances,[1552] including those that may lie beyond his or her formal powers.[1553] The kind and extent of measures to be taken depend on the degree of effective control exercised by the superior at the relevant time, and on the severity and imminence of the crimes that are about to be committed.[1554] A superior must prevent not only the execution and completion of a subordinate's crimes, but also their earlier planning and preparation. The superior must intervene as soon as he becomes aware of the planning or preparation of crimes to be

[1546] Kamara Final Brief, para. 69; Kanu Final Brief, para. 192.
[1547] Kamara Final Brief, para. 69.
[1548] *Orić* Trial Judgement, para. 324.
[1549] *Čelebići* Trial Judgement, para. 387; *Halilović* Trial Judgement, para. 69.
[1550] *Orić* Trial Judgement, para. 326; *Limaj* Trial Judgement, para. 527; *Strugar* Trial Judgement, para. 373.
[1551] *Blaškić* Appeal Judgement, paras 72, 77; *Čelebići* Trial Judgement, para. 394.
[1552] *Limaj* Trial Judgement, para. 528; Prosecution Final Brief, paras 453-454.
[1553] *Čelebići* Trial Judgement, para. 395.
[1554] *Orić* Trial Judgement, para. 329.

committed by his subordinates and as long as he has the effective ability to prevent them from starting or continuing.[1555]

799. The duty to punish only arises once a crime under the Statute has been committed.[1556] A superior is bound to conduct a meaningful investigation with a view to establish the facts, order or execute appropriate sanctions, or report the perpetrators to the competent authorities in case the superior lacks sanctioning powers.[1557] According to the ICTY Appeals Chamber, there is no support in customary international law for the proposition that a commander can be held responsible for crimes committed by a subordinate prior to the commander's assumption of command over that subordinate.[1558]

4. Relationship Between Article 6(1) and 6(3) of the Statute

800. Article 6(1) and 6(3) of the Statute denote different categories of individual criminal responsibility. Where both Article 6(1) and Article 6(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, it would constitute a legal error invalidating a judgement to enter a concurrent conviction under both provisions.[1559] Where a Trial Chamber enters a conviction on the basis of Article 6(1) only, an accused's superior position may be considered as an aggravating factor in sentencing.[1560]

[1555] *Orić* Trial Judgement, para. 329; *Halilović* Trial Judgement, para. 79.
[1556] *Blaškić* Appeal Judgement, paras 83, 85.
[1557] *Limaj* Trial Judgement, para. 529; *Orić* Trial Judgement, para. 336; *Strugar* Trial Judgement, para. 376.
[1558] *Hadžihasanović* Appeal Decision on Command Responsibility, paras 45-46, but see Partial Dissenting Opinion of Judge Shahabuddeen, para. 43; Separate and Partially Dissenting Opinion of Judge David Hunt – Command Responsibility Appeal, para. 8; *Orić* Trial Judgement, para. 335.
[1559] *Blaškić* Appeal Judgement, para. 91; *Kordić* Appeal Judgement, para. 34.
[1560] *Blaškić* Appeal Judgement, para. 91; *Aleksovski* Appeal Judgement, para. 183; see also *Orić* Trial Judgement, paras 339-343.

X. FACTS AND FINDINGS

A. Unlawful Killings (Counts 3-5)

1. Allegations and Submissions

801. The Indictment alleges that members of the AFRC/RUF subordinate to and/or acting in concert with the Accused carried out unlawful killings of civilians who were "routinely shot, hacked to death and burned to death"[1561] in various locations in the territory of Sierra Leone, including Bo District between about 1 June to 30 June 1997; Kenema District between about 25 May 1997 and about 19 February 1998; Kono District about 14 February 1998 and 30 June 1998; Kailahun Districts between about 14 February 1998 and 30 June 1998; Koinadugu District between about 14 February 1998 and 30 September 1998; Bombali District between about 1 May 1998 and 30 November 1998; Freetown and the Western Area between 6 January 1999 and 28 February 1999; and Port Loko District between about February and April 1999.[1562]

802. Submissions by the Parties in respect of particular incidents or witnesses have been discussed as they arise on the evidence below.

803. The Trial Chamber has considered the available evidence below to determine whether the *actus reus* of the acts of murder under Article 2(a) and Article 3(a) of the Statute and extermination under Article 2(b) of the Statute is proved beyond reasonable doubt in respect of the locations and time frames pleaded in the Indictment. The Trial Chamber finds that where the *actus reus* of the crime has been established, the only reasonable inference on the evidence adduced is that the perpetrators intentionally killed the victim or caused serious bodily harm in the knowledge that death would likely result.

804. Where findings have been made of murder as crimes against humanity, the Trial Chamber is further satisfied that the perpetrators of the crimes were aware that their acts were part of the widespread and systematic attack on the civilian population of Sierra Leone which was taking place at the time.

805. Where findings have been made of murder as a war crime, the Trial Chamber is further satisfied that the perpetrators were aware of the protected status of the victims and were acting in furtherance of the armed conflict, as the victims were either fighters from opposing forces but *hors*

[1561] Indictment, para. 42.
[1562] Indictment, paras 43-50.

de combat or civilians, whom the AFRC/RUF targeted on the basis of their perceived support for the opposing forces. The Trial Chamber recalls that the judicial notice was taken of the fact that the CDF, including the Kamajors, were a party to the armed conflict in Sierra Leone.[1563] On the evidence adduced, the Trial Chamber is satisfied that ECOMOG was also a party to the armed conflict.

2. Evidence and Deliberations

(a) Bo District (1 June 1997 – 30 June 1997)

806. The Prosecution alleges that "[b]etween about 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembehun, Gerihun, and Mamboma, unlawfully killing an unknown number of civilians".[1564]

807. No evidence of unlawful killings has been adduced with respect to the villages of Telu, Sembehun and Mamboma, as alleged in the Indictment.[1565]

808. The Brima Defence submits that no evidence was led by the Prosecution of any attack by the AFRC in Bo District, implying that the perpetrators of the crimes in Bo District were exclusively members of the RUF.[1566]

809. In arriving at the following factual findings, the Trial Chamber has examined the entirety of the evidence and relies on Prosecution Witnesses TF1-004, TF1-053 and TF1-054 and Defence Witness DBK-137, as well as Exhibit P-66.

(i) Tikonko

810. Witness TF1-004 testified that on or around 25 June 1997, two groups of more than 200 "soldiers" in military fatigue and red head bands attacked Tikonko.[1567] He stated that after the two attacks the streets of Tikonko were full of dead bodies and that as many as 200 persons may have lost their lives.[1568] Given the general nature of this evidence and the possibility that some of the persons killed were not protected persons, the Trial Chamber will make findings only on the specific incidents described by the witness below.

[1563] Indictment, para. 10; Judicial Notice Decision, Fact D.
[1564] Indictment, para. 43.
[1565] Rule 98 Decision, paras 89, 96.
[1566] Brima Final Brief, para. 241.
[1567] TF1-004, Transcript 23 June 2005, pp. 8, 35-36, 95-99.
[1568] TF1-004, Transcript 23 June 2005, pp. 17-18, 21-22, 28-31, 82.

811. The witness testified that he was at Tikonko Junction when the first group of soldiers came from the direction of Bo. The first group of soldiers said that they were coming to kill Kamajors; he heard this from some market women who were fleeing and, later, from the soldiers themselves.[1569] One of the soldiers from the group asked the witness who he was and the witness replied that he was "with them" so that the soldiers would not kill him. The soldier said they had come for Kamajors and did not kill the witness.[1570]

812. Witness TF1-004 testified that a second group of soldiers followed the first and that they were "not selecting" meaning that they were killing people indiscriminately.[1571] The witness observed the soldiers kill five civilians and three Kamajors.[1572]

813. The burden of proof as to whether a combatant is *hors de combat* rests with the Prosecution.[1573] The witness did not describe with precision the circumstances in which the three Kamajors were killed. The Trial Chamber is therefore unable to determine whether they were taking active part in the hostilities at the time. The Trial Chamber accordingly finds that five civilians were intentionally killed during the attack on Tikonko.

814. Some time later, the witness came out of his hiding spot and saw an unknown number of dead people at Tikonko Junction. The corpses were dressed in civilian clothing.[1574] The Witness walked into Tikonko proper, towards his house and saw more corpses, both women and men.[1575] He heard a woman calling from a house. The witness entered the house and the woman asked him for water. The woman had been shot in the knee and her belly had been split open. She told the witness that the "soldiers" were responsible. The witness also observed approximately ten other bodies in the room with bullet wounds. In the next room, the witness saw the body of a man who had been shot in the back of the neck. A child was lying next to him, shot dead through the chest. The witness moved into a third room of the house where he observed another two bodies; one of a man who had been shot in the side and through the ears.[1576]

[1569] TF1-004, Transcript 23 June 2005, pp. 5-6.
[1570] TF1-004, Transcript 23 June 2005, p. 12.
[1571] TF1-004, Transcript 23 June 2005, pp.12-15.
[1572] TF1-004, Transcript 23 June 2005, pp.15-16.
[1573] *Blaškić* Appeal Judgement, para. 111.
[1574] TF1-004, Transcript 23 June 2005, p. 17.
[1575] TF1-004, Transcript 23 June 2005, p. 18.
[1576] TF1-004, Transcript 23 June 2005, pp. 18-20.

815. The witness left the house and continued walking towards his home. He saw the corpse of a man whose legs had been broken and whose skin appeared to have been removed from his forehead with a knife as well as the corpse of another man with bullet wounds lying in the gutter.[1577]

816. The witness entered another house, next to his home and saw the bodies of two dead women. One woman had a gunshot wound to the ear and her stomach had been split open so that the intestines had slipped out. The second woman had a gunshot wound in her side. The bodies were piled one on top of the other.[1578]

817. The witness testified that he did not know anyone in the village who owned guns that could have killed these individuals.[1579]

818. Two to three days after the attacks, the witness, together with some youths and elders from the village dug a mass grave, collected bodies from around the town and buried them. The witness estimates that they buried 20 bodies.[1580]

819. The Trial Chamber is satisfied on the basis of the witness's evidence that at least 18 to 20 civilians were killed by "soldiers" during the attack on Tikonko.

820. The Brima and Kanu Defence submit that the witness in cross-examination accepted that the soldiers who attacked Tikonko in June 1997 were members of the RUF.[1581] The Trial Chamber notes that while witness TF1-004 testified that the "soldiers" attacking Tikonko identified themselves as belonging to the AFRC faction,[1582] he also stated that some of them were the "rebels" or RUF who had been stationed in Tikonko prior to the May 1997 coup.[1583] In light of this evidence, the Trial Chamber finds that the above-established incidents were committed by members of either the AFRC faction or the RUF, but it cannot be determined beyond reasonable doubt to which of the two factions the perpetrators belonged.

(ii) Gerihun

821. Witness TF1-053 testified that on 26 June 1997, eight "soldiers" with guns, among them a certain AF Kamara, one AB Kamara and one Boysie Palmer, arrived in vehicles and entered the

[1577] TF1-004, Transcript 23 June 2005, p. 22.
[1578] TF1-004, Transcript 23 June 2005, pp. 25-26.
[1579] TF1-004, Transcript 23 June 2005, p. 27.
[1580] TF1-004, Transcript 23 June 2005, pp. 29-31.
[1581] Brima Final Brief, para. 241; Kanu Final Brief, paras 39, 369, referring to TF1-004, Transcript 23 June 2005, p. 99.
[1582] TF1-004, Transcript 23 June 2005, pp. 96, 98.
[1583] TF1-004, Transcript 23 June 2005, pp. 99, 100.

house of Paramount Chief Sandy Demby in Gerihun.[1584] The witness approached the veranda of the house and while he did not see what occurred inside, he heard a gunshot, upon which he fled the scene.[1585]

822. Witness TF1-054 had come to Paramount Chief Demby's house to warn him of the imminent arrival of the soldiers. He testified that Paramount Chief Demby was in his bedroom recovering from an operation and with him was his caretaker, Sumaila. Paramount Chief Demby told the Witness and his caretaker to hide in the bathroom and they did so. The witness then decided to step outside and he hid next to Paramount Chief Demby's bedroom window. He watched as a group of soldiers shot Paramount Chief Demby in the stomach. Having realised that Paramount Chief Demby was not dead yet, another soldier stabbed him in the neck.[1586] At this point the Witness ran away. When he returned to the house the next morning, he found the dead body of the caretaker, Sumaila, lying in the bathtub. Witness TF1-054 did not give further information as to who killed Sumaila.[1587] Given the strong circumstantial evidence, the Trial Chamber is satisfied beyond reasonable doubt that Sumaila was also killed by the soldiers.

823. The Brima Defence submits that the evidence of witness TF1-053 should not be relied upon and alleges that his testimony contradicted his earlier pre-trial statements.[1588] In addition, Defence witness DBK-137 testified that he heard that Kamajors were responsible for the death of Chief Demby.[1589] The Trial Chamber notes that the testimony of witness TF1-053 regarding the killing of Chief Demby was corroborated by witness TF1-054 and was not shaken on cross-examination.[1590] The Trial Chamber thus dismisses the version of events presented by witness DBK-137 which is based on hearsay.

824. On the same day, 26 June 1997, witness TF1-053 observed a "soldier" shoot and kill a boy who used to run errands for him, named Kamo Lahai.[1591] The witness also saw a dead woman lying on Old Bo Road. The witness was told by mourners that her name was Sukie and that she had been

[1584] TF1-053, Transcript 18 April 2005, pp. 103-106; TF1-053, Transcript 19 April 2005, pp. 18-20, 22, 34.
[1585] TF1-053, Transcript 18 April 2005, pp. 105-107.
[1586] TF1-054, Transcript 19 April 2005, pp. 90-93.
[1587] TF1-054, Transcript 19 April 2005, p. 94 *See also* exhibit P-66, "Sierra Leone Country Report on Human Rights Practices for 1997 Released by the Bureau of Democracy, Human Rights and Labour," 30 January 1998, CMS p. 16528.
[1588] Brima Final Brief, paras 243, 245; Statement of Witness TF1-053 dated November 2002, CMS, p. 7285 [Confidential]. The witness stated that on 26 June 1997, he saw Kamajors entering Gerihun, but they passed and went to another place. Although he did not see them firing gun shots, at 4.30 pm he heard two gunshots.
[1589] DBK-137, Transcript 2 October 2006, p. 126.
[1590] TF1-053, Transcript 19 April 2005, pp. 35-40, 42, 43; TF1-054, Transcript 19 April 2005, pp. 92-93.
[1591] TF1-053, Transcript 18 April 2005, pp. 103, 107-108.

shot in the breast by a "soldier".[1592] Although witness TF1-053 did not mention the name Sukie in his pre-trial statement, the Trial Chamber finds that this does not affect the credibility of the witness as he explained that he only recalled her name when giving evidence at trial.[1593] The Trial Chamber is satisfied Sukie was unlawfully killed by a soldier during the attack on Gerihun.

825. On 26 or 27 June 1997, in the vicinity of the market in Gerihun, Witness TF1-053 encountered at least five corpses, both male and female.[1594] Given that no further particulars were given regarding this incident, the Trial Chamber is unable to establish with certainty the identity of the perpetrators or whether the victims were protected persons. The Trial Chamber accordingly makes no findings on this incident.

(iii) Findings

826. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 1 June 1997 and 30 June 1997, a minimum of 27 civilians were unlawfully killed in Bo District as charged under Counts 4 and 5. On the evidence adduced, the Trial Chamber has been unable to establish beyond reasonable doubt whether the perpetrators were members of the AFRC and/or RUF.

(b) Kenema District (25 May 1997 – 19 February 1998)

827. The Prosecution alleges that "[b]etween about 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/ RUF unlawfully killed an unknown number of civilians."[1595]

828. In making the following factual findings, the Trial Chamber has considered the entirety of the evidence and relies on Prosecution Witnesses TF1-122 and Defence Witnesses DAB-063 and DAB-147, as well as Exhibit P-24.

(i) Kenema Town

829. Following the coup in May 1997, both "RUF rebels" and "AFRC Juntas" took control of Kenema Town.[1596] These groups were present in Kenema until February 1998.[1597]

[1592] TF1-053, Transcript 18 April 2005, p. 110; TF1-053, Transcript 19 April 2005, p. 55.
[1593] TF1-053, Transcript 19 April 2005, pp. 61-63, 67-68.
[1594] TF1 -053, Transcript 19 April 2005, p. 94.
[1595] Indictment, para. 44.

830. Not long after the takeover of Kenema Town, witness TF1-122 saw the house of one Pa Mansaray at Mambu Street on fire. According to the witness, the house had previously been occupied by Kamajors.[1598] Thereafter, he saw three dead bodies dressed in plain cloth – two elderly men and one younger man – lying on the street. Witness TF1-122 insisted that they were civilians and not Kamajors.[1599] However, in the absence of further evidence, the Trial Chamber cannot establish beyond reasonable doubt that these individuals were killed by members of the AFRC/RUF.

831. Witness TF1-122 gave evidence that at the end of May 1997 or shortly thereafter, a certain Ms. Dowei reported to the Kenema Police that "AFRC Juntas" and "RUF rebels" shot dead her husband who intervened while they were looting his property.[1600]

832. The testimony of witnesses TF1-122 and DAB-147, as well as Exhibit P-24, establish that in late January or early February 1998, a number of persons, among them BS Massaquoi, Brima Kpaka and Andrew Quee were arrested on the orders of Sam Bockarie of the RUF and brought to the AFRC Secretariat in Kenema. Bockarie announced that these persons were Kamajor supporters and would be killed.[1601] The detainees were then transferred to the Kenema Police Station. BS Massaquoi and Brima Kpaka were subsequently released on bail.[1602] Within a couple of days, BS Massaquoi was re-arrested by "AFRC juntas". He was then taken away, along with the other detainees, to an unknown location.[1603] Thereafter, at Lambaya stream near a waterfall called Dorwala, witness TF1-122 found the corpses of BS Massaquoi, Andrew Quee and four other individuals. Their bodies were covered with gunshot wounds, and the cranium of BS Massaquoi had been crushed by a cement block.[1604]

833. Referring to the evidence given by witnesses DAB-063 and DAB-147, the Brima and Kamara Defence submit that Sam Bockarie was responsible for the killing of BS Massaquoi.[1605] The Trial Chamber notes that the evidence on precisely who carried away BS Massaquoi, Andrew

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[1596] TF1-122, Transcript 24 June 2005, p. 5; DAB-147, Transcript 3 October 2006, p. 27.
[1597] TF1-122, Transcript 24 June 2005, p. 7.
[1598] TF1-122, Transcript 24 June 2005, pp. 63-67.
[1599] TF1-122, Transcript 24 June 2005, pp. 64, 68.
[1600] TF1-122, Transcript 24 June 2005, pp. 26-28, 102-103.
[1601] TF1-122, Transcript 24 June 2005, pp. 35-37; DAB-147, Transcript 3 October 2006, pp. 30-35; Exhibit P-24, "CID Office Station Diary, opened on 13 January 1998 and closed on 7 February 1998", p. 112.
[1602] TF1-122, Transcript 24 June 2005, pp. 38-42.
[1603] TF1-122, Transcript 24 June 2005, pp. 43-45; DAB-147, Transcript 3 October 2006, p. 33; Exhibit P-24, "CID Office Station Diary, opened on 13 January 1998 and closed on 7 February 1998", p. 155.
[1604] TF1-122, Transcript 24 June 2005, pp. 45-49.
[1605] Brima Final Brief, para. 254; Kamara Final Brief, para. 130; DAB-063, Transcript 2 August 2006, p. 27; DAB-147, Transcript 3 October 2006, pp. 30-35.

Quee and the other detainees is inconclusive. There is also no direct evidence on who killed the individuals found at Lambaya stream.[1606] Nonetheless, the Trial Chamber is satisfied on the evidence that unidentified members of AFRC/RUF were responsible for these killings.

834. In late June 1997, a certain Bonnie Wailer was detained at the Kenema police station. One day, witness TF1-122 saw Sam Bockarie arriving at the police station, accompanied by an unidentified AFRC Lieutenant and others.[1607] In the presence of police officers and civilians, witness TF1-122 heard Bockarie ordering that Bonnie Wailer and two other detained persons should be killed. Witness TF1-122 was present when "Bockarie's men" and "AFRC juntas" shot dead the three individuals.[1608] Their bodies were taken away on a military pickup van.[1609]

835. After the end of the rainy season in 1997, the Kenema police were investigating the burglary of the warehouse of the International Committee of the Red Cross ("ICRC") in Kenema. Witness TF1-122 heard Sam Bockarie announce that he would take the investigation into his own hands.[1610] As a result, Bockarie had two individuals arrested, one of whom was named Santos.[1611] On the same evening, Witness TF1-122 found the dead bodies of these two persons at his doorstep.[1612] Two days later, Sam Bockarie and "his boys" loaded the corpses onto a vehicle and drove off.[1613] Although Witness TF1-122 in a pre-trial statement stated that the burglary concerned the warehouse of 'Médecins Sans Frontières', not of the ICRC,[1614] the Trial Chamber is satisfied that this inconsistency can be attributed to the lapse of time and that the credibility of Witness TF1-122 remains unshaken.

836. One morning in late December 1997, when 'Operation No Living Thing' was launched in Kenema, Witness TF1-122 saw the dead body of a man dressed in civilian clothes near the Sierra Leone Telecommunication Building on Hangh Road in Kenema Town.[1615] "RUF rebels" and "AFRC juntas" were dancing around the body and singing that they would kill all Kamajors. They split open the dead man's abdomen with a bayonet and stretched his intestines across Hangh Road and established a checkpoint around it. The body stayed there for three days.[1616]

[1606] TF1-122, Transcript 24 June 2005, pp. 43-45; DAB-147, Transcript 3 October 2006, pp. 33-34.
[1607] TF1-122, Transcript 24 June 2005, pp. 18-20.
[1608] TF1-122, Transcript 24 June 2005, pp. 21-22.
[1609] TF1-122, Transcript 24 June 2005, p. 23.
[1610] TF1-122, Transcript 24 June 2005, pp. 28-29, 115.
[1611] TF1-122, Transcript 24 June 2005, p. 29.
[1612] TF1-122, Transcript 24 June 2005, pp. 29-30.
[1613] TF1-122, Transcript 24 June 2005, pp. 30, 31.
[1614] TF1-122, Transcript 24 June 2005, p. 109.
[1615] TF1-122, Transcript 24 June 2005, pp. 32-34.
[1616] TF1-122, Transcript 24 June 2005, pp. 33-34.

837. At an unspecified time between May 1997 and February 1998, Sam Bockarie personally killed a farmer near the NIC Building in Kenema town with two gunshots. Witness TF1-122 heard the gunshots and arrived at the scene when the farmer was dying. Sam Bockarie remarked that all Kamajors must be "finished". Bockarie's "boys" then threw the farmer's dead body into a hole.[1617]

838. The Kanu Defence submits that the evidence of witness TF1-122 is unreliable as regards the identification of perpetrators of unlawful killings, and that "crimes committed in Kenema District during the AFRC regime fall clearly within the responsibility of the RUF".[1618]

839. The Trial Chamber accepts on the evidence that some of the above killings can be attributed to Sam Bockarie of the RUF. However, it dismisses the Kanu Defence submission that none of the killings can be attributed to the AFRC faction as the testimony of witness TF1-122 implicating "AFRC juntas" in these incidents was not shaken on cross-examination.

(ii) Findings

840. By virtue of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 25 May 1997 and about 19 February 1998, members of the AFRC/RUF unlawfully killed a minimum of 17 civilians in Kenema Town in Kenema District, amounting to the elements of Counts 4 and 5.

(c) Kono District (14 February 1998 – 30 June 1998)

841. The Prosecution alleges that "[a]bout mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya."[1619]

842. No evidence has been led on unlawful killings with respect to the villages of Foindu, Willifeh and Biaya.[1620]

843. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-334, George Johnson, TF1-216 and Defence witnesses DBK-129, DAB-018, and DAB-023.

[1617] TF1-122, Transcript 24 June 2005, pp. 23-26, 101-102, 114-115.
[1618] Kanu Final Brief, para. 371.

844. The evidence establishes that between February and June 1998, AFRC/RUF forces were in control of Kono District.[1621] Defence witnesses testified that the AFRC soldiers present in Kono were under the overall command of RUF.[1622]

(i) Koidu

845. In early March 1998, Johnny Paul Koroma declared Koidu Town a "no go area" for civilians. This declaration was reiterated by Issa Hassan Sesay of the RUF.[1623] Many civilians were killed following this order by AFRC and RUF troops in Koidu Town and surrounding villages.[1624] This testimony is generally corroborated by witnesses TF1-206 and TF1-217, who heard about killings in Koidu Town.[1625]

846. Documentary evidence suggests that in mid-June 1998, more than 650 civilians were killed as a result of the fighting in the area around Koidu.[1626] Again, the Trial Chamber is unable to attribute those killings to a specific faction.

847. The Trial Chamber therefore finds that an unknown number of civilians were unlawfully killed in Koidu, but is unable to determine beyond reasonable doubt whether these killings are attributable to AFRC and/or RUF forces in Kono District.

(ii) Tombodu

848. In or about April 1998, upon the orders of a certain 'Staff Alhaji Bayo', 53 people were burnt alive by "juntas" in a big house near late Sahr Fania's compound at Tombodu.[1627]

849. In mid-May 1998, 'Savage' locked 15 civilians into a house in Tombodu town which he then set ablaze. None of them escaped.[1628] Another 47 people were beheaded by 'Savage' and 'Guitar boy' and then thrown into a diamond pit.[1629] Witness George Johnson corroborated this

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[1619] Indictment, para. 45.
[1620] Rule 98 Decision, paras 89, 96.
[1621] TF1-217, Transcript 17 October 2005, pp. 12-14; TF1-334, Transcript 18 May 2005, pp. 21-30.
[1622] DAB-023, Transcript 3 August 2006, pp. 56, 63, 64; DBK-129, Transcript 9 October 2006, pp. 69-73; DAB-018, Transcript 7 September 2006, pp. 7-9.
[1623] TF1-334, Transcript 20 May 2005, pp. 4-6.
[1624] TF1-334, Transcript 20 May 2005, pp. 4-5, 7-8; Exhibit P-54, Amnesty International, "Sierra Leone, A Year of Atrocities Against Civilians", 1998, CMS p. 15806.
[1625] TF1-206, Transcript 28 June 2005, pp. 81-82; TF1-217, Transcript 17 October 2005, pp. 13-14.
[1626] Exhibit P-54, Amnesty International Report on Sierra Leone, A Year of Atrocities Against Civilians," 1998, CMS p. 15807.
[1627] TF1-216, Transcript 27 June 2005, p. 92; TF1-217, Transcript 17 October 2005, pp. 17-21, 36-37, 46-47.
[1628] TF1-334, Transcript 20 May 2005, p. 14; DAB-023, Transcript 3 August 2006, p. 75, 78. The witness stated that he did not report the atrocities to 'Superman' because 'Savage' was the commander at Tombodu.
[1629] TF1-334, Transcript 20 May 2005, p. 15; DAB-023, Transcript 3 August 2006, p. 78.

evidence generally, testifying that 'Changabulanga' aka 'Savage' killed more than 150 people who were then thrown into a pit. He stated that all were civilians and had all been killed by machete.[1630] Several other witnesses testified that massive killings took place at the hands of AFRC/RUF fighters in Tombodu town between February and June 1998.[1631]

850. Witness TF1-033 testified that in or about March 1998, the Accused Brima ordered 'Savage' to attack Tombodu, which resulted in the killing of "hundreds of civilians".[1632] In the presence of AFRC commanders including the Accused Kamara and Kanu, many civilians were burned alive as they were locked up in houses which were then set on fire.[1633]

851. The Defence vigorously contests the testimony of witness TF1-033 with regard to this incident. The Kamara Defence submit that the witness's testimony is exaggerated, inconsistent and contradictory to other Prosecution witnesses.[1634] The Brima Defence claim that the testimony of witness TF1-033 is unsupported and cannot be relied upon, stating that although George Johnson gave evidence of the presence of the Accused Brima in Tombodu at a particular time, this was a transient stop on their withdrawal from the district. George Johnson did not state that he saw Brima order atrocities on their way out of Kono District.[1635]

852. The following issues are in dispute amongst the parties regarding the testimony of witness TF1-033: the number of persons killed in Tombodu, the time frame when the killings took place and whether the Accused Brima ordered or was present while the crimes were committed.

853. In cross-examination, witness TF1-033 stated that 'Savage' was the sole commander of Tombodu at the time of the atrocities described and he was subordinate commander to 'Gullit'.[1636] Prosecution witness George Johnson testified that the Accused Brima arrived after the commission of crimes in Tombodu.[1637] Further, witness TF1-033 gave only very general information in relation to the alleged order and his testimony is inconsistent and contradicts the evidence of other reliable witnesses.[1638] For example, witness TF1-033 testified that the Accused Kanu was present in Tombodu in March 1998, at a time that other witnesses locate the Accused Kanu in Koinadugu District. Further, witness TF1-033 testified that the Accused Brima ordered Savage to attack

[1630] George Johnson, Transcript 15 September 2005, p. 45.
[1631] George Johnson, Transcript 15 September 2005, p. 45; DAB-023, Transcript 3 August 2006, p. 75; DAB-098, Transcript 4 September 2005, p. 33.
[1632] TF1-033, Transcript 11 July 2005, pp. 11-13.
[1633] TF1-033, Transcript 11 July 2005, pp. 11-13.
[1634] Kamara Final Brief, para. 144.
[1635] Brima Final Brief, para. 256.
[1636] TF1-033, Transcript 11 July 2005, pp. 145-148.
[1637] George Johnson, Transcript 15 September 2005, pp. 44-45.

Tombodu at a time where Tombodu was already the base of an AFRC Battalion in Kono District.[1639]

854. The Trial Chamber is thus of the view that the witness's evidence that the Accused Brima gave an order to 'Savage' to kill civilians in Tombodu is not probative and does not rely on it in making a finding on unlawful killings in Tombodu.

855. The Trial Chamber is satisfied that in the Indictment period for Kono District 'Staff Alhaji Bayo' intentionally killed 53 people in Tombodu; that 'Savage' intentionally killed 15 civilians in Tombodu; that Savage and Guitar boy intentionally killed another 47 people in Tombodu.

(iii) Mortema

856. The Trial Chamber notes that the Prosecution has not led any evidence of unlawful killings in Mortema. However, the Defence witnesses DAB-025 and DAB-101 testified that on an unspecified day in 1998, the RUF attacked and took control of Mortema and an unknown number of people were killed as a result of the attack.[1640] As the attack was conducted by the RUF, the Trial Chamber will not make a final determination on the reliability of the evidence.

(iv) Findings

857. On the basis of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 June 1998, members of the AFRC unlawfully killed a minimum of 265 civilians in Tombodu, Kono District, as charged under Counts 4 and 5. The Trial Chamber is further satisfied that these large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred in a single village over a relatively short period of time establishes that the principal perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.

[1638] TF1-334, Transcript 20 May 2005, p. 56.
[1639] George Johnson, Transcript 15 September 2005, p. 40.
[1640] DAB-025, Transcript 28 July 2006, pp. 95, 107-108; DAB-101, Transcript 12 September 2006, pp. 96-98.

(d) Kailahun District (14 February 1998 – 30 June 1998)

858. The Prosecution alleges that "[b]etween about 14 February 1998 and 30 June 1998, in locations including Kailahun town, members of AFRC/RUF unlawfully killed an unknown number of civilians."[1641]

859. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-045, TF1-113, TF1-334 and Gibril Massaquoi and Defence witness DAB-147, DAB-140 and DAB-142.

(i) Kailahun Town

860. Sam Bockarie was the senior commander of RUF troops which were in Kailahun District between February and June 1998.[1642] Witness TF1-113 testified that on his orders, a total of 67 persons were arrested in several villages in Kailahun District and detained at the G5 office in Kailahun Town. The persons were accused of being Kamajors.[1643] Some time later witness TF1-113 saw Sam Bockarie personally kill two individuals at the roundabout in Kailahun town. Eight dead bodies were already lying on the ground when he arrived at the scene.[1644] From the witness's testimony, the Trial Chamber is satisfied that these eight persons were also killed by Bockarie. The ten persons killed were part of the group of 67 detained 'Kamajors'.

861. Following the incident at the roundabout, Sam Bockarie ordered the killing of the remaining 57 detained 'Kamajors'.[1645] In the witness's presence, Bockarie instructed the Military Police Commander Joe Fatoma to kill these individuals, threatening him with death if the order was not obeyed. The 57 individuals were shot following that order.[1646] Witness TF1-113's evidence is generally corroborated by a number of Defence Witnesses, although some of them testified that Sam Bockarie killed the 57 persons himself.[1647] Given that Witness TF1-113 was not shaken on cross-examination and the Defence Witnesses' accounts of events were less detailed than her own, the Trial Chamber relies on her evidence. Witnesses DAB-142 and DAB-147 corroborated the evidence that the civilians killed were alleged Kamajors.[1648]

[1641] Indictment, para. 46.
[1642] DAB- 147, Transcript 3 October 2006, pp. 48-50.
[1643] TF1-113, Transcript 18 July 2005, pp. 84-86.
[1644] TF1-113, Transcript 18 July 2005, pp. 87-88.
[1645] TF1-113, Transcript 18 July 2005, pp. 85-88.
[1646] TF1-113, Transcript 18 July 2005, pp. 89-90.
[1647] DAB-147, Transcript 3 October 2006, p. 47; DAB-140, Transcript 19 September 2006, pp. 94-95; DAB-142, Transcript 19 September 2006, pp. 36-37.
[1648] DAB-142, Transcript 19 September 2006, pp. 19, 35-36; DAB-147, Transcript 3 October 2006, p. 47.

862. As witness TF1-113 testified that the above incidents occurred shortly after Johnny Paul Koroma arrived in Kailahun Town and left for Kangema,[1649] the Trial Chamber is able to infer that the killings described occurred in the last half of March 1998.

863. However, it appears from the evidence that the 67 persons killed were combatants. The Trial Chamber recalls that if a victim is "a member of an armed organization, the fact that he is not armed or in combat at the time of the commission of crimes, does not accord him civilian status."[1650] Accordingly, the Trial Chamber finds that the Prosecution has failed to prove beyond reasonable doubt that the detained and alleged 'Kamajors' were part of the civilian population.

(ii) Findings

864. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that between 14 February 1998 and 30 June 1998, Sam Bockarie and his subordinates unlawfully killed 67 persons in Kailahun Town in Kailahun District. As the Prosecution has not proved beyond reasonable doubt that the detained 'Kamajors' were part of the civilian population but only that they were *hors de combat*, the Trial Chamber concludes that only the elements of murder (Count 5) are established in respect of the killings in Kailahun Town.

(e) Koinadugu District (14 February 1998 – 30 September 1998)

865. The Prosecution alleges that "[b]etween about 14 February 1998 and 30 September 1998, in several locations including Heremakono, Kabala, Kumalu (or Kamalu), Kurubonla, Katombo, Koinadugu, Fadugu and Kamadugu, members of the AFRC/RUF unlawfully killed an unknown number of civilians."[1651]

866. No evidence on unlawful killings was led in respect of Heremakono, Kumalu (or Kamalu), Katombo, Kamadugu[1652] and Kurubonla.

867. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-334, TF1-209 and TF1-147 and Defence witnesses DAB-081, DAB-083, DAB-077, DAB-078 and DAB-085, as well as Prosecution Exhibits P-57 and P-54 and Defence Exhibit D-24 (under seal).

[1649] Also referred to as 'Kangama'.
[1650] *Blaškić* Appeal Judgement, para. 114.
[1651] Indictment, para. 47.
[1652] Rule 98 Decision, para. 96.

(i) Kabala

868. Witness TF1-209 witnessed the killing of her six year old son by a rebel called 'Jabie', loyal to SAJ Musa, at a farm in or near Kabala on an unspecified date in August 1998.[1653] Her husband was beaten to death with a 'mortar pestle' in the same attack by 'Jabie' and a certain 'Allusein', who was loyal to 'Superman's' group.[1654] The witness was sexually assaulted and abducted by the fighters. Her testimony in relation to these events is considered by the Trial Chamber below in its findings on Count 9.[1655]

869. In cross-examination, Defence Counsel referred the witness to a prior statement in which she stated that her son was two, and not six years old. The witness maintained that her child was six years of age when he was killed. She was able to provide a detailed account of the events and explained the inconsistencies with her prior statement.[1656] The Trial Chamber is thus satisfied that the witness's husband and son were killed by fighters loyal to SAJ Musa and 'Superman'.

870. On 17 September 1998, "rebels" attacked Kabala a second time. Witness TF1-147 testified that the rebels engaged in hostilities with loyal government SLA and ECOMOG forces. The witness was not present during those hostilities as he was hiding outside the town.[1657] However, he heard about the killing of many people.[1658] On his return to Kabala the next morning he saw ten corpses with gun shot wounds at the main junction in the centre of town.[1659] During cross-examination, the witness testified that the ten corpses that he saw were killed during the hostilities. The witness was not able to state whether the persons were civilians or by which armed organisation they were killed.[1660] In the absence of more specific evidence, the Trial Chamber is not satisfied that these victims were killed by AFRC or RUF forces or that they were civilians.

871. The Trial Chamber notes the evidence of witness TF1-199, that in the course of the attack on Kabala, ECOMOG were captured. Lieutenant Colonel 'Savage' and his men captured seven ECOMOG and loyal government SLA soldiers, removed their combat uniform, lined them up with

[1653] TF1-209, Transcript 7 July 2005, pp. 35-36.
[1654] TF1-209, Transcript 7 July 2005, p. 35.
[1655] Factual Findings, Outrages on Personal Dignity, paras 1127-1130.
[1656] TF1-209, Transcript 7 July 2005, pp. 49-51.
[1657] TF1-147, Transcript 13 July 2005, pp. 11-12, 21.
[1658] TF1-147, Transcript 13 July 2005, pp. 12.
[1659] TF1-147, Transcript 13 July 2005, pp. 11-12, 20-21.
[1660] TF1-147, Transcript 13 July 2005, pp. 12, 21.

their hands tied behind their back and executed them.[1661] However, this incident occurred outside of the Indictment period for Koinadugu.

(ii) Koinadugu Town

872. AFRC and RUF forces under the command of SAJ Musa and 'Superman' attacked and occupied Koinadugu Town in late July 1998.[1662] Many civilians were killed upon the orders of 'Superman'.[1663] Specifically, Witness DAB-081 testified that more than ten civilians were beaten to death with machetes or sticks by the RUF.[1664]

873. Witness DAB-081 testified that one civilian boy, Lansana Farroo, was guarding a school in Koinadugu where child soldiers were being held. When he denied access to two RUF soldiers, they killed him.[1665]

874. In addition to the specific incidents described above, evidence of dead bodies found in the streets of Koinadugu Town was adduced at trial. The Trial Chamber finds this evidence insufficient to form the basis of findings of unlawful killings.[1666]

(iii) Fadugu

875. Notwithstanding the Defence submission that ECOMOG may be accountable for some of the killings which occurred in Fadugu at the relevant time,[1667] the Trial Chamber is satisfied that the following incidents cannot be attributed to ECOMOG.

876. On 22 May 1998, rebels attacked the town of Fadugu. They shot indiscriminately at civilians and killed an unspecified number.[1668] The Trial Chamber finds this evidence insufficient to form the basis of findings of unlawful killings.

877. Witness DAB-078 saw eight armed soldiers capture a civilian man, whom they believed was a member of the CDF, at a checkpoint in Fadugu on 22 May 1998.[1669] The soldiers beat the man to death, cut open his stomach and removed his intestines. The intestines were displayed openly at the

[1661] TF1-199, Transcript 6 October 2005, pp. 88, 103-104.
[1662] DAB-081, Transcript 20 July 2006, p. 82.
[1663] DAB-081, Transcript 20 July 2006, p. 95; TF1-153, Transcript 22 September 2005, pp. 51-52.
[1664] DAB-081, Transcript 20 July 2006, pp. 99.
[1665] DAB-081, Transcript 20 July 2006, p. 98; DAB-081, Transcript 21 July 2006, pp. 2, 3.
[1666] DAB-083, Transcript 21 July 2006, p. 46; TF1-153, Transcript 22 September 2005, pp. 51-52.
[1667] Brima Final Brief, para. 239; DAB-077, Transcript 19 July 2006, pp. 60, 89.
[1668] TF1-199, Transcript 6 October 2005, pp. 77-78; DAB-077, Transcript 19 July 2006, pp. 92-94.
[1669] DAB-078, Transcript 6 September 2006, pp. 10-14.

checkpoint.[1670] In close vicinity to the checkpoint, a teacher and his younger brother were killed.[1671] The Trial Chamber is not satisfied beyond reasonable doubt that the soldiers knew that the killings were part of the attack on the civilian population and therefore the requisite *mens rea* to establish a crime against humanity is lacking. However, on the evidence adduced, the Trial Chamber finds that the perpetrators were aware that the victim was not taking active part in the hostilities and that they acted in furtherance of the armed conflict. However, the witness was not able to provide any details as to which faction the soldiers belonged.

878. During the early hours of 11 September 1998, there was a second attack on Fadugu by "rebels" in a campaign known as "Operation Die." An unknown number of civilians were killed in the course of this attack, including the local paramount chief of Mabolo who was burnt to death.[1672] This incident is corroborated by documentary evidence.[1673]

(iv) Findings

879. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF unlawfully killed a minimum of 21 civilians in Kabala, Koinadugu Town and Fadugu in Koinadugu District, amounting to the elements of Counts 4 and 5.

(f) Bombali District (1 May 1998 - 30 November 1998)

880. The Prosecution alleges that "[b]etween about 1 May 1998 and 30 November 1998, in several locations in Bombali District, including Bonyoyo (or Bornoya), Karina, Mafabu, Mateboi and Gbendembu (or Gbendubu or Pendembu), members of the AFRC/RUF unlawfully killed an unknown number of civilians."[1674]

881. No evidence on unlawful killings was led with respect to Mafabu.[1675]

[1670] DAB-078, Transcript 6 September 2006, pp. 15-17.
[1671] DAB-078, Transcript 6 September 2006, pp. 17-18.
[1672] DAB-085, Transcript 20 July 2006, pp. 7, 38-41; DAB-078, Transcript 6 September 2006, p. 36.
[1673] Exhibit P-57, Conflict Mapping Report, "No Peace without Justice", 10 March 2004, p. 16056; Exhibit P-54, Amnesty International "Sierra Leone. A year of atrocities against civilians, 1998", p. 15811; Exhibit D-24 (under seal).
[1674] Indictment, para. 48.
[1675] Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98, 31 March 2006, paras 89, 96.

882. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution Witnesses TF1-156, TF1-157, TF1-158, TF1-033, George Johnson and TF1-334 and Defence witnesses DBK-089, DBK-050 and DBK-094.

(i) Bornoya

883. Witnesses TF1-156, TF1-157 and TF1-158 testified that Bornoya was attacked by "soldiers" in the morning hours on an unspecified day in May 1998. Defence witnesses testified that the exact date of the attack was 8 May 1998. The assailants were armed and wore combat uniforms and red head bands.[1676] An unspecified number of civilians were killed during the attack.[1677]

884. A man wearing shorts, boots and a jacket uniform, and another man with a head band carrying a cutlass, slit open the stomach of a pregnant woman named Isatta and removed the foetus. Isatta died as a result.[1678] A certain Lansana Mansaray and Sarah Foday were assaulted and seriously wounded and later died as a result of their injuries.[1679] Two children of one Alhaji Sorie Mansaray were intentionally burnt to death under a mattress which was set on fire.[1680] An unspecified number of other civilians were killed in the course of the attack, including Adama Kamara, Jammah Daboh, Sheriff Mansaray and Mohamdu Koroma.[1681] A female soldier called Adama hacked to death the father of witness TF1-158.[1682] Witness DBK-050 watched soldiers hack his younger brother to death with a cutlass, on the orders of a female soldier known to him as 'Adama Cut Hand'.[1683]

885. Witness TF1-158, who was abducted and later used as a child soldier by the troops that attacked Bornoya, testified that he learned from another abducted boy who had been with the troops since Kono District that the leaders of the troops included 'Gullit', 'Five-Five', 'O-Five' and SAJ Musa.[1684] He testified that he learned about those names during the subsequent attack on the nearby village of Karina. However, witnesses belonging to SAJ Musa's group testified that SAJ Musa and 'O-Five' were not en route with the advance team led by Brima.[1685] Nevertheless, Witness TF1-157, who was also abducted and later used as a child soldier, corroborates the fact that the troops were

[1676] TF1-158, Transcript 26 July 2005, p. 30.
[1677] TF1-156, Transcript 26 September 2005, pp. 56-58.
[1678] TF1-158, Transcript 26 July 2005, pp. 35, 50, 87, 95-97.
[1679] TF1-156, Transcript 26 September 2005, pp. 59, 60.
[1680] TF1-156, Transcript 26 September 2005, pp. 39, 40.
[1681] TF1-156, Transcript 26 September 2005, pp. 36-38.
[1682] TF1-158, Transcript 26 July 2005, pp. 33, 34.
[1683] DBK-050 Transcript 10 July 2006, pp. 16-17.
[1684] TF1-158, Transcript 26 July 2005, pp. 30-34.
[1685] Context of the Alleged Crimes, para. 196-198, *supra*.

lead by 'Gullit' and 'Five-Five'.[1686] He testified that he only heard about those names once he arrived at Camp Rosos.[1687] The Trial Chamber is satisfied that the attack on Bornoya was conducted by troops associated with the three Accused, as the village was on the route taken by the advance team led by Brima during the same time period.[1688]

(ii) Karina

886. On 8 May 1998 AFRC soldiers attacked Karina, a Mandingo village in Bombali District. Previously, at Kamagbengbe, the Accused Brima ordered his troops to specifically target Karina, as he alleged that it was the home town of President Kabbah.[1689] All three Accused participated in the attack.[1690]

887. In the presence of witness TF1-334, the Accused Kamara and two other "juntas" locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive.[1691]

888. "Juntas" threw an unspecified number of little children into the flames of burning houses. The children were burnt alive.[1692] Soldiers stabbed a pregnant woman to death.[1693] A certain Saccoh Kankoh Fanta was injured during the attack and subsequently died.[1694] An unspecified number of children were killed during the attack.[1695]

889. 'Cyborg', a security officer to the Accused Kamara, threw at least four children aged between five and ten years from a two-storey building in Karina.[1696] The witness did not clarify whether the four children died as a result. The Trial Chamber therefore is not satisfied beyond a reasonable doubt that the children were killed.

890. A certain Eddie Williams, a.k.a. 'Maf', wrapped into an unknown number of people in a carpet inside a house and thereafter set the house on fire. The people were burnt alive. The Accused

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[1686] TF1-157, 22 July 2005, p. 90.
[1687] TF1-157, 22 July 2005, p. 90.
[1688] Exhibit P-30(a), "Map of Sierra Leone", indicating the route of the troops as testified by witness George Johnson, *see* Transcript 15 September 2005, p. 52; TF1-058, Transcript 14 June 2005, p. 95, testifying that Bonoya [Bornoya] was attacked by the same troops as Karina; Transcript TF1-033, 11 July 2005, p. 18; although TF1-033 testified that the attack on Bornoya occurred around June 1998, this does not discredit his overall testimony of the route taken which is corroborated by other witnesses, *i.e.* witness TF1-058 *supra*.
[1689] TF1-334, 23 May 2005, pp. 56-59.
[1690] TF1-334, Transcript 23 May 2005, pp. 57-65; George Johnson, Transcript 15 September 2005, pp. 53-54, 58; TF1-033, Transcript 11 July 2005, pp. 18, 19; DBK-094, Transcript 11 July 2006, pp. 26, 27.
[1691] TF1-334, Transcript 23 May 2005, pp. 65-67.
[1692] TF1-334, Transcript 23 May 2005, pp. 67.
[1693] TF1-055, Transcript 12 July 2005, pp. 132, 136.
[1694] TF1-058, Transcript 14 July 2005, p. 83.
[1695] TF1-055, Transcript 12 July 2005, p. 137.
[1696] George Johnson, Transcript 15 September 2005, p. 56.

Kamara was watching from outside the house, together with Witness George Johnson and several personal security guards of the Accused Kamara.[1697]

891. Prosecution Witnesses TF1-334, George Johnson, TF1-199 and TF1-055 testified that civilians were killed at the Karina mosque, including the Imam.[1698] Witness TF1-334 testified that the Accused Brima was at the mosque and accused the Imam of supporting President Kabbah. Brima allegedly said to the Imam: "You, you are the one that pray for people. You are one of Pa Kabbah's family...[s]o you are the worst people here." The Witness stated that the Accused Brima then shot and killed the Imam, along with six men and five women with his 'Magnum' pistol.[1699] Witness George Johnson testified that the civilians at the mosque were killed by Halaji Kamanda aka 'Gun Boot'. However, Witness George Johnson did not see the civilians being killed, but rather observed dead bodies with gun shot wounds inside and outside the mosque subsequently.[1700]

892. The Defence presented a different version of events. The Defence adduced evidence in closed session that established beyond reasonable doubt that the Imam was not killed in the attack on Karina mosque.[1701] Defence Witnesses DBK-089 and DBK-094 gave evidence that the Imam left Karina three days prior to the attack, leaving the Imam's elder brother in charge of the mosque.[1702] The Imam's elder brother appointed someone to lead the prayers in the absence of the Imam.[1703]

893. Defence witnesses DBK-089 and DBK-094 did not dispute the killing of civilians at the mosque. The Brima Defence submits that the testimony of witness TF1-334 is unreliable based on his assertion that the Imam was killed.[1704] The Trial Chamber notes that when asked to whom Brima spoke at the mosque, Witness TF1-334 responded "It was the imam -- the imam that was in charge of the mosque who was leading prayers."[1705] The Trial Chamber is thus satisfied that the Witness referred to the person killed as the 'Imam' on the basis that this person was leading the prayers when the troops arrived at the mosque. This mistake on the part of the witness does not undermine the credibility of his evidence that the Accused Brima killed the person leading the prayers, along with 11 other civilians at the mosque.

[1697] George Johnson, Transcript 15 September 2005, pp. 54-56.
[1698] TF1-334, Transcript 23 May 2005, pp. 68-69; George Johnson, Transcript 15 September 2005, pp. 56, 57; TF1-199, Transcript 6 October 2005, para. 75; TF1-055, Transcript 12 July 2005, p. 142.
[1699] TF1-334, Transcript 23 May 2005, pp. 68-69.
[1700] George Johnson, Transcript 15 September 2005, pp. 56-57.
[1701] DBK-094, Transcript 11 July 2006, pp. 98-100 [closed session]; Exhibit D-15, under seal.
[1702] DBK-089, Transcript 14 July 2006, pp.15-18; DBK-094, Transcript 11 July 2006, pp. 29-30, 43-44.
[1703] DBK-089, Transcript 14 July 2006, p.15.
[1704] *See* Brima Final Brief, para. 247.
[1705] TF1-334, Transcript 23 May 2005, p. 68.

894. In light of the above evidence, the Trial Chamber considers the testimony of witness DBK-094, who claimed to have only seen seven dead bodies in Karina after the attack to be unreliable.[1706] The Trial Chamber is satisfied that in fact civilians were killed on a massive scale in Karina.[1707] One witness estimated that at least 200 civilians were killed in the attack on Karina.[1708] Even though other witnesses have not estimated any total figures for the event, the figure of 200 civilians killed is corroborated by the totality of the evidence given, the massiveness of the attack on the village and the general destruction caused.

(iii) Mateboi

895. At an unspecified time in 1998, the Accused Brima sent an AFRC "advance team" under the command of 'Captain Arthur' to Mateboi, a village close to Camp Rosos.[1709] Upon return to Camp Rosos, 'Captain Arthur' brought the decapitated head of the chief of Mateboi and handed it over the commanders at headquarters, which included the Accused Brima and Kamara.[1710]

(iv) Gbendembu

896. In or around August 1998, 'Gullit' ordered two AFRC commanders, one Salifu Mansaray and 'Arthur' to attack Gbendembu, on the basis that ECOMOG and loyal SLA troops were purportedly stationed there.[1711] Witness TF1-033 heard that 25 civilians were killed in the attack on Gbendembu and that 'Gullit' commended his men for "a job well done".[1712]

(v) Findings

897. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that between 1 May 1998 and 30 November 1998, members of the AFRC unlawfully killed an unknown number of civilians in Bornoya, Mateboi and Gbendembu in Bombali District. Consequently, the Trial Chamber finds that the material elements in relation to Counts 4 and 5 have been established.

[1706] DBK-094, Transcript 11 July 2006, pp. 38-40.
[1707] George Johnson, Transcript 15 September 2005, p. 55; TF1-033, Transcript 11 July 2005, pp. 19-20; TF1-058, Transcript 14 July 2005, pp. 78-82; DBK-089, Transcript 14 July 2006, pp. 11-13; Exhibit P-54, Amnesty International, "Sierra Leone, A Year of Atrocities against Civilians", 1998, p. 15810.
[1708] TF1-055, Transcript 12 July 2005, p. 80.
[1709] George Johnson, Transcript 15 September 2005, pp. 60-61.
[1710] George Johnson, Transcript 15 September 2005, pp. 61-63.
[1711] TF1-033, Transcript 11 July 2005, pp. 32-33; TF1-334, Transcript 23 May 2005, pp. 81, 84.
[1712] TF1-033, Transcript 11 July 2005, p. 34.

898. The Trial Chamber is further satisfied that each of the killings in Karina was part of a large scale killing which in its totality satisfies the element of massiveness for the crime of extermination as charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred over a relatively short period of time establishes that the perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.

(g) Freetown and the Western Area (6 January 1999 – 28 February 1999)

899. The Prosecution alleges that "[b]etween 6 January 1999 and 28 February 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown and the Western area. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city and the Western Area, including Kissy, Wellington, and Calaba Town".[1713]

900. The Prosecution has led evidence from witnesses who heard of killings of civilians and witnessed dead bodies in various locations in Freetown and the Western Area.[1714] While the Trial Chamber accepts this evidence as credible, given its general nature, the Trial Chamber relies on it to corroborate its findings on the more specific incidents described below.

901. The Trial Chamber has considered the available evidence and, in arriving at the following findings of fact, relies on the evidence of Prosecution witnesses TF1-033, TF1-184, Gibril Massaquoi, TF1-334, TF1-024, TF1-104, TF1-083, TF1-157, TF1-021, TF1-153 and TF1-084.

(i) Freetown

a. East End Police

902. Witness TF1-157 testified that when the troops entered Freetown, police officers and their families were specifically targeted and killed.[1715] The targeting of police officers followed a specific reminder by the Accused Kanu, who reiterated a previous order given to the troops by SAJ Musa at Newton, ordering that the troops should kill Nigerian soldier, Nigerian civilians, police officers and SLPP party members.[1716] The Accused Kanu reminded the troops of that order at a meeting near

[1713] Indictment, para. 49.
[1714] TF1-033, Transcript 11 July 2005, pp. 63-65; TF1-153, Transcript 22 September 2005, p. 100; TF1-334, Transcript 14 June 2005, pp. 28, 64-65; George Johnson, Transcript 16 September 2005, p. 38; Gibril Massaquoi, Transcript 10 October 2005, pp. 12, 13; TF1-083, Transcript 8 April 2005, pp. 54-56, 62; TF1-227, Transcript 8 April 2005, p. 101.
[1715] TF1-157, Transcript 25 July 2005, pp. 19, 20.
[1716] George Johnson, Transcript 16 September 2005, p. 4.

Orugu Village[1717] on the eve of the attack on Freetown. The Accused Brima, Kamara, the witness George Johnson, Hassan Papah Bangura and other battalion commanders were present at that meeting.[1718]

903. No suggestion has been made that the regular police were involved in the hostilities during the armed conflict in Sierra Leone. The Trial Chamber is therefore satisfied that the killed officers were civilians.

b. State House Area

904. Witness TF1-033 testified that on 6 January 1999, while he was seated on a bench at State House with Gibril Massaquoi, fighters including 'Junior Sheriff' brought one boy to State House. The witness saw the boy's ID card, from which the witness learnt that he was from Guinea-Bissau. Witness TF1-033 testified that 'Junior Sheriff' then shot and killed the boy.[1719]

905. Witness TF1-033 also testified that on 6 January 1999 and the subsequent four or five days thereafter, he observed civilians being killed around State House by AFRC fighters on the orders of 'Gullit'.[1720] The witness stated that people perceived to be Nigerians and civilians suspected of harbouring Nigerians were brought to State House and killed. Given the more detailed evidence of killings at State House considered below, some of which involved the Accused Brima, the Trial Chamber makes no additional findings on this general evidence of witness TF1-033.

906. On 6 January 1999, at State House, witness TF1-184 watched the Accused Brima shoot dead a woman, who was the girlfriend of one of the soldiers.[1721] Witness TF1-334 also described an incident wherein the Accused Brima shot and intentionally killed a woman at State House on that same day, whom he referred to as the wife of one of the soldiers.[1722]

907. Witness Gibril Massaquoi testified that when he entered State House on 6 January 1999, he saw sixteen persons in civil attire sitting on the ground inside the compound. The witness overheard 'Five-Five' talking to the men, who were explaining that they were not soldiers but Nigerian businessmen. 'Gullit' then arrived and told 'Five-Five' that the men were Nigerian ECOMOG soldiers who had removed their uniforms and were posing as civilians. Several of the Nigerians

[1717] Marked as location (H) on exhibit P-30(a), Transcript 16 September 2005, p. 18.
[1718] TF1-George Johnson, Transcript 16 September 2005, 17, 18.
[1719] TF1-033, Transcript 11 July 2005, pp. 63-65.
[1720] TF1-033, Transcript 11 July 2005, pp. 63-65.
[1721] TF1-184, Transcript 27 September 2005, p. 62.
[1722] TF1-334, Transcript 14 June 2005, p. 22.

denied this. 'Gullit' then told his soldiers to "get rid" of the Nigerians.[1723] The witness testified that he saw 'Five-Five' and other soldiers take "some of them" across the road from State House to "a place now they are referring to as the Defence Building. It was formerly a hotel."[1724] The witness testified that 'Five-Five' shot and killed one man. Three others were shot and killed, although the witness does not state by whom. The four corpses and the remaining Nigerians, who were still alive, were then loaded into a white four wheel drive and taken away from State House.[1725]

908. The Trial Chamber has considered the cross-examination of witness Gibril Massaquoi on this point.[1726] It emerged that in a prior statement concerning the incident, the witness stated that he saw two persons being killed at "the defence building". He states that neither 'Gullit' nor 'Five-Five' personally killed anyone, but that "they gave orders to their men" to execute the Nigerians.[1727]

909. Witness TF1-184 gave the following evidence regarding killings he witnessed at State House on 6 January 1999:

> A. [...] So by this I left him and came inside State House. They came with four men --
> Q. Mr Witness, who is they? They came?
> A. We, our soldiers, junior soldiers, went to the defence. By then it was Paramount Hotel. They used to call it Paramount Hotel. That is where they brought this four civilian, including one woman. As they said, these people were Nigerians. Gullit shot at them. Five-Five took the woman. We left there. I came down. I came inside again.[1728]

The witness was not cross-examined on this evidence, which the Trial Chamber finds somewhat imprecise.

910. The Trial Chamber is satisfied that witnesses Gibril Massaquoi and TF1-184 describe the same incident, as their accounts are substantially similar and over six years passed between the event in question and their testimony. It is plausible that the discrepancies between the witnesses' accounts are explicable on the basis that the witnesses arrived at State House at a different point in time and described the incident from their various perspectives. The Trial Chamber is satisfied that the Accused Brima gave an order to his subordinates, including Kanu, to execute the civilians. The Trial Chamber is further satisfied that Kanu shot and killed one civilian near State House and ordered his men to execute another three civilians.

[1723] Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116.
[1724] Gibril Massaquoi, Transcript 7 October 2005, p. 117.
[1725] Gibril Massaquoi, Transcript 7 October 2005, p. 116.
[1726] Gibril Massaquoi, Transcript 10 October 2005, pp. 101-112.
[1727] Gibril Massaquoi, Transcript 10 October 2005, p. 111.
[1728] TF1-184, Transcript 27 September 2005, pp. 61-62.

911. Witness TF1-334 testified that on the same day, he observed 'Tito' bringing fourteen captured Nigerian ECOMOG soldiers, in uniform, to State House. 'Gullit' questioned these soldiers about their commander and where their "military hardware" was stored. The witness stated that 'Gullit' became irritated when the soldiers did not give adequate responses and he took a pistol and shot and killed two of them. He then ordered 'Tito' to execute the remaining soldiers. 'Tito' took the remaining twelve Nigerians "out the back of the State House" where they were executed by him and his men.[1729] The Trial Chamber observes, from the evidence of witness TF1-024, that the Defence building, formerly the Paramount Hotel, is situated behind State House but close by it.[1730] Witness TF1-334 was not cross-examined on this incident.

912. As there is a possibility that the victims were combatants, the Trial Chamber is not satisfied that they belonged to the civilian population. The Trial Chamber is satisfied that at least four persons *hors de combat* were executed by AFRC soldiers who were acting in furtherance of the armed conflict.

913. On 6 January 1999, at Garrison Street outside State House, witness TF1-334 observed a AFRC named Lieutenant Colonel Kido shoot and kill approximately six civilians because they had "overlooked" him,[1731] meaning that they did not pay him sufficient respect.

914. Prior to the departure of the AFRC troops from State House, while Witness TF1-024 was in captivity there, he overheard a commander whom the others called 'Gullit' telling his fighters to force captured civilians to join the AFRC troops on their retreat, in order to replace those fighters killed by ECOMOG. Civilians who refused to join were shot in the presence of 'Gullit' and their dead bodies were thrown out the back of State House. The witness was unable to specify the number of civilians who were killed, but estimated that there were more than thirty.[1732] The Trial Chamber thus finds that at least thirty civilians were killed.

915. The Brima Defence submits that witness TF1-024's identification of 'Gullit' at State House was a mere guess, intended to favour the Prosecution case.[1733] In cross-examination it emerged that the witness, in a prior written statement, described 'Gullit' as a man of medium height, 'not too black' but rather 'fair in complexion'. The witness clarified that he did not intend to suggest that the

[1729] TF1-334, Transcript 14 June 2005, pp. 22-24, 27.
[1730] TF1-024, Transcript 7 March 2005, pp. 71-73.
[1731] TF1- 334, Transcript 14 June 2005, pp. 28-29.
[1732] TF1-024, Transcript 7 March 2005, pp. 46-48, 72-74.
[1733] Brima Defence Final Brief, para. 182.

person to whom he referred as 'Gullit' was white.[1734] The Trial Chamber accepts the evidence of the witness, contained in a pre-trial written statement and repeatedly asserted in oral testimony, that he knew the person to be 'Gullit' by the fact that people called him by that name and he responded.[1735] Further, there is corroborating evidence from other witnesses that 'Gullit' was present at State House in the first week after the invasion.[1736]

916. The Brima Defence also challenge the witness's description of State House, submitting that it is contradicted by the description given by the Accused Brima in evidence.[1737] The Trial Chamber has reviewed the evidence of both witness TF1-024 and the First Accused in relation to the layout of State House and especially the kitchen.[1738] The Trial Chamber is of the view that the discrepancies between the two descriptions of the building are minor and explicable on the basis that the First Accused worked in the building for a number of years while on the witness's account he spent a short and stressful period in captivity there.

c. Kingtom

917. In the second week that the troops were in Freetown, while the headquarters was still at State House, the 5th Battalion Commander 'Basky', aka Saidu Kambolai, came to State House and reported that he needed reinforcements at Kingtom, near Ascension Town, as ECOMOG had taken over the area.[1739] Witness TF1-334 was at State House in the presence of the three Accused, his superior Commander A[1740], Colonel Woyoh and some of the military supervisors when 'Basky' made this report. In response, the witness, his superior, Commander Basky and Colonel Woyoh gathered some men and returned to State House, where they introduced the men to 'Gullit'. 'Gullit' told the Operations Commander in front of the men that he needed the ground at Kingtom captured.

918. The troops, led by Operations Commander, Commander Basky and Colonel Woyoh and accompanied by the witness, went to Kingtom.[1741] The witness stated that the soldiers broke into houses and killed the civilians inside because they perceived them as 'traitors' who were collaborating with ECOMOG.[1742] The witness testified that the soldiers would knock on the door of

[1734] TF1-024, Transcript 7 March 2005, pp. 69-70.
[1735] TF1-024, Transcript 7 March 2005, pp. 44-45
[1736] TF1-334, Transcript 14 June 2005, pp. 21-22; Gibril Massaquoi, Transcript 7 October 2006, p. 115; George Johnson, Transcript 16 September 2005, p. 27.
[1737] Brima Defence Final Brief, para. 182.
[1738] First Accused Brima, Transcript 6 June 2006, pp. 27-28; TF1-024, Transcript 7 March 2005, pp. 70-73.
[1739] TF1-334, Transcript 14 June 2005, p. 40.
[1740] Name mentioned on exhibit P-12.
[1741] TF1-334, Transcript 14 June 2005, pp. 41-42.
[1742] TF1-334, Transcript 14 June 2005, pp. 43-44.

the house and if the door was not opened, they would force it open and "[t]he first person who came out was a dead person."[1743] The witness was unable to estimate the number of civilians killed in this manner.

d. Fourah Bay

919. Witness TF1-334 testified that in Freetown in January 1999, after the troops lost State House and Eastern Police and while the troops were at Savage Square, 'Gullit' received information that the people of Fourah Bay had killed one of his soldiers. 'Gullit' announced that he would lead the AFRC troops to Fourah Bay to burn houses and kill people in retaliation. The witness testified that troops including himself, 'Gullit', 'Bazzy', 'Five-Five', the Operation Commander, the Deputy Operation Commander and his superior "Commander A" moved to Fourah Bay. The troops attacked Fourah Bay and he observed a number of civilians being killed. The witness testified that all of the commanders participated in the attack, naming specifically 'Gullit' and 'Five-Five'. The troops then moved to Upgun.[1744]

920. Witness George Johnson corroborated the evidence of the Accused Brima ordering retaliatory killings of civilians in Fourah Bay, although he stated that Brima and the other commanders were at State House when they received the report about the soldier allegedly killed. The witness testified that he went on the attack, along with around one hundred AFRC soldiers, led by one Saidu Kambolia.[1745] "A lot of civilians" were killed, including men, women and children burned inside houses. Soldiers shot people who attempted to escape from burning houses.[1746] The attack was not limited to Fourah Bay Road but encompassed the entire Fourah Bay area. When asked to estimate the number of civilians killed, the witness replied that "I couldn't estimate because I could not go round the whole Fourah Bay to count each and every body."[1747] After the operation, the soldiers returned to State House where Brima was present.[1748]

921. Witness TF1-184 gave the most detailed account of an attack on Fourah Bay ordered by Brima in retaliation for the alleged killing of one of the soldiers by civilians in that area. He testified that he was at Ferry Junction, after the troops lost State House, with 'Gullit' and 'Five-Five' and

[1743] TF1-334, Transcript 14 June 2005, p. 45.
[1744] TF1-334, Transcript 14 June 2005, pp. 66-67.
[1745] George Johnson, Transcript 16 September 2005, pp. 42-44.
[1746] George Johnson, Transcript 16 September 2005, p. 44.
[1747] George Johnson, Transcript 16 September 2005, p. 44
[1748] George Johnson, Transcript 16 September 2005, p. 45.

Kamara was nearby.[1749] Upon receiving this information, 'Gullit' ordered a soldier named "Mines" to go to the SLRA to collect cutlasses. "Mines" subsequently returned with cutlasses, which he distributed to the troops with the assistance of one of the battalion commanders 'Changabulanga'.[1750] He described a demonstration of an amputation that 'Five-Five' gave for the troops at this point.[1751]

922. Brima then ordered the soldiers to move to the Upgun roundabout via Kissy Road. The witness testified that upon arrival at Upgun, the troops were summoned in a muster parade. 'Five-Five' and 'Gullit' held a discussion and then 'Five-Five' told the troops that 'Gullit' had said that the civilians should be taught a lesson. 'Five-Five' then ordered that any civilian the troops saw from Ross Road until Fourah Bay Road should be amputated and killed and the entire area should be burned down.[1752] The witness stated that it was normal practice for the commanders to have a discussion, after which 'Five-Five', whom the witness referred to as the "army chief commander", would inform the troops on the details of the operation.[1753]

923. According to the witness, the troops were then divided for the attack on Fourah Bay, with 'Five-Five' as the commander of one group and 'Bazzy' at Kissy Road. He then stated that after carrying out the orders, the troops were called back to where 'Gullit' was near Kissy Road.[1754]

924. The Kamara Defence submits that the testimonies of witnesses TF1-334, George Johnson and TF1-184 on the attack on Fourah Bay are inconsistent.[1755] The Trial Chamber accepts that there are discrepancies between the three accounts. Nonetheless, this does not mandate the dismissal of the entire testimony of each witness in relation to the attack on Fourah Bay. The Trial Chamber is of the view that the variations in the three accounts are explicable due to the passage of years since the events in question and the chaotic and stressful atmosphere existing at the relevant time, rather than bias on the part of witnesses George Johnson and TF1-334, as suggested by the Kamara Defence.[1756] However, the Trial Chamber notes that neither witness George Johnson nor TF1-334 were cross-examined on their testimony regarding the incident. In addition, witness TF1-184's evidence was more detailed.

[1749] TF1-184, Transcript 27 September 2005, pp. 71-72; 30 September 2005, p. 78.
[1750] TF1-184, Transcript 27 September 2005, p. 73.
[1751] *See* Factual Findings, Physical Violence, para. 1230, *infra*.
[1752] TF1-184, Transcript 27 September 2005, pp. 74-75.
[1753] TF1-184, Transcript 27 September 2005, p. 75.
[1754] TF1-184, Transcript 27 September 2005, pp. 75-76.
[1755] Kamara Final Brief, paras 207-209.
[1756] Kamara Final Brief, para. 209.

925. The Trial Chamber further finds it has not been established beyond reasonable doubt that the Accused Brima personally killed any civilians. However, the Trial Chamber is satisfied beyond reasonable doubt, based on the consistent testimony of all three witnesses, that Brima ordered the attack on Fourah Bay.

926. The Trial Chamber further finds, based on the detailed eye-witness account of witness TF1-184 which was not shaken in cross-examination in this regard, that the Accused Kanu reiterated the order to the assembled troops prior to the attack. While both witnesses TF1-334 and TF1-184 testified that the Accused Kanu went on the attack, the Trial Chamber is not satisfied that the Accused Kanu personally killed any civilians.

e. Guard Street

927. At an unspecified point during the AFRC retreat from Freetown, witness TF1-334 encountered 'Captain Blood', who was a bodyguard of the Accused Kamara, with seven captured civilians at Guard Street. The witness watched 'Captain Blood' shoot and kill three of the civilians and kill the remaining four using a machete.[1757]

(ii) Kissy

a. Good Shepherd Hospital

928. Witness TF1-104 was working as a nurse at the Good Shepherd Hospital in Kissy in January 1999.[1758] He testified that on 18 January 1999, a group of "juntas" went to the Good Shepherd Hospital in Kissy and accused personnel there of treating ECOMOG and Kamajors. They forced everybody out of the hospital – patients, nurses, staff, and visitors – and beat them with a large stick called a 'coboko', which has a rope tied to it.[1759]

929. The "juntas" then took Witness TF1-104, along with other civilians, to a certain Pa Zubay's house a short distance away. At this house there were a number of juntas and commanders including 'Captain Shepherd', whom the witness had met previously, and an individual to whom the other juntas called 'Captain Blood'. The civilians were made to stand against a wall and the juntas opened fire and began shooting randomly from different directions. The witness was injured

[1757] TF1-334, Transcript 14 June 2005, pp. 72-73.
[1758] TF1-104, Transcript 30 June 2005, pp. 5-9.
[1759] TF1-104, Transcript 30 June 2005, pp. 22-24.

and indicated wounds on his elbow, knee and right hip for the record during his examination-in-chief. He testified that fifteen civilians were killed as a result of the shooting. [1760]

930. The Trial Chamber finds the elements in relation to Counts 4 and 5 (murder as a crime against humanity and a war crime respectively) have been established beyond reasonable doubt in respect of the shooting by 'juntas' at the house of 'Pa Zubay'.

b. Rogbalan Mosque

931. Witness TF1-334 testified that while the troops were at Kissy Mental Home during the retreat from Freetown in January 1999, 'Gullit' called the Operation Commander and one Lieutenant Colonel named 'Gunboot' and "other commanders" to him. 'Gullit' told the assembled commanders that he had received information that civilians were harbouring ECOMOG forces in mosques. 'Gullit' further stated that AFRC troops should shoot and kill people they encounter in mosques, as these people were enemies.[1761] The witness stated that while the area had many mosques, 'Gullit' referred in particular to a mosque "down towards Shell Old Road, towards the junction" that was housing "collaborators".[1762] 'Gullit' chose 'Five-Five' to lead a group of men including the witness, his superior 'Supervisor A' and others to the mosque. As the troops approached the mosque, 'Five-Five' instructed them to start shooting at it. The witness stated that the mosque was big and there were many people inside. The troops opened the door and started shooting. The witness observed many people die in the mosque. The troops then withdrew. [1763]

932. On or about 22 January 1999, witness TF1-083 sought refuge from fighting between "rebels" and ECOMOG in Rogbalan Mosque. He encountered many corpses on the premises of the mosque, both inside the mosque itself and within the fenced area surrounding it. The witness estimated that there would have been seventy corpses. He stated that the dead included elderly people, men, women and children.[1764]

933. Witness TF1-021 testified that on a Friday afternoon in January 1999, around half past twelve to one o'clock, unarmed civilian worshippers were gathered at Rogbalan Mosque in Windsor St, Kissy. Over fifteen men armed with guns and machetes, stormed into the compound of the mosque. The men asked the civilians if they were praying, to which the civilians responded

[1760] TF1-104, Transcript 30 June 2005, pp. 24-29.
[1761] TF1-334, Transcript 14 June 2005, pp. 87-88.
[1762] TF1-334, Transcript 14 June 2005, p. 88.
[1763] TF1-334, Transcript 14 June 2005, pp. 88-89.
[1764] TF1-083, Transcript 8 April 2005, pp. 69-70, 82-83.

affirmatively. The witness stated that the men told the civilians "As you are here now, you are people who voted for Tejan Kabbah. We are going to kill all of you." The civilians collected money and offered it to their assailants so that they would leave. The men took the money and then began firing indiscriminately, killing people throughout the mosque. According to the witness, the men stated that the killings were not their fault, as they came in peace, but that of President Kabbah, since he did not recognise the People's Army.

934. The witness testified that he did not know to which group the men belonged as they did not wear identifying clothing and it was difficult to distinguish between the factions. He stated that he was thrown to the ground and the rebels stepped on him, telling him that he would die that way as they did not have any bullets left in their magazines. After the men departed, the witness counted the bodies. He testified that approximately 71 were killed, with 36 bodies inside the mosque, 7 at the back of the mosque, 7 in the toilet and 21 outside the mosque. The witness knew several of the victims personally and gave their names to the Trial Chamber.[1765]

935. In cross-examination, the Brima Defence put to witness TF1-021 a prior written statement in which he said that the attackers of Rogbalan Mosque identified themselves as belonging to the RUF, which the witness did not deny at trial.[1766] Specifically, the witness stated "I know this because when they were addressing us, they told us that they were RUF rebels and that they were People's Army."[1767]

936. The Trial Chamber finds the evidence of witness TF1-021 regarding the killings of civilians at the mosque to be clear, consistent and well corroborated by the evidence of TF1-083. The Brima Defence did not challenge either witness on the killing of civilians, but argued that the men responsible were members of the RUF and there is therefore no nexus with any of the Accused.[1768]

937. The Trial Chamber observes that witness TF1-021 testified that the mosque was attacked by RUF rebels, or members of the 'People's Army'. Although individual RUF members may have been active in Freetown, the Trial Chamber has found that the fighters present in Freetown in January 1999 were largely members of the AFRC and entirely under AFRC command. The term 'People's Army' was also used by members of the AFRC, particularly during the AFRC government period. The Trial Chamber also recalls that the lack of distinguishing insignia worn by

[1765] TF1-021, Transcript 15 April 2005, pp. 25-34.
[1766] TF1-021, Transcript 15 April 2005, p. 45; Brima Final Brief, para. 249, referring to Exhibits D-05.A and D-05.B.
[1767] Statement of Witness TF1-021 dated 25 February 2003, CMS p. 6378 [confidential].
[1768] Brima Final Brief, paras 248-249.

the AFRC and RUF made it difficult for members of the public to identify the perpetrators of crimes by sight.

938. Documentary evidence was admitted which suggests that more than one mosque was attacked during the January 1999 invasion and retreat from Freetown.[1769] However, exhibit P-19, a map of Freetown, shows that the mosque attacked by witness TF1-334's group is situated on Whenzle St in Kissy. The Trial Chamber observes that Rogbalan Mosque in Kissy is located on the same street, and is satisfied the reference in the transcript to "Windsor Street" is due to an error. The Trial Chamber is therefore satisfied beyond reasonable doubt that the armed men who attacked Rogbalan Mosque were AFRC fighters as described in the testimony of witness TF1-334.

c. Kissy Mental Home

939. Witness TF1-334 testified that one evening in January 1999, on the day that the AFRC troops arrived at Kissy Mental Home during the retreat from Freetown, the Accused Brima, in the presence of commanders including the Accused Kamara and Kanu, ordered troops to go out from the mental home and "clear up" the area. Brima stated that civilians were to be killed and amputated and houses burned as punishment for their support of ECOMOG.[1770] Specifically, he ordered the witness, 'Pikin', 'Shrimp', 'Hassim' and others to go as far as they could towards "PWD" killing people.[1771]

940. The witness stated that his group accordingly moved from the Kissy Mental Home, along the Old Road, towards Kissy market, where they heard civilians celebrating. The soldiers began firing machine guns at the civilians, killing an unspecified number of them. The troops went as far as Fisher Lane and then retreated to Kissy Mental Home, where they reported to 'Gullit' that the mission had been accomplished.[1772]

941. Witness TF1-334 further testified that in this period the AFRC troops held eight captured nuns at Kissy Mental Home. After ECOMOG began bombarding the troops there, two abducted clerics escaped. 'Gullit' ordered that the nuns should be killed so as to prevent them escaping and leaking information. Pursuant to this order, Foday Bah Marah a.k.a. 'Bulldoze' executed five

[1769] Exhibit P-46, "Fifth report of the Secretary General on the UN Observor Mission in Sierra Leone", 4 March 1999, p. 15659.
[1770] TF1-334, Transcript 14 June 2005, pp. 83-84.
[1771] TF1-334, Transcript 14 June 2005, p. 84.
[1772] TF1-334, Transcript 14 June 2005, pp. 86-87.

nuns.[1773] Witness George Johnson also testified that the troops had eight abducted nuns at the mental home. However, he stated that when ECOMOG attacked the troops, Foday Bah Marah killed three nuns and the others escaped. The witness did not state whether this was pursuant to any order.[1774] Witness TF1-184 corroborated the evidence that three nuns were killed when the Nigerians attacked the mental home. He does not state who killed the nuns, but he testified that it was 'Gullit' who ordered their execution.[1775]

942. On the basis of the testimony of witnesses TF1-334, George Johnson and TF1-184, the Trial Chamber finds beyond reasonable doubt that three nuns were killed on the orders of the Accused Brima.

943. Witness TF1-153 testified that in January 1999 as the AFRC troops and some captured civilians retreated from Kissy Mental Home area towards the Portee area by the Cotton Tree, the Accused Brima, in the presence of witness TF1-153, shot dead a nun because she was not walking quickly enough.[1776]

d. Rowe Street

944. Witness TF1-084 testified that at an unspecified time in January 1999, at Rowe Street in the Kissy area of Freetown, "rebels" in military uniform commanded by a man named Tafaiko captured him, along with seven other civilians, and body-searched them for valuables. The "rebels" then lined up the other seven civilians and shot them dead in front of the witness.[1777]

945. In cross-examination, it emerged that in a prior statement the witness had referred to the rebels in Kissy as 'RUF'.[1778] He explained that the forces he saw in Kissy were mixed, with some wearing military uniform and others civilian attire on which was written 'RUF'.[1779] The Trial Chamber recalls that it was often difficult for members of the public to distinguish between AFRC and RUF fighters. In view of this, the Trial Chamber considers the witness's identification of his attackers to be unreliable.

[1773] TF1-334, Transcript 14 June 2005, pp. 95-97.
[1774] George Johnson, Transcript 16 September 2005, p. 55.
[1775] TF1-184, Transcript 27 September 2005, pp. 82-84.
[1776] TF1-153, Transcript 23 September 2005, pp. 20-22.
[1777] TF1-084, Transcript 6 April 2005, pp. 40-41, 45-47.
[1778] TF1-084, Transcript 6 April 2005, p. 45.
[1779] TF1-084, Transcript 6 April 2005, p. 45.

946. The Trial Chamber notes that while some members of the RUF participated in the attack on Freetown, these individuals were fighting with the AFRC troops.[1780] The Trial Chamber accordingly finds that the perpetrators of the attack were individuals associated with the AFRC troops.

e. Fatamaran Street

947. On approximately 18 January 1999, witness TF1-098, his brother and his cousin were forced by rebels at gunpoint to follow them to a school on Fataraman Street.[1781] Upon arrival at the school, four other civilians captured by the rebels were joined with the witness's group. A certain Tommy, one of the rebels, amputated the hands of the seven captured persons.[1782] Witness TF1-098's cousin died as a result of the amputation.[1783]

(iii) Calaba Town

948. Immediately after the withdrawal of the troops from Kissy Mental Home, at Calaba Town, witness Gibril Massaquoi saw a AFRC named "Foday Bah" shoot dead three nuns who supposedly refused to join the retreating troops.[1784] Thereafter, the witness also saw the dead body of a priest lying on the ground. The witness was not present when the priest was shot and does not know who the perpetrator is.[1785]

949. Having carefully considered the evidence of witnesses Gibril Massaquoi, TF1-334, TF1-184 and George Johnson in relation to the killing of three nuns around the time the troops retreated from Kissy Mental Home, the Trial Chamber is not satisfied beyond reasonable doubt that this incident at Calaba Town is different to that described above as taking place at Kissy Mental Home and accordingly makes no additional findings.

(iv) Wellington

950. Witness TF1-085 was abducted by rebels in Wellington in January 1999. She testified that in Wellington, "I saw them burning houses, killing people and looting property."[1786] The Trial Chamber finds this evidence too general to make any additional finding of unlawful killings.

[1780] Gibril Massaquoi, Transcript 7 October 2005, p. 124.
[1781] TF1-098, Transcript 5 April 2005, p. 39.
[1782] TF1-098, Transcript 5 April 2005, pp. 40-42.
[1783] TF1-098, Transcript 5 April 2005, pp. 42-43.
[1784] Gibril Massaquoi, Transcript 10 October 2005, pp. 27-28.
[1785] Gibril Massaquoi, Transcript 10 October 2005, p. 28.
[1786] TF1-085, Transcript 7 April 2005, p. 15.

However, the Trial Chamber has considered the witness's testimony regarding her abduction in its factual findings in relation to outrages on personal dignity.

(v) Findings

951. In light of the foregoing evidence and leaving aside for the present the individual responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January and 28 February 1999, AFRC forces killed at least 145 civilian men, women and children in the city of Freetown and in Kissy in the Western Area, as charged under Counts 4 and 5. The Trial Chamber is further satisfied that these large scale killings satisfy the element of massiveness for the crime of extermination charged under Count 3 of the Indictment. The indiscriminate manner in which the victims were targeted and the fact that the killings occurred over a relatively short period of time establishes that the principal perpetrators of the individual killings intended to contribute to the overall and massive result of these killings.

(h) Port Loko District

952. The Prosecution alleges that "[a]bout the month of February 1999, members of the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between about February 1999 and April 1999, members of AFRC/RUF unlawfully killed an unknown number of civilians in various locations in Port Loko District, including Manaarma, Tendakum and Nonkoba."[1787]

953. The Trial Chamber recalls that the Prosecution did not lead evidence of unlawful killings with respect to Tendakum.[1788]

954. In arriving at the following findings, the Trial Chamber has examined the available evidence and relies on the testimony of Prosecution witnesses TF1-334, George Johnson, TF1-157, TF1-023, TF1-253, TF1-256 and TF1-320 and Defence witnesses, DBK-129, DBK-012.

(i) Manaarma

[1787] Indictment, para. 50.

[1788] Rule 98 Decision, para. 96. The Trial Chamber notes that the Defence evidence shows that on an unspecified day in April 1999, 'rebels' killed a lot of people during the attack on Tendakum. Witness DBK-111 stated that he saw over ten mass graves where people were buried in Tendakum.[1788] He does not know how they were killed. As the Prosecution had not led evidence of unlawful killings in this location, the Trial Chamber did not require the Defence to complete this evidence: *See* Transcript 18 September 2006, pp. 49-50.

955. Witness TF1-320 testified that on an unspecified date in April 1999, "soldiers" wearing military uniforms brought a number of civilians who had been captured in the surrounding villages to Manaarma. After separating the women from the men, the "soldiers" took an unspecified number of women to a house where they killed some of them with axes and shot dead the others.[1789]

956. In April 1999, witness TF1-253 was abducted on the way to Ro-Makambisa by "rebels" who took him to Manaarma. [1790] As they entered Manaarma, witness TF1-253 saw a pregnant woman whose head had been severed and her stomach opened by the "rebels".[1791] The Brima Defence submits that the testimony of witness TF1-253 is inconsistent and unreliable.[1792] However, the Trial Chamber is satisfied that the witness's testimony on this particular incident was not shaken in cross-examination and therefore relies on his evidence.

957. The Prosecution submits that the evidence of Prosecution witnesses TF1-253 and TF1-320, both residents of Manaarma who were abducted by rebels in April 1999 and taken to Port Loko,[1793] establishes that the "rebels" and "soldiers" who attacked Manaarma were in fact AFRC troops en route to Port Loko, where a major attack was staged at the end of April 1999.[1794] The Trial Chamber will thus consider the available evidence on the attacks on Port Loko and Manaarma in order to make a finding on this submission.

958. Witness George Johnson testified that en route to Port Loko, the troops attacked a village where a fat lady was killed by an AFRC captain using a machete.[1795] The witness, who was the commander of the troops at the time, then sent an advance troop to secure the village ahead. He testified that when he subsequently arrived at the next village, he observed a number of dead civilians and 'Sheriff' complained to him that 'Cyborg' had killed them.[1796] The witness did not give the names of either village. He stated that no other villages were attacked en route to Port Loko.[1797] The witness led the troops to Port Loko, where they fought Malian ECOMOG soldiers and captured a large cache of arms and ammunition and two Malian soldiers.[1798]

[1789] TF1-320, Transcript 8 April 2005, pp. 13-15, 38-40.
[1790] TF1-253, Transcript 15 April 2005, pp. 63-65, 79-80.
[1791] TF1-253, Transcript 15 April 2005, pp. 80-81.
[1792] Brima Final Brief, para. 253.
[1793] TF1-253, Transcript 15 April 2005, p. 94; TF1-320, Transcript 8 April 2005, pp. 16-18.
[1794] Prosecution Final Brief, paras 1785-1786.
[1795] George Johnson, Transcript 16 September 2005, p. 79
[1796] George Johnson, Transcript 16 September 2005, pp. 75-76.
[1797] George Johnson, Transcript 16 September 2005, p. 76.
[1798] George Johnson, Transcript 16 September 2005, p. 74.

959. Witness TF1-334 also went on the operation commanded by George Johnson to Port Loko.[1799] The witness testified that at Port Loko, Junior Lion and the other troops fought the Malians at Shelenka secondary school.[1800]

960. Witness TF1-253 was told by one of the rebels who captured him that he was part of Superman's group.[1801] However, he stated that "Johnson" and "Sesay" were the "big men" in Manaarma. He described Johnson as fat and black with plaited hair.[1802] "Colonel Sesay" was described as fair in complexion, not overly tall, wearing combat and a 'cap' that from the witness's description sounded like a balaclava.[1803] The witness states that "Johnson" was speaking into a device which the witness's described as "the thing [...] which is called a solar, normally they put it in the sun".[1804] The Trial Chamber infers that the witness is referring to a radio. Witness TF1-253 accompanied the troops as their captive to Port Loko. He testified that at Port Loko, the rebels fought the Malians at a secondary school called Schenlenker, at which point he escaped.[1805]

961. Witness TF1-320 also stated that at Port Loko, the rebels fought Malian ECOMOG soldiers at "Sri Lanka", a place near Low Shell Road.[1806] The Trial Chamber infers that the witness was referring to 'Shelenker' or 'Shelenka', the school referred to by witnesses TF1-320 and TF1-334.[1807]

962. Although the Trial Chamber has not relied on the testimony of Defence witness DBK-012 in relation to the command structure in Port Loko District, the Trial Chamber notes that the witness went on the operation to Port Loko and testified that the troops attacked Manaarma en route.[1808]

963. On the basis of the evidence of witnesses TF1-253 and TF1-320, the Trial Chamber finds that a group of rebels attacked Manaarma en route to Port Loko, where they engaged the Malian ECOMOG soldiers in combat at Shelenker/Shelenka secondary school. The Trial Chamber is satisfied from the evidence of witnesses TF1-334 and DBK-012 that the group of rebels that attacked Manaarma were AFRC soldiers under the command of 'Junior Lion' aka George Johnson. In making this finding, the Trial Chamber has not relied on witness TF1-253's description of 'Colonel Sesay' and 'Colonel Johnson', which it found confused and contradictory.

[1799] TF1-334, Transcript 15 June 2005, p. 34.
[1800] TF1-334, Transcript 15 June 2005, p. 35.
[1801] TF1-253, Transcript 15 April 2005, p. 62.
[1802] TF1-253, Transcript 15 April 2005, p. 81.
[1803] TF1-253, Transcript 15 April 2005, p. 82.
[1804] TF1-253, Transcript 15 April 2005, p. 83.
[1805] TF1-253, Transcript 15 April 2005, pp. 97-98, 100.
[1806] TF1-320, Transcript 8 April 2005, pp. 16-17.

(ii) Nonkoba

964. On the morning of 28 April 1999, "rebels" attacked the village of Nonkoba. Witness DBK-111 and other inhabitants of Nonkoba fled to the bush. The witness later learned that 36 villagers were killed in this attack, including his mother-in-law. He observed several dead bodies with severed heads.[1809]

(iii) Findings

965. By virtue of the foregoing, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between February and April 1999, in Port Loko District, an unknown number of civilians were unlawfully killed by AFRC troops in Manaarma, as charged under Counts 4 and 5. The Trial Chamber further finds that at least 36 civilians were unlawfully killed in Nonkoba, as charged under Counts 4 and 5. However, on the evidence adduced, the Trial Chamber has been unable to establish beyond reasonable doubt whether the perpetrators of the killings in Nonkoba were members of the AFRC and/or RUF.

[1807] TF1-320, Transcript 8 April 2005, pp. 17-18.
[1808] DBK-012, Transcript 6 October 2006, p. 45-46.
[1809] DBK-111, Transcript 18 September 2006, pp. 43-45

B. Rape (Count 6)

1. Allegations and Submissions

966. The Indictment alleges that members of the AFRC/RUF committed widespread sexual violence against civilian women and girls including brutal rapes, often by multiple rapists. The sexual violence is alleged to have occurred between 14 February 1998 and 30 June 1998 in Kono District, between 14 February 1998 and 30 September 1998 in Koinadugu District, between about 1 May 1998 and 30 November 1998 in Bombali District, at all times relevant to the Indictment in Kailahun District, between 6 January 1999 and 28 February 1999 in Freetown and Western Area and between February 1999 and April 1999 in Port Loko District.[1810]

967. The Prosecution submits that the evidence presented establishes beyond reasonable doubt that the legal requirements for rape as a crime against humanity are met.[1811] With regards to the *mens rea* element, the Prosecution argues that the only reasonable inference from the evidence is that the perpetrators had the required *mens rea*. Specifically, the Prosecution alleges that, there is no doubt that the perpetrators knew of the absence of consent of the victims.[1812]

968. Insofar as the Defence challenge the testimony of witnesses with regard to specific incidents of rape, the Trial Chamber has discussed these submissions as they arise in the evidence below. Submissions by the Parties on the applicable law have been discussed above.

2. Evidence and Deliberations

(a) Kono District (14 February 1998 – 30 June 1998)

969. The Indictment alleges that between about 14 February 1998 and 30 June 1998 members of the AFRC/RUF raped hundreds of women and girls at various locations throughout Kono District including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomenɑeh, Fokoiya, Wondedu, and AFRC/RUF camps such as "Superman camp" and Kissi-town (or Kissi Town) camp.[1813]

[1810] Indictment, para. 51-57.
[1811] Prosecution Final Brief, para. 998.
[1812] Prosecution Final Brief, para. 998.
[1813] Indictment, para. 52.

970. The Prosecution has conceded that there was no evidence of rape in respect of Tomendeh, Fokoiya, "Superman Camp"/Kissi Town Camp, Kissi Town, or Tombodu.[1814]

971. The Trial Chamber has carefully considered the evidence on rape, a crime against humanity, relative to Kono District of Prosecution witnesses TF1-198, TF1-206, TF1-272, TF1-019, TF1-033, and TF1-217 and Defence witnesses DBK-129, DAB-025, DAB-115, DAB-114, DBA-113, DAB-123, DAB-128, DSK-103, DAB-127, DAB-134, DAB-129, DAB-101, DAB-125, and DAB-124. The Trial Chamber finds the evidence given by these witnesses with regards to the commission of crimes under Count 6 relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

972. In arriving at its factual findings, the Trial Chamber has taken into consideration the evidence of Prosecution witnesses TF1-217, TF1-019, TF1-076 and Defence witnesses DBK-117.

(i) Koidu

973. Prosecution witness TF1-217 testified that "juntas" and "rebels" under the command of a certain 'Akim Sesay' attacked Koidu Town and raped young girls in February or March 1998.[1815] On cross-examination, witness DBK-117 gave similar evidence. The witness, who was based in Koidu from April 1998 until it was overtaken by ECOMOG[1816] and again when Koidu was recaptured by 'Superman' in December 1998, testified that the RUF raped women and girls when they went on patrols in Kono District.[1817] The Trial Chamber finds that the evidence of both Prosecution witness TF1-217 and Defence witness DBK-117 to be vague and insufficient to satisfy the *actus reus* and *mens rea* elements of the crime of rape.

974. The Trial Chamber also notes the evidence of Prosecution witness TF1-019 but finds that the relevant aspects fall outside of the indicted period for Kono District and therefore makes no findings in this regard.[1818]

(ii) Foendor / Foendu

975. Witness TF1-076 testified that on an unknown date in 1998, when she was approximately 15 years old, she fled her village of Tombodu and went towards Foendor with her sister, her brother-in-law and her uncle. They were captured by three "rebels" in the bush just outside of Foendor. The

[1814] Rule 98 Decision, para. 159.
[1815] TF1-217, Transcript 17 October 2005, pp. 4-5, 8.
[1816] Approximately May 1998, see Role of the Accused.
[1817] DBK-117, Transcript 16 October 2006, p. 35.

witness described the rebels as wearing combat trousers or shorts and t-shirts. They were carrying guns and a cutlass and were speaking Liberian English. One of the rebels raped the witness. He cut off her skirt and underwear with a knife and penetrated her with his penis. The witness bled and became light-headed.[1819] On cross-examination, the Defence put to the witness a prior statement in which she stated that the rebel removed her "lappa".[1820] The Trial Chamber finds that there is no meaningful difference between a "lappa" and a skirt and therefore this inconsistency does not undermine the credibility of the witness.

976. The Trial Chamber is satisfied on the basis of the witness's description of the perpetrators as "rebels", wearing combat trousers or shorts and t-shirts, carrying guns and a cutlass and speaking Liberian English that they were members of either the AFRC or the RUF.

977. The Prosecution argues that it did not attempt to identify specifically the attacker of witness TF1-076, but submits that the attacker was a member of the Junta under the command of both AFRC and RUF commanders.[1821]

978. The Trial Chamber notes that the Prosecution in its Final Brief listed the preceding evidence of witness TF1-076 as having occurred in Tombodu.[1822] The Trial Chamber finds this is a mischaracterisation of the evidence. The witness clearly testified that she left Tombodu and was in the bush near Foendor when she was attacked. The Trial Chamber also notes that the Prosecution conceded that it did not lead evidence on Count 6 in Tombodu.[1823]

979. The Trial Chamber finds the testimony of witness TF1-076 to be credible; however, the Prosecution failed to establish that the evidence of the witness falls within the indicted period for Kono District (14 February through 30 June 1998). The witness testified that the events occurred in 1998 but did not provide any further direct or circumstantial evidence to guide the Chamber. Where two reasonable inferences are possible on the available evidence, the Trial Chamber is bound to interpret the evidence to the benefit of the Accused. The Trial Chamber therefore makes no further findings on the evidence of witness TF1-076.

(iii) Wondedu

[1818] TF1-019, Transcript 30 June 2005, pp. 81-82.
[1819] TF1-076, Transcript 27 June 2005, pp. 101-108.
[1820] "Lappa" is a Krio word which refers to a piece of cloth which women traditionally wrap around their waists as a skirt-like covering or sarong; TF1-076, Transcript 27 June 2005, p. 108.
[1821] Prosecution Response to Motion for Judgement of Acquittal, para. 154.
[1822] Prosecution Final Brief, para. 1320.
[1823] Prosecution Response to Rule 98 Motion, para. 146.

980. In making its factual findings in Wondedu, the Trial Chamber takes into consideration the evidence of Prosecution witness TF1-217 who testified that women, including his sister, were abducted from Wondedu.[1824] However, no further evidence was adduced which would suggest that the women he knew were raped.

(iv) Findings

981. By virtue of the foregoing the Trial Chamber is not satisfied that the elements of rape are established in relation to Kono District.

(b) Koinadugu District (14 February 1998 – 30 September 1998)

982. The Indictment alleges that between about 14 February and 30 September 1998 members of the AFRC/RUF raped an unknown number of women and girls in locations in Koinadugu District including Kabala, Koinadugu, Heremakono and Fadugu.[1825]

983. The Prosecution has conceded that it did not lead evidence of rape in respect of Heremakono.[1826]

984. The Trial Chamber has carefully considered the evidence on rape, a crime against humanity, relative to Koinadugu District of Prosecution witnesses TF1-153, TF1-033, TF1-199 and Defence witnesses DAB-090, DAB-086, DAB-088 and DAB-089. The Trial Chamber finds the evidence given by these witnesses relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

985. In coming to its findings in relation to Koinadugu District, the Trial Chamber has examined the evidence of Prosecution witnesses TF1-199 and TF1-209 and Defence witnesses DBK-083 DAB-079, DAB-081, DAB-078, DAB-085 and DBK-156.

(i) Kabala

986. Defence witness DAB-156 testified that after the AFRC was overthrown in Freetown in February 1998 but before the rainy season, she was raped by 'Junior Lion'[1827] in Kabala. He held her, raped her, banged her on the forehead where she still has a scar, and knocked out some of her

[1824] TF1-217, Transcript 17 October 2005, p. 11.
[1825] Indictment, para. 53.
[1826] Rule 98 Decision, para. 159.
[1827] 'Junior Lion' is Prosecution witness George Johnson.

teeth.[1828] The Trial Chamber is satisfied that the *actus reus* and *mens rea* of rape are satisfied on the basis of this evidence.

987. Witness DBK-083 testified that sometime after the AFRC and RUF were forced to withdraw from Freetown,[1829] a column of troops passed by his farm outside of Kabala. The witness testified that the troops were led by SAJ Musa and Superman. At that time, the witness heard reports of rapes.[1830]

988. The Trial Chamber also notes, but does not rely on, the testimony of witness TF1-199 with regards to a possible incident of rape in Kabala. The Trial Chamber finds that the relevant evidence falls outside of the indicted period. The witness testified that he came to Kabala in 1998. While no specific date was given by the witness of his arrival, the Trial Chamber notes the witness stated that he was abducted by the AFRC/RUF in Bombali District at Christmas time 1998 and travelled with the AFRC/RUF to several places prior to arriving in Kabala.[1831] As such, he could not have been in Kabala prior to 30 September 1998, the end of the indicted period for Koinadugu.

(ii) Koinadugu Town

989. Witness TF1-209 testified that she was "in Kabala in Koinadugu Town" in August of 1998 when the witness heard and saw "rebels" carrying guns shooting outside her home. The "rebels" were dressed in combat and civilian clothes with pieces of red and white cloth tied around their heads.[1832] The witness fled. The next day, the witness was at her mother's farm when she, her husband, her six year old child and some neighbours were attacked by "rebels".

990. The Trial Chamber notes that the witness testified in chief that the timeframe of these events was August 1998 but that on cross-examination, when asked whether she remembered when she was captured, she stated that she was not sure of the dates because she had never been to school, and that she could not remember the year. When asked if she remembered August 1998, the witness stated that she remembered August was in the rainy season and that was the time in which she was captured.[1833] The Trial Chamber notes, in light of the repeated evidence and references before it, that the annual rainy season in Sierra Leone extends from May to September. The Trial Chamber accepts that witness TF1-209 has little formal education and that her indication of August is not

[1828] DAB-156, Transcript 29 September 2006, pp. 39-40, 43.
[1829] Approximately February 1998, *see* Context of Alleged Crimes, *supra*.
[1830] DBK-083, Transcript 21 July 2006, pp. 28-36.
[1831] TF1-199, Transcript 06 October 2005, pp. 69-70, 75, 89.
[1832] TF1-209, Transcript 7 July 2005, pp. 29-30.
[1833] TF1-209, Transcript 7 July 2005, pp. 43-44.

inconsistent with the Chamber's determination of the rainy season. The Trial Chamber is therefore satisfied that it can rely upon the timeframe adduced of August 1998.

991. The witness described the persons who attacked her as "rebels and soldiers" and as "juntas". They were armed.[1834] The witness saw four rebels arrive; two went towards a neighbouring farm and two remained at the witness's mother's farm.[1835] Two rebels raped the witness in the presence of her husband. The two rebels told her to "bow down" and they removed her "pants" and "lappa". The witness stated that the rebels and raped her "as their wife." The witness was pregnant at the time of the rapes. She stated that her "pregnancy was wasted"[1836] which the Trial Chamber understands to mean that she miscarried as a result of the rapes.

992. The witness testified that the rebels beat her husband to death with a mortar pestle and shot her child dead. A rebel cut the witness's hand with a knife when she tried to hold on to her child.[1837] The witness also testified that she saw the rebels rape other women and children during the attack. She was unable to estimate how many persons were raped. She estimated that the children who were raped were approximately nine to ten years old.[1838]

993. After the attack, the rebels looted some belongings, such as rice, and forced civilians to carry those belongings to town. In town, the witness learned that the men who raped her belonged to Superman and SAJ Musa's groups.[1839]

994. The Trial Chamber notes that the witness's testimony was unclear with regards to her location at the time of the attacks. She testified that she was "in Kabala in Koinadugu" at the time that she first saw rebels in August 1998, but then continued to respond to the Prosecutor's questions with regards to "Koinadugu."[1840] She also testified that the rebels she saw at this time told her they were going to Kabala.[1841] On cross-examination, the witness clarified that in August 1998 in the rainy season she was not in Kabala, but in Koinadugu.[1842]

995. On the second occasion the witness saw rebels, at the time that according to her testimony she was raped, the witness testified she had fled to her mother's farm but did not give the precise location of the farm. She subsequently testified that after the attack she was brought "to town" by

[1834] TF1-209, Transcript 7 July 2005, p. 31.
[1835] TF1-209, Transcript 7 July 2005, pp. 67-69.
[1836] TF1-209, Transcript 7 July 2005, p. 33.
[1837] TF1-209, Transcript 7 July 2005, pp. 31-33, 35-36.
[1838] TF1-209, Transcript 7 July 2005, pp. 31, 33-34.
[1839] TF1-209, Transcript 7 July 2005, p. 32.
[1840] TF1-209, Transcript 7 July 2005, p. 29.
[1841] TF1-209, Transcript 7 July 2005, p. 30

the rebels.[1843] Although she did not explicitly specify which town she was referring to, the Trial Chamber infers, as discussed below, that she was taken to Koinadugu Town. The Trial Chamber similarly infers that witness's mother's farm is located in the environs of Koinadugu Town.

996. The Trial Chamber finds the witness's evidence with regards to this attack credible and not significantly shaken on cross-examination. From the description of her attackers as armed "rebels and soldiers", as "juntas", and as members of 'Superman' and SAJ Musa's groups, known commanders of the RUF and the AFRC respectively, the Trial Chamber is satisfied that the perpetrators of the attack belonged to either the AFRC or the RUF. The Trial Chamber infers from the context of violence and coercion that the witness did not and could not have validly consented to the sexual intercourse. The Trial Chamber is thus satisfied that the *actus reus* and *mens rea* elements of rape are met with regards to this incident.

997. The Trial Chamber also considers the further evidence of witness TF1-209 suggesting acts of sexual violence occurred subsequent to this attack. The witness testified that captured civilians, including herself, were taken "to town" where the witness indicated that she was then held by two persons she named as 'Jabie' and 'Allusein'. The witness testified that the person who captured her took her to a house where the witness cooked and laundered for him. The witness testified that he turned her into his "wife" which she explained meant that he would have sex with her whenever he felt like it.[1844] The witness indicated that this person was 'Jabie'. The witness testified that following 'Jabie's death, she was held and abused by 'Allusein'.[1845]

998. The witness testified that she had seen 'Jabie' and 'Allusein' before, when she was captured and raped at her mother's farm outside of Koinadugu Town. The witness testified that she recognised them as the rebels who had beaten her husband to death and 'Jabie' as the rebel who had shot her child dead.[1846]

999. The witness was strenuously challenged on the periods of time and sequence of her interactions with 'Jabie' and 'Allusein'. She remained calm and unshaken in her answers but appeared to have some difficulty in conveying what exactly she meant. However, the Trial Chamber is satisfied that the witness did not resile from her evidence in chief that she entered into

[1842] TF1-209, Transcript 7 July 2005, p. 63.
[1843] TF1-209, Transcript 7 July 2005, pp. 31-32, 36.
[1844] TF1-209, Transcript 7 July 2006, p. 38.
[1845] TF1-209, Transcript 7 July 2006, pp. 39, 38-39, 44-45.
[1846] TF1-209, Transcript 7 July 2006, pp. 35-36.

relationships by force or duress with 'Jabie' for three months from the time of her capture to the time of 'Jabie's' death and subsequently with Allusein for one month.[1847]

1000. With regards to the affiliations of the two men, the witness first testified that 'Jabie' was a member of SAJ Musa's group and that 'Allusein' was a member of 'Superman's group.[1848] The witness subsequently testified that the person who took her to his house and made her into his wife upon her arrival in Koinadugu Town was a member of 'Superman's group.[1849] This is inconsistent with her statement that she was first with 'Jabie' and that he belonged to SAJ Musa's group. The witness later reiterated that 'Allusein' was part of Superman's group.[1850] She also testified that after she was captured and taken to Koinadugu Town, she frequently saw a man she referred to as 'Five-Five', who was one of several rebels who told her about atrocities they had committed together, but that this man had left Koinadugu Town by the time the witness was with 'Allusein'.[1851] On cross-examination Counsel put it to the witness that she changed her reference in a prior statement from "Fire-Fire" to 'Five-Five'. The Trial Chamber is satisfied by the witness's clear statements that 'Five-Five' and "Fire-Fire" were separate persons with different names and that "Fire-Fire" was a small, short boy who was known for killing and to whom she had never spoken.

1001. With regards to her location during these events, the Trial Chamber notes that witness TF1-209's testimony was at times unclear. The Trial Chamber has found that following the attack at her mother's farm the witness was brought to Koinadugu Town by the rebels. The witness testified that some time after she had been held for four months, she was present in Koinadugu when members of the CDF came from Kabala and there was a fight in which two members of the CDF were killed[1852] and that sometime following that Koinadugu was completely burnt.[1853] The witness testified that following this she went to a village near Koinadugu called Kalkoya.[1854]

1002. On cross-examination when asked by Counsel where she was when she was with the rebels 'Allusein' and 'Jabie' the witness replied, "Koinadugu. In the Koinadugu District or Kabala." Counsel for Kanu then asked if she was in Kabala, and the witness replied, "Yes, in my village."[1855]

[1847] TF1-209, Transcript 7 July 2006, pp. 38-39.
[1848] TF1-209, Transcript 7 July 2006, p. 39.
[1849] TF1-209, Transcript 7 July 2006, p. 38.
[1850] TF1-209, Transcript 7 July 2006, p. 52.
[1851] TF1-209, Transcript 7 July 2006, pp. 54-55.
[1852] TF1-209, Transcript 7 July 2005, pp. 39-40.
[1853] TF1-209, Transcript 7 July 2005, p. 42.
[1854] TF1-209, Transcript 7 July 2005, p. 43.
[1855] TF1-209, Transcript 7 July 2005, p. 45.

1003. Later on cross-examination the witness stated that she was in Koinadugu at the time after SAJ Musa and Superman fought and when SAJ Musa went to Morya.[1856] Counsel and the witness then had the following exchange:

> Q: Madam Witness, when you say Koinadugu, do you mean the district or a town in Koinadugu District?
>
> A: It was a town. The town is also called Koinadugu District. When you talk of Kabala, it is in the Koinadugu District. Kabala. That has the name Koinadugu District. They only say it is Kabala.
>
> Q: You see what I am asking you, when you talk about Koinadugu, do you mean Kabala?
>
> A: No. The Koinadugu District in Kabala.
>
> Q: Is there a separate town, apart from Kabala, called Koinadugu?
>
> A: Yes, that is my own village. That is where my father was born.
>
> Q: Your village is called Koinadugu?
>
> A: Yes.[1857]

1004. On further cross-examination by Counsel for Kanu the witness stated that she stayed with 'Jabie' and 'Allusein' in Koinadugu Town[1858] and that during the whole of the three months she was with 'Jabie' she stayed primarily in one house in Koinadugu Town, occasionally going during the day to farms in the bush.[1859]

1005. The Trial Chamber accepts that the witness may have been nervous to appear before it and that it may have been difficult for her to testify to events that would have been extremely traumatic. The Trial Chamber also notes that the witness's testimony was being translated and that the witness is uneducated, all of which may account for some apparent inconsistencies in her testimony. The Trial Chamber found her to be reliable and unshaken in her testimony and having carefully reviewed the evidence of the witness, is satisfied of the following:

1006. Witness TF1-209 was abducted and brought to Koinadugu Town in approximately August, 1998, by members of the AFRC/RUF. In Koinadugu Town she stayed first with a certain 'Jabie' for a period of three months and subsequently with a certain 'Allusein' for one month.

[1856] TF1-209, Transcript 7 July 2005, p. 46.
[1857] TF1-209, Transcript 7 July 2005, pp. 46-47.
[1858] TF1-209, Transcript 7 July 2005, p. 52.
[1859] TF1-209, Transcript 7 July 2005, p. 60.

1007. The Trial Chamber is satisfied that the witness's identification of 'Jabie' as one of the persons present when she was attacked at her mother's farm; her description of attackers at her mother's farm as armed "rebels and soldiers", "juntas"; and her description of 'Jabie' as being a member of SAJ Musa's group or Superman's group; are consistent with a finding that 'Jabie' was a member of the AFRC or RUF.

1008. The Trial Chamber is satisfied from the repeated references to Koinadugu Town and the witness's detailed descriptions of events that occurred there in her presence, that she was held by 'Jabie' in Koinadugu Town.

1009. Finally, the Trial Chamber is satisfied on the basis of the testimony of the witness that 'Jabie' repeatedly had sex with her and that given the context of violence, to wit, the previous attacks against the witness, the death of her husband and her child at the hands of 'Jabie', her abduction and her subsequent confinement, that the witness could not have validly consented to the repeated acts of sexual intercourse. The Trial Chamber is thus satisfied that the *actus reus* and *mens rea* elements of rape are met with regards to this incident.

1010. The Trial Chamber notes that further evidence was given by witness TF1-209 regarding possible acts of sexual violence perpetrated by 'Allusein' in Koinadugu Town following the death of 'Jabie'. However, the Trial Chamber finds that this evidence falls out of the indicted period. The Trial Chamber has accepted that the witness was attacked in or about August, 1998 and after this attack she was held by 'Jabie' until he was killed, a period of three months. The Trial Chamber therefore concludes that 'Jabie's death must have occurred some time in November, 1998 and that any events testified to by the witness occurring in the month after this point fall well outside of the indicted period for Koinadugu District which ends on 30 September 1998. The Trial Chamber therefore makes no findings with regards to Count 6 on the basis of this testimony.

1011. The Trial Chamber finds that the evidence of witness TF1-209 is generally supported by that of Defence witness DAB-079 who testified that he was based in Kabala and was operating with the CDF shortly after the AFRC Coup in May 1997.[1860] The witness's professional capacity, given to the Trial Chamber in closed session,[1861] put him in a position to receive information from CDF contacts about the activities of other parties in the region including SLA, AFRC and ECOMOG forces. The Trial Chamber is satisfied that the witness had indirect access to approximately 1000-1700 people and received weekly reports from Koinadugu Town as well as other locations such as

[1860] DAB-079, Transcript 28 July 2006, pp. 8, 43
[1861] DAB-079, Transcript 28 July 2006, p. 7.

Kabala, Yifin and Geberefed. The witness testified that on the basis of these reports and his own knowledge that members of the RUF committed rapes but that the SLAs were more disciplined.[1862]

1012. The witness testified that in Kabala, the "SLA"s, including the commanders KIS Kamara and SAJ Musa, arrived after the AFRC was driven out of Freetown by ECOMOG in February 1998.[1863] They arrived on approximately the 15th of February.[1864] A week after the SLAs arrived, starting on approximately February 22nd, the RUF also began to arrive, followed by Sam Bockarie on approximately 24 May.[1865]

1013. The witness testified that prior to the arrival of the RUF, the relationship between the civilians and the SLAs in Kabala was "cordial." In particular, the witness recalled that SAJ Musa held a meeting in the late Chief's compound in Sengbe in which he told his soldiers not to intimidate civilians.[1866] The witness was present at this meeting and testified that there were a large number of SLA officers at the meeting. The witness understood the meeting was called by SAJ Musa in response to reports to him from civilians in Kabala that an SLA officer had attempted to steal money from a civilian.

1014. The witness testified that by contrast, when the RUF arrived, Kabala became "extremely chaotic". The RUF contingent included 'Superman', 'Johnny Hemoe' and Captain Rahman D. Kobah a.k.a. 'Blackman'. The witness testified that during this time, the RUF were known to loot property, beat civilians, enter houses without permission and steal food and that there were a number of children with weapons among them. On cross-examination the witness testified that the RUF committed rapes. The witness testified that he knew of one rape in particular as he was informed of it by a woman who had been raped by 'Superman'. The witness estimated that members of the RUF raped approximately four to five women. The witness stated that the rapes motivated some civilians in Kabala to form the CDF.[1867]

1015. Later in his evidence in chief, the witness suggested that rape was a trademark of the RUF. The witness testified that in the reports he received on the activities of groups in the area his sources often referred generally to "rebels" which could denote either the AFRC or the RUF. Nevertheless, the witness testified that although the groups were together, each group had its trademark. The

[1862] DAB-079, Transcript 28 July 2006, pp. 30-36.
[1863] DAB-079, Transcript 28 July 2006, pp. 9-10.
[1864] DAB-079, Transcript 28 July 2006, p. 65.
[1865] DAB-079, Transcript 28 July 2006, p. 65.
[1866] DAB-079, Transcript 28 July 2006, p. 13.
[1867] DAB-079, Transcript 28 July 2006, pp. 46-47.

SLAs were more restrained whereas the RUF would attack more indiscriminately and more rampantly. The SLA tended to loot food while the RUF tended to burn down houses and to rape.[1868]

1016. Witness DAB-079 also testified that some SLAs stayed in Kabala for eight to nine months and that during that time he did not see any SLAs perpetrating sexual violence.[1869]

1017. The Trial Chamber finds the evidence of witness DAB-079, although largely hearsay, to be credible and consistent. The witness was not significantly shaken on cross-examination. The Trial Chamber is of the opinion that the testimony given by the witness relating to rapes alleged to have been committed by members of the RUF is insufficient to support the *actus reus* and *mens rea* elements of the crime, and does not rely upon it in this regard.

1018. While the Trial Chamber does not make any findings which would support a finding of rape on the basis of witness DAB-079's evidence, the Trial Chamber notes that the implication that the RUF may have committed rapes in Koinadugu District, including Koinadugu Town, during this time period generally supports the evidence of rapes committed against witness TF1-209 and others, the perpetrators of which the Trial Chamber has found belonged to the RUF or the AFRC.

1019. The Trial Chamber accepts the evidence of witness DAB-079 that SAJ Musa instructed his troops not to intimidate civilians but notes that this general prohibition, in and of itself, does not create a reasonable doubt with regards to the veracity of the incidents of rape described by described by witness TF1-209. Similarly, the Trial Chamber finds that the fact that witness DAB-079 did not witness any acts of violence committed in Kabala by SLAs does not in and of itself create a reasonable doubt that in fact no rapes were committed by members of the AFRC during this time period either in Kabala or elsewhere in the District. The Trial Chamber accepts that the witness was in a particular position to receive wide-ranging information on the activities of parties to the conflict in and around Kabala, including Koinadugu Town, but the Defence has not demonstrated that this information network was in any way exhaustive. Nor has the Defence demonstrated that the information network systematically collected information on possible crimes committed by the parties to the conflict. The witness's testimony therefore does not create a reasonable doubt with regards to the specific incidents of rape to which witness TF1-209 testified in great detail.

1020. Finally, the Trial Chamber notes that the evidence of both witness TF1-209 and witness DAB-079 is generally supported by that of Defence witness DAB-081 who testified that while he

[1868] DAB-079, Transcript 28 July 2006, pp. 36-41.
[1869] DAB-079, Transcript 28 July 2006, p. 42.

was in captivity in Koinadugu Town after August 1998, he did not hear of SAJ Musa ordering any harassment of civilians; however, he heard that the RUF were committing rapes.

(iii) Fadugu

1021. The Prosecution asserts that there were two attacks in Fadugu; one in May and one in September, 1998.[1870] Noting the evidence of witness DAB-078 who testified that he did not see or hear about any rapes when Fadugu was attacked on 22 May 1998,[1871] the Trial Chamber finds no evidence was led of rape in Fadugu during the May attack.

1022. With regards to the attack in September, the Trial Chamber has carefully reviewed the testimony of witness DAB-078 who also testified that he was in Fadugu Town when ECOMOG forces in the town were attacked on 11 September 1998. The witness testified that he hid during the attack and when the gunfire subsided he ran to a house. When he arrived he found four men who were attempting to rape a girl. The witness described two of the men as wearing soldier's uniforms and two in civilian clothes. Three of the men were armed with guns.[1872] The Trial Chamber is satisfied from this description and from the context of the attack that the men were members of the AFRC or RUF.

1023. The men detained the witness and forced him to watch as they raped the girl.[1873] The witness testified that the girl died from the rape due to excessive bleeding. After the attack, the witness did not see the men again. The witness later met a woman in the bush who told him that the rebels had called a meeting where 'Savage' introduced himself as the commander of the attack. His second in command was 'Ishmael'.[1874] The witness knew that 'Savage' and 'Ishmael' were SLAs "from the discussion with the men."[1875] The Trial Chamber finds the testimony of witness DAB-078 to be detailed, consistent and credible and that the *actus reus* and *mens rea* of rape are satisfied with regards to this incident.

1024. The Trial Chamber has carefully reviewed the testimony of Defence witness DAB-085 who testified that between February and September 1998, he did not see or hear about any rapes or sexual violence by members of the AFRC.[1876] The Trial Chamber finds that this evidence, though credible, does not raise reasonable doubt as to the testimony given by witness DAB-078 as the

[1870] Prosecution Final Brief, para. 1490.
[1871] DAB-078, Transcript 11 September 1998, pp. 8-22, 53.
[1872] DAB-078, Transcript 11 September 1998, pp. 34-40.
[1873] DAB-078, Transcript 11 September 1998, p. 40.
[1874] DAB-078, Transcript 11 September 1998, pp. 40-41.
[1875] DAB-078, Transcript 11 September 1998, p. 57.

witness did not provide any evidence that he would have been in a position to know whether or not the incident described by witness DAB-078 in fact occurred.

1025. The Trial Chamber notes that Prosecution witness TF1-199 also gave evidence of rape in Fadugu[1877] but the Chamber has not taken this evidence into consideration in its factual findings on Count 6 as the evidence relates to events which fall outside of the indicted period. The witness testified that he was abducted at Christmas time, 1998, in Bombali District and travelled to several places before arriving in Fadugu.[1878] As such, it is impossible that he could have been in Fadugu prior to the end of the indicted period, 30 September, 1998.

(iv) Findings

1026. By virtue of the foregoing the Trial Chamber is satisfied that the elements of rape are established in relation to Koinadugu District.

(c) Bombali District (1 May 1998 – 30 November 1998)

1027. The Indictment alleges that between about 1 May 1998 and 30 November 1998 members of the AFRC/RUF raped an unknown number of women and girls in locations in Bombali District including Mandaha and Rosos (or Rosors or Rossos).[1879]

1028. At the Motion for Acquittal stage the Prosecution conceded that there was no evidence of rape in respect of Mandaha.[1880]

1029. The Trial Chamber has carefully considered evidence relevant to the crime of rape in Bombali District of Prosecution witnesses TF1-334 and TF1-033 and Defence witnesses DBK-090, DBK-094, DBK-086, DBK-102, DBK-089 and DBK-101. The Trial Chamber finds the evidence given by these witnesses relates to locations not specified in the Indictment and therefore makes no findings on the basis of their evidence.

1030. In arriving at its factual findings, the Trial Chamber has taken into consideration the evidence given by Prosecution witnesses TF1-269, TF1-267, TF1-033 and George Johnson and Defence witness DBK-113.

[1876] DAB-085, Transcript 20 July 2006, pp. 50-51.
[1877] TF1-199, Transcript 6 October 2005, pp. 79-80.
[1878] TF1-199, Transcript 6 October 2005, pp. 69-70.
[1879] Indictment, para. 54.
[1880] Rule 98 Decision, para. 159.

(i) Rosos

1031. Prosecution witness TF1-269 testified that she was living in Rosos during the war when, during the rainy season, "rebels" entered the town and captured her. The Trial Chamber is satisfied that the time period described by the witness is May through July 1998. The witness testified that some of the rebels were wearing vests and some were wearing combat. Three of the rebels raped her. One of the rebels had a gun and the other had a knife. After they had raped her, a rebel pushed her to the ground and cut her in the back of the neck.[1881] The existence of a scar on the witness's body was noted by the Chamber.[1882] The witness testified that two of the rebels convinced the others not to kill her.

1032. The three rebels spoke to the witness in Temne and asked her to show them where the other civilians were hiding. The witness took them to a nearby area; however the civilians were not there. Rather, there were only more rebels. One of these rebels, whom the witness described as wearing a T-shirt, told the witness to take his penis in her mouth. She refused and the rebel said he would have her killed. The rebel put his penis in her mouth and tried to rape her vaginally. When the witness resisted the rebel brought her over to another group of rebels. The witness testified that some of these rebels were armed with guns, some with sticks and some with knives and they were wearing a mix of combat and civilian clothes. One of these rebels hit the witness's head and left shin with a stick. The witness was unable to walk and her leg remains scarred. The scar on the witness's left shin was noted by the Trial Chamber.[1883] After she was beaten the witness was raped twice more. The witness described the last rebel who raped her as wearing civilian dress.[1884] Altogether, the witness was raped by five rebels.[1885]

1033. The Trial Chamber finds the evidence of witness TF1-269 to be detailed and consistent. The Defence was unable to adduce any major inconsistencies in her testimony during cross-examination. As such, the Trial Chamber finds the evidence described to be credible and that the *actus reus* and *mens rea* of rape are satisfied on the basis of her evidence.

1034. Prosecution witness TF1-267 testified that she was at her home in Rosos in 1998, during the time when farms were being burnt in the countryside, when people from the neighbouring village came and told her and the other villagers that "rebels" were attacking the area and urged them to

[1881] TF1-269, Transcript 14 July 2005, pp. 41-43.
[1882] TF1-269, Transcript 14 July 2005, pp. 43.
[1883] TF1-269, Transcript 14 July 2005, p. 46.
[1884] TF1-269, Transcript 14 July 2005, pp. 43-47.
[1885] TF1-269, Transcript 14 July 2005, p. 46.

leave. The witness left Rosos with her family and hid in the bush.[1886] Several days later, when the witness and her family were drying their belongings after a "big rain"[1887] in a nearby area called Rotu, rebels and soldiers attacked. The witness testified that one of the attackers wore a soldier's fatigue cap, another wore trousers and combat fatigue, and another had "big shoes that they wore".[1888] On cross-examination, the witness stated that she was able to identify SLA soldiers even though she had not seen them before and she clarified that one of the soldiers was wearing a cap and trousers which were both "military fatigue" and that others were wearing big black boots.[1889] The witness explained that others wore civilian clothes.[1890]

1035. The witness tried to run away, but a soldier kicked her and she fell down. The soldier tore off all her clothes, including her "knicker"[1891] - which the Trial Chamber understands to mean underwear - and brutally raped her. The witness stated, "he took his penis and thrust it into my vagina and started pounding me like he was pounding mud...he did not sex me as people do normally. He did it abnormally".[1892] The witness was then raped by another rebel. She tried to fight him but he pinned her back on the ground. A third rebel - who was armed, came and told the witness, "If you open your mouth, I will shoot you dead" and then raped her. The witness testified that she experienced great pain. A fourth rebel came and the witness tried to get up, but as she bent to rise "somebody" pushed her back down onto her back. The fourth rebel also raped the witness. She was afraid he would kill her and she could not resist. The witness testified that the last rape was particularly painful. She stated, "it seem[ed] as though all my guts were coming out".[1893] When the rebels left, the witness tried to get up but she fell back down again as she was so weak.[1894] The Trial Chamber is satisfied on the basis of this evidence that the *actus reus* and *mens rea* of rape are proven.

1036. The witness testified further that when the rebels left the village, her daughter ran to her and told her that she too had been raped by two rebels from the same group – the only group of rebels to come to Rosos that day.[1895] The witness's daughter told her that "they" stuffed her mouth with cloth

[1886] TF1-267, Transcript 26 July 2005, pp. 102-105; Transcript 27 July 2005, pp. 5, 10-11.
[1887] TF1-267, Transcript 26 July 2005, pp. 103-104; Transcript 27 July 2005, pp. 4-5.
[1888] TF1-267,Transcript 27 July 2005, p. 5.
[1889] TF1-267,Transcript 27 July 2005, pp. 12-13.
[1890] TF1-267,Transcript 27 July 2005, pp. 16-17.
[1891] TF1-267,Transcript 27 July 2005, p. 5.
[1892] TF1-267,Transcript 27 July 2005, p. 6.
[1893] TF1-267,Transcript 27 July 2005, p. 7.
[1894] TF1-267, Transcript 27 July 2005, pp. 4-7, 10, 12-13,16-17.
[1895] TF1-267, Transcript 27 July 2005, pp. 20-22.

and raped her one after the other. The witness saw that her daughter was bleeding from her vagina. Prior to this incident, her daughter was a virgin.[1896]

1037. The Trial Chamber notes that in her evidence-in-chief, the witness refers to her daughter alternately as her "sibling", "daughter" and "lady".[1897] On cross-examination the witness adopted prior statements which use the term "daughter".[1898] The Trial Chamber notes that the witness testified in Krio which was translated into English. The Chamber is satisfied that the various terms used do not undermine the credibility of the witness and that a girl that the witness knew very well was raped that day. The Trial Chamber finds the evidence given by witness TF1-267 in chief to be highly detailed and coherent and the witness was not shaken on cross-examination. The Trial Chamber therefore finds the evidence to be credible and is satisfied on the basis of this evidence that the *actus reus* and *mens rea* of rape are satisfied.

1038. The evidence of Prosecution witnesses TF1-269 and TF1-267 is supported generally by that of Prosecution witness TF1-033 who testified to being with AFRC troops at Rosos during the rainy season in 1998.[1899] He testified that rape was widespread throughout the time he was in captivity with the AFRC troops.[1900]

1039. Prosecution witness, George Johnson aka 'Junior Lion', testified that towards the end of April or early May 1998, when the AFRC advanced to Rosos, he was appointed as a Provost Marshal in charge of discipline to ensure that "jungle justice" was adhered to. The witness testified that "jungle justice" included a prohibition against rape during operations. Punishment for breaching "jungle justice" included public flogging or death.[1901] The Trial Chamber finds that the mere prohibition of rape does not create any doubt as to whether the incidents of rape testified to in great detail by Prosecution witnesses TF1-269 and TF1-267 in fact occurred.

1040. The Trial Chamber has carefully examined the evidence of witness DBK-113, who testified that he went to Rosos with the AFRC and stayed there for about three or four months.[1902] On cross-examination, the witness testified that he did not see or hear about any rapes of female civilians at Rosos.[1903] In the absence of evidence establishing that the witness was in a position to broadly determine whether rapes were or were not occurring and given the highly detailed and credible

[1896] TF1-267, Transcript 27 July 2005, pp. 9-10, 20-22.
[1897] TF1-267, Transcript 27 July 2005, p. 9.
[1898] TF1-267, Transcript 27 July 2005, p. 29.
[1899] TF1-033, Transcript 11 July 2005, p. 22.
[1900] TF1-033, Transcript 12 July 2005, p. 9.
[1901] George Johnson, Transcript 15 September 2005, pp. 48-49, 78.
[1902] DBK-113, Transcript 13 October 2006, p. 46.

evidence of Prosecution witnesses to the contrary, the Trial Chamber finds that this evidence does not raise reasonable doubt that rapes did in fact occur in Rosos at this time.

(ii) Findings

1041. By virtue of the foregoing the Trial Chamber is satisfied that the elements of rape are established in relation to Bombali District.

(d) Freetown and Western Area (6 January 1999 – 28 February 1999)

1042. The Indictment alleges that between 6 January 1999 and 28 February 1999 members of the AFRC/RUF raped hundreds of women and girls throughout the city of Freetown and the Western Area.[1904]

1043. In arriving at its factual findings in Freetown and the Western Area, the Trial Chamber has taken into consideration the evidence given by Prosecution witnesses TF1-334, TF1-024, Gibril Massaquoi, TF1-033, TF1-153, TF1-083 and Defence witnesses DBK-012 and DBK-126.

(i) State House

1044. The Prosecution submits that there is evidence that all three Accused committed rape or instigated or aided and abetted the sexual violence at the State House and elsewhere during the invasion and retreat.[1905] The Prosecution further submits that in January 1999, the three Accused were at State House where soldiers brought and engaged women in forceful sexual intercourse.[1906]

1045. Witness TF1-334 testified that on 6 January 1999, he saw "soldiers" bring an unknown number of abducted women to rooms within the State House and rape them there.[1907] He testified that the most beautiful ones were brought to the senior commanders, including 'Gullit', 'Bazzy' and '55'.[1908] Witness TF1-334 saw 'Gullit' with a girl who told the witness that she was in Form Two;[1909] that is, approximately 12 years old.[1910] The witness did not see 'Gullit' abduct the girl.[1911] The girls with '55' and 'Bazzy' were also very young school girls.[1912] The girl with Bazzy was

[1903] DBK-113, Transcript 13 October 2006, p. 78.
[1904] Indictment, para. 56.
[1905] Prosecution Final Brief, paras 1622, 1628, 1635.
[1906] Prosecution Final Brief, para 1672.
[1907] TF1-334, Transcript 14 June 2005, p. 25.
[1908] TF1-334, Transcript 14 June 2005, p. 26; Transcript 15 June 2005, p.3.
[1909] TF1-334, Transcript 15 June 2005, p. 3.
[1910] TF1-334, Transcript 20 June 2005, p. 3.
[1911] TF1-334, Transcript 20 June 2005, p. 4-5.
[1912] TF1-334, Transcript 15 June 2005, pp. 4-5.

approximately 12-15 years old.[1913] Gullit was with his girl up to Makeni; '55' stayed with his girl until the retreat from Freetown; and 'Bazzy' was with his girl until Westside.[1914] The Trial Chamber has previously considered general issues of credibility with regards to witness TF1-334 and finds the evidence given by him with regards to rapes at the State House to be reliable. However, the Trial Chamber finds this evidence insufficient to prove the *actus reus* and *mens rea* of rape.

1046. The evidence of witness TF1-334 is generally supported by that of witness TF1-024 who testified that on 8 January 1999,[1915] he was captured by a group of rebels and soldiers.[1916] The Trial Chamber notes that the witness describes his abductors variously as "rebels and soldiers [...] combin[ed] together", as "rebel boys", as "rebels and soldiers [...] all mixed together". The witness also describes them as wearing "ECOMOG" uniforms and speaking Liberian English.[1917] The rebels and soldiers took the witness to State House where he was detained for four nights in a kitchen on the ground level.[1918] Through the kitchen window, the witness testified that he could see women and girls being raped[1919] by "Gullit's boys" every night in the compound.[1920] He heard the women cry and heard the girls saying "We do not agree. We are school-going girls." ("A no de gri. Mi na small pikin.")[1921]

1047. The witness testified that he saw 'Gullit' twice at the State House.[1922] The rebels called him "Honorable Gullit" and he was "commanding his boys."[1923] When ECOMOG forces approached the State House, 'Gullit' ordered the rebels to leave and left together with them.[1924]

1048. The Trial Chamber notes that on cross-examination, the witness testified that the girls who were raped were given 5000 leones, but that this was not pay.[1925] The Trial Chamber finds that given the overwhelmingly coercive environment and the suggestion of the young age of the victims, no attribution of consent to the sexual acts can be derived from this payment. The Trial Chamber is of the opinion that the testimony of witness TF1-024 is detailed and coherent. The witness was not shaken on this evidence on cross-examination. The Trial Chamber accepts this evidence as credible.

[1913] TF1-334, Transcript 22 June 2005, p. 10.
[1914] TF1-334, Transcript 15 June 2005, pp. 3-5; Transcript 22 June 2005, p. 6.
[1915] TF1-024, Transcript 7 March 2005, pp. 43, 53, 62-63.
[1916] TF1-024, Transcript 7 March 2005, p. 44.
[1917] TF1-024, Transcript 7 March 2005, pp. 44, 49.
[1918] TF1-024, Transcript 7 March 2005, pp. 70-72.
[1919] TF1-024, Transcript 7 March 2005, pp.72-75.
[1920] TF1-024, Transcript 7 March 2005, pp. 44, 46, 49, 76.
[1921] TF1-024, Transcript 7 March 2005, p. 49.
[1922] TF1-024, Transcript 7 March 2005, pp. 45, 51-52.
[1923] TF1-024, Transcript 7 March 2005, p. 45.
[1924] TF1-024, Transcript 7 March 2005, pp. 51-52.
[1925] TF1-024, Transcript 7 March 2005, p. 75.

The Trial Chamber is satisfied that the *actus reus* and *mens rea* elements of rape are satisfied on the basis of this evidence.

1049. The evidence of witnesses TF1-334 and TF1-024 is also generally supported by Prosecution witness Gibril Massaquoi who testified that while the three Accused were in command at State House in January 1999, he heard complaints from civilians that "Military Police" came into people's homes "to look for girls".[1926] The witness heard a civilian complain to the Accused Kamara about looting and entering homes at night. The witness did not see or hear of anyone being punished for looting or entering houses looking for women in Freetown.

1050. By contrast, the Trial Chamber notes that a number of witnesses testified that they were not aware of any rapes occurring at State House in early January, 1999.

1051. Prosecution witness TF1-033 testified that he was at State House with the AFRC troops on 6 January 1999[1927] and that he did not witness any rapes while he was there.[1928]

1052. Defence witness DBK-012, an ex-SLA who was a member of the AFRC during the war, similarly testified that he did not see or hear of any raping going on at State House during the invasion of Freetown in January 1999.[1929] He was neither able to confirm or deny that young girls were brought to State House by the AFRC to be raped.[1930]

1053. Witness DBK-126 testified that she was captured in Koidu Town by a "boy" whom the witness referred to as 'Bravo' shortly after the AFRC was overthrown in Freetown in February 1998. The witness testified that 'Bravo's' boss was Junior Johnson also known as Junior Lion.[1931] The witness testified that she was with the troops when the AFRC invaded Freetown. In Freetown Junior Lion made the witness cook for him and bring him food at the Adelaide Police Station. Three days later, the government troops moved Junior Lion to State House. The witness continued to take food to him there. The witness testified that 'FAT Sesay' was in charge of the State House. She testified that the Accused Kamara was not at State House during this period and that she did not see

[1926] Gibril Massaquoi, Transcript 10 October 2005, pp. 10-11.
[1927] TF1-033, Transcript 11July 2005, p. 61.
[1928] TF1-033, Transcript 11July 2005, p. 65; 12 January 2005, p. 20.
[1929] DBK-012, Transcript 9 October 2006, p. 46.
[1930] DBK-012, Transcript 9 October 2006, p. 49.
[1931] DBK-126, Transcript 11 October 2006, pp. 45-47.

the soldiers rape anyone.[1932] On cross-examination, however, the witness admitted that she had brought food to the Accused Kamara at the State House.[1933]

1054. The Prosecution notes that this witness has already pleaded guilty to contempt of Court for attempting to intimidate Prosecution witnesses.[1934]

1055. The Trial Chamber recalls its discussion of the evidence of witnesses who did not see atrocities committed in Freetown, wherein it found that in light of the overwhelming evidence to the contrary, no weight was to be afforded to this aspect of their testimony.

(ii) PWD

1056. Prosecution witness TF1-153 testified that 'Gullit' called him to the AFRC Headquarters at PWD during the time of the AFRC invasion. The witness testified that he saw young civilian women at the PWD several times. The witness testified that "soldiers" had abducted the girls from the Annie Walsh School near the East End Police Station. Tina Musa told the witness later that the girls had told her that they were all raped at the place they were caught.[1935]

1057. Witness TF1-153 also testified that around this same time, 'Gullit' called him and told him he "had strangers" for him at PWD.[1936] The witness went upstairs and saw a group of priests and nuns locked in a room. The witness spoke to a priest who told him that they had been captured and brought to the PWD. The priest said that all the nuns had been raped. The witness approached 'Gullit' to ask him to release the priests and nuns, but 'Gullit' said "They are all involved. They are making us suffer."[1937]

1058. The Brima Defence asserts that witness TF1-153 abandoned portions of his statement and was desirous of impressing the bench by giving evidence damaging to the Accused as he had received a witness allowance.[1938] The Trial Chamber has previously addressed general issues of credibility with regards to witness TF1-153. The Trial Chamber notes that the evidence given by the witness with regards to rapes of young girls and nuns at PWD is hearsay evidence.

[1932] DBK-126, Transcript 12 October 2006, p. 62.
[1933] DBK-126, Transcript 25 October 2006, p. 56.
[1934] Prosecution Final Brief, para. 1575(o).
[1935] TF1-153, 23 September 2005, pp. 6-11.
[1936] TF1-153, 23 September 2005, p. 12.
[1937] TF1-153, 23 September 2005, pp. 12-14.
[1938] Brima Final Brief, para. 191.

1059. The evidence of witness TF1-153 is generally supported by Prosecution witness TF1-334 who testified that roughly three weeks after the 6 January 1999 invasion of Freetown, Brima, Kamara and Kanu went to PWD Junction[1939] to call for reinforcements from the RUF.[1940] Around that time, Brima ordered the "troops" to abduct civilians in order to attract the attention of the international community.[1941] Kamara and Kanu were present also.[1942] Civilians, including a number of young girls were then abducted by the rebels and the commanders[1943] from Freetown and brought to the headquarters at PWD.[1944]

1060. The Trial Chamber finds that the hearsay evidence of witness TF1-153 that women and girls were raped at PWD and the general evidence of witness TF1-334 that young girls were abducted and brought to PWD is insufficient to satisfy the *actus reus* and *mens rea* elements of rape.

(iii) Greater Freetown

1061. The Trial Chamber has carefully considered the evidence of Prosecution witnesses TF1-104 who testified that "RUF junta guys" tried to rape his colleague, a certain 'Saata' at the Good Shepherd Clinic in Freetown sometime between 6 January 1999 and 14 January 1999.[1945] The Trial Chamber makes no findings on this evidence, as it goes to proof of a crime, namely attempted rape, over which this Court has no jurisdiction.

1062. Prosecution witness TF1-083 testified that in "Freetown" on about 16 January 1999, "rebels" whom the witness described as wearing "combat" but who were not ECOMOG came at night and took his sister-in-law out of their house. The witness and his brother ran and hid in nearby plantations. When the witness's sister-in-law returned later that evening, she told the witness and his brother that she had been raped.[1946]

1063. The evidence of witness TF1-083 is generally supported by that of Prosecution witness TF1-033 who testified that after the AFRC lost the battle in Freetown he remained with the AFRC troops during their retreat for three weeks. During this time the eastern part of Freetown was occupied by

[1939] The Witness marked "PWD" as location #6 on a map of Freetown, Exhibit P18.
[1940] TF1-334, Transcript 14 June 2005, p. 55.
[1941] TF1-334, 14 June 2005, pp. 62, 118-119.
[1942] TF1-334, 14 June 2005, p. 63.
[1943] TF1-334, 14 June 2005, p. 118.
[1944] TF1-334, 14 June 2005, pp. 64, 120.
[1945] TF1-104, Transcript 30 June 2005, pp. 14-16, 22, 39-40.
[1946] TF1-083, Transcript 8 April 2005, pp. 47-50, 52.

AFRC "fighters" under the command of 'Gullit'. The witness testified that 'Gullit' ordered his men to commit atrocities as they were retreating and that women and girls were raped by the fighters.[1947]

1064. The Trial Chamber has carefully considered the objections of the Defence with regards to the credibility of witness TF1-033.[1948] The Trial Chamber has previously considered the credibility of witness TF1-033 in general terms[1949]

1065. Defence witness DAB-100 testified that he heard that there were rapes by the AFRC/RUF during the invasion of Freetown in 1999. The Trial Chamber gives this statement little weight as no specific incidents were elaborated by the witness.

1066. By contrast, Defence witness DBK-012 testified that there were no rapes during the attack on Freetown in January 1999 because this was against the ideology of SAJ Musa, to whom he referred as the "Five Star General". Anyone who would rape a civilian would have been executed.[1950] The Trial Chamber finds that this evidence does not raise a reasonable doubt as to the veracity of the overwhelming and detailed evidence to the contrary.

1067. The Trial Chamber also notes, but does not rely on, the evidence of Defence witness DSK-113 who testified that he was taken with the AFRC to Freetown during the January 1999 invasion. He testified that during the journey from Benguema to Freetown he did not see any SLA soldiers carrying out any rapes.[1951] This evidence relates to time periods not indicted.

(iv) Findings

1068. By virtue of the foregoing, and without predetermining the individual criminal responsibility of the three Accused, the Trial Chamber is satisfied that the elements of rape are established in relation to Freetown and the Western Area.

[1947] TF1-033, Transcript 11 July 2005, pp 65-66.
[1948] Kanu Final Brief, para. 140; Brima Defence Final Brief, para. 34, 189.
[1949] Role of Accused, paras 364-367.
[1950] DBK-012, Transcript 6 October 2006, p. 29.
[1951] DSK-113, Transcript 12 October 2006, pp. 108-111.

C. Outrages on Personal Dignity (Count 9)

1. Preliminary Remarks

1069. Count 9 has been charged in addition to or in the alternative to Count 6 (Rape), Count 7 (Sexual Slavery and Any Other Form of Sexual Violence) and Count 8 (Other Inhumane Act, Forced Marriage). As discussed, *supra*, in *Chapter II, Defects in the Indictment*, the Trial Chamber has dismissed Count 7 for duplicity[1952] and as discussed, *supra*, in *Chapter IX, Applicable Law*, the Trial Chamber has dismissed Count 8 for redundancy.[1953] As additionally discussed, *supra*, in *Chapter IX, Applicable Law*, the Trial Chamber is satisfied that the acts of rape and sexual slavery are encompassed by the definition of outrages on personal dignity and will consider evidence to this effect presently.

1070. In coming to its findings in relation to Count 9, the Trial Chamber relies on the findings made in relation to Count 6, *supra*, as well as its findings on the chapeau elements of war crimes.[1954]

2. Allegations and Submissions

1071. The Prosecution submits that the evidence in relation to Counts 6 to 8 establishes the legal requirements for the charge of outrages upon personal dignity.

1072. The Prosecution submits that the evidence establishes beyond a reasonable doubt the legal requirements of sexual slavery. The Prosecution asserts that the acts described in the evidence shows a pattern according to which the perpetrators abducted and detained women and subjected them to sexual acts. The Prosecution asserts that, very often, these women were the victims of multiple perpetrators. The only possible inference from the evidence is that the perpetrators acted in the reasonable knowledge that sexual slavery were likely to follow from their acts.[1955]

1073. The Prosecution in its Final Brief stated that it is the condition of being enslaved that gives rise to sexual slavery.[1956] It recalls the opinion of Trial Chamber I that the Accused must have intended to exercise the act of sexual slavery or have had reasonable knowledge that this was likely

[1952] Defects in the Indictment, para. 92 et seq.
[1953] Applicable Law, para. 697.
[1954] General Requirements of Articles 2, 3 and 4 of the Statute, paras 249-254.
[1955] Prosecution Final Brief, para. 1005.
[1956] Prosecution Final Brief, para. 1000.

to occur. The Prosecution submits that same standard prevails in and should be applied in the present instance.[1957]

1074. The Kanu Defence submits that the Prosecution evidence did not prove that the phenomenon of 'bush wives' can be categorized as the crime of sexual slavery, as the "powers attaching to the right of ownership" (an element of the crime) are absent.[1958]

1075. Insofar as the Defence challenge the testimony of witnesses with regard to specific incidents of sexual slavery, the Trial Chamber has discussed these submissions as they arise in the evidence below.

3. Evidence of Witnesses TF1-094, DAB-156 and TF1-085

1076. Evidence which may go to the proof of the elements of sexual slavery can not always be limited to a particular place or a particular instant in time. Rather, given the prolonged nature of the crime alleged, some of the evidence given by a number of witnesses relates to events which take place over time, sometimes running through the indicted period for one District into the indicted period of other Districts. Similarly, some of the evidence given by these witnesses cover more than one location within a District and often more than one District.

1077. To maintain the coherence of such testimony, the Trial Chamber will first examine this evidence on a witness by witness basis. The Trial Chamber will then make findings on the whole of the evidence by District as set out in the Indictment.

(a) Prosecution Witness TF1-094

1078. Prosecution witness TF1-094 testified that she was with her parents in the village of Bamukura, Koinadugu District in August of 1998 when the village was attacked by "rebels and SLAs".[1959] The witness, her parents and other family members fled to the bush but they were captured. The "rebels and SLAs" killed her parents[1960] and "one of them" threatened to kill the witness as well.[1961] An "SLA", whom the witness described as wearing combat, and to whom she referred as 'Andrew' intervened and said that he would save her.[1962] On cross-examination the

[1957] Prosecution Final Brief, para. 1001.
[1958] Kanu Final Brief, para. 58.
[1959] TF1-094, Transcript 13 July 2005, pp. 25, 47.
[1960] TF1-094, Transcript 13 July 2005, pp. 26-27.
[1961] TF1-094, Transcript 14 July 2005, pp. 37-38.
[1962] TF1-094, Transcript 13 July 2004, p. 28, Transcript 14 July 2005, p. 37.

witness clarified that at the time 'Andrew' said that he would save her, he did not actually save her as "if you were saving somebody … you would not rape that person."[1963]

1079. 'Andrew' captured the witness, brought her to Yamadugu and raped her there. The witness was in "Class Two" at the time and had not yet started menstruating. The Trial Chamber observes that a child in Class Two is approximately 12 years old. The witness testified that she believed that if she had refused to have sex with 'Andrew', "they" would have killed her.[1964] The Trial Chamber finds that the environment of violence and the murder of both the witness's parents substantiates this belief.

1080. The witness testified that after this, 'Andrew' continued to rape her and she became pregnant within a month of her capture. 'Andrew' told the witness not to abort the pregnancy and he would take care of her. The witness had to do his laundry and other chores. 'Andrew' considered the witness to be his "wife".[1965] The witness testified that the "boss" in Yamadugu was a certain 'Ojagu' who was an SLA. The witness also stated that 'Syllabug', 'Colonel Junior' and 'Rambo', whom she describes as all SLA, as well as other commanders whom the witness did not know, were also in Yamadugu.[1966]

1081. The Prosecution states that it was suggested to the witness in cross-examination that at the time she was pregnant, Andrew said he would marry her. In response, the witness did not specifically rebut this statement, but clarified that she was pregnant at the time and 'Andrew' had asked her not to abort the pregnancy.[1967] The Prosecution asserts, and the Trial Chamber accepts, that this shows that at the time, she was not legally married to him. The witness testified in cross-examination that Andrew used to care for her.[1968] It is the case of the Prosecution, however, that the fact that the men cared for their abducted 'wives' did not change the fact that these women were 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 environment whereby they were unable to give genuine consent.[1969] The Trial Chamber notes the environment of violence and coercion in which the events testified to by the witness took place and it is satisfied that any benefit received by the witness is relative only and in no way diminishes the seriousness of the acts committed against her.

[1963] TF1-094, Transcript 14 July 2005, pp. 37-38.
[1964] TF1-094, Transcript 13 July 2005, pp. 28-29, 49.
[1965] TF1-094, Transcript 13 July 2005, pp. 29, 50; Transcript 14 July 2005, p. 38.
[1966] TF1-094, Transcript 13 July 2005, pp. 29, 50; Transcript 14 July 2005, p. 38.
[1967] TF1-094, Transcript 14 July 2005, p. 38.

1082. Witness TF1-094 testified that she was taken with the troops as they travelled to Bamukoro, Koinadugu District; Badela; Tumanya or "Pumpkin Ground", Koinadugu District where the witness stated SAJ Musa was the commander; Bofodia, Koinadugu District and Rosos, Bombali District. When they reached Rosos, the witness was four months pregnant. The witness testified that "55" was at Rosos and that there were many civilians at Rosos including hundreds of women.[1970]

1083. After Rosos, the witness was taken with the troops to Kamaranka; Kamalo, Bombali District; and then to Waterloo, Western Area. The witness testified that "55" was with the troops on the way to Waterloo. She was six months pregnant at the time and "55" beat her with a stick.[1971] The witness was then taken with the troops to Benguema, Western Area; Hastings, Western Area; and to Freetown during the AFRC invasion of 6 January 1999.[1972] During the AFRC retreat from Freetown, the witness was taken to Calaba Town, Western Area; Waterloo, Western Area - where she met 'Andrew'; and then to Makeni, Bombali District. Andrew was shot dead in Makeni when the witness was seven months pregnant. The witness gave birth in Makeni on 19 April 1999, however, the child had died in the womb.[1973]

(b) Defence Witness DAB-156

1084. As found by the Trial Chamber with regards to Count 6, *supra,* Defence witness DAB-156 was raped by Junior Lion in Kabala, Koinadugu District sometime after the AFRC was overthrown in Freetown in February 1998 but before the rainy season. The witness testified that Junior Lion held her, raped her, banged her on the forehead where she still has a scar, and knocked out some of her teeth.[1974] The witness testified that he took her as his "wife" by force. He abducted her in Yuromia Town, near Foday Street.[1975]

1085. The witness testified that she was taken by Junior Lion to Kono, Koidu, Kono District and Kurubonla, Port Loko District. In Kurubonla, the witness saw a large number of soldiers, their wives, and other civilians. The leader was SAJ Musa and his deputies were called FAT and King. Junior Lion was also a deputy. At Krubonla, Junior Lion released the witness and a person the witness referred to as 'Simon' took the witness as his second wife. The witness testified that he was

[1968] TF1-094, Transcript 14 July 2005, p. 38.
[1969] Prosecution Final Brief, paras 1894-1895.
[1970] TF1-094, Transcript 13 July 2005, pp. 34, 36-39, 53, 55.
[1971] TF1-094, Transcript 13 July 2005, pp. 41, 55-57.
[1972] TF1-094, Transcript 13 July 2005, pp. 39-43.
[1973] TF1-094, Transcript 13 July 2005, pp. 45-46.
[1974] DAB-156, Transcript 29 September 2006, pp. 39-40, 43.
[1975] DAB-156, Transcript 29 September 2006, pp. 77-78.

good to her. After that Simon and Junior Lion moved to another town and Simon arranged that the witness would stay with his brother, a man known to the witness as 'Foyo'.[1976]

1086. Regarding witness DAB-156's evidence that she was captured and raped by George Johnson aka Junior Lion and taken to the Westside as a captive, the Prosecution submits that the 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.[1977] 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.[1978] The Trial Chamber agrees with this submission and makes no further findings on the basis of this evidence.

(c) Prosecution Witness TF1-085

1087. Prosecution witness TF1-085 testified that she lived with her family in Wellington, Western Area when AFRC rebels invaded in early January 1999. The Trial Chamber notes that the witness testified in chief that the year was 1999 but stated on cross-examination that she does not know the year she was captured. She accepted from counsel that the year was "1999" but then remained inconsistent on the exact date, stating alternatively that it was the 5th, the 6th and "Thursday".[1979] The Trial Chamber finds that as the events happened many years ago and as the evidence of the witness is corroborated by the known date of the AFRC invasion of Freetown, 6 January 1999, the credibility of the witness is not undermined.

1088. The witness testified that she was approximately thirteen at the time.[1980] One day, shortly thereafter, the witness was warned by her neighbours that the rebels had arrived in Wellington. She hid in her house with her family but "rebels" whom the witness describes as "STF from Liberia" including a rebel whose name the witness gave to the Court in closed session,[1981] hereinafter 'Colonel Z', broke down the door. The rebels told the witness to come with them and when she refused they beat her, put a pistol to her neck and threatened to cut off her mother's hands.[1982] The rebels gave her a load to carry and took her to Allen Town.[1983]

[1976] DAB-156, Transcript 29 September 2006, pp. 39-40, 42-49.
[1977] DAB-156, Transcript 29 September 2006, p. 5.
[1978] Prosecution Final Brief, para. 1805.
[1979] TF1-085, Transcript 6 April 2005, pp. 61, 74, 116.
[1980] TF1-085, Transcript 6 April 2005, pp. 61; Transcript 7 April 2005, pp. 124-125.
[1981] Name given in closed session, TF1-085, Transcript 6 April 2005p. 11-12.
[1982] TF1-085, Transcript 7 April 2005, pp. 7-14.
[1983] TF1-085, Transcript 7 April 2005, pp. 15-17.

1089. The witness testified that 'Five-Five' led the group in Wellington. She was told by "others" that he was '55'. She described him as huge, fat, tall, fair, black, carrying a stick that shot bombs, and wearing ronko.[1984] On cross-examination, the witness testified that he was "huge", "tall", and had body guards.[1985] The Kanu Defence asserts that witness TF1-085's description of a "big boss" named 'Five-Five' does not correspond with the Accused Kanu and is not corroborated by any other Prosecution witnesses.[1986] The Trial Chamber notes that the description of 'Five-Five' given by the witness does not correspond with the physical features of the Accused Kanu who is a thin man of medium height and therefore does not rely on her evidence in this regard.

1090. 'Colonel Z' took the witness into the Mammy Dumbuya Church in Allen Town and told her he wanted to have sex with her. The witness refused. 'Colonel Z' beat her, tied her hands and raped her. The witness bled and lost consciousness. It took a month for her to heal.[1987] After 'Colonel Z' raped the witness, he told her she was his "wife".[1988]

1091. Witness TF1-085 was taken by the rebels from Allen Town to Waterloo which had been captured.[1989] The witness testified that a person she referred to as 'Five-Five' was in command in Allen Town[1990] and that in a village on the way to Waterloo, he ordered that the witness be beaten for cooking and making smoke.[1991] As discussed, *supra*, the Trial Chamber makes no findings with regards to the Accused Kanu on the basis of this evidence. The witness was then taken by the rebels to Masiaka, Port Loko District. The person the witness referred to as 'Five-Five' led the group to Masiaka.[1992] In Masiaka, 'Colonel Z' repeatedly forced the witness to have sex with him. As a result, the witness bled and 'Colonel Z' took her to the doctor. When she healed, 'Colonel Z' continued to have sex with her without her consent.[1993] The witness became pregnant and miscarried twice as a result of the rapes.[1994]

1092. In Masiaka, 'Colonel Z' "married" the witness in a ceremony and gave money to the person referred to by the witness as 'Five-Five' as a "father-in-law".[1995] The Prosecution submits that this did not create any valid marriage or change the witness's status of being under sexual slavery or in

[1984] TF1-085, Transcript 7 April 2005, pp. 16-17, 90-91.
[1985] TF1-085, Transcript 7 April 2005, pp. 60, 67, 69.
[1986] Kanu Final Brief, paras 172-174.
[1987] TF1-085, Transcript 7 April 2005, pp. 17-20.
[1988] TF1-085, Transcript 7 April 2005, p. 21.
[1989] TF1-085, Transcript 7 April 2005, p. 21.
[1990] TF1-085, Transcript 7 April 2005, p. 18.
[1991] TF1-085, Transcript 7 April 2005, pp. 27-28, 71.
[1992] TF1-085, Transcript 7 April 2005, p. 30.
[1993] TF1-085, Transcript 7 April 2005, pp. 35-36.
[1994] TF1-085, Transcript 7 April 2005, pp. 36-37.
[1995] TF1-085, Transcript 7 April 2005, p. 37.

a forced marriage as she was not at liberty to leave and remained there under a coercive war environment.[1996] The Trial Chamber notes the environment of violence and coercion, namely, the witness's forcible abduction and her repeated rape by the rebel 'Colonel Z', and finds that given these circumstances the witness could not have validly consented to the "marriage". The Trial Chamber is therefore of the opinion that this was not a 'legal' marriage.

1093. 'Colonel Z' had more than six other captured wives in Masiaka.[1997] He did not force the witness to do any work around the house; however, his other wives were required to do so. The other wives beat the witness because they said that she took their husband away.[1998]

1094. 'Colonel Z' held the witness in Masiaka against her will.[1999] The witness begged 'Colonel Z' to let her return to Freetown. The witness testified that 'Colonel Z' gave her cocaine. She also stated that he gave her marijuana, a pistol and an AK-47 and taught her how to use the weapons for her security.[2000] On cross-examination, the witness stated that she carried the pistol with her.[2001]

1095. The witness tried to escape from Masiaka with two other women. They were approximately two miles away from town when they were caught by some "rebel boys". The rebels cut the two other women with a blade, marking their bodies with the acronym "AFRC/RUF". They took the witness to the police station in Masiaka where 'Colonel Z' picked her up. He brought her back to the house, beat her, and threatened to kill her.[2002]

1096. The witness was held Masiaka for several months after which time she, 'Colonel Z' and the rebels travelled to Lunsar, Port Loko District to avoid ECOMOG.[2003] The witness testified that 'Issa' went from Masiaka to Lunsar and that he was in charge together with the other rebels.[2004] 'Daramy' and 'Gold Teeth' were in Lunsar.[2005] They then travelled to Krubola Hill, Port Loko District where the witness and other civilians were trained to fight. They were trained on how to cock and fire a gun, how to evade enemies and how to attack.[2006] After the training, the witness and the other trained civilians were sent to fight in Kono. Some of the trained civilians were killed by

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[1996] Prosecution Final Brief, para. 1908.
[1997] TF1-085, Transcript 7 April 2005, pp. 33, 89, 96.
[1998] TF1-085, Transcript 7 April 2005, p. 37.
[1999] TF1-085, Transcript 7 April 2005, p. 36.
[2000] TF1-085, Transcript 7 April 2005, pp. 34-35.
[2001] TF1-085, Transcript 7 April 2005, p. 112.
[2002] TF1-085, Transcript 7 April 2005, pp. 43-44, 121.
[2003] TF1-085, Transcript 7 April 2005, p. 46.
[2004] TF1-085, Transcript 7 April 2005, p. 46.
[2005] TF1-085, Transcript 7 April 2005, p. 86.
[2006] TF1-085, Transcript 7 April 2005, p. 49.

ECOMOG during the attack.[2007] The Trial Chamber notes this evidence of witness TF1-085 will be addressed in the Factual Findings in relation to Count 12 (Child Soldiers). The Trial Chamber also notes that the Indicted period for Count 13 (Abductions and Forced Labour) for Kono District ends in January 2000 and thus makes no findings on the basis of this evidence in that regard.

1097. After the attack, the witness, the rebels and 'Colonel Z' returned to Port Loko District and then travelled to Makeni, Bombali District. Makeni was bombed and the witness was separated from 'Colonel Z' and she attempted to flee to Masiaka. She was detained by ECOMOG forces and then allowed to return to Freetown where she reunited with her mother. She was pregnant when she returned and underwent an abortion.[2008] The Trial Chamber makes no findings on the basis of this evidence in regards to Bombali District as the indicted period for sexual crimes in Bombali District ends on 30 November 1998, well before this evidence of the witness took place.

1098. The Trial Chamber notes that the witness testified that she was abducted by an "STF from Liberia" and that the Trial Chamber has no evidence before it to suggest with which faction, if any, these persons were affiliated. However, the witness's description of her abductors as "rebels"; and the route taken by the persons who captured the witness, namely from Wellington to Allen Town to Waterloo to Masiaka, Port Loko District where she was held for several months, which is consistent with the known route taken by AFRC/RUF forces on the retreat from Freetown; are consistent with a finding that her abductors were members of the AFRC/RUF.

1099. The Trial Chamber notes the Kanu Defence assertion that the evidence given by Prosecution witness TF1-085 can not be deemed reliable and should not be give any weight. [2009] The Trial Chamber found witness TF1-085 consistent and firm in her evidence and accepts her as a witness of truth.

4. Evidence and Deliberations by District

(a) Kono District (14 February 1998 – 30 June 1998)

1100. The Indictment alleges that between 14 February 1998 and 30 June 1998 an unknown number of women and girls were abducted by members of the AFRC/RUF from various locations within the District and used as sex slaves.[2010]

[2007] TF1-085, Transcript 7 April 2005, p. 50.
[2008] TF1-085, Transcript 7 April 2005, pp. 51-52, 119-120.
[2009] Kanu Final Brief, paras 172-174.
[2010] Indictment, para. 52.

1101. The Prosecution has conceded that it has not led evidence in respect of Tomendeh, Fokoiya, Superman Camp/Kissi Town Camp, Kissi Town or Tombodu.[2011]

1102. In making its findings in relation to Kono District, the Trial Chamber relies upon the evidence of Prosecution witness TF1-334 and Defence witnesses DAB-125 and DAB-101.

1103. Prosecution witness TF1-334 testified that from the time Johnny Paul Koroma declared Koidu a "no go" area for civilians in early March, 1998, civilians were captured by "rebels" from the surrounding villages such as Tombodu and Yamadu. Civilians who tried to escape were executed.[2012] Women – particularly the young and beautiful ones – were placed under the full control of "commanders"; they became their "wives". As their "wives" the women cooked for the rebels and the other soldiers in Kono. They were also "used sexually."[2013] This was an open practice. Witness TF1-334, "Commander A" and other soldiers all "had sexual intercourse" with captured women.[2014]

1104. The Prosecution submits that this evidence has not been challenged by any Defence evidence and as such the Prosecution version of events must be accepted.[2015]

1105. The Trial Chamber is of the opinion that witness TF1-334's testimony that women were captured; that captured civilians who tried to escape were executed; that captured women were place under the "full control" of commanders and became their "wives"; and that these women cooked for the commanders and other soldiers is indicative of the deprivation of the captured women's liberty and the exercise of ownership over them by members of the AFRC. The Trial Chamber is also satisfied on the evidence of the witness, namely that the women were "used sexually" and that soldiers, including himself, had sexual intercourse with captured women, that acts of sexual violence were committed against the captured women. The Trial Chamber infers from the environment of violence and coercion that the women did not consent to these sexual acts. The Trial Chamber is thus of the opinion that the *actus reus* and *mens rea* elements of the crime of sexual slavery are satisfied on the basis of this evidence.

1106. The evidence of witness TF1-334 is generally supported by that of witness DAB-101 who testified that after hearing on the radio about "Operation No Living Thing" he was captured and released three times by the RUF in Kono District. The "rebels" were based at Mortema at this time.

[2011] Rule 98 Decision, para. 161.
[2012] TF1-334, Transcript 20 May 2005, pp. 4-5.
[2013] TF1-334, Transcript 20 May 2005, pp. 4-6.
[2014] TF1-334, Transcript 20 May 2005, p. 7.

The witness was captured, together with two other civilians, by the RUF a fourth time. The rebels were armed and were wearing civilian clothing. The rebels told the witness that they would release him if he agreed to turn over two of his nieces to them to be their "wives". The witness testified that the nieces advised him to accept the offer so he did. The girls were 15 and 17 years old at the time. The witness then went back to the "bush". The witness saw the girls again after the war. The girls told the witness their "ordeal"; they said they were beaten but did not tell the witness anything else.[2016] The Trial Chamber is of the opinion that girls aged 15 and 17 years of age, in the context of coercion and violence, could not have validly consented to "marriage".

1107. Witness DAB-101 also testified that, generally, women that were captured by the rebels were transformed into their 'wives'. They were usually sent to spy for the rebels or to find food. In Mortema, the witness did not hear about any rapes. He also never heard the name of the Accused Brima.[2017]

1108. The evidence of witness TF1-334 is also generally supported by that of witness DAB-125 who testified that around Wordu Town, if "they" saw a young girl they would hold and turn her into their wife.[2018]

(i) Findings

1109. By virtue of the foregoing the Trial Chamber is satisfied that the elements of sexual slavery are established in relation to Kono District.

(b) Koinadugu District (14 February 1998 – 30 September 1998)

1110. The Indictment alleges that between 14 February 1998 and 30 September 1998 an unknown number of women and girls were abducted and used as sex slaves by members of the AFRC/RUF.[2019]

1111. The Prosecution has conceded that it has not led evidence in respect of Heremakono.[2020]

[2015] Prosecution Final Brief, para. 1314.
[2016] DAB-101, Transcript 12 September 2006 pp. 81-88.
[2017] DAB-101, Transcript 12 September 2006, pp. 98-99.
[2018] DAB-125, Transcript 13 September 2006, p. 54.
[2019] Indictment, para. 53.
[2020] Rule 98 Decision, para. 161.

1112. In making its findings in relation to Koinadugu District, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-094, TF1-133, and TF1-209 and Defence witness DAB-079 and DAB-156.

1113. As examined, *supra*, in the evidence by witness section, witness TF1-094 testified that in August of 1998 she was abducted by a certain 'Andrew' from her village, Bambukura, Koinadugu District. The Trial Chamber is satisfied from the witness's description of 'Andrew' as an "SLA" dressed in combat that Andrew was a member of the AFRC or the RUF. The witness testified that after Andrew abducted her, he repeatedly raped her. The witness became pregnant within the first month of being with Andrew. She testified that she had to do his laundry and other chores and that Andrew considered the witness to be his "wife". The witness was taken with the troops as they travelled to Bombali District. They reached Rosos when the witness was four months pregnant.

1114. The Trial Chamber is of the opinion that the witness's testimony of her forcible abduction; the murder of her parents in her presence which established an context of fear and violence; her fear that she too would be killed if she did not have sex with 'Andrew'; the extraction of her forced labour by 'Andrew', namely laundering and other chores; the use of the term 'wife'; and her detention with the troops for approximately four to five months as they travelled through Koinadugu District to Bombali District are all indicative of the deprivation of her liberty and the exercise of ownership over her person by 'Andrew' which together with acts of sexual violence, namely, 'Andrew's repeated rape of the witness and her subsequent pregnancy, satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery.

1115. Prosecution witness TF1-133 testified that captured women in Koinadugu District were forced to be "wives" to members of the AFRC or RUF and that she was present in Krubola for a period of seven months and Serekolia for a period of three months during which time "forced marriages" were supervised and organised by herself for members of the AFRC and RUF.

1116. The witness testified that in Kumala, in April 1998, at the time that the villagers were "getting ready to make [their] farms" at the end of the dry season, she, her siblings and one of her husband's other wives, were captured by four "rebels" whom the witness named as 'Mohammed the Killer', 'Trouble', 'Arpick' and 'Cyborg'. Some of the rebels were in uniform and some were in civilian dress.[2021] The witness and her family members, together with some other captured civilians known to the witness – Bamba Jalloh and Sialo Kamara - were taken by the rebels on a path towards Woronbiai. Before they reached town, 'Mohammed the Killer', who was armed, raped the

witness. The witness testified that she was unable to refuse. At the same time, another rebel – whom the witness named as 'RPG' - raped the witness's husband's other wife.[2022]

1117. The witness was kept with the rebels at Woronbiai for eight days. There the witness learned that Mohammed the Killer's commander was named 'Cobra'.[2023] Other commanders at Woronbiai were 'Colonel Tee' who was SLA; 'Pa Mani' who was SLA; and 'Rambo'. 'Rambo' and 'Pa Mani' were the overall commanders at Woronbiai.[2024] At Woronbiai, 'Mohammed the Killer' wanted to marry the witness to 'Cobra'. The witness refused. 'Mohammed the Killer' said the witness should be killed and he wounded her with a bayonet. The witness was injured on her hip and buttocks.[2025] The witness was led away by a rebel to be killed, however, 'Rambo' intervened.[2026] 'Rambo' and 'Pa Mani' punished 'Mohammed the Killer' by having him beaten.[2027] 'Cobra' said "You have brought this woman for me. If she says she doesn't love me, leave her alone".[2028] The witness was treated for her injuries. For the eight days she was in Woronbiai, the witness lived with 'Cobra'.[2029]

1118. All of the women who were captured at the same time as the witness were given to "men" as their "wives" which meant that the women had to have sex with the men. The witness's husband's other wife was given to a "rebel" named Komba; Bamba Jalloh was given to a Mende "rebel" named Yubao. Sialo Kamara was made to work for the wives of the rebels. She laundered clothes and washed dishes.[2030]

1119. The Trial Chamber notes that in its Final Brief, the Prosecution cites the proceeding testimony of witness TF1-133 as evidence of crimes committed in Woronbiai, *Kono* District.[2031] The Trial Chamber finds that this is a mistaken assertion. Witness TF1-133 clearly testified that she was in the bush outside of Kumala, near Alikalia, when she was captured, and that she was raped in the bush on the way to Woronbiai. She also testified that immediately prior to the attack on Kumala, Yifin had been attacked.[2032] The Trial Chamber has no doubt that the proceeding events the witness describes took place in Koinadugu District.

[2021] TF1-133, Transcript 7 July 2005, pp. 80-85.
[2022] TF1-133, Transcript 7 July 2005, pp. 85-86, 113, 118.
[2023] TF1-133, Transcript 7 July 2005, pp. 86-87.
[2024] TF1-133, Transcript 7 July 2005, p. 88.
[2025] TF1-133, Transcript 7 July 2005, pp. 89-90.
[2026] TF1-133, Transcript 7 July 2005, pp. 88, 90.
[2027] TF1-133, Transcript 7 July 2005, p. 90.
[2028] TF1-133, Transcript 7 July 2005, p. 90.
[2029] TF1-133, Transcript 7 July 2005, p. 92.
[2030] TF1-133, Transcript 7 July 2005, pp. 90-92.
[2031] Prosecution Final Brief, paras 1317-1318, 1889.
[2032] TF1-133, Transcript 7 July 2005, pp. 81-82.

1120. Witness TF1-133 testified that then she and an unknown number of other women who had been captured by "rebels" were taken with the rebels - including 'Cobra' and "Brigadier" Mani - to Krubola where they stayed for seven months. At Krubola, they "met" another group of rebels which included a "fighter" named 'Savage', a "rebel" named 'Komba Gbundema', and a "rebel" named 'Superman'. There were other men there, but the witness did not know their names. The men at Krubola were all "under" Komba Gbundema.[2033] The Trial Chamber is satisfied on the basis of this evidence that the rebels present at Krubola at this time were both members of the AFRC and RUF.

1121. In Krubola, the captured women cooked and "had sex" with the rebels and were forced to be their "wives". The witness stated that when a women was "betrothed" to a man, she became his "wife" which according to the witness, meant that "whoever you were with would have sex with you." The witness testified that when the rebels captured women, they would have sex with them before bringing them to where the rebels were based. When the captured women were taken to the base, they would be handed over to a person who would have sex with that woman all the time. The "bosses and stronger guys" all had wives who were captured but the subordinates were not allowed to have wives. The subordinates would be sent to the front and they would always bring back captured civilians, including women.

1122. The witness testified that in her presence the "elders" and "bosses" including 'Rambo', 'Colonel Tee' and 'Pa Mani' made a law that whoever was given a woman would be the sole owner over her and that a man should not covet his colleague's wife. "If you were caught, you will be killed". Captured children were made to work for the captured "wives" of the rebels.[2034] On cross-examination, the witness testified that the children were captured *because* older civilians wanted them to work for them.

1123. At the time that groundnuts were about to be harvested the rebels moved to Serekolia, Koinadugu District. On the way, the rebels travelled through Mongo which "was captured". The rebels that moved included Kombo Gbundema's group, 'Superman', 'Savage', 'Colonel Tee' and 'Pa Mani'. They remained in Serekolia for three months. While they were there the civilians voted for the witness to represent them. She was appointed the "Mammy Queen" by 'Pa Mani', 'Colonel Tee' and their clerk Alhaji. As the Mammy Queen, the witness would investigate captured civilians who had been mistreated and cases where husbands or wives had sex with someone else's spouse. If

[2033] TF1-133, Transcript 7 July 2005, pp. 93-95, 118
[2034] TF1-133, Transcript 7 July 2005, pp. 98-102.

a woman was found guilty of having sex with someone else's husband she could be given 200 lashes. If a man raped another man's wife, he could be killed.[2035]

1124. The Prosecution asserts that the witness's position as a "Mammy Queen" did not in any way help her or the other "wives'" 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.[2036]

1125. The Prosecution also asserts that witness TF1-133 was not discredited on cross-examination and that her evidence has not been challenged by any Defence evidence and as such, the Prosecution version of events should be accepted.[2037]

1126. The Trial Chamber is satisfied on the evidence of witness TF1-133 that women captured in Koinadugu District were subject to repeated rape by members of the AFRC/RUF; were made to labour for members of the AFRC/RUF, namely to cook, launder clothes and wash dishes; were labelled as "wives", in this context a label of possession, and placed in exclusive relationships of ownership by certain rebels; were punished with physical violence if the exclusive sexual relationship was violated; and were detained at rebel bases in Krubola and Serekolia and made to travel together with the troops; are all indicative of the deprivation of liberty and the exercise of ownership over captured women together with acts of sexual violence satisfying the *actus reus* and *mens rea* of the crime of sexual slavery.

1127. As found by the Trial Chamber, *supra,* Prosecution witness TF1-209 was raped at her mother's farm outside of Koinadugu Town by two members of the AFRC/RUF in or about August, 1998. Following this attack the rebels brought her to Koinadugu Town where over a period of three months she was repeatedly raped by 'Jabie', a member of the AFRC.[2038]

1128. In addition to these findings, the Trial Chamber also relies upon the evidence of witness TF1-209 that when she and other captured civilians were brought to Koinadugu Town, they were taken to the "MP's" office where their names were recorded by a person to whom the witness referred as 'Mongo.' The witness testified that this was done so that the captured civilians would

[2035] TF1-133, Transcript 7 July 2005, pp. 102-106.
[2036] Prosecution Final Brief, para. 1891.
[2037] Prosecution Final Brief, paras 1319, 1890, 1897.
[2038] Factual Findings, Outrages on Personal Dignity, paras 989-1011, *supra.*

not go missing. The witness described 'Mongo' as dressed in combat and stated that he was the boss of the Military Police.[2039]

1129. The witness testified that following this registration process she was taken by the "person" who captured her to 'Jabie's house where she cooked and laundered for him. The witness testified that he turned her into his "wife" which she explained meant that he would have sex with the witness whenever he felt like it.[2040] The witness also testified that with the exception of excursions during the day to farms in the bush, she stayed in the same house with 'Jabie' in Koinadugu Town for three months until he was killed.[2041]

1130. The Trial Chamber is satisfied that the witness's testimony of her forcible capture; the registration of her name by 'Mongo' when she arrived in Koinadugu Town and her perception that this was done to prevent her and other captured civilians from "going missing"; the extraction of her forced labour by 'Jabie', namely cooking and laundering; the use of the term 'wife', in this context a label of possession; and her detention in the same house as 'Jabie' is indicative of the deprivation of her liberty and the exercise of ownership over her person which together with acts of sexual violence, namely, 'Jabie's repeated rape of the witness found previously by the Trial Chamber satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery.

1131. The evidence of Prosecution witnesses TF1-094, TF1-133, and TF1-209 is generally supported by that of Defence witnesses DAB-156 and DAB-079. As found by the Trial Chamber with regards to Count 6, *supra*, Defence witness DAB-156 was raped by 'Junior Lion' in Kabala sometime after the AFRC was overthrown in Freetown in February 1998 but before the rainy season.[2042] The witness also testified that he took her as his "wife" by force and that he abducted her in Yuromia Town, near Foday Street.[2043]

1132. Witness DAB-079 testified that he did not receive any information about sexual violence in Kabala Town by the SLAs, although there were rumours of 'bush wives' in the interior. The witness was part of a CDF information network of 1000-1700 people and was receiving weekly reports from Kabala, Koinadugu, Yifin, Geberefe and other locations. [2044]

(i) Findings

[2039] TF1-209, Transcript 7 July 2006, pp. 37-38.
[2040] TF1-209, Transcript 7 July 2006, p. 38.
[2041] TF1-209, Transcript 7 July 2006, p. 74.
[2042] Factual Findings, Rape, para. 986.
[2043] DAB-156, Transcript 29 September 2006, pp. 77-78.
[2044] DAB-079, Transcript 28 July 2006, pp. 9-10,13-14, 16-17, 27, 34-36, 39-42.

1133. By virtue of the foregoing the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Koinadugu District.

(c) Bombali District (1 May 1998 – 30 November 1998)

1134. The Indictment alleges that between 1 May 1998 and 30 November 1998 an unknown number of women and girls were abducted and used as sex slaves by members of the AFRC/RUF.[2045]

1135. The Prosecution has conceded that it has not led evidence in respect of Mandaha.[2046]

1136. In coming to its findings in Bombali District, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-334, TF1-094 and TF1-033 and Defence witness DAB-095.

1137. Witness TF1-334 testified that he and other "soldiers" under the command of "Woyoh"[2047] captured approximately 35 civilian women during the attack on Karina in June of 1998.[2048] The women were initially stripped naked but were later permitted to dress.[2049] When the soldiers left Karina they stopped at a temporary base in the jungle. There, Woyoh handed the women over to 'Five-Five' who was the Chief of Staff.[2050] 'Five-Five' distributed the women among the soldiers under his command by requiring them to "sign for" a woman. 'Five-Five' stated that if there were any problems the soldiers should immediately report directly to him. He also stated that if the soldiers "disturbed" the women, they would be removed from the soldier's control.[2051] The women were "wives to the soldiers"[2052] and they remained with their "husbands" until the soldiers invaded Freetown.[2053]

1138. Witness TF1-334 testified that the AFRC troops arrived in Rosos at the beginning of the rainy season in 1998 and stayed there for three months, leaving in September.[2054] 'Five-Five' was in charge of overseeing that the captured women were trained for combat.[2055] 'Five-Five' continued to regulate the "marriages" of the women abducted in Karina at Camp Rosos. 'Gullit' appointed a "Mammy Queen" – a woman at the camp who looked after women's affairs, including pregnancy,

[2045] Indictment, para. 54.
[2046] Rule 98 Decision, para. 161.
[2047] TF1-334, Transcript 23 May 2005, p. 72.
[2048] TF1-334, Transcript 23 May 2005, pp. 63, 72.
[2049] TF1-334, Transcript 23 May 2005, pp. 72-73.
[2050] TF1-334, Transcript 23 May 2005, p. 73.
[2051] TF1-334, Transcript 23 May 2005, pp. 76-77.
[2052] TF1-334, Transcript 23 May 2005, p. 77.
[2053] TF1-334, Transcript 24 May 2005, p. 61.
[2054] TF1-334, Transcript 23 May 2005, p. 103.
[2055] TF1-334, Transcript 24 May 2005, pp. 23-24, 60.

birth and sickness.[2056] 'Five-Five' issued a "disciplinary order" regulating the conduct of women which was explained to supervisors in the camp and to the Mammy Queen. According to this order, women who were unfaithful to their husbands should be punished.[2057] Soldiers and their "wives" reported problems directly to 'Five-Five' and if 'Five-Five' determined that the woman deserved punishment this could be delegated to the Mammy Queen. Women found by 'Five-Five' to have misbehaved could be beaten or given lashes. Women were also locked for long periods of time in a box meant for transporting rice.[2058] In one instance, witness TF1-334 observed a Staff Sergeant named "Junior" aka "General Bagehgeh" report to 'Five-Five' that he suspected his "wife" of misbehaving. 'Five-Five' called the woman before him and found her guilty. He ordered that she be sent to the Mammy Queen, be given a dozen lashes and be locked in the box. The witness escorted her to the box.[2059]

1139. The Trial Chamber considers the evidence of Prosecution witness TF1-334 together with that of Prosecution witness TF1-033 who testified to having been taken along with AFRC troops to Rosos during the rainy season in 1998.[2060] He testified that rape was widespread throughout the time he was in captivity with the AFRC troops and that the only thing done about sexual violence committed by ARFC troops by "the commanders" occurred at Rosos. The witness testified that according to the "jungle justice" rules at that time, any fighter who raped another fighter's abducted and forcefully married wife would be put to death. The witness specifically recalled an incident in which Alhaji Kamanda alias 'Gunboot' killed an AFRC fighter for raping another fighter's forcefully abducted and married wife.[2061]

1140. The evidence of Prosecution witnesses TF1-334 and TF1-033 is supported by that of Prosecution witness TF1-094, found by the Trial Chamber to have been subject to sexual slavery in Koinadugu District, who also testified that during the period of her sexual slavery, she was brought by the troops to Rosos.[2062]

1141. The Trial Chamber is satisfied that the testimony of Prosecution witnesses TF1-334, TF1-033 and TF1-094 that women captured by the AFRC/RUF were distributed to soldiers to be their "wives"; that captured women were brought to Rosos where they were subject to physical and

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[2056] TF1-334, Transcript 24 May 2005, p. 62.
[2057] TF1-334, Transcript 24 May 2005, pp. 65-67.
[2058] TF1-334, Transcript 24 May 2005, pp. 63-64.
[2059] TF1-334, Transcript 24 May 2005, pp. 67-69. *See* discussion on credibility of this witness: Role of Accused, paras 364-367.
[2060] TF1-033, Transcript 11 July 2005, p. 22.
[2061] TF1-033, Transcript 12 July 2005, p. 9. *See* discussion on credibility of this witness: Role of Accused, paras 364-367.

psychological violence as a form of punishment; and that the women were detained with their "husbands" until the soldiers invaded Freetown is indicative of the deprivation of the captured women's liberty and the exercise of ownership over her person which taken together with acts of sexual violence committed against them, namely, rape at the hands of their rebel "husbands" or at the hands of other fighters satisfies the *actus reus* and *mens rea* elements of the crime of sexual slavery. The Trial Chamber finds further that this was a practice tolerated and regulated by the AFRC/RUF commanders.

1142. Prosecution witness TF1-334 also testified that in or about September 1998, after the troops left Rosos, SAJ Musa arrived in Major Eddie Town. During a meeting with the commanders there, he said that the troops would not be able to secure the women so the women should leave. The women did not leave.[2063]

1143. This evidence is generally supported by that of Defence witness DAB-095 who testified that he was in Colonel Eddie Town when it was used as a military camp for the SLAs under SAJ Musa. The witness was present during a muster parade held by SAJ Musa in Eddie Town when SAJ Musa gave an order that the SLAs should not attack civilians. Witness did not know about a Mammy Queen at Eddie Town. Soldiers were not allowed to rape civilians.[2064]

1144. The Prosecution argues that defence witnesses who gave insider type evidence such as DAB-095 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.[2065] The Prosecution considers evidence given by such witnesses that they did not hear of any crimes, such as rape, being committed by the SLAs during the retreat from Freetown to be manifestly unreliable and untrue.[2066]

(i) Findings

1145. By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Bombali District.

[2062] Factual Findings, Outrages on Personal Dignity, paras 1078-1083.
[2063] TF1-334, Transcript 13 June 2005, p. 27.
[2064] DAB-095, Transcript 28 September 2006, pp. 49-54.
[2065] Prosecution Final Brief, para. 1569.
[2066] Prosecution Final Brief, para. 1573.

(d) Kailahun (At all times relevant to the Indictment)

1146. The Indictment alleges that at all times relevant to the Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone and brought to AFRC/RUF camps in the District and used as sex slaves.[2067]

1147. No specific concessions with regards to locations in Kailahun were found to have been made by the Prosecution at the Motion for Acquittal stage.[2068]

1148. In making its findings in relation to Kailahun, the Trial Chamber has examined the evidence of Prosecution witnesses TF1-045 who testified that during the ECOMOG intervention in Freetown in February 1998, he was in Kenema.[2069] "Operation Pay Yourself" was declared by Sam Bockarie during which time civilians were abducted by the troops and taken to Daru.[2070] The witness moved with the troops to Daru, where the next morning, he met his niece Aminata who was one of the captured civilians. Aminata told the witness that an "RUF" named Ibrahim captured her, raped her and told her she should be his "wife". Aminata was a young teenager at the time.[2071] The Trial Chamber finds on the basis of this evidence that the crime of sexual slavery is not proven as the evidence insufficiently establishes the exercise of ownership by the perpetrator over the victim.

(i) Findings

1149. By virtue of the foregoing the Trial Chamber is not satisfied that the elements in relation to sexual slavery are established in relation to Kailahun District.

(e) Freetown and Western Area (6 January 1999 – 28 February 1999)

1150. The Indictment alleges that between 6 January 1999 and 28 February 1999 throughout Freetown and the Western Area members of the AFRC/RUF abducted hundreds of women and girls and used them as sex slaves.[2072]

1151. No specific concessions with regards to locations in Freetown and the Western Area were found to have been made by the Prosecution at the Motion for Acquittal stage.[2073]

[2067] Indictment para. 55.
[2068] Rule 98 Decision, para. 161.
[2069] TF1-045, Transcript 19 July 2004, p. 78.
[2070] TF1-045, Transcript 19 July 2004, pp. 79-83.
[2071] TF1-045, Transcript 19 July 2004, pp. 84-86.
[2072] Indictment, para. 56.

1152. In coming to its findings in relation to Freetown and the Western Area, the Trial Chamber relies on the evidence of Prosecution witnesses TF1-023, TF1-334, TF1-094 and Defence witnesses DBK-113 and DBK-126.

1153. Prosecution witness TF1-023 testified that she was 16[2074] when the AFRC invaded Freetown in January 1999. She and her family tried to hide; however, she was captured by "rebels"[2075] in Calaba Town on 22 January 1999.[2076] She was taken by the rebels first to Allen Town and then back to Calaba Town.[2077] At Calaba town, she was given to an AFRC rebel,[2078] hereinafter "the Captain" to be his "wife".[2079] The Captain told the witness he would not take her as his "wife" as he had already been given another woman – the witness's cousin – and could not take care of two women at the same time.[2080] Instead, the Captain handed the witness over to a known AFRC Colonel,[2081] hereinafter "Colonel X", who took her as his "wife".[2082] There was no ceremony and he did not ask her consent.[2083] The witness was afraid. That night, Colonel X came into the room where the witness was instructed to sleep. He told her to undress, threatened her and had sex with her without her consent. Prior to this incident, the witness was a virgin.[2084]

1154. After that night, the witness was taken along with the rebels as they attempted to evade ECOMOG attacks, travelling to Allen Town, Waterloo, Benguema, Lumpa and Four Mile.[2085] At Benguema, the witness saw a man whom the soldiers[2086] said was the senior commander, Brigadier 'Gullit'.[2087] At Four Mile the witness spent three weeks with Colonel X.[2088] During this time Colonel X and the witness lived together and he continued to have sex with her frequently. He did not ask her consent when he had sex with her; he said she was his "wife". Colonel X asked the witness to cook for him, but she did not because she did not know how.[2089] The witness felt there was no way for her to escape from Colonel X.[2090] She was unfamiliar with the area in which she

[2073] Rule 98 Decision, para. 161.
[2074] TF1-023, Transcript 9 March 2005, p. 32.
[2075] TF1-023, Transcript 9 March 2005, p. 30.
[2076] TF1-023, Transcript 9 March 2005, pp. 29-30; Transcript 07 November 2005, p. 12.
[2077] TF1-023, Transcript 9 March 2005, pp. 33, 37; Exhibit P-1.Name under seal.
[2078] TF1-023, Transcript 10 March 2005, p. 25.
[2079] TF1-023, Transcript 9 March 2005, p. 45.
[2080] TF1-023, Transcript 9 March 2005, pp. 44-45.
[2081] TF1-023, Transcript 10 March 2005, p. 25; name on exhibit P-2 [under seal].
[2082] TF1-023, Transcript 9 March 2005, p. 46.
[2083] TF1-023, Transcript 9 March 2005, p. 46.
[2084] TF1-023, Transcript 9 March 2005, pp. 46-47.
[2085] All locations in Freetown/Western Area; TF1-023, Transcript 9 March 2005, pp. 48-49.
[2086] TF1-023, Transcript 10 March 2005, p. 30.
[2087] TF1-023, Transcript 10 March 2005, pp. 26-30.
[2088] TF1-023, Transcript 9 March 2005, p. 49.
[2089] TF1-023, Transcript 9 March 2005, pp. 49-51.
[2090] TF1-023, Transcript 9 March 2005, p. 51.

was being held[2091] and Colonel X sent an armed escort with her wherever she went.[2092] She was afraid.[2093] There were approximately 400 armed rebels at Four Mile and the witness knew that those who tried to escape were caught and beaten by the rebels.[2094] The witness testified that Colonel X told her that the senior commander at Four Mile was Brigadier 'Bazzy'.[2095] She would see Brigadier 'Bazzy' regularly when he would visit Colonel X.[2096]

1155. There were other women given to soldiers as wives in Four Mile. In Lumpa, for example, the witness knew ten other women who had been captured and given as "wives" to AFRC rebels.[2097] Some were given to lieutenants and some were given to ordinary soldiers.[2098] The Prosecution asserts that this evidence was not challenged in cross-examination.[2099]

1156. As the "wife" of a commander, the witness was accorded certain privileges. The Trial Chamber notes that in chief the witness stated that she was not forced to do "anything". She clarified on cross-examination that she was not forced to do any work; she was not forced to cook or clean, for example.[2100] The witness testified that "people of lower ranks" respected her and deferentially called her "De Mammy" because of the Colonel.[2101] The Prosecution submits that 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.[2102] The Trial Chamber agrees with this submission. The fact that some individual abductees were treated less harshly than others does not, in our opinion, detract from the fact that they were forcibly taken and subjected to sexual slavery.

1157. Colonel X left the witness in Four Mile and went to Makeni. In his absence, Colonel X left her in the care of another AFRC captain,[2103] hereinafter "Captain Y", whom the witness accepted on cross-examination tried to look after her and to ensure that she did not come to any harm.[2104] The witness travelled with Captain Y and the rebels to Mile 38, Port Loko District and then to

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[2091] TF1-023, Transcript 9 March 2005, p. 51.
[2092] TF1-023, Transcript 9 March 2005, pp. 51-53; Transcript 10 March 2005, p. 41.
[2093] TF1-023, Transcript 9 March 2005, p. 53.
[2094] TF1-023, Transcript 9 March 2005, pp. 51-53.
[2095] TF1-023, Transcript 07 November 2005, pp. 27, 34.
[2096] TF1-023, Transcript 10 March 2005, pp. 32-33; TF1-023, Transcript 07 November 2005, p. 27.
[2097] TF1-023, Transcript 9 March 2005, p. 54; Transcript 10 March 2005, p. 24.
[2098] TF1-023, Transcript 9 March 2005, p. 55.
[2099] Prosecution Final Brief, para. 1902.
[2100] TF1-023, Transcript 9 March 2005, p. 57; Transcript 11 November 2005, p. 13.
[2101] TF1-023, Transcript 9 March 2005, pp. 57-58.
[2102] Prosecution Final Brief, para. 1900.
[2103] TF1-023, Transcript 9 March 2005, p. 59; TF1-023, Transcript 10 March 2005, p. 26 name on exhibit P-3.
[2104] TF1-023, Transcript 07 November 2005, p. 13.

Magbeni[2105] where later, in August of 1999, the witness was able to escape. The witness was in the custody of Captain Y for approximately five months. During this time, Colonel X did not return.[2106] The witness saw 'Bazzy' several times in Mile 38.[2107] 'Bazzy' was the overall commander in Magbeni.[2108] In June or July, the witness also saw 'Gullit' in Magbeni.[2109]

1158. The Prosecution submits that the evidence of the witness remained consistent and was unsuccessfully challenged in cross-examination.[2110]

1159. The Trial Chamber is satisfied that the witness's testimony of her forcible capture; the use of the term 'wife', in this context a label of possession; her detention with the troops as they travelled through the Western Area; her detention with Colonel X for three weeks in Four Mile at which time she felt that she could not escape for fear of being beaten or killed by him; and her subsequent detention by Colonel X and the other rebels for a period of several months, are all indicative of the deprivation of her liberty and the exercise of ownership over her person which, together with acts of sexual violence committed against her, namely 'Colonel X's repeated rape of the witness, satisfies the *actus reus* and *mens rea* of the crime of sexual slavery.

1160. The Trial Chamber notes that the witness testified that as the "wife" of Colonel X she was accorded certain benefits, for example, she was not forced to cook or clean and was deferentially called "De Mammy". The Trial Chamber is of the opinion that this is a relative benefit only and does not in any way undermine the absolute seriousness of the crime committed against the witness.

1161. The evidence of Prosecution witness TF1-023 is generally supported by that of Prosecution witness TF1-334 who testified that after the invasion of Freetown on 6 January 1999, a number of soldiers who did not "have women" before had new "wives".[2111] The soldiers gave the women food and clothing and the women cooked for the soldiers.[2112]

1162. Prosecution witness TF1-334 testified that civilians abducted during the retreat from Freetown[2113] were brought with the rebels to Benguema where the rebels were based for approximately one month.[2114] There were approximately 300 civilians at Benguema – men, women

[2105] TF1-023, Transcript 10 March 2005, pp. 34-35.
[2106] TF1-023, Transcript 10 March 2005, p. 24.
[2107] TF1-023, Transcript 07 November 2005, pp. 33, 34.
[2108] TF1-023, Transcript 07 November 2005, p. 34.
[2109] TF1-023, Transcript 07 November 2005, pp. 14-16.
[2110] Prosecution Final Brief, para. 1901, 1899.
[2111] TF1-334, Transcript 15 June 2005, pp. 5, 8.
[2112] TF1-334, Transcript 15 June 2005, pp. 5-8.
[2113] TF1-334, 14 June 2005, pp. 78, 80, 114-117.
[2114] TF1-334, 14 June 2005, pp. 105, 114-117.

and children.[2115] During this time, the civilians that were abducted were "well-secured" meaning that they could not escape.[2116] Most of the young girls who were abducted from Freetown became the "wives" of "various commanders" meaning that they had sex with the commanders.[2117]

1163. In the Kissy area, where the witness knew some of the captured girls, they told the witness "what they would do with the men who captured them"; sometimes the witness would "see with my own eyes".[2118] The "wives" were also required to help with the cooking.[2119]

1164. Witness TF1-334 testified that "families", which the witness explained refers to the captured civilians travelling with the troops, travelled with the troops from Waterloo to Newton where they all stayed for about a month. The only civilians with the "troops" at Waterloo and Newton were those who arrived with them.[2120] The "women" were helping with the cooking and the "girls" were sleeping with the "commanders". The "commanders" would call them their "wives".[2121] 'Five-Five' was responsible for the women and girls in the camp at Newton. The soldiers would report problems with the women to 'Five-Five'.[2122]

1165. The Trial Chamber is of the opinion that witness TF1-334's testimony that civilian women were captured from Freetown and brought with the retreating troops to the Western Area, were held in Benguema for approximately one month and were taken to Kissy, Waterloo and Newton; that during their detention in Benguema the civilians were well secured so they could not escape; that young girls became the "wives" of various commanders; and that the "wives" were required to cook for the soldiers is credible and is indicative of the deprivation of the captured women's liberty and the exercise of ownership over them by members of the AFRC/RUF. The Trial Chamber is also satisfied that acts of sexual violence described by the witness, namely that the "wives" had sex with the various commanders, were committed against the captured women. The Trial Chamber infers from the environment of violence and coercion that the women did not consent to these sexual acts. The Trial Chamber is thus of the opinion that the *actus reus* and *mens rea* elements of the crime of sexual slavery are satisfied on the basis of this evidence.

1166. The Trial Chamber also relies on the evidence of Prosecution witness TF1-094, found by the Trial Chamber to have been subject to sexual slavery in Koinadugu District, that during the period

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[2115] Witness TF1-334, 14 June 2005, p. 116
[2116] Witness TF1-334, 14 June 2005, p. 119.
[2117] Witness TF1-334, 14 June 2005, pp. 120-121.
[2118] Witness TF1-334, 14 June 2005, p. 121.
[2119] Witness TF1-334, 14 June 2005, p. 121.
[2120] Witness TF1-334, Transcript 15 June 2005, pp. 13-14.
[2121] Witness TF1-334, Transcript 15 June 2005, p. 14.

of her sexual slavery, she was brought by the troops to Freetown during the AFRC invasion of 6 January 1999 and was present during the retreat through the Western Area.[2123]

1167. Defence witness DBK-113 testified that he was with the troops during the invasion of Freetown in January, 1999.[2124] He testified that after SAJ Musa died, he remained with the troops in Hastings for three to four days. From Hastings, the witness passed through Allen Town, Wellington and Kissi and, on January 6th, he came as far as Hill Cot Road. The witness cannot recall that a "Mammy Queen" was appointed during the move to Freetown.[2125] The Trial Chamber finds the evidence of witness DBK-113 to be credible and consistent. However, the fact that the witness could not recall a "Mammy Queen" does not raise a reasonable doubt with regards to the evidence of Prosecution witnesses TF1-023, TF1-094 and TF1-334 whose evidence indicates numerous incidents of sexual slavery following the 6 January 1999 invasion.

1168. The Trial Chamber has also carefully examined the evidence of witness DBK-126 who testified that when the AFRC entered Freetown, all the soldiers were with their wives. Only the detainees did not have wives.[2126] The Trial Chamber finds that in the face of overwhelming evidence to the contrary this statement is not credible.

1169. Witness DBK-126 also testified that she had a "boyfriend" who was a commander of a mortar platoon. The witness testified that from the time she and her "boyfriend" were in Kono at Masingbi Road, he had repeatedly proposed to her. He went to 'Junior Lion' whom the witness referred to as "the Chief"[2127] and told him he wanted the witness. 'Junior Lion' told the witness "this is your husband." She agreed because she had no option. They have a son together. After they left the bush, the witness told her "boyfriend" that she did not want him anymore.[2128] In Freetown, the witness was called a "rebel wife", but she testified that she does not consider herself a "rebel wife", as she was with the SLA and not the RUF. Although the witness also stated she had not heard the term "forced marriage" the Trial Chamber is satisfied that her evidence shows the *actus reus* and *mens rea* of sexual slavery.[2129]

(i) Findings

[2122] Witness TF1-334, Transcript 15 June 2005, p. 15-16.
[2123] Factual Findings, Outrages on Personal Dignity, paras 1078-1083.
[2124] Witness DBK-113, Transcript 13 October 2006, p. 46.
[2125] Witness DBK-113, Transcript 13 October 2006, pp. 38-40.
[2126] Witness DBK-126, Transcript 12 October 2006, pp. 62-64.
[2127] Witness DBK-126, Transcript 11 October 2006, pp. 45-47.
[2128] Witness DBK-126, Transcript 12 October 2006, pp. 62-64.
[2129] Witness DBK-126, Transcript 12 October 2006, pp. 80-81.

1170. By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Freetown and the Western Area.

(f) Port Loko District (February, 1999 – April, 1999)

1171. The Indictment alleges that about the month of February 1999, AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between February 1999 and April 1999 an unknown number of women and girls in various locations in the District were used as sex slaves by members of the AFRC/RUF.[2130]

1172. No specific concessions with regards to locations in Port Loko District were found to have been made by the Prosecution at the Motion for Acquittal stage.[2131]

1173. In coming to its findings in Port Loko District, the Trial Chamber relies upon the evidence of Prosecution witnesses TF1-282 and TF1-285 and Defence witness DAB-156.

1174. Witness TF1-282 testified that during the dry season in early 1999, "rebels"[2132] entered her village in Port Loko District.[2133] The Trial Chamber notes that the witness testified in chief that the time period was "early in 1999" and in the "dry season".[2134] On cross-examination the witness accepted that the correct month was January but she could not say if it was towards the beginning or end of January.[2135]

1175. The witness hid in an uncultivated area outside of the village. As she was hiding, the "rebels", whom the witness described as some wearing civilian attire, some in combat, and some with guns, came a second time and captured the witness along with other civilians hiding in the uncultivated area. Witness TF1-282 was 14 at the time. The Trial Chamber notes that the witness stated that she was born in 1985 but on cross-examination testified that she does not know how old she was when she was captured.[2136] The Trial Chamber accepts that the witness is innumerate and finds that this does not undermine her credibility.

[2130] Indictment, para. 57.
[2131] Rule 98 Decision, para. 161.
[2132] Witness TF1-282, Transcript 13 April 2005, p. 7.
[2133] Witness TF1-282, Transcript 13 April 2005, pp. 5-7, 28-30.
[2134] Witness TF1-282, Transcript 13 April 2005, pp. 5, 7.
[2135] Witness TF1-282, Transcript 13 April 2005, pp. 29, 30.
[2136] Witness TF1-282, Transcript 13 April 2005, pp. 4, 27.

1176. The witness testified that the civilians were made to sit on the ground and were surrounded by the rebels. The witness watched as an armed rebel selected a woman from the group and led her away to another area. The rebel brought the woman back a short while later and then selected the witness and led her along the same route where a man the witness referred to as '55' and another armed rebel were waiting. The witness testified that she knew the man was called '55' because the rebel who brought her to the area called the name '55' and nodded at him. '55' told the witness to undress and to lie down and then he raped her. After the rape the witness was light-headed and was unable to get up for some time. '55' told her to stand up and brought her back to the group of civilians.[2137]

1177. Witness TF1-282 testified that she later heard '55' giving orders to fire and to move to Sumbuya, although on cross-examination she admitted that she did not hear '55' give these orders directly.[2138] The witness also stated that she was later told by her rebel husband, whose name was given in closed session and hereinafter referred to as 'Rebel A',[2139] that '55' was the "big man" in Sumbuya and gave orders to loot.[2140] On cross-examination the witness stated that she only saw '55' once, when he raped her, and could not describe him.[2141]

1178. The Kanu Defence submits that witness TF1-282 is highly unreliable. In cross-examination, the witness was presented with a prior statement in which she described the person 'Five-Five' who raped her as "tall, slim, and fair in complexion, which means not too black."[2142] When presented with this account of her description of 'Five-Five' the witness recanted stating that she was not able to describe the man who raped her, as she only saw him once, and that she did not describe him as tall, slim and fair in complexion.[2143] The Trial Chamber finds that the witness's identification evidence is therefore inconsistent and cannot be relied upon. The Trial Chamber makes no findings on the basis of this evidence with regards to the Accused Kanu.

1179. After she was raped, the rebels, some of whom the witness described as wearing civilian attire and some of whom were in combat and who had guns took the witness to Sumbuya, a two day march. On the way, 'Rebel A' told the witness that he "wanted" her. When they arrived at Sumbuya, the named rebel took the witness to a house where he raped her. After that, the named

[2137] Witness TF1-282, Transcript 13 April 2005, pp. 5-15; 20-21; Transcript 14 April 2005, pp. 4-5; 32-35.
[2138] Witness TF1-282, Transcript 13 April 2005, p. 15; Transcript 14 April 2005, pp. 4-5
[2139] Name given in closed session: Transcript 13 April 2005, p. 25.
[2140] Witness TF1-282, Transcript 13 April 2005, pp. 20-21.
[2141] Witness TF1-282, Transcript 13 April 2005, pp. 32-35.
[2142] Witness TF1-282, Transcript 14 April 2005, pp. 3-5.
[2143] Witness TF1-282, Transcript 14 April 2005, pp. 3-5.

rebel asked the witness to be his "wife". The witness testified that she said "yes" because saying no in the circumstances would make no difference and she was afraid she might have been killed.

1180. In cross-examination, a prior statement of witness TF1-282 was put to her in which she 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 testified that she could not remember saying this. It is the case of the Prosecution that, even if she had said so, it did not change the situation of the witness being in sexual slavery or forced 'marriage'.[2144] The Trial Chamber agrees that such retroactive action does not diminish the seriousness of the acts.

1181. The witness testified that the named rebel continued to rape her everyday.[2145] The witness and the named rebel lived in the house with two other rebels; all three rebels were armed. There were also many other rebels in Sumbuya. The witness was afraid of the named rebel and did not try to escape for fear of what he might do to her. The witness was kept in Sumbuya by the named rebel for less than a month.[2146] On cross examination, the witness stated that she did not know if she was with the rebels in Sumbuya during February.[2147]

1182. The Brima Defence asserts that the testimony of witness TF1-282 is not reliable as she testified on cross that by giving evidence at the Special Court her lifestyle had changed for the better.[2148] The Trial Chamber does not share this opinion. Any benefit received by the witness related to her short-term accommodation during the Trial and in no way changes the witness's overall lifestyle.

1183. The Trial Chamber is satisfied that the witness's testimony of her forcible capture; her detention in a house with her rebel husband and two other rebels for under a month; her feeling that she could not escape for fear of what her rebel husband might do to her; and the use of the term 'wife', in this context a label of possession; is indicative of the deprivation of her liberty and the exercise of ownership over her person which, together with acts of sexual violence committed against her, namely repeated rapes committed by her rebel husband, satisfies the *actus reus* and *mens rea* of the crime of sexual slavery.

[2144] Prosecution Final Brief, para. 1910.
[2145] TF1-282, Transcript 13 April 2005, pp. 15-18; Transcript 14 April 2005, p. 39.
[2146] TF1-282, Transcript 13 April 2005, pp. 18-19.
[2147] TF1-282, Transcript 13 April 2005, p. 30.
[2148] Brima Defence Final Brief, para. 188.

1184. The Trial Chamber also relies on the evidence of Prosecution witness TF1-085, examined by the Trial Chamber, *supra*,[2149] that she was abducted from Wellington, Western Area by persons found by the Chamber to belong to the AFRC/RUF sometime shortly after the 6th of January 1999. She was forced by the rebels to carry a load and taken to Allen Town where a rebel, present at the time of the witness's abduction and whose name was given to the Court in closed session [hereinafter "named rebel"], raped her and told her she was his 'wife.' The witness was taken with the troops during the retreat from Freetown to Waterloo and then Masiaka, Port Loko District, where the named rebel continued to repeatedly rape her. The witness became pregnant and miscarried twice as a result of the rapes. In Masiaka, the named rebel "married" the witness in a ceremony, although the Trial Chamber has held that given the environment of coercion, there could be no valid consent on the part of the witness and therefore, this "marriage" could not have been legal. The witness was not forced to do any work for the named rebel, but she was detained against her will for several months and punished and threatened with death by the named rebel when she tried to escape.

1185. The Trial Chamber is satisfied on the basis of the evidence above that the named rebel exercised ownership over the witness and committed acts of sexual violence against her. As such, the Trial Chamber is satisfied that the *actus reus* and *mens rea* of the crime of sexual slavery are satisfied with regards to the evidence of witness TF1-085.

1186. The Trial Chamber also notes the evidence of Defence witness DAB-156 who testified that 'Junior Lion' took her as his "wife" by force in Kabala District after the AFRC was overthrown in Freetown in February 1998, but before the rainy season and that he brought her to Kurubonla, Port Loko District some time after that. The witness testified that at Kurubonla, 'Junior Lion' released the witness and a person the witness referred to as 'Simon' took her as his second wife. The witness testified that he was good to her and that after Simon and 'Junior Lion' moved to another town Simon arranged that she would stay with his brother, a man known to the witness as 'Foyo'.[2150] The Trial Chamber is not satisfied on the basis of this evidence that sexual slavery is satisfied as there is no indication of the elements of ownership or sexual violence. The Trial Chamber is also of the opinion that this evidence indicates that the witness may have received some benefit from this particular arrangement. However, the Trial Chamber is not willing to infer that this was also the case for other witnesses who have testified to sexual slavery nor, in any event, that this relative

[2149] Factual Findings, Outrages on Personal Dignity, paras 1087-1099.
[2150] Witness DAB-156, Transcript 29 September 2006, pp. 39-40, 42-49.

benefit would create doubt as to the seriousness of the crime of sexual slavery where it has been found in relation to the evidence of other witnesses.

(i) Findings

1187. By virtue of the foregoing, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied that the elements in relation to sexual slavery are established in relation to Port Loko District.

5. Findings

1188. By virtue of the foregoing and of the Trial Chamber's findings with regards to Count 6 and the chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 9 (Outrages on Personal Dignity) are established in Kono, Koinadugu, Bombali, Freetown and Western Area and Port Loko Districts.

D. Physical Violence

1. Allegations and Submissions

1189. The Indictment alleges that "[w]idespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out"[2151] by members of the AFRC/RUF in various locations in the territory of Sierra Leone including Kono District between about 14 February 1998 to 30 June 1998; Koinadugu District between about 14 February 1998 and 30 September 1998; Bombali District between about 1 May 1998 and 31 [sic] November 1998; Freetown and the Western Area between 6 January 1999 and 28 February 1999; and Port Loko District between February and April 1999.[2152]

1190. Specifically in relation to Kenema District the Indictment alleges that between about 25 May 1997 and about 19 February 1998 members of the AFRC/RUF carried out beatings and ill treatment of a number of civilians that were in custody.[2153]

1191. The Parties have not made general submissions applicable to all districts in which mutilations are alleged to have occurred. Insofar as the Parties challenge the testimony of witnesses with regard to specific incidents of physical violence the Trial Chamber has discussed these submissions as they arise in the evidence below.

2. Evidence and Deliberations

(a) Kenema District (25 May 1997 - 19 February 1998)

1192. The Indictment alleges that "[b]etween 25 May 1997 and about 19 February 1998, in locations in Kenema District, including Kenema town, members of the AFRC/RUF carried out beatings and ill-treatment of a number of civilians who were in custody".[2154]

1193. In reaching the following findings of fact, the Trial Chamber relied on the testimony of Prosecution witness TF1-122, and exhibit P-24.

[2151] Indictment, para. 58.
[2152] Indictment, paras 59, 61-64.
[2153] Indictment, para. 60.
[2154] Indictment, para. 60.

1194. At the time of the AFRC coup on 25 May 1997, CDF controlled Kenema District.[2155] Following the coup, AFRC/RUF troops under the command of Sam Bockarie took over control of Kenema District.[2156]

(i) Kenema Town

1195. AFRC/RUF troops were stationed in Kenema Town between May 1997 and February 1998.[2157] Witness TF1-122 testified that AFRC/RUF soldiers used to "set a trap" on civilians with the national flag. The witness explained that the flag of Sierra Leone used to be raised every morning at 6am outside the AFRC/RUF Secretariat building at 14 Hangh Road. The law stated that civilians had to stand still while the flag was being raised. However, sometimes the AFRC/RUF would raise the flag at different times of the morning. The AFRC/RUF soldiers would then arrest civilians who were unaware of the changed time and were walking in the street. They took these individuals to their Secretariat and took away any possessions that they had on them.[2158] If a person resisted, she or he would be beaten and confined. The witness testified that this happened "continuously".[2159] On one such occasion the witness tried to prevent the soldiers from arresting a woman but the soldiers then began beating him with their belts.[2160]

1196. In early February 1998, Sam Bockarie arrested the chairman of Kenema Town Council, B.S. Massaquoi; Brima Kpaka, a prominent business man; Andrew Quee, a civil servant and about four others on the grounds that they were "Kamajor supporters".[2161] These individuals were initially detained at the AFRC Secretariat in Kenema Town.[2162] In the presence of both Sam Bockarie and the man in charge of the local AFRC Secretariat, the detainees were made to lie on the floor with tied hands to the back. They were assaulted, as a result of which B.S. Massaquoi had a swollen face, Brima Kpaka had an injury above his eye and the others had bruises.[2163] They were kept at the AFRC Secretariat building for three days.[2164] After handing them over to the police,[2165] AFRC/RUF

[2155] TF1-062, Transcript 27 June 2005, p. 6.
[2156] TF1-062, Transcript 27 June 2005, pp. 9, 15, 42, 53; TF1-045, Transcript 19 July 2005, pp. 32, 79; George Johnson, Transcript 19 September 2005, p. 55; According to TF1-122 the Commander of the AFRC/RUF troops in Kenema Town was Secretary of State East, Eddy Kanneh. Sam Bockarie was in charge of the RUF. His sub-commanders were Gibril Massaquoi and Morris Kallon. Other sub-commanders were 'Akim' and Issa Sesay.
[2157] TF1-122, Transcript 24 June 2005, p. 7.
[2158] TF1-122, Transcript 24 June 2005, pp. 10-12.
[2159] TF1-122, Transcript 24 June 2005, pp. 12.
[2160] TF1-122, Transcript 24 June 2005, p. 13.
[2161] TF1-122, Transcript 24 June 2005, pp. 35-37.
[2162] TF1-122, Transcript 24 June 2005, p. 36.
[2163] TF1-122, Transcript 24 June 2005, pp. 36-37.
[2164] TF1-122, Transcript 24 June 2005, p. 38.
[2165] TF1-122, Transcript 24 June 2005, pp. 41-42; Exhibit P-24, "Kenema Police Diary", p. 112, serial no. 46 (dated 28 January 1998), p. 00008552.

troops rearrested them saying that they were to be taken to SOS East Brigade Headquarters.[2166] The AFRC/RUF troops beat and kicked B.S. Massaquoi.[2167] Subsequently, B.S. Massaquoi, Andrew Quee and the four other individuals were all killed.[2168]

(ii) Finding

1197. In light of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied that AFRC/RUF troops carried out beatings and ill-treatment of at least seven civilians who were in their custody in Kenema Town in Kenema District. The Trial Chamber accordingly finds that the elements in relation to Counts 10 and 11 are established in respect of these incidents.

(b) Kono District (14 February 1998 - 30 June 1998)

1198. The Indictment alleges that "[b]etween about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wondedu. The mutilations included cutting off limbs and carving 'AFRC' and 'RUF' on the bodies of the civilians".[2169]

1199. No evidence of physical violence was led in respect of Wondedu.

1200. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution Witnesses TF1-033, TF1-072, TF1-074, TF1-076, George Johnson, TF1-198, TF1-216, TF1-272 and TF1-334, Defence Witness DAB-098 and Exhibits P-24, P-26, P-27, P-51 and P-56.

(i) Tombodu

1201. Following an order of Johnny Paul Koroma in March 1998 children were abducted and trained to perform amputations on civilians in areas within the Kono District, including Tombodu.[2170] Documentary evidence corroborates the occurrence of physical violence, including mutilations, in Tombodu.[2171]

[2166] TF1-122, Transcript 24 June 2005, p. 44; Exhibit P-24, "Kenema Police Diary", p. 155, serial no. 50 and p. 181, serial no. 78, and P. 182, serial no. 10, pp. 00008595, 00008620, 00008621.
[2167] TF1-122, Transcript 24 June 2005, pp. 44-45.
[2168] *See* Factual Findings, Unlawful Killings, paras 832-833.
[2169] Indictment, para. 59.
[2170] TF1-334, Transcript 20 May 2005, pp. 6-7,
[2171] Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15718, 15810.

1202. In about March 1998, Witness TF1-072 and thirteen other civilians were captured by "soldiers" and brought before their commander 'Savage' in Tombodu. 'Savage' used a cutlass to slap Witness TF1-072 on the back, accusing him of killing soldiers.[2172] He then cut the Witness severely with the cutlass on his upper right calf and on his left calf. Witness TF1-072 was also stabbed by one of Savage's subordinates, 'Small Mosquito', in the left rib area following an order by 'Savage'. The Trial Chamber was able to observe the scars from these incidents.[2173]

1203. 'Savage' then announced that he would cut off the hands of the fourteen captives, including witness TF1-072.[2174] The men were forced to lie on ground and were tied together. 'Small Mosquito' urinated on them. He then covered them with a mattress that he set on fire with the men still lying underneath. Witness TF1-072 was burnt on his shoulder before he managed to free himself. On account of his attempted escape 'Savage' flogged the Witness on his face so severely that his vision is permanently impaired.[2175] 'Savage' then ordered the witness to place his hand on a nearby tree stump and attempted to amputate his right hand. The Witness was so terrified that he defecated. His right hand was not entirely amputated, but permanently disfigured. The Trial Chamber was able to observe that the Witness' fingers are mangled. He stated that he is unable to read or write as result of the assault.[2176] The witness was not shaken on cross-examination with regard to the identity of the commander 'Savage'.[2177]

1204. In about May 1998, Witness TF1-334 watched 'Savage' personally amputate the hands of about fifteen civilians. The civilians were celebrating what they believed was an ECOMOG takeover of Tombodu when in fact it was 'Savage' and his men who were wearing Nigerian ECOMOG uniforms. 'Savage' retaliated against the civilians for celebrating what they believed was his defeat.[2178] The witness testified that 'Savage' told the civilians that "they should go and tell ECOMOG that he, Savage, was in Tombodu and this was to be a warning to the other civilians".[2179]

1205. Witnesses TF1-033 and DAB-098 also testified that civilians were amputated by troops under the command of 'Savage' in Tombodu.[2180]

[2172] TF1-072, Transcript 1 July 2005, pp. 14-16. The Trial Chamber notes that the retaliation on the civilians for the killing of a soldier is corroborated by TF1-033: TF1-033, Transcript 11 July 2005, p. 12.
[2173] TF1-072, Transcript 1 July 2005, pp. 15-16.
[2174] TF1-072, 1 July 2005, p. 16.
[2175] TF1-072, 1 July 2005, p. 18.
[2176] TF1-072, 1 July 2005, pp. 19, 26.
[2177] TF1-072, 1 July 2005, pp. 22-38.
[2178] TF1-344, Transcript 20 May 2005, pp. 8, 12-13.
[2179] TF1-334, Transcript 20 May 2005, p. 13.
[2180] TF1-033, Transcript 11 July 2005, pp. 11-12; DAB-098, Transcript 4 September 2006, pp. 22, 45.

1206. In April 1998, witness TF1-216 was abducted and taken to Tombodu, along with a number of other civilians. At Tombodu, a commander called 'Staff Alhaji' ordered that the witness' hands and the hands of five other civilians be amputated. Following the amputation they were told to go and see President Kabbah as "he [...] got one container [of] hands for us".[2181]

(ii) Kaima/Kayima

1207. At an unspecified time in 1998, Witness TF1-074 was abducted by "rebels", along with eighteen other civilians, and taken to Kayima where the rebel boss Komba Gbundema was headquartered.[2182] In Kayima, AFRC/RUF soldiers carved the letters "AFRC" or "RUF" with a surgical blade on the chests of each of the civilians. Witness TF1-074 was marked by a soldier named Bangalie and was carved with both "AFRC" and "RUF" letters.[2183] The witness described the people who captured him as belonging to the AFRC/RUF.[2184] As the witness testified that these events happened approximately two months after he had seen Johnny Paul Koroma passing through Kono District from Koidu Town, the Trial Chamber is able to conclude that the mutilation described took place around May 1998.[2185]

1208. The Brima Defence submits that the credibility of witness TF1-074 is undermined by inconsistencies between his testimony and his pre-trial statement as to whether particular individuals mentioned in his testimony were AFRC or RUF troops. The Brima Defence thus submits that RUF troops were solely responsible for the events described.[2186] While the witness may have been mistaken regarding the affiliation of particular troops, the Trial Chamber notes that witness TF1-074 testified consistently that both the AFRC and the RUF were present in Kayima. The witness testified that he was able to distinguish between the two groups since the AFRC soldiers wore combat while the RUF were armed but wearing civilian clothing.[2187] The Trial Chamber also accepts the detailed and credible evidence of witness TF1-074 that it was an AFRC soldier Bangalie who was responsible for marking his body.

[2181] TF1-216, Transcript 27 June 2005, pp. 93-94.
[2182] TF1-074, Transcript 5 July 2005, p. 14.
[2183] TF1-074, Transcript 5 July 2005, pp. 14-15; Exhibit P-27, "Picture of Chest of Witness TF1-074 with markings 'AFRC RUF.' "
[2184] TF1-074, Transcript 5 July 2005, p. 11.
[2185] TF1-074, Transcript 5 July 2005, p. 10.
[2186] Brima Defence Final Brief, paras 187, 282. *See also* cross-examination of witness: TF1-074, Transcript 5 July 2005, pp. 34-38.
[2187] TF1-074, Transcript 5 July 2005, p. 11.

1209. In March 1998, when witness DSK-103 arrived in Koidu Town, a number of amputees were being treated by ECOMOG. The amputees said their hands had been amputated by 'Savage's group.'[2188]

1210. In addition, documentary evidence corroborates the evidence given by the witnesses of physical violence by members of the AFRC/RUF in Kono District, including Kayima.[2189]

1211. From 6 April 1998 onward, the surgical teams of MSF at Connaught Hospital in Freetown started recording an increase in the number of patients suffering from severe mutilations. Between 6 April and 4 May 1998 Connaught Hospital received 115 patients,[2190] most of whom were severely mutilated. Most of them came from Kono.[2191] Some had received some basic medical treatment from ECOMOG just outside Koidu.[2192] They were brought to the hospital in ECOMOG trucks.[2193]

1212. The majority of patients suffered deep lacerations, broken limbs, field amputations and amputations. A few suffered gunshot wounds and the lips, ears and fingers of some had been cut.[2194] Of the 115 patients admitted to Connaught Hospital between 6 April and 4 May 1998 four men had had both arms amputated; 14 men had had one arm amputated; five men, in addition to having their arms amputated had a part of, one or both ears cut off; 23 patients had deep lacerations on lower arms, severed tendons, broken ulna and radius, as a result of cutlass attacks; seven patients had either a complete hand or several fingers missing as a result of cutlass attacks.[2195] Between 6 April 1998 and 27 July 1998, an MSF surgical team treated almost 300 patients with amputations, severe mutilations or gunshot wounds at the hospital. The majority of the cases treated were lacerations to the head or neck or amputations of arms, hands, fingers, ears or lips. This number represented, however, only a fraction of the number of such victims, many of whom never reached

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[2188] DSK-103, 13 September 2006, pp. 27-31.
[2189] Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15718, 15810.
[2190] The patients were brought to Connaught Hospital because at that time there were no other functioning surgical/operating theatres in Sierra Leone. By May 1998 other hospitals started receiving patients in Makeni, Magburaka, and Kamakwie: *see* TF1-272, Transcript 4 July 2005, p. 42 [closed session]. Connaught Hospital is Sierra Leone's only hospital with an orthopaedic surgeon. Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3787.
[2191] Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3787.
[2192] TF1-272, Transcript 4 July 2005, p. 35 [closed session].
[2193] TF1-272, Transcript 4 July 2005, p. 42 [closed session].
[2194] TF1-272, Transcript 4 July 2005, pp. 39-40 [closed session].
[2195] Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3789; see also Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", pp. 15807-15808.

medical help.[2196] According to humanitarian agencies in Freetown, only about one in four victims of mutilations by rebel forces survived their injuries.[2197]

(iii) Finding

1213. By virtue of the foregoing, and leaving aside for the present the question of the criminal responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 14 February 1998 and 30 June 1998, troops under the command of 'Savage' intentionally mutilated at least sixteen civilians by cutting off their limbs in Tombodu in Kono District, as charged under Counts 10 and 11. The Trial Chamber further finds beyond reasonable doubt that in this same period AFRC/RUF soldiers carved the letters 'AFRC' and 'RUF' on the bodies of eighteen civilians in Kayima in Kono District, as charged under Counts 10 and 11.

(c) Koinadugu District (14 February 1998 - 30 September 1998)

1214. The Indictment alleges that "[b]etween about 14 February 1998 and 30 September 1998, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Kabala and Konkoba (or Kontoba). The mutilations included cutting off limbs and carving 'AFRC' on the chests and foreheads of the civilians".[2198]

1215. No evidence of physical violence was adduced in respect of Konkoba.[2199]

1216. In reaching the following findings of fact, the Trial Chamber has considered the entire evidence and relies on the testimony of Prosecution witness TF1-199 and Defence witness DAB-156, as well as exhibit P-51.

(i) Kabala

1217. Witness TF1-199, a member of an SBU (Small Boys Unit), testified that in approximately mid-May 1998, Lieutenant-Colonel 'Savage' led an attack by AFRC/RUF forces on Kabala Town. The witness participated in the attack and he testified that after the AFRC/RUF forces had successfully captured the town, they amputated the hands of an unknown number of civilians.[2200]

[2196] Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15808; Exhibit P-26, "MSF 1998 Report: Atrocities against civilians in Sierra Leone", p. 3791.
[2197] Exhibit P-54, "Amnesty International 'Sierra Leone 1998 – a year of atrocities against civilians'", p. 15808.
[2198] Indictment, para. 61.
[2199] Rule 98 Decision, para. 186.
[2200] TF1-199, Transcript 6 October 2005, pp. 81-83, 86-88, 91.

(ii) Findings

1218. By virtue of the foregoing, and leaving aside for the present the question of the criminal responsibility of the Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF mutilated an unknown number of civilians by cutting off their limbs in Kabala in Koinadugu District. The Trial Chamber accordingly finds that the elements in relation to Counts 10 and 11 are established.

(d) Bombali District (1 May 1998 - 30 November 1998)

1219. The Indictment alleges that "[b]etween about 1 May 1998 and 31 [sic] November 1998, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in Bombali district, including Lohondi, Malama, Mamaka, Rosos (or Rossos or Rosors). The mutilations included cutting off limbs."[2201]

1220. No evidence of mutilations was led in respect of Lohondi, Malama, Mamaka.[2202]

1221. In arriving at the following findings of fact, the Trial Chamber has considered the entirety of the evidence and relies on the testimony of Prosecution witness TF1-269.

(i) Rosos

1222. During the rainy season of 1998, in Rosos, Witness TF1-269 was attacked by three persons she referred to as 'rebels'. One of the rebels cut Witness TF1-269 in the back of her neck in an attempt to kill her.[2203] The Trial Chamber was able to observe a scar of about two inches on the neck of the Witness.[2204]

1223. The Trial Chamber however makes no finding on this incident as the only act of mutilation particularised in the Indictment is "cutting off limbs".[2205]

1224. The Trial Chamber notes that a significant amount of evidence was led on mutilations in other locations in Bombali District, in particular in Karina.[2206] No findings have been made on this evidence as the locations were not pleaded in the Indictment.

[2201] Indictment, para. 62.
[2202] Rule 98 Decision, para. 186.
[2203] TF1-269, Transcript 14 July 2005, pp. 41-42, 51.
[2204] TF1-269, Transcript 14 July 2005, pp. 43.
[2205] Indictment, para.62.

(e) Freetown and the Western Area (6 January 1999 - 28 February 1999)

1225. The Indictment alleges that "[b]etween 6 January 1999 and 28 February 1999, members of the AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown, and the Western Area, including Kissy, Wellington and Calaba Town. The mutilations included cutting off limbs".[2207]

1226. No evidence was adduced in relation to Calaba Town.

1227. The Prosecution led evidence of witnesses seeing amputated people or stating that 'rebels' committed amputations in various parts of Freetown and the Western Area.[2208] Documentary evidence confirms that in Freetown during January 1999, hundreds of civilians had their limbs amputated or were subjected to other forms of mutilation. The mutilations were usually inflicted with machetes or axes and the victims included men, women and children.[2209] While the Trial Chamber accepts this evidence as credible, given its general nature, the Trial Chamber relies on it to corroborate its findings on the more specific incidents described below.

1228. In arriving at the following findings of fact, the Trial Chamber has considered on the credible testimony of Prosecution witnesses TF1-083, TF1-084, TF1-085, TF1-098, TF1-153, George Johnson, TF1-184, TF1-278, and TF1-334.

(i) Freetown

a. Upgun

1229. The Trial Chamber has found that in January 1999, an attack on Fourah Bay was ordered by the Accused Brima in retaliation for the alleged killing of an AFRC soldier by civilians.[2210] Witness TF1-184 testified that prior to the troops commencing the attack, in the Kissy Old Road area, 'Five-Five' demonstrated an amputation on a civilian, explaining to them that a 'long hand' is the amputation of the hand, while a 'short hand' is the amputation of an arm around the bicep area

[2206] TF1- 058, Transcript 14 July 2005, pp. 83- 86; TF1-199, Transcript 06 October 2005, p. 76; TF1-334, Transcript 23 May 2005, pp. 70-71; TF1- 157, Transcript 22 July 2005, p. 75; TF1- 184, Transcript 07 September 2005, p. 35; Exhibit P-54.
[2207] Indictment, para. 63.
[2208] TF1-157, Transcript 25 July 2005, pp. 18-20; TF1-084, Transcript 6 April 2005, pp. 43-44; TF1-033, Transcript 10 July 2005, p.20, Transcript 12 July 2005, p.60; TF1-104, Transcript 30 June 2005, pp. 5-9.
[2209] Exhibit P-46, "Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone", p. 15658 (para. 23).
[2210] Factual Findings, Unlawful Killings, para. 919.

(above the elbow and below the shoulder).[2211] Witness TF1-184 identified 'Five-Five' as the Accused Kanu.[2212]

b. Kissy Old Road

1230. Witness TF1-334 testified about a demonstration of an amputation carried out by 'Five-Five' subsequent to the attack on Fourah Bay, at Kissy Old Road. According to the witness, 'Five-Five' arrived at Upgun with Major Mines and Captain Kabila and announced that it was time for the amputations to begin. He stated that he would carry out the first amputations in order to set an example for the others. Kanu called for two civilians nearby to be brought to him and he amputated both hands of both civilians with a machete at their wrists, explaining the difference between what he referred to as 'short sleeve' and 'long sleeve' amputations. 'Five-Five' then told the civilians that since they voted for 'Pa Kabbah' they should go to him and ask him for hands. In the presence of the Accused Kanu, ten more civilians were then rounded up and Captain Kabila and Major Mines amputated them at the elbow. Major Mines told them to go to 'Pa Kabbah' or ECOMOG to complain.[2213]

c. 'Operation Cut Hand' at PWD

1231. Witness TF1-153 testified that while the headquarters was at PWD, a soldier came from Fourah Bay "with his head bust" reporting that the civilians there had been fighting the soldiers.[2214] The witness subsequently heard that 'Bazzy' had raided a WFP warehouse in the nearby area and collected a number of machetes he found there. Later that evening, the witness saw 'Bazzy' and overheard a conversation between him and SAJ Musa's wife. Tina Musa asked 'Bazzy' why his men were holding machetes. According to the witness, 'Bazzy' replied "We are just [returning] from Operation Cut Hand". The witness testified that from this conversation he understood that the machetes from the warehouse had been used to amputate people.[2215]

(ii) Kissy

a. Rowe Street

[2211] TF1-184, Transcript 27 September 2005, pp. 72-74.
[2212] TF1-184, Transcript 26 September 2005, p. 80.
[2213] TF1-334, Transcript 14 June 2005, pp. 68-71.
[2214] TF1-153, Transcript 23 September 2005, p. 17.
[2215] TF1-153, Transcript 23 September 2005, p. 18.

1232. The Trial Chamber has relied on the evidence of witness TF1-084 of his arrest in Rowe Street, Kissy, by rebels in January 1999 in its findings on unlawful killings.[2216] In addition to the evidence recounted therein, the witness stated the rebel commander, a certain Tafaiko, ordered that witness TF1-084's hand was to be amputated. The rebels put witness TF1-084 on the ground, stood on his chest, stretched out his arms, and intentionally chopped off his hand with an axe.[2217]

b. Fatamaran Street

1233. On approximately 18 January 1999, witness TF1-098, his brother and his cousin were forced by rebels at gunpoint to follow them to a school on Fataraman Street.[2218] The witness described the rebels as being dressed in black T-shirts, some had soldier combats and tied mufflers with the American flag.[2219] Upon arrival at the school, four other civilians captured by the rebels were joined with the witness' group. 'Tommy', one of the rebels, dressed in combat, amputated the hands of the seven captured persons, including the left hand of the witness. Having done so, the rebels told them to go to 'Pa Kabbah' and he would give them new hands.[2220] Witness TF1-098's cousin died as a result of the amputation.[2221]

c. Old Road (Locust and Samuels area)

1234. On 22 January 1999, on Old Road in the Locust and Samuels area, witness TF1-083 and his family were captured by a group of rebels. The rebel commander told witness TF1-083 and others to lie flat on their backs to be killed or amputated. The rebels took two people to a corner and then returned with bloody knives. The commander ordered the rebels to cut off the hands of the remaining people. He said anyone whose hand is cut should go to Kabbah and ask him for a hand. One rebel stabbed witness TF1-083 with a knife in the left upper arm. The rebels chopped witness TF1-083's hand off with two blows of an axe.[2222] The hand of a man named Pa Sorie was also cut.[2223] The rebels cut off the fingers of a man named Mussa. The commander ordered the rebels to cut off the entire hand and when Mussa begged for mercy, the rebels killed him.[2224]

[2216] TF1-084, Transcript 6 April 2005, p. 38.
[2217] TF1-084, Transcript 6 April 2005, pp. 40-42.
[2218] TF1-098, Transcript 5 April 2005, p. 39.
[2219] TF1-098, Transcript 5 April 2005, p. 39.
[2220] TF1-098, Transcript 5 April 2005, pp. 40-42.
[2221] TF1-098, Transcript 5 April 2005, pp. 42-43.
[2222] TF1-083, Transcript 8 April 2005, pp. 62-67.
[2223] TF1-083, Transcript 8 April 2005, p. 67.
[2224] TF1-083, Transcript 8 April 2005, p. 68.

d. Parsonage Street

1235. On 22 January 1999, witness TF1-278 was fleeing from the rebels with his family and some of his tenants with their families when they were stopped by four persons wearing SLA uniforms and one person wearing civilian clothes near Parsonage Street in Freetown.[2225] A soldier named 'Captain Two Hand' ordered the soldiers to cut off the tenant's hands. A rebel in civilian clothes used an axe to cut off both of his hands. The soldiers told the tenant to "go and tell Tejan Kabbah this is what we have done. Go and tell no more politics, no more voting."[2226] Soldiers then amputated witness TF1-278's left hand. The witness testified that his child shouted "Hey, soldier, don't cut my father's hand, please. He is working for us."[2227] One of the soldiers ordered that the child's hand be amputated. The witness asked the soldier to amputate his right hand in exchange for sparing his child. The rebels amputated his right hand, before releasing the witness and the other civilians, telling them "You are the messenger of Tejan Kabbah. Go and tell Tejan Kabbah that we cut off your hand. Since you did not allow for peace we are saying good-bye to you."[2228]

e. Old Shell Road

1236. At Old Shell road, immediately prior to the troops' arrival at Kissy Mental Home, witness TF1-334 observed Osman Sesay a.k.a. 'Changamulanga' amputating six young civilian men at the elbow. 'Changamulanga' told the men to go to 'Pa Kabbah' and he would give them back their hands because they had voted for him. None of the three Accused were present during the amputations, but the troops subsequently moved to Kissy Mental Home to meet them.[2229]

f. Kissy Mental Home

1237. The Trial Chamber has found that the evening the troops arrived at Kissy Mental Home during the retreat from Freetown in January 1999, in the presence of the Accused Kamara and the Accused Kanu, the Accused Brima issued an order to the troops to burn houses and kill civilians in retaliation for their support of ECOMOG.[2230] In addition to ordering the witness to kill people in the PWD area, the witness overheard the Accused Brima ordering 'Changamulanga', 'Mines' and

[2225] TF1-278, Transcript 5 April 2005, p. 54.
[2226] TF1-278, Transcript 6 April 2005, pp. 5-7.
[2227] TF1-278, Transcript 6 April 2005, p. 8.
[2228] TF1-278, Transcript 6 April 2005, pp. 8-9.
[2229] TF1-334, Transcript 14 June 2005, p. 82.
[2230] Factual Findings, Unlawful Killings, para 931.

Colonel Kido to go towards the "low cost area" and amputate people.[2231] However, the witness did not testify as to whether this order to commit amputations was carried out. The Trial Chamber therefore does not make a finding of physical violence on this evidence. However, the Trial Chamber considers this evidence to generally corroborate the findings of physical violence made below in relation to Kissy Mental Home.

1238. Witness George Johnson testified that on the day that the troops arrived at Kissy Mental Home, the Accused Kanu ordered the soldiers, in the presence of the Accused Brima, the Accused Kamara and other commanders, to go to the eastern part of Freetown and amputate up to 200 civilians and send them to Ferry Junction. After the order was given, the witness observed fighters, including Kabila, 'Born Naked', 'Cyborg', and 'SBU Killer', moving towards the eastern part of Freetown. On their return, their machetes were covered with blood and they brought with them many amputated arms.[2232]

1239. Witness TF1-184 testified that while the troops were at Kissy Mental Home, AFRC soldier Kabila told 'Gullit' that "the civilians are pointing their hands at our own crowd here," implying that the civilians were divulging the troops' position to ECOMOG. In the presence of the witness, 'Gullit' said "that the hand that they are pointing at us, the fingers that are pointing at us, we shall ensure that all their hands are amputated." [2233] When asked if anything occurred as a result of the Accused Brima's words, the witness testified that about one and a half hours later, AFRC soldier 'Mines' returned to Kissy Mental Home with a bag full of hands which he showed to 'Gullit' and others, including the witness.[2234] The Trial Chamber is satisfied beyond reasonable doubt from this testimony that 'Mines' amputated an unknown number of civilians pursuant to the order issued by the Accused Brima.

1240. Witness TF1-184 testified that during the period that the troops were at Kissy Mental Home, he observed 'Gullit' amputating a civilian's hand at Shell Company by Old Road.[2235]

1241. George Johnson testified that at Kissy Mental Home, a soldier named Kabila amputated the arms of a captured Nigerian ECOMOG soldier.[2236] The witness observed FAT Sesay writing a letter, which Kanu placed the around the ECOMOG soldier's neck. The ECOMOG soldier was sent

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[2231] TF1-334, Transcript 14 June 2005, p. 84.
[2232] George Johnson, Transcript 16 September 2005, p. 53-54.
[2233] TF1-184, Transcript 27 September 2005, p. 81.
[2234] TF1-184, Transcript 27 September 2005, p. 81.
[2235] TF1-184, Transcript 27 September 2005, p. 80.
[2236] George Johnson, Transcript 16 September 2005, p. 54.

to meet other ECOMOG soldiers at Ferry Junction.[2237] The Trial Chamber notes that this incident was not directed against the civilian population, but against a combatant. Therefore the Trial Chamber will consider this incident only in relation to Count 10.

(iii) Wellington

1242. Witness TF1-085 testified that in January 1999, 'rebels' broke the door to her mother's house in Wellington where she was hiding along with some other civilians. The 'rebels' cut off the hand of one of the children, aged four or five years, who had been hiding in the house. The witness was then abducted by the rebels.[2238] The witness' testimony regarding subsequent events has been considered in the Trial Chamber's findings on outrages on personal dignity.[2239]

(iv) Findings

1243. In light of the foregoing evidence, and leaving aside for the present the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January 1999 and 28 February 1999, members of the AFRC fighting forces mutilated at least 237 civilians and one soldier by cutting off their limbs in various areas of Freetown and in Kissy and Wellington in the Western Area. The Trial Chamber accordingly finds that the elements in relation to Count 10 (violence to life, health and physical or mental well-being of persons, in particular mutilation) and Count 11 (other inhumane acts) have been established in Freetown and the Western Area.

[2237] George Johnson, Transcript 16 September 2005. pp. 54-55.
[2238] TF1-085, Transcript 7 April 2005, pp. 6-7.
[2239] Factual Findings, Outrages on Personal Dignity, paras 1087- 1099, *infra*.

E. Child Soldiers

1. Allegations and Submissions

1244. In Count 12, the Accused are charged with "conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities", punishable under Article 4(c) of the Statute. Paragraph 65 of the Indictment alleges that "[a]t all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters."

1245. In its Pre-Trial Brief, the Prosecution added that the evidence would demonstrate that: "Thousands of children were abducted from all over Sierra Leone; Thousands of children underwent military training at AFRC/RUF camps; Children were formed into Small Boys Units and Small Girls Units; and Armed Small Boys Units and Small Girls Units were used in combat."[2240]

1246. In addition to the legal submissions of the Defence which have been considered elsewhere in the Judgement,[2241] the Defence argues that the evidence was inconclusive regarding the age of many of the alleged child soldiers.[2242] Bearing this concern in mind, the Trial Chamber emphasizes that it has excluded all evidence related to child soldiers where it was not clear that the evidence referred to soldiers under the age of 15.

1247. Finally, the Defence refers to several arguments made by the Defence Expert which will be addressed below.[2243]

2. The Expert Witnesses

1248. Both the Prosecution and the Defence introduced expert witness reports on Child Soldiers,[2244] and the Prosecution expert testified at trial.[2245] The Prosecution expert report provides an overview on the widespread use of children under the age of 15 as combatants by the parties to the conflict in Sierra Leone during the period covered by the Special Court Statute.[2246] The Trial

[2240] Prosecution Supplemental Pre-Trial Brief, paras 182, 465, 748.
[2241] Applicable Law, paras. 732.
[2242] Kamara Defence Final Brief, para. 310. Kanu Defence Final Brief, para. 80.
[2243] Kamara Final Trial Brief, paras 312-319. Kanu Final Defence Brief, paras 75-80.
[2244] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces." Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict."
[2245] Witness TF1-296, Transcripts 4 and 5 October 2005.
[2246] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces."

Chamber cannot confirm the Prosecution Expert's figures regarding the number of child soldiers because some of her sources referred to child soldiers as individuals under the age of 18, rather than 15, and there is no other corroborating evidence on the issue.[2247] Nevertheless, the Prosecution expert report emphasizes that the illegal recruitment and/or use of children as combatants was not an isolated, localised, or accidental phenomenon.[2248] While "widespread or systematic use" of children is not a chapeau element for a finding of liability under Article 4 (C) of the Statute, that Trial Chamber finds that the information may be useful in assessing whether a perpetrator "knew or should have known" that persons recruited were under the age of 15.

1249. With regards to the forces alleged to have been associated with the Accused in this case, the Prosecution Expert Report refers to the illegal conscription and use of children by AFRC Government forces during the AFRC government period,[2249] and by armed forces during the January 1999 invasion and retreat from Freetown.[2250] She also notes that the overthrow of the AFRC government brought negotiations for the release of child combatants between child protection organisations and the rebel government to a halt. While the expert does not specifically refer to the further illegal recruitment or use of children during 1998, she does say that during that year ECOMOG turned over child Prisoners of War (POWs) to UNICEF,[2251] suggesting that these children had been associated with forces fighting the Kabbah government during this period.

1250. The Defence Expert Witness report affirms the widespread recruitment and use of children as combatants by all the forces involved in the conflict, including by AFRC soldiers.[2252] He attributes the problem to several phenomena: that in a "traditional African setting the concept of childhood is related to the ability to perform tasks not to age[2253]; that the phenomenon was due, in part, to the partial disintegration of the state prior to the conflict[2254]; that the use of children as combatants was a practice established in Sierra Leone in the decades preceding the conflict of the latter half of the 1990s[2255]; that the Kabbah government's encouragement of child soldier

[2247] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," para. 9.
[2248] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," paras 24, 28, 32-33.
[2249] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," paras 21, 43.
[2250] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," paras 32-34, 47.
[2251] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces," para. 27.
[2252] Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 1, 38, 40.
[2253] Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," para. 9.
[2254] Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 35-37, 43-44.
[2255] Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 35-37.

recruitment into the military influenced the practice of rebel groups[2256]; and that all fighting factions resorted to the use of child soldiers.[2257] Finally, the Defence Expert report states that many of the children that followed AFRC members after they were ousted from power in February 1998 did so voluntarily, and that they joined family members or other close associates out of fear of reprisals.[2258] However, the Expert provided no research or evidence to substantiate this claim.

1251. The Trial Chamber stresses that both experts agree that persons under the age of 15 were used for military purposes by all factions, including the AFRC, during the conflict including the period 25 May 1997-mid 1999. As discussed in the Applicable law, the Trial Chamber rejects any defence based on cultural distinctions regarding the definition of "childhood."[2259] The Trial Chamber infers from the Defence Expert's argument that all factions to the conflict recruited and used child soldiers that he is suggesting a *tu quoque* defence. The Trial Chamber rejects such a defence and recalls that it has addressed the related Mistake of Law issue in the Applicable Law section of the Judgement. The Trial Chamber will not review evidence regarding the conditions of the Sierra Leonean State and army prior to 1997 as the issue has no bearing on the perpetration of international crimes by individuals within the state. Finally, it is not impossible that some persons under the age of 15 associated with the troops were family members and were present voluntarily. The Trial Chamber will address this particular defence claim in more detail below.

3. The Evidence of Former Child Soldiers

1252. The Trial Chamber finds the testimonies of both witnesses TF1-157 and TF1-158 regarding their experiences as former child soldiers to be reliable and credible.

1253. TF1-157 was 20 years old when he testified before the SCSL in 2005. As will be discussed in more detail below, the Trial Chamber is able to infer beyond a reasonable doubt that he was abducted between May and August of 1998, meaning that he was approximately thirteen years old at the time of the events he described.[2260] The witness testified that rebels and soldiers attacked Bonoya/Bornoya village in Bombali District, his home village, on the Islamic New year, although he did not know the year.[2261] He clarified that among the attackers were former soldiers who had "turned into rebels."[2262] Among the attackers were individuals wearing combat fatigues, and others

[2256] Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," para. 38
[2257] Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 40, 53.
[2258] Exhibit D-37, Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict," paras 51, 57.
[2259] Applicable Law, para. 731.
[2260] TF1-157, Transcript 22 July 2005, pp. 56-57.
[2261] TF1-157, Transcript 22 July 2005, pp. 57-58.
[2262] TF1-157, Transcript 25 July 2005, p. 8.

wearing civilian clothing.[2263] During the attack, the witness watched the assailants commit a number of atrocities against his family members.[2264] Among the assailants was a man named 'Mohamed', who abducted the witness. [2265] The attackers abducted at least five other people from Bonoya/Bornoya the same day, at least three of whom were younger than the witness at the time.[2266] The witness described having gone together with his captors through the villages of Kamagbo, Daraya, Mayogbo, Karina, Mabaka, Mandaha, Mateboi, Gbomsamba, Robat Mess (Camp Rosos).[2267] While the Trial Chamber is unable to find some of these locations on the maps at its disposal, it notes that these locations are discussed by other prosecution witnesses.

1254. Given the precision with which the witness described his journey from Bonoya/Bornoya to Robat Mess/Camp Rosos, events at Robat Mess/Camp Rosos[2268], the journey towards Freetown, including the death of SAJ Musa in Benguema,[2269] and the fact that the troops arrived in Freetown on "January 6,"[2270] the Trial Chamber is able to infer beyond a reasonable doubt that the witness was abducted between May and August of 1998.[2271] Along the route the child witnessed the commission of numerous crimes by his abductors,[2272] and was systematically exploited and abused. 'Mohamed' forced him to carry rice and luggage along the route from Bonoya to Camp Rosos,[2273] while other captors also used him to fetch water, and pound rice, in addition to carrying goods for the troops.[2274] Upon arrival at Camp Rosos, the witness' abductors forced the witness to undergo military training.[2275] During that training, the witness was repeatedly flogged by his captors because he "was Mandingo and belonged to Tejan Kabbah's people."[2276] As part of the military instruction the witness was given injections and tablets of drugs which he believed to be cocaine.[2277] The daily doses of narcotics were so strong that the witness did not know what he was doing, and could not tell the court whether he had killed anyone while under the influence.[2278] At one point 'Adama Cuthand', a known fighter associated with the AFRC soldiers, threatened to amputate one of his

[2263] TF1-157, Transcript 22 July 2005, p. 58.
[2264] TF1-157, Transcript 22 July 2005, pp. 58-60.
[2265] TF1-157, Transcript 22 July 2005, pp. 62-63, 88.
[2266] TF1-157, Transcript 22 July 2005, pp. 62-65.
[2267] TF1-157, Transcript 22 July 2005, pp. 67-87.
[2268] TF1-157, Transcript 22 July 2005, pp. 68-90, 90-91, 96.
[2269] TF1-157, Transcript 25 July 2005, pp. 15-18.
[2270] TF1-157, Transcript 25 July 2005, p. 18.
[2271] TF1-157, Transcript 22 July 2005, p. 66.
[2272] TF1-157, Transcript 22 July 2005, pp. 67-82.
[2273] TF1-157, Transcript 22 July 2005, pp. 62-63, 86.
[2274] TF1-157, Transcript 22 July 2005, p. 86.
[2275] TF1-157, Transcript 25 July 2005, pp. 3, 6.
[2276] TF1-157, Transcript 25 July 2005, p. 5.
[2277] TF1-157, Transcript 25 July 2005, p. 6.
[2278] TF1-157, Transcript 25 July 2005, p. 6.

limbs-- although it is not clear why-- and he only narrowly escaped that fate.[2279] The witness testified that he learned at Camp Rosos that the commanders in charge of the "rebels" who had captured him were 'Gullit', 'Five-Five' and 'Adama Cut Hand'.[2280]

1255. On 6 January, 1999 the witness entered Freetown with the SLA rebels.[2281] He was forced by his commander Abdul to accompany him wherever he went in Freetown. The witness gives as an example an occasion on which he was forced to accompany Abdul to Calaba Town to burn vehicles and houses and kill people.[2282] On two occasions Abdul also took the witness to fight at Eastern Police.[2283] It emerged in cross-examination that witness TF1-157 did not fight on these occasions, but that his role was to carry equipment for Abdul.[2284] Following the retreat from Freetown, the witness managed to escape from the rebels and found his way to the protection of UNICEF.[2285] The Trial Chamber notes that the witness was not shaken on cross-examination, and therefore in spite of his youth at the time of events finds that the witness was credible and reliable with regards to the details of captivity and his treatment in captivity. However, the Trial Chamber will consider the youth of the witness at the time of events when evaluating the weight to be accorded his testimony regarding the command structure of the troops he was forced to accompany.

1256. Witness TF1-158, who is the younger brother of Witness TF1-157,[2286] was 18 years old when he testified before the Court. He too did not recall the precise year but remembered that he was 10 years old when armed soldiers and men wearing mixed combat and civilian witness attacked the Mosque in Bonoya/Bornoya where the witness was attending a service.[2287] The attackers wore mixed combat and civilian clothing.[2288] The witness later learned that the leaders of the group that attacked Bonoya/Bornoya were "SAJ Musa. Gullit, Five-Five and O-Five."[2289] He also referred to his abductors as "SAJ Musa's group."[2290] The witness watched 'Adama' hack his father to death on

[2279] TF1-157, Transcript 25 July 2005, pp. 20-21.
[2280] TF1-157, Transcript 25 July 2005, pp. 90-92.
[2281] TF1-157, Transcript 25 July 2005, p. 18.
[2282] TF1-157, Transcript 25 July 2005, pp. 23-24.
[2283] TF1-157, Transcript 25 July 2005, p. 25, 26 September 2005 p. 22.
[2284] TF1-157, Transcript 26 September 2005 p. 22.
[2285] TF1-157, Transcript 25 July 2005, pp. 27-28.
[2286] TF1-158, Transcript 26 July 2006, pp. 50 (sealed).
[2287] TF1-158, Transcript 26 July 2005, p. 30.
[2288] TF1-158, Transcript 26 July 2005, p. 30.
[2289] TF1-158, Transcript 26 July 2005, p. 32. See also Transcript 26 July 2005, pp. 37 where the witness says that he saw "Gullit, Five-Five and O-Five" at Mateboi and again at Rosos. See Transcript 26 July 2005, p. 35 where the witness further describes the clothing worn by the assailants who attacked Bonoya. See also Transcript 26 July 2005, p. 40 where witness states that "Gullit, O-Five and Five-Five" watched Staff Alhaji provide military training to the witness.
[2290] TF1-158, Transcript 26 July 2005, p. 37. See also Transcript 26 July 2005, p. 39 where witness gives his age at the time of events.

the day he was abducted,[2291] was compelled by his captors to carry food for the troops,[2292] and witnessed the commission of numerous crimes by the troops who had abducted him.[2293] The witness testified that he spent a week at Rosos,[2294] where like witness TF1-157, he was forced by his captors to participate in military training. Some of those trained with him were as young as seven or eight years old.[2295] Soon after the military training the witness managed to escape to the village of Kamasufu, where he was arrested a second time by a different faction of AFRC soldiers associated with the fighters named "Savage' and "Staff Alhaji. When asked at which time he was abducted the second time the witness answered that "it was when they said there was a ceasefire.[2296] The Trial Chamber therefore infers that the second abduction took place in 1999. The witness was again forced to carry loads for his captors,[2297] and forced to undergo further military training[2298] before being sent to participate in an attack on Kabala.[2299] The attack failed and the troops were forced to retreat to Kamabai. Five days later the witness was told there was infighting between the RUF and AFRC at Makeni. Savage then ordered that the troops disarm and the witness was turned over to the United Nations.[2300]

1257. The Trial Chamber concludes that Witness TF1-158 was abducted and exploited the first time by a group associated with the Accused during a period covered by the Indictment. However, the witness was abducted the second time in Bombali District in 1999. The Trial Chamber recalls that it is the Prosecution's case that during this time the Accused were in the Western Area or Port Loko Districts. Although this point in itself is not dispositive, the Prosecution has failed to make a case linking the Accused with crimes committed in Bombali district in late 1998 or early 1999. Accordingly, while the Trial Chamber finds that Witness TF1-158 was again abducted and used to participate in hostilities, the Trial Chamber will disregard the evidence on this second abduction.

1258. The Brima Defence points out that the witness described the Accused Brima as having a stammer when he speaks.[2301] The Accused testified before the Chamber for 21 days and displayed no sign of a stammer in his speech. The Trial Chamber also observes that the witness repeatedly stated that the commanders of the first group that abducted him were "SAJ Musa, Gullit, 55 and

[2291] TF1-158, Transcript 26 July 2005, pp. 33-34.
[2292] TF1-158, Transcript 26 July 2005, p. 37.
[2293] TF1-158, Transcript 26 July 2005, pp. 36
[2294] TF1-158, Transcript 26 July 2005, p. 39.
[2295] TF1-158, Transcript 26 July 2005, pp. 39-41.
[2296] TF1-158, Transcript 26 July 2005, p. 42.
[2297] TF1-158, Transcript 26 July 2005, p. 42.
[2298] TF1-158, Transcript 26 July 2005, p. 44.
[2299] TF1-158, Transcript 26 July 2005, pp. 43-46.
[2300] TF1-158, Transcript 26 July 2005, pp. 45-46.
[2301] Brima Final Trial Brief, para. 291;[sic, the Final Brief refers to TF1-157].

05."[2302] However, other evidence before this Chamber indicates that SAJ Musa and 'O-Five' were not together with the Accused Brima and Kanu in Bombali District during this period. The witness also testified that 'Staff Alhaji' trained child soldiers both at Camp Rosos in Bombali District,[2303] during the witness' first abduction, and at Kamabai in Koinadugu District, during his second abduction, which the Trial Chamber believes is improbable.[2304] On cross-examination, however, the Witness was not shaken with regards to the description of his treatment in captivity. The Trial Chamber further notes that the events as described by TF1-158 are notably distinct from those related by witness TF1-157. Therefore the Trial Chamber finds that in spite of his youth, the witness was credible and reliable with regards to the details of captivity and his treatment in captivity. However, it will not rely on his testimony with regards to the command structure.

1259. Three other former child soldiers testified before the Chamber, TF1-199, TF1-180, TF1-085 but the Trial Chamber concludes that their testimonies were problematic. TF1-180 testified that he was abducted in Bombali District. He was then shuttled back and forth between Bombali District and Port Loko District and was eventually sent to fight ECOMOG in Koinadugu District. The only indication that the witness provides regarding the time frame is that the Commanders in charge of his captivity were "General Issa, Brigadier Five-Five and General Gullit" suggesting that his captivity took place after the retreat from Freetown to Port Loko or Bombali District in 1999.[2305] The Indictment refers to no other crimes taking place in Port Loko after April 1999, and to no crimes at all in Koinadugu and Bombali Districts during this period.

1260. TF1-085 testified she was abducted in Freetown in January 1999. She was then forced into a "marriage" with her captor. She spent "months" in Port Loko District where she endured a series of sexual crimes. After an attempt to escape, this witness too was shuttled back and forth between Port Loko and Makeni Districts where she was forced to undergo military training. Following a long, but imprecise, period of sexual enslavement, she was sent to participate in an attack on Kono. The Trial Chamber has no other information regarding any attacks on Kono after the spring of 1998.[2306] Thus, the Trial Chamber is unable to link the military element of the witness' experiences, directly or indirectly, to the Accused

1261. TF1-199 testified that he was abducted in Bombali district during the Christmas holidays of 1998. 'Lieutenant Marah' and his superior 'Savage' were the commanders of the faction that

[2302] TF1-158, Transcript 26 July 2005, p. 32.
[2303] TF1-158, Transcript 26 July 2005, pp. 38-40.
[2304] TF1-158, Transcript 26 July 2005, p. 44.
[2305] TF1-180, Transcript 8 July 2005, pp. 5-18.
[2306] TF1-085, Transcript 7 April 2005, pp. 12-50. The witness was abducted in Freetown in January 1999.

abducted the witness.[2307] The Brima Defence argues that these two men were part of Brigadier Mani's group, and that the Prosecution has not linked Brigadier Mani to the Accused during this period.[2308] The Trial Chamber recalls that it is the Prosecution's case that during this period, the Accused were in the Western Area preparing the attack on Freetown. Although this point in itself is not dispositive, the Prosecution has failed to make a case linking the accused with crimes committed in Bombali district in late 1998 or early 1999.

4. The Evidence of Other Witnesses

1262. In addition to the testimony provided by former child soldiers, the Trial Chamber heard the evidence of witnesses who said that crimes against them were committed by child soldiers, and the evidence of other witnesses who described the abduction and use of child soldiers by SLA soldiers. Witnesses TF1-023, who was 16 years old at the time of events, testified that she was captured by a "young boy" holding a gun on 22 January 1999.[2309] She was then taken to Allen Town with other abducted civilians. Once there, she and other civilians were guarded by boys her abductors referred to as 'SBUs' which she said stood for 'Small Boy Units.' The witness believed these boys to have been between 13 and 15 years old.[2310] TF1-024 testified that he was abducted by three "rebel boys" on 8 January 1999.[2311] However, as he did not provide an approximate age for these "boys", the Trial Chamber will not consider his testimony on this particular subject.

1263. On the 25th of January 1999, Witness TF1-227 was abducted by AFRC troops led by a 'Corporal Bastard' at Kola Tree in the Western Area and taken to Benguema in the Western Area.[2312] At Benguema, he saw approximately 25 combatants between the ages of 10 and 14 years old.[2313] They were dressed in military uniforms, carried guns and "acted like they were trained soldiers".[2314] He said that "Brigadier Five-Five" personally had five to ten child combatants with him.[2315] He described Five-Five as a "mature gentleman" wearing civilian clothes.[2316] The Witness explained that child soldiers were responsible for flogging civilians who disobeyed disciplinary

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[2307] TF1-199, Transcript 6 October 2005, pp. 69-75, 86-87: The Trial Chamber notes that two Foday Marah's are referred to in the evidence. Foday *Bah* Marah was a renegade soldier and participated in the 6 January 1999 invasion. The affiliation of the other Foday Marah is unclear.
[2308] Brima Final Trial Brief, para. 290.
[2309] TF1-023, Transcript 9 March 2005, p. 30.
[2310] TF1-023, Transcript 9 March 2005, p. 35.
[2311] TF1-024, Transcript 7 March 2005, pp. 43-44.
[2312] TF1-227, Transcripts 8 April 2005, pp. 95-96; Transcript 11 April 2005, pp. 2-3.
[2313] TF1-227, Transcript 11 April 2005.
[2314] TF1-227, Transcript 11 April 2005, pp. 16, 21.
[2315] TF1-227, Transcript 11 April 2005, p. 22.
[2316] TF1-227, Transcript 11 April 2005, p. 18.

rules.[2317] As the Witness' identification of 'Brigadier Five-Five' is vague, the Trial Chamber will not rely on it in making its findings on the liability of the Accused Kanu for this crime.

1264. Witness TF1-206 testified that he was abducted by rebels wearing combat clothing in Bombafoidu, Kono during the night of 12-13 April 1998.[2318] Once captured by these men, the witness and other abducted civilians were forced to undress by an armed boy between the ages of 12 and 14 wearing combat clothing.[2319]

1265. Witnesses TF1-122 and TF1-062 described the use of children in Kenema District. The former testified that during the Junta period he saw child soldiers, some no older than 12 years old, at the AFRC Secretariat in Kenema,[2320] while the latter said he saw armed children as young as 12 guarding Cyborg Pit, a diamond mining area in Kenema, during the same period.[2321]

1266. Referring to the Applicable Law above, it is the Trial Chamber's view that the use of children to participate actively in hostilities is not limited to participation in combat. An armed force requires logistical support to maintain its operations. Any labour or support that gives effect to, or helps maintain, operations in a conflict constitutes active participation.

1267. Thus, with regards to the specific question of using a child to guard a diamond mine, the Trial Chamber observes that in the instant conflict, diamonds were mined and sold to raise revenue to finance war efforts. Therefore, use of a child to guard a diamond mine in this context put the child at sufficient risk to constitute illegal use of the child pursuant to Article 4 (C) of the Statute. Therefore, the Trial Chamber will consider the evidence of Witness TF1-062. TF1-122 testified that he saw child soldiers at the AFRC Secretariat in Kenema. He also testified that crimes were committed in that Secretariat.[2322] Thus the Trial Chamber further finds that regardless of the specific duties of the children at the Secretariat, the presence of children in locations where crimes were widely committed was illegal.

1268. Witness TF1-133 testified that 'Pa Mani' used children as bodyguards at his home in Kurunbonla, Koinadugu in 1998.[2323] The Trial Chamber is satisfied that 'Pa Mani' is Brigadier Mani, the Director of Defence in the AFRC government. However, the Prosecution has adduced no evidence linking the crimes of Brigadier Mani with the Accused.

[2317] TF1-227, Transcript 11 April 2005,pp. 6-7, 21-23.
[2318] TF1-206, Transcript 28 June 2005, pp. 86-88.
[2319] TF1-206, Transcript 28 June, p. 92.
[2320] TF1-122, Transcript 24 June 2005, pp. 17-18.
[2321] TF1-062, Transcript 27 June 2005, pp. 35-36.

1269. In addition to the prosecution witnesses, Defence witnesses DAB-081 and DBK-037 also indicated that the use of child soldiers was prevalent during the Indictment period. DBK-081 testified that in July 1998 rebels associated with SAJ Musa and 'Superman' attacked the witness' village in Koinadugu District.[2324] While the factions occupied the town, they "recruited" young boys and girls and used them to "safeguard the village from enemy attack". The abductees ranged in age from 14 to 18 years old.[2325] DBK-037, testified that numerous children were abducted during the retreat from Freetown, and that commanders on the "West Side" in Port Loko District had approximately 300 child combatants in their charge. However, the witness did not specify the time period.[2326] The Trial Chamber, however, finds no evidence linking the Accused to these children.

1270. The testimony of other witnesses has enabled the Trial Chamber to put the evidence provided by former child soldiers and their victims into a broader context. TF1-334 testified that following Johnny Paul Koroma's declaration of Koidu (Kono District) as a "no-go area" area for civilians in late February 1998, rebel soldiers began capturing civilians for a variety of uses, including children between the ages of 8 and 12. Young boys were assigned to Small Boy Units (SBUs) which were used in Tombodu to amputate the limbs of civilians.[2327]

1271. George Johnson testified that hundreds of civilians were abducted by AFRC troops during the trek from Mansofinia to Camp Rosos, including men, women and children.[2328] Among those who received military training at Rosos were small boys between the ages of ten and fifteen who were called "Small Boy Units". Following the training these boys were then divided into battalions. The witness himself had approximately 15 SBUs under his command.[2329] TF1-334 corroborated this evidence saying small children as young as ten years old were abducted at Karina and distributed among the military commanders,[2330] and that at Camp Rosos he personally provided military training to children abducted between Mansofinia and Rosos.[2331] Witness TF1-153 testified that he had seen many child soldiers at the base established by the AFRC soldiers at 'Colonel Eddie Town.'[2332]

[2322] TF1-122, Transcript 24 June 2005, pp. 12-13.
[2323] TF1-133, Transcript 7 July 2005, pp. 95-96.
[2324] DAB-081, Transcript 20 July 2006, p. 82.
[2325] DAB-081, Transcript 21 July 2006, p. 3.
[2326] DBK-037, Transcript 4 October 2006, p. 55.
[2327] TF1-334, Transcript 20 May 2005, pp. 4-6.
[2328] George Johnson, Transcript 15 September 2005, pp. 58-59.
[2329] George Johnson, Transcript 15 September 2005, pp. 65-67.
[2330] TF1-334, Transcript 23 May 2005, p. 73.
[2331] TF1-334, Transcript 23 May 2005, p. 73, and Transcript 24 May 2005 pp. 23-25.
[2332] TF1-153, Transcript 22 September 2005, p. 83.

1272. Witness TF1-334 further stated that during the 1999 invasion of Freetown, 'Gullit' ordered the capture of civilians saying that it would attract the attention of the international community.[2333] Approximately 300 abducted civilians were taken by the fighters from Freetown to Benguema.[2334] Among those captured were "many" small boys, including some as young as nine or ten years old. They were later trained as SBUs, and the witness himself had two SBUs.[2335] He added that once the retreating troops arrived at Newton in the Western Area, 'Gullit' ordered that everyone who had a young boy between the ages of ten and twelve should provide the child with basic military training.[2336]

1273. Witness TF1-334 further testified that while he, 'Gullit', 'Bazzy', 'Five-Five' and 'Commander A', a close associate of the accused, were at Newton following the 1999 retreat from Freetown, they met with officials from UNAMSIL and Archbishop Ganda who asked the fighters to release children in order to help secure a ceasefire. 'Gullit' responded that he would consider the proposal but no children were released.[2337] With regards to this particular evidence, however, the Trial Chamber notes that the Witness did not say that the children had been abducted nor did he explain what they were being used for.

1274. Finally, a UN Report released in the wake of the January 1999 invasion of Freetown stated that "a significant number of rebel combatants were children. Reports were received of death and injuries being inflicted by boys as young as eight to 11 years old."[2338]

1275. The Trial Chamber therefore finds that the AFRC fighting forces conscripted children under the age of 15 years old and/or used them to participate actively in hostilities during the period covered by the Indictment. The Trial Chamber is of the view that the AFRC fighting faction used children as combatants because they were easy to manipulate and program, and resilient in battle.[2339] In the instant case, the evidence is conclusive that most, if not all, of the children in question were forcibly abducted from their families or legal guardians.[2340] In addition to having been kidnapped,

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[2333] TF1-334, Transcript 14 June 2005, pp. 118-119.
[2334] TF1-334, Transcript 14 June 2005, p. 116.
[2335] TF1-334, Transcript 14 June 2005, pp. 121-122.
[2336] TF1-334, Transcript 15 June 2005, pp. 14-15.
[2337] TF1-334, Transcript 15 June 2005, pp. 16-17.
[2338] Exhibit P-46, "Fifth Report of the Secretary General on the United Nations Observer Mission in Sierra Leone", 4 March 1999, para. 25.
[2339] Defence Expert Witness Osman Gbla, "Research Report: The use of child soldiers in the Sierra Leone Conflict", 11 October 2006, para. 40.
[2340] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", para. 47. Exhibit P-55, Amnesty International "Sierra Leone; Childhood – A casualty of conflict," 31 August 2000, para. 55; Exhibit P-46,"Report of the Secretary-General on the United nations Observer Mission in Sierra Leone," 4 March 1999, para. 26; Prosecution Military Expert, Col. Richard Iron, exhibit P-36, para. C3.1; exhibit P-52, Human Rights Watch,

child soldiers described having been forced into hard labour[2341] and military training, and sent into battle, often on the frontlines.[2342] They were also beaten;[2343] forced to watch the commission of crimes against family members;[2344] injected with narcotics to make them fearless;[2345] compelled to commit crimes including rape, murder, amputation and abduction;[2346] used as human shields;[2347] and threatened with death if they tried to escape or refused to obey orders.[2348]

5. Findings

1276. The Trial Chamber is therefore satisfied that children were routinely recruited and used for military purposes by the AFRC fighting forces. The only method of recruitment described in the evidence is abduction, a particularly egregious form of 'conscription.'

1277. The Trial Chamber is further satisfied that AFRC and RUF forces abducted children for military purposes in Kenema District[2349] during the AFRC government period, and that the AFRC fighting forces abducted children for military purposes in Kono[2350], Koinadugu and Bombali[2351]

"Sowing Terror: Atrocities against civilians in Sierra Leone," July 1998; TF1-334, Transcript 24 May 2005, pp. 23-24, 14 June 2005, pp. 121-122.

[2341] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", para. 47; exhibit P-46, "Report of the Secretary-General on the United nations Observer Mission in Sierra Leone," 4 March 1999, para. 26.

[2342] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", para. 49; Exhibit P-55, Amnesty International "Sierra Leone; Childhood- A casualty of conflict," 31 August 2000; Exhibit P-46, "Report of the Secretary-General on the United nations Observer Mission in Sierra Leone," 4 March 1999, paras 25, 26; Prosecution Military Expert, Col. Richard Iron, exhibit P-36, para. C3.1; George Johnson, Transcript 15 September 2005, pp. 65-66; TF1-334, Transcript 24 May 2005, pp. 23-25.

[2343] TF1-157, Transcript 25 July 2005, p. 5.

[2344] TF1-158, Transcript 26 July 2005, p. 33.

[2345] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", para. 48; Prosecution Exhibit 46, para. 22; exhibit P-55, Amnesty International "Sierra Leone; Childhood – A casualty of conflict," 31 August 2000; TF1-180, Transcript 8 July 2005, pp. 10-12.

[2346] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", para. 46; TF1-334, Transcript 20 May 2005, p. 6; TF1-180, Transcript 8 July 2005, pp. 13-15; TF1-024, Transcript 7 March 2005, pp. 43-44, 50; TF1-023, transcript 9 March 2005, pp. 30-36; TF1-227, Transcript 11 April 2005, pp. 21-23; TF1-206, Transcript 28 June 2005, p. 92; TF1-334, Transcript 20 May 2005, pp. 4-6. Exhibit P-57, "No Peace Without Justice-Conflict Mapping Program," 9 March 2004.

[2347] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", para. 47.

[2348] Exhibit P-33, "Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces", paras 48-49; Exhibit P-55, Amnesty International "Sierra Leone; Childhood- A casualty of conflict," 31 August 2000; TF1-334, Transcript 20 May 2005, pp. 4-5.

[2349] TF1-122, Transcript 24 June 2005, pp. 17-18. TF1-062, Transcript 27 June 2005, pp. 35-36.

[2350] TF1-206, Transcript 28 June, p. 92. TF1-334, Transcript 20 May 2005, pp. 4-6.

[2351] TF1-157, Transcript 22 July 2005, pp. 68-90, 90-91, 96. TF1-158, Transcript 26 July 2005, pp. 39-41. TF1-334, Transcript 23 May 2005, p.73, and TF1-334 Transcript 24 May 2005 pp. 23-26. TF1-153, Transcript 22 September 2005, p. 83. P-Exhibit 51, "Report on Atrocities Committed" UNHCR, 28 January 1999. Exhibit P-55, Amnesty International "Sierra Leone childhood- a casualty of conflict," 31 August 2000.

Districts in 1998, and in Freetown and the Western area in 1999.[2352] It finds the evidence insufficient to make a finding with regards to the conscription and/or use of Child Soldiers in Port Loko District between February and April 1999.

1278. Although the Trial Chamber has found that the recruitment of these children for military purposes suffices for a finding of liability under Count 12, the Trial Chamber is further satisfied that children under the age of 15 were used for military purposes in Kenema District in 1997-1998,[2353] Kono District in 1998,[2354] and Freetown and the Western Area in 1999.[2355] The Trial Chamber finds that forcing children to undergo military training in a hostile environment constitutes illegal use of children pursuant to Article 4 (C), and therefore also finds that AFRC forces illegally used children in Bombali District in 1998.[2356] The Trial Chamber is further satisfied that incidents of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities were linked to the Accused in this case in the districts of Bombali and Freetown and the Western Area.

[2352] TF1-023, Transcript 9 March 2005, pp. 30-36; TF1-024, Transcript 7 March 2005, pp. 43-44, 50. TF1-227, Transcript 11 April 2005, pp. 6-7, 21-23. George Johnson, Transcript 15 September 2005, pp. 65-67. TF1-334, Transcript 15 June 2005, pp. 13-15.
[2353] TF1-062, Transcript 27 June 2005, pp. 35-36.
[2354] TF1-206, Transcript 28 June, p. 92. TF1-334, Transcript 20 May 2005, pp. 4-6.
[2355] TF1-023, Transcript 9 March 2005, pp. 30-36; TF1-024, Transcript 7 March 2005, pp. 43-44, 50. TF1-227, Transcript 11 April 2005,pp. 6-7, 21-23. Exhibit P-46, "Report of the UN Observer Mission in Sierra Leone (UNOMSIL)", 4 March 1999.
[2356] TF1-157, Transcript 25 July 2005, pp. 3, 6. TF1-158, Transcript 26 July 2005, pp. 39-41. George Johnson, Transcript 15 September 2005, pp. 65-67. TF1-334, Transcript 23 May 2005, p. 73, and TF1-334 Transcript 24 May 2005 pp. 23-25.

F. Abductions and Forced Labour (Count 13)

1. Allegations and Submissions

1279. The Indictment alleges that "[a]t all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use of diamond miners."[2357] The Indictment specifies that such acts allegedly occurred in various locations in the territory of Sierra Leone, including Kenema District between about 1 August 1997 and about 31 January 1998; Kono District between about 14 February 1998 to January 2000; Koinadugu District between about 14 February 1998 and 30 September 1998; Bombali District between about 1 May 1998 and 31 November 1998; Kailahun District at all times relevant to the Indictment; Freetown and the Western Area between 6 January 1999 and 28 February 1999; and Port Loko District about February 1999.[2358] The Accused are thus charged with enslavement, a crime against humanity, punishable under Article 2(c) of the Statute.

1280. The Trial Chamber recalls that the Prosecution has pleaded specific locations at which abductions and forced labour are alleged to have occurred in Kenema, Kono, Koinadugu, Freetown and Western Area and Port Loko, but has not provided such particulars in respect of Bombali and Kailahun Districts. Given the continuous nature of the offence, and in the interests of justice, the Trial Chamber has considered all the evidence of enslavement adduced in relation to each District, provided that it falls within the timeframe specified in the Indictment.[2359]

1281. Submissions by the Parties in respect of particular incidents or witnesses have been discussed as they arise on the evidence below. In addition, however, the Parties made several general submissions on the evidence with respect to enslavement.

1282. The Prosecution submits that the evidence adduced establishes the legal requirements for a finding of enslavement as a crime against humanity.[2360] The Prosecution argues that it is not necessary for a finding of enslavement to prove that the perpetrators intended to detain the victims under constant control for a prolonged period of time, citing the ICTY Appeals Chamber decision in *Kunarac* in support of this proposition.[2361] The Trial Chamber accepts that a person may be

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[2357] Indictment, para 66.
[2358] Indictment, paras 67-73.
[2359] *See* discussion on the pleading of offences of a continuous nature: Alleged Defects in the Form of the Indictent, paras 39-41.
[2360] Prosecution Final Brief, para. 1034.
[2361] Prosecution Final Brief, para. 1032; *Prosecutor v. Kunarac et al.*, IT-96-23&23/1-A, "Judgement", Appeals Chamber, 12 June 2002 paras 116-122.

enslaved for a short period of time provided that in that time the perpetrator intentionally exercises a degree of control over the person sufficient to constitute the *actus reus* of the crime.

2. The Brima Defence submits that there is no evidence before the Trial Chamber capable of supporting a charge of enslavement.[2362]

1283. The Kanu Defence also submits that the evidence presented during the trial does not support a conviction on enslavement.[2363] The Kanu Defence submits in relation to forced labour that the evidence must prove objectively that the witness was forced to work. The Kanu Defence argues that some of the evidence adduced by the Prosecution fails to fulfil this requirement as it was subjective, meaning that the evidence proved only the witness's personal conviction that she or he was compelled to work.[2364] The Trial Chamber emphasises that the legal definition of enslavement is framed objectively.[2365] When considering the evidence below, the Trial Chamber has looked for objective indications that civilians were forced to work, such as threats or use of violence by the perpetrators and lack of compensation. Findings are made only where the Trial Chamber is satisfied beyond reasonable doubt that the civilians were forced to work by AFRC/RUF soldiers.

1284. The Kanu Defence further submits that evidence of abduction does not suffice for a finding of enslavement and rather, the Prosecution must prove that victims were abducted and then subjected to enslavement. The Kanu Defence argues that much of the Prosecution evidence deals only with abducted civilians and it cannot be inferred that these abducted civilians were used as forced labour on the basis of evidence of different incidents in which abducted civilians were so used.[2366]

1285. The Trial Chamber accepts the submission that evidence that civilians were abducted, in the absence of proof of what subsequently occurred to them, is not sufficient *per se* to prove that these civilians were enslaved. However, the Trial Chamber relies on evidence of abductions insofar as it corroborates the evidence of witnesses who were abducted and then enslaved by AFRC/RUF troops.

1286. The Trial Chamber has considered the evidence adduced below to determine whether the *actus reus* of enslavement is proved beyond reasonable doubt in respect of the locations and time

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[2362] Brima Defence Final Brief, para. 315.
[2363] Kanu Defence Final Brief, para. 92.
[2364] Kanu Defence Final Brief, para. 84, citing *Prosecutor v. Krnojelac*, Appeals Chamber Judgement, 17 September 2003, IT-97-25-A, para. 159.
[2365] Applicable Law, paras 744-749.
[2366] Kanu Defence Final Brief, paras 87-90.

frames pleaded in the Indictment. The Trial Chamber finds that where the *actus reus* of the crime has been established, the only reasonable inference on the evidence is that the perpetrators intentionally exercised powers attaching to the right of ownership over the abductees. The Trial Chamber is also satisfied that each of the perpetrators was aware that their acts formed part of the widespread and systematic attack on the civilian population which was taking place at the time the crime was committed. In such circumstances the requisite *mens rea* element of the offence is established.

2. Findings

(a) Kenema District (about 1 August 1997 - about 31 January 1998)

1287. The Prosecution alleges that "[b]etween about 1 August 1997 and 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field".[2367]

1288. In arriving at the following findings of fact, the Trial Chamber has considered the available evidence, in particular the testimony of Prosecution witnesses TF1-062, TF1-122, TF1-334 and TF1-045 and Defence witnesses DAB-147, DAB-033 and DBK-063.

(i) Tongo Field

1289. Witness TF1-062 is a miner who was living and working in Tongo Field in 1997, with six men employed to mine for him.[2368] On an unspecified date in August 1997, witness TF1-062 heard gunfire and soon after observed soldiers entering Tongo Field. Some of these soldiers wore combat and others were in civilian clothing. The witness recognised the soldiers in combat as members of the SLA.[2369] The witness identified Sam Bockarie ('Mosquito') as the commander of the men, since he entered in a jeep and spoke to the civilians.[2370]

1290. Approximately three days later, 'Mosquito' gathered the civilians of Tongo Field in a public meeting at Tongo Park attended by witness TF1-062.[2371] He informed the civilians that the AFRC/RUF government, formed in Freetown, was now in control of Tongo. The civilians were told that 'Mosquito' had set up a secretariat, under Lieutenant Dennis, to handle any of their complaints.

[2367] Indictment, para 67.
[2368] TF1-062, Transcript 27 June 2005, p. 4.
[2369] TF1-062, Transcript 27 June 2005, pp. 8, 43-45.
[2370] TF1-062, Transcript 27 June 2005, pp. 8-9.
[2371] TF1-062, Transcript 27 June 2005, p. 13.

In addition, 'Mosquito' told the civilians that they were going to mine for diamonds.[2372] Witness TF1-062 testified that soon after this meeting, 'Mosquito' left Tongo Field, leaving SLA commander Jamayo Kati in charge of the mining. Kati was subsequently killed and replaced by SLA soldier Set Marrah.[2373] However, 'Mosquito' would visit Tongo Field more or less at weekly intervals.[2374]

1291. Witness TF1-062 stated that the civilians of Tongo Field were subsequently required to elect from their number a chairman, named Mompleh, who would be responsible for organising the civilian mining. Commander Pa Set Marrah informed the civilians, through Mompleh, that 'Mosquito' had ordered that they should mine for "the Government" two days a week.[2375] Witness TF1-062 testified that thereafter the AFRC/RUF would designate certain days as 'government days'.[2376] On 'government days', the civilians of Tongo Field were forced to go and work in the mines in an area known as Cyborg Pit.[2377]

1292. Witness TF1-062 estimated that over a thousand civilians worked in the mines on 'government days'.[2378] The AFRC/RUF government did not provide the civilians with food or mining equipment.[2379] Witness TF1-062 testified that civilians would not refuse to work on 'government days' since they knew that if they did so, the AFRC/RUF would mete out "discipline".[2380] The witness stated, as an example, that one of his workers hid in an attempt to avoid work, but was found and beaten.[2381]

1293. On 'government days', civilians were compelled to hand over any diamonds found to the AFRC/RUF soldiers supervising the mine work.[2382] The supervising soldiers at Cyborg Pit were armed with guns, such as RPGs, LMGs, G-3s, and AK-47s, and would watch the civilian miners to ensure that all diamonds found were surrendered.[2383] Civilians who attempted to keep diamonds

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[2372] TF1-062, Transcript 27 June 2005, pp. 14-16.
[2373] TF1-062, Transcript 27 June 2005, pp. 20-21. This commander is referred to in the transcript as 'Katy'. The Trial Chamber has adopted the spelling 'Kati' for consistency, as it is satisfied that this is the same person referred to in the evidence of TF1-045 below.
[2374] TF1-062, Transcript 27 June 2005, pp. 25, 54.
[2375] TF1-062, Transcript 27 June 2005, p. 24.
[2376] TF1-062, Transcript 27 June 2005, p. 27.
[2377] TF1-062, Transcript 27 June 2005, pp. 22-23, 27. *See also* TF1-045 Transcript 19 July 2005, p 48 and DAB-147, Transcript 3 October 2006, p. 62.
[2378] TF1-062, Transcript 27 June 2005, pp. 26-27.
[2379] TF1-062, Transcript 27 June 2005, p. 31.
[2380] TF1-062, Transcript 27 June 2005, p. 27
[2381] TF1-062, Transcript 27 June 2005, pp. 26-27.
[2382] TF1-062, Transcript 27 June 2005, p. 26-27; TF1-045, Transcript 19 July 2005, p 53.
[2383] TF1-062, Transcript 27 June 2005, pp. 31-32 and 34-35.

found during a government mining day would be flogged almost to death.[2384] Witness TF1-062 watched AFRC/RUF soldiers shoot and kill civilian miners that disobeyed orders on two occasions.[2385] In addition, the witness regularly saw corpses being brought out of the Cyborg pit, and he was informed by his workers that these civilians had been shot by AFRC/RUF soldiers.[2386] Even on non-government days, AFRC/RUF soldiers would be present at Cyborg Pit and would take diamonds found by civilians.[2387]

1294. Witness TF1-062 worked for the AFRC/RUF government at Cyborg Pit for about four months, until they were ousted from Tongo Field by the CDF Kamajors in approximately December 1997.[2388] His evidence regarding events at Cyborg Pit was corroborated by that of witnesses TF1-045 and TF1-122, each of whom testified that the AFRC/RUF forced civilians to labour in the diamond mines at Tongo Field in the period May 1997 through February 1998.

1295. Witness TF1-122, a civil police officer based in Kenema Town in the relevant period, testified that on an unspecified date the AFRC/RUF in Kenema Town formed a strong force and left for Tongo Field.[2389] Several days later, he spoke with displaced civilians arriving from Tongo, who told him that the AFRC/RUF had captured many able-bodied men and forced them to mine diamonds for them.[2390]

1296. Witness TF1-045 was an RUF Major who spent two to three months in Tongo Field, from approximately July to September 1997.[2391] He was sent there by his RUF commanding officer to mine diamonds and he did so using captured civilians given to him by the AFRC/RUF. The witness stated that the civilians he used did not mine for him voluntarily, although he gave them some food and money.[2392]

1297. Witness TF1-045 was unable to give an estimate of the number of civilians labouring in the mines, but stated that it could have been than 300 or 500.[2393] He described the process by which civilians were collected for work. The AFRC oversaw the formation of civilian committees that were in charge of organising their civilian colleagues for government work, in return for which they

[2384] TF1-062, Transcript 27 June 2005, p. 33.
[2385] TF1-062, Transcript 27 June 2005, pp. 35-36.
[2386] TF1-062, Transcript 27 June 2005, pp. 36-37.
[2387] TF1-062, Transcript 27 June 2005, p. 30.
[2388] TF1-062, Transcript 27 June 2005, p. 38.
[2389] TF1-122, Transcript 24 June 2005, p. 71.
[2390] TF1-122, Transcript 24 June 2005, p. 72.
[2391] TF1-045, Transcript 19 July 2005, pp. 34-35, 55, Transcript 20 July 2005 pp. 79-81.
[2392] TF1-045, Transcript 20 July 2005 pp. 85-86. The name of the witness's commanding officer was given to the Trial Chamber in closed session.
[2393] TF1-045, Transcript 19 July 2005, p. 47.

reputedly earned a commission from the diamonds found.[2394] The witness observed civilians being rounded up. He stated that armed men accompanied the committees to search for civilians and collected them at gunpoint.[2395] Once captured, the armed men tied the civilians together with their shirts and brought them to the mine where they were forced to work at gunpoint.[2396] When asked what happened to civilians who resisted, the witness replied that, from his observations, "If [you] 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."[2397] The witness clarified in cross-examination that he saw civilians shot and killed on two occasions.[2398]

1298. Witness TF1-045 testified that upon his arrival in Tongo Field, Captain Kati was the AFRC commander in charge of a company consisting of both RUF and AFRC troops.[2399] Kati reported to 'Mosquito', who was the overall commander of Tongo Field at this time.[2400] The witness testified that there were several other AFRC/RUF commanders involved in the mining operation in Tongo Field in this period, including Kati's deputy, RUF Major 'Eagle'; the OC Secretariat, AFRC Sergeant 'Junior'; and the AFRC PLO 2, whose name the witness did not recall.[2401]

1299. Witness TF1-045 testified that any diamonds found at the mines were handed over to the armed guards, who would then pass them on to the PLO 2. The witness was present at the AFRC Secretariat on occasions when the PLO 2 would weigh the diamonds. The PLO 2 told him that the diamonds were to be sent to Eddie Kanneh, the resident Minister at the time. However, on one occasion the witness observed the PLO 2 giving diamonds to 'Mosquito'.[2402]

1300. The Trial Chamber recalls its finding that the Accused Brima was the PLO 2 during the AFRC period, but that in this position he was involved in mining in Kono District and not Kenema.[2403] Although the witness was clearly mistaken in his recollection that the 'PLO 2' was in Tongo Field, the Trial Chamber accepts the remainder of his evidence in relation to the use of forced labour as it was detailed and consistent in all material respects and the witness remained unshaken on cross-examination.

[2394] TF1-045, Transcript 20 July 2005 pp. 88-89.
[2395] TF1-045, Transcript 19 July 2005, pp. 48-51.
[2396] TF1-045, Transcript 19 July 2005, pp. 51-52.
[2397] TF1-045, Transcript 19 July 2005, p. 55.
[2398] TF1-045, Transcript 20 July 2005, pp. 16-18.
[2399] TF1-045, Transcript 19 July 2005, pp. 35-36.
[2400] TF1-045, Transcript 19 July 2005, p. 37, Transcript 20 July 2005 p. 85.
[2401] TF1-045, Transcript 19 July 2005, pp. 39-40.
[2402] TF1-045, Transcript 19 July 2005, pp. 53-55.
[2403] *See* discussion of this aspect of witness TF1-045's evidence in Role of Accused, paras 329.

1301. The Brima Defence submits that witness TF1-045 did not describe any actual events which led him to conclude that the labour at the mines was forced.[2404] The Trial Chamber considers that a reasonable inference may be drawn from the evidence of witness TF1-045 that civilians were collected and taken to the mines at gunpoint, with resistance being met by violence, that their labour was extracted by force and without consent. While the witness does not give particulars of specific incidents in which he saw violence being inflicted on civilians, the Trial Chamber is satisfied that his evidence on this point is reliable, given that he personally used forced civilian labour in Tongo Field for a substantial period of time.

1302. Witness TF1-334 also gave evidence that during the AFRC government period both the SLA and the RUF were mining in Tongo. Each faction supervised its own mining sites, but the mining of both factions was under the overall control of the AFRC Secretariat led by Staff Sergeant 'Junior Sheriff'. The AFRC Secretariat was under the command of Secretary of State East, Captain Eddie Kanneh.[2405] While the witness does not state that civilians were forced to mine diamonds, the evidence corroborates the testimony of witnesses TF1-062 and TF1-045 that the AFRC were involved in diamond mining in Tongo Field.

1303. The Trial Chamber notes that Defence witnesses DAB-147, DAB-033 and DAB-063 gave evidence to the effect that the RUF were solely responsible for forced mining at Cyborg Pit in Tongo Field.

1304. Witness DAB-147 visited Kenema on two occasions in the period May 1997 through February 1998. He testified that both AFRC and RUF troops were stationed there. The witness stated that the RUF were mining at Cyborg Pit and they would kill civilians that went there to mine. The RUF commanders in Tongo, according to witness DAB-147, were named Manawa and Mopleh and they reported to Bockarie.[2406] However, he also stated at one point that the OC Secretariat Sergeant-Major 'Junior' was in charge of Tongo in this period. Witness DAB-047 testified that while he was in Tongo, he did not see AFRC soldiers forcing civilians to work in the mines.[2407] However, in cross-examination he agreed with the proposition that the AFRC government in Kenema forced civilians to mine for diamonds, before stating repeatedly that he had no knowledge of any AFRC mining operations and he could only testify to RUF mining in Tongo Field.[2408]

[2404] Brima Defence Final Brief, p. 123.
[2405] TF1-334, Transcript 17 May 2005, pp.54-55.
[2406] DAB-147, Transcript 3 October 2006, pp. 35-37.
[2407] DAB-147, Transcript 3 October 2006, p. 38.
[2408] DAB-147, Transcript 3 October 2006, pp. 62-65.

1305. Witness DAB-033, a member of the SLA, was posted to Tongo in July 1997 and remained there until January 1998. He gave evidence that Tongo was under RUF command.[2409] Witness DAB-033 agreed that civilians were forced to mine at Cyborg Pit, but testified that the RUF was in control of all mining operations there.[2410] Although there were SLAs in Tongo, led by Captain Kati and Seth Marrah, they were under RUF control and did not force civilians to mine.[2411] Under cross-examination, witness DAB-033 agreed that there was an AFRC secretariat in Tongo that monitored the mining operations. He also agreed that SLAs and RUF worked together at the secretariat, and SLA 'Junior Sheriff' was one of the commanders.[2412] Further, the witness's evidence discloses that the SLAs conducted mining in Tongo, since he states that good mining sites were taken from them by the RUF.[2413]

1306. Witness DBK-063, a member of the SLA, was posted in Tongo for six months commencing soon after June 1997.[2414] He testified that both RUF and SLA members were stationed in Tongo in this period. The RUF were commanded by 'Mosquito' and Eddie Kanneh, who was the SLA Secretary of State for Kenema.[2415] However, he gave evidence that the RUF and the SLA did not work together in Kenema District because they did not take commands from each other.[2416] According to Witness DBK-063, he was sent to Tongo along with other SLAs because the RUF were "not under control" and 'Mosquito' was stealing diamonds.[2417] He testified that Captain Kati, an SLA officer was killed when he went to Cyborg Pit to try and stop the mining, although this occurred prior to the witness's arrival in Tongo Field.[2418]

1307. Having considered the cross-examination of Defence witnesses DAB-033 and DAB-147, the Trial Chamber finds their testimony unreliable insofar as they both assert that the SLA had no involvement in the forced mining that occurred at Cyborg Pit. Witness DBK-063 did not state whether or not the AFRC were involved in mining operations. The Trial Chamber considers that the fact that these witnesses could testify only to RUF involvement in forced mining does not necessarily mean that the AFRC were not also engaging in the practice. Witness DAB-147 visited

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[2409] DAB-033, Transcript 25 September 2006, p. 42.
[2410] DAB-033, Transcript 25 September 2006, p. 43, Transcript 2 October 2006, pp. 109-110.
[2411] DAB-033, Transcript 25 September 2006, p. 43-44, Transcript 2 October 2006, p. 109.
[2412] DAB-033, Transcript 2October 2006, p. 54.
[2413] DAB-033, Transcript 25 September 2006, p. 44.
[2414] DBK-063, Transcript 2 August 2006, pp. 21-22, 25.
[2415] DBK-063, Transcript 2 August 2006, pp. 68-69.
[2416] DBK-063, Transcript 2 August 2006, pp. 63-64.
[2417] DBK-063, Transcript 2 August 2006, pp. 23-24.
[2418] DBK-063, Transcript 2 August 2006, pp. 23-25, 52. The transcript records the name of this captain as 'Yamao Kateh'. The Trial Chamber instead adopts the spelling 'Kati', as it is satisfied that this is the same person referred to in the evidence of witness TF1-045.

Tongo Field only twice and never went to Cyborg Pit.[2419] There is no evidence that witness DAB-033 or DBK-063 ever visited Cyborg Pit. The Trial Chamber prefers the more detailed evidence of Prosecution witnesses TF1-062 and TF1-045 in relation to the involvement of the AFRC in forced labour at Cyborg Pit, as both these witnesses were involved in mining operations there for a significant period of time.

1308. The Trial Chamber notes the evidence of Witness DBK-063 that the two factions worked separately in Tongo Field and also that of DAB-033 that the SLAs were under RUF control. Having accepted that the evidence above establishes beyond reasonable doubt that the AFRC were involved in mining operations using forced civilian labour at Cyborg Pit, the Trial Chamber finds it unnecessary to determine conclusively the working dynamic between the two factions, which was often frictional.

(ii) Findings

1309. On the basis of the preceding evidence, and without predetermining the individual responsibility of the three Accused, the Trial Chamber is satisfied beyond reasonable doubt that between about 1 August 1997 and about 31 January 1998, the AFRC/RUF forced an unknown number of civilians to mine for diamonds at Cyborg Pit in Tongo Field in Kenema District. The Trial Chamber accordingly finds that the elements of enslavement, as charged in Count 13, are established.

(b) Kono District (about 14 February 1998 – January 2000)

1310. The Prosecution alleges that "[b]etween about 14 February 1998 to January 2000, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wondedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area".[2420]

1311. No evidence of enslavement has been adduced with respect to Tomendeh.[2421]

1312. In arriving at the following findings of fact, the Trial Chamber has considered the available evidence, in particular the testimony of Prosecution witnesses TF1-072, TF1-216, TF1-334, TF1-198 and TF1-033 and Defence witnesses DAB-098, DAB-042 and DAB-131.

[2419] DAB-147, Transcript 3 October 2006, p. 37.

(i) Tombodu

1313. Witness TF1-334 arrived in Koidu Town in Kono District in early March 1998.[2422] He testified that several days after his arrival, the AFRC/RUF began capturing civilians on the order of Johnny Paul Koroma, especially the strong men and the young women, from Tombodu, Yamadu and other surrounding villages in Kono District. Civilians who tried to escape were executed.[2423] The AFRC/RUF used the civilians to carry their food, and trained some of them as soldiers for the movement.[2424]

1314. In March 1998, witness TF1-072 and his friend encountered seven soldiers in uniform near Gbaima while looking for food. Accompanying the soldiers was a civilian, tied with rope.[2425] The soldiers tied up witness TF1-072 and his friend and forced them to walk to Gbaima. The witness states that he and his friend could not refuse the soldiers as they were 'big men'. On arrival at Gbaima, the two men were made to lie down. They overheard the armed soldier left to guard them being instructed to shoot them if they tried to escape.[2426]

1315. Witness TF1-072, his friend, and the other civilian who had been with the soldiers were then taken, still tied, into Gbaima. Witness TF1-072 observed many "bags and bundles" lying around the town. The men were untied and forced by the soldiers to carry these loads on their heads towards Tombodu.[2427] Along the way, the soldiers encountered other civilians, whom they forced to join them, also making them carry loads on their heads.[2428] In Tombodu the civilians, of whom by now there were fourteen, were taken to a compound where they were beaten.[2429] The leader of the soldiers in the compound was called 'Savage'.[2430] 'Savage' mutilated Witness TF1-072's right hand before he managed to escape.[2431]

1316. On 14 April 1998, witness TF1-216 and his three children were captured by a group of soldiers near Paema.[2432] The soldiers tied up the witness and forced him and six other civilians to

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[2420] Indictment, para 68.
[2421] Rule 98 Decision, para. 236.
[2422] TF1-334, Transcript 20 May 2005, p. 3.
[2423] TF1-334, Transcript 20 May 2005, pp. 4-5.
[2424] TF1-334, Transcript 20 May 2005, pp. 5, 34.
[2425] TF1-072, Transcript 1 July 2005, p. 7.
[2426] TF1-072, Transcript 1 July 2005, p. 8.
[2427] TF1-072, Transcript 1 July 2005, pp. 9-10.
[2428] TF1-072, Transcript 1 July 2005, pp. 10-12.
[2429] TF1-072, Transcript 1 July 2005, pp. 12-18.
[2430] TF1-072, Transcript 1 July 2005, pp. 14.
[2431] TF1-072, Transcript 1 July 2005, pp. 19-20.
[2432] TF1-216, Transcript 27 June 2005, pp. 87-88.

carry loads to Tombodu at gunpoint.[2433] Upon arrival, the seven were tied together outside a house.[2434] At that point, a group of soldiers arrived with some other civilians. 'Staff Alhaji' whom the soldiers had identified as their leader, ordered the soldiers to put the civilians in the house. Witness TF1-216 overheard one of the soldiers reporting to 'Staff Alhaji' that there were 53 people in the house.[2435] 'Staff Alhaji' told Witness TF1-216 and four of the other civilians that they were to be used to take a message to President Kabbah. All five then had their hands amputated before being released.[2436]

1317. At an unspecified time after March 1998, witness DAB-098 and five others were captured by "rebels" near Gbongbor Junction while looking for food. Witness DAB-098 states that the "rebels" shot around them and there was no way for them to escape.[2437] The "rebels" took the group of civilians to Tombodu, where they were kept in a house for six months and subjected to regular beatings.[2438] Whilst in captivity, witness DAB-098 and the other civilians were required to go fishing, clean, carry goods, and collect food for the "rebels".[2439] He stated that while under their command, he felt that he had to accept anything they did to him or otherwise they would kill him.[2440] During his captivity, witness DAB-098 learnt that the leader of the "rebels" was named 'Savage'.[2441]

1318. The Trial Chamber recalls its finding that 'Savage' was an AFRC commander in charge of a battalion of mixed AFRC/RUF soldiers in Tombodu in the period from approximately mid March until at least the end of April 1998, with 'Staff Alhaji' as his deputy.

1319. Witness TF1-033 testified that in March 1998, he was abducted in Tombodu, along with many other civilians, by AFRC fighters under the command of 'Gullit', whose subordinate was 'Savage'. He stated that he both saw and heard 'Gullit' issue the command to abduct the civilians, and that the AFRC fighters told him that if he tried to escape they would kill him.[2442] In April 1998, when 'Gullit' ordered the AFRC fighters to retreat to Yaya due to the advance of ECOMOG

[2433] TF1-216, Transcript 27 June 2005, pp. 89-90.
[2434] TF1-216, Transcript 27 June 2005, p. 91.
[2435] TF1-216, Transcript 27 June 2005, p. 92.
[2436] TF1-216, Transcript 27 June 2005, pp. 93-94.
[2437] DAB-098, Transcript 4 September 2006, p. 14.
[2438] DAB-098, Transcript 4 September 2006, pp. 17-19, 28.
[2439] DAB-098, Transcript 4 September 2006, pp. 20-21, 30-31. The Transcript gives the location as 'Jagbema Fiama', however the Trial Chamber is satisfied that this is a misspelling of the location in Kono 'Jagbwema Fiama'.
[2440] DAB-098, Transcript 4 September 2006, p. 51.
[2441] DAB-098, Transcript 4 September 2006, pp. 22-23, 37-38, 52.
[2442] TF1-033, Transcript 11 July 2005, pp. 9-10.

witness TF1-033 was forced to accompany them.[2443] The witness remained with the AFRC until the retreat from Freetown in 1999.[2444]

1320. Under cross-examination, witness TF1-033 gave only very general information in relation to his abduction. He repeated his assertion that upon arrival in Tombodu, he encountered 'Gullit' and AFRC fighters and simultaneously overheard 'Gullit' ordering the fighters to abduct him.[2445] He stated that there were many other abducted civilians in Tombodu, and they stayed in houses under the strict supervision of AFRC fighters.[2446] Witness TF1-033 lived in the house of Staff Alhaji.[2447] He did not specify what, if anything, the civilians did in this period or describe any incidents that occurred involving himself or other abductees.

1321. The Kanu and Brima Defence submit that witness TF1-033's testimony in relation to his abduction is unreliable as the witness was not an abducted civilian, but rather an active AFRC supporter.[2448] The Brima Defence further submits that the evidence of witness TF1-033 is unreliable as he was a former AFRC member who stood to gain from embellishing his testimony to the detriment of the three Accused.[2449]

1322. Witness TF1-033's evidence that abductions of civilians were taking place in Tombodu in the period after February 1998 is corroborated by witnesses TF1-072, TF1-216 and TF1-334. However, the Trial Chamber is of the view that the evidence that the witness himself was forcibly captured in Tombodu is not probative, for several reasons. First, in a prior statement to the Prosecution, the witness stated that he decided to flee from Freetown with the AFRC troops in February 1998.[2450] Secondly, the Trial Chamber has found on the basis of reliable evidence from other witnesses that the Accused Brima was not in Kono in this period.[2451] Thirdly, the witness's account of his own abduction and captivity lacked the detail contained in the testimony of witnesses TF1-072, TF1-216 and DAB-098. The Trial Chamber therefore does not rely on the evidence of witness TF1-033 in making findings on enslavement in Kono District.

1323. The Trial Chamber notes that witnesses TF1-334 and DAB-098 gave evidence of diamond mining in the Tombodu area, however their evidence concerned the AFRC government period and

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[2443] TF1-033, Transcript 11 July 2005, p. 13.
[2444] TF1-033, Transcript 11 July 2005, p. 66.
[2445] TF1-033, Transcript 11 July 2005, p. 135-136.
[2446] TF1-033, Transcript 11 July 2005, pp. 76-77.
[2447] TF1-033, Transcript 11 July 2005, p. 78.
[2448] Kanu Defence Final Brief paras 140, 389; Brima Defence Closing Arguments, Transcript 7 December 2006, pp. 96-97.
[2449] Brima Defence Final Brief, paras 34, 47.
[2450] TF1-033, Transcript 11 July 2005, pp. 139-142.

therefore falls outside the Indictment period for Kono District for Count 13.[2452] No other evidence was adduced of diamond mining in the Tombodu area.

(ii) Koidu

1324. In July 1998, witness DAB-131 and his family were captured, along with an unspecified number of other civilians, in the bush around Tuyor, near Koidu.[2453] Their captors identified themselves as RUF soldiers.[2454] After they were captured, they pounded husk rice for the RUF and were forced to carry it into Koidu Town on their heads.[2455]

1325. Upon arrival in Koidu, witness DAB-131 and his group of civilians were sent by an RUF commander to a mining unit in an unspecified location in Kono District and told that they would work for the RUF.[2456] Witness DAB-131 testified that there were 240 civilians mining diamonds for the rebels, guarded by RUF soldiers. He knew the number of civilians since they were counted every morning. The commander of the soldiers introduced himself to the civilians as RUF Major Kumba. Any diamonds found were handed over to him.[2457]

1326. The civilians mined for the RUF for three months, until ECOMOG displaced the RUF from Kono. At this point, witness DAB-131 and an unspecified number of other civilians were forced to carry loads on their heads for the RUF from Koidu Town to Burkina (also known as Buedu) in Kailahun District.[2458] The civilians walked for two days and two nights, accompanied by the RUF, before arriving in Burkina.[2459] He observed the RUF soldiers killing civilians who were unable to carry their loads. Their loads were then transferred on to the heads of others. In addition, the soldiers would confiscate clothing and footwear that was in good condition from the civilians.[2460] The witness testified that by the time the group arrived in Kailahun, it included over 500 civilians.[2461]

1327. After an unspecified time in Burkina, witness DAB-131 and some 230 other civilians were forced to carry loads for the rebels back to Kono, to a location that the witness refers to as 'Joe

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[2451] Role of the Accused, paras 333-338,343-343.
[2452] *See* TF1-334, Transcript 17 May 2005, p.52-54, Transcript 20 May 2005, p. 40-43; DAB-098, Transcript 4 September 2006, p. 50.
[2453] DAB-131, Transcript 14 September 2006, pp. 36-37, 69.
[2454] DAB-131, Transcript 14 September 2006, p. 36.
[2455] DAB-131, Transcript 14 September 2006, pp. 37, 70.
[2456] DAB-131, Transcript 14 September 2006, pp. 39-40.
[2457] DAB-131, Transcript 14 September 2006, pp. 40-41.
[2458] DAB-131, Transcript 14 September 2006, pp. 42-43.
[2459] DAB-131, Transcript 14 September 2006, pp. 42-43.
[2460] DAB-131, Transcript 14 September 2006, pp. 43-44, 72.
[2461] DAB-131, Transcript 14 September 2006, pp. 46-47, 49.

Bush'.[2462] At 'Joe Bush' the civilians were forced to mine diamonds, supervised by armed RUF guards.[2463] The witness stated that diamonds found at the mine were taken by escort to Sam Bockarie, since the civilians were told that everything they recovered was for the RUF movement.[2464] Witness DAB-131 and the other civilians mined at Joe Bush for three to four months, until December 1998 when the rebels moved them to Koidu Town.[2465] The witness remained a captive of the RUF until "the ceasefire".[2466]

(iii) Wondedu

1328. At an unspecified time after February 1998, witness TF1-217 observed that RUF rebels brought around ten girls to Wondedu in open vehicles.[2467] He saw one of the girls crying. At that same time, the witness's sister was forcefully captured by RUF Captain Bai Bureh, who said that she was his wife. Witness TF1-217 testified that his sister did not want to go with Bureh, but the witness did not dare to intervene because Bureh threatened that he would take either his life or his sister.[2468] The witness did not know the fate of his sister or the ten girls.

1329. The Trial Chamber recalls that evidence of abductions alone is insufficient to prove enslavement.[2469] In the absence of other evidence of enslavement in Wondedu, the Trial Chamber makes no finding of enslavement in respect of this location.

(iv) Other locations in Kono District

1330. In late 1999, witness DAB-042 was captured by RUF rebels in Yengema.[2470] The witness, along with many other civilians, was taken to Kailahun and forced to carry loads, consisting of objects such as beds, baling machines, rice and beans, to the Mende land area.[2471] The witness remained with the rebels for three months.[2472]

[2462] DAB-131, Transcript 14 September 2006, pp. 50-51.
[2463] DAB-131, Transcript 14 September 2006, pp. 51-53.
[2464] DAB-131, Transcript 14 September 2006, p. 53.
[2465] DAB-131, Transcript 14 September 2006, pp. 53-57.
[2466] DAB-131, Transcript 14 September 2006, p. 72. The reference to "the ceasefire" is likely to refer to the May 1999 ceasefire which preceded the 1999 Lome Peace Accord. However, the witness's testimony did not make this clear.
[2467] The transcript gives the location as 'Wendedu', however the Trial Chamber is satisfied that this is the same location as 'Wondedu', which is the spelling used in the Indictment.
[2468] TF1-217, Transcript 17 October 2005, pp. 10-11.
[2469] Factual Findings, Enslavment, para. 1285.
[2470] DAB-042, Transcript 15 September 2006, pp. 83-85, 95.
[2471] DAB-042, Transcript 15 September 2006, pp. 85-86.
[2472] DAB-042, Transcript 15 September 2006, p. 84.

1331. Around mid-1998, witness TF1-198 and her family met a group of around seven armed "soldiers" in Koiduwar, who tied up her husband and forced him, along with five other men, to carry loads on their heads to Yardu Gbensa.[2473]

1332. Witness DAB-025 was captured by RUF rebels in Mortema in an unspecified year and forced to undergo military training and work at an RUF checkpoint near Yengema.[2474] As the Trial Chamber was unable to ascertain the time period in which these events occurred, the Trial Chamber does not rely on this evidence.

(v) Findings

1333. In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 to January 2000, an unknown number of civilians were abducted and used as forced labour in various locations in Kono District, including Tombodu, by AFRC/RUF forces under the command of 'Savage'. The Trial Chamber is further satisfied that in this same period, RUF forces abducted an unknown number of civilians and used them as forced labour at various locations in Kono District, including the RUF camp known as 'Joe Bush', Koidu Town and Yengema. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

(c) Koinadugu District (about February 1998 – 30 September 1998)

1334. The Prosecution alleges that "[b]etween about 14 February 1998 and 30 September 1998, at various locations including Heremakono, Kabala, Kumala (or Kamalu), Koinadugu, Kamadugu and Fadugu, members of the AFRC/RUF abducted an unknown number of men, women and children and used them as forced labour".[2475]

1335. No evidence of enslavement was led in respect of Kamadugu and Heremakono.[2476]

1336. In arriving at the following findings of fact, the Trial Chamber has taken into consideration the available evidence, in particular the testimony of Prosecution witnesses TF1-153, TF1-094, TF1-209 and TF1-133 and Defence witnesses DAB-089, DAB-081, DAB-082, DAB-078, DAB-088, DAB-090 and DAB-085.

[2473] TF1-198, Transcript 28 June 2005, pp. 12-13.
[2474] DAB-025, Transcript 28 July 2006, pp. 95-107
[2475] Indictment, para 69.
[2476] Rule 98 Decision, para. 236.

1337. The Trial Chamber has considered the evidence of witnesses TF1-209 and TF1-094 in its findings under Count 9.[2477] The evidence contained therein establishes beyond reasonable doubt that these witnesses were also enslaved by AFRC troops in Koinadugu District. Their evidence is discussed below insofar as it relates to the abduction and forced labour of other civilians in Koinadugu District.

(i) Kabala

1338. Witness TF1-209 testified that during the rainy season in 1998, a number of other civilians were captured by "juntas" along with herself, near Kabala.[2478] The 'juntas' took rice and ground nuts from the civilians and forced them to carry these items into Kabala town.[2479] En route, other civilians were captured and made to carry loads.[2480] Upon arriving in Kabala town, the civilians were taken to a man named 'Mongo' who was dressed in combat uniform. 'Mongo' wrote down their names so that none of them could go missing.[2481] Witness TF1-209 was taken to Koinadugu Town and 'married' to a man named Jabie. She gave no further evidence regarding the other civilians.

(ii) Kumala

1339. The available evidence of abductions and forced labour in Kumala consisted of the testimony of Prosecution witness TF1-133. The Trial Chamber has considered the evidence of this witness in its findings under Count 9.[2482] The evidence contained therein establishes beyond reasonable doubt that she was also enslaved by AFRC troops in Koinadugu District.

(iii) Koinadugu

1340. At an unspecified time in 1998, DAB-089 was abducted at gun point near Koinadugu by persons he identified only as 'gunmen' and forced to join a group of other civilians carrying loads to Koinadugu Town.[2483] Upon arrival in Koinadugu, the witness was handed over to a man named Albert, who threatened that he would kill him if he escaped and marked his forehead and chest with 'RUF'.[2484] Witness DAB-089 remained with Albert for eight days, in which time he followed

[2477] Factual Findings, Outrages on Personal Dignity, paras 1127-1133.
[2478] TF1-209, Transcript 7 July 2005, pp. 31-32.
[2479] TF1-209, Transcript 7 July 2005, pp. 36-37.
[2480] TF1-209, Transcript 7 July 2005, p. 37.
[2481] TF1-209, Transcript 7 July 2005, pp. 37-38.
[2482] Factual Findings, Outrages on Personal Dignity, paras 1115-1126.
[2483] DAB-089, Transcript 24 July 2006, pp. 50-51.
[2484] DAB-089, Transcript 24 July 2006, pp. 52-53.

orders to carry loads of food and communications equipment and logged wood.[2485] He overheard conversations in which Albert referred to his leaders as 'Superman' and SAJ Musa.[2486] Witness DAB-089 then managed to escape.[2487]

1341. In about August 1998, witness DAB-081 was captured by RUF rebels near Koinadugu.[2488] The rebels made the witness take them at gunpoint to Dankawalli village and then the following day to Koinadugu.[2489] In Koinadugu, the witness was housed with 50 other abductees and kept captive for several months.[2490] He testified that while he worked for the RUF, both RUF and SLA fighters used civilians for labour.[2491] The captives were forced to search for food for the RUF and SLA troops in Koinadugu. Abductees also had to build over 20 huts and guard posts along the road to Koinadugu for the RUF fighters.[2492] The RUF flogged their civilian workers, including witness DAB-081, with sticks.[2493]

1342. At an unspecified time after February 1998, witness TF1-153 and other civilians of Yirayie Town were captured by RUF commander Komba Gbundema and his men in the bush near Yirayie.[2494] The men ordered the civilians to hand over all their food and property.[2495] The men carried guns and the civilians were told that anyone who ran away would be killed. Gbundema ordered witness TF1-153 and the other civilians to carry the property which had been taken from them to Yirayie Town.[2496]

1343. Upon arrival in Yirayie, witness TF1-153 observed women pounding rice, children carrying loads on their heads and other commanders arriving from the bush with civilians.[2497] Witness TF1-153 states that the commanders and soldiers in Yirayie were from both the AFRC and the RUF. The Trial Chamber accepts that the witness was able to distinguish between the two factions as he came from a family background of affiliation with the military.[2498] That night, Witness TF1-153 was

[2485] DAB-089, Transcript 24 July 2006, pp. 54-55.
[2486] DAB-089, Transcript 24 July 2006, p. 55.
[2487] DAB-089, Transcript 24 July 2006, p. 56.
[2488] DAB-081, Transcript 20 July 2006, p. 84.
[2489] DAB-081, Transcript 20 July 2006, p. 85.
[2490] DAB-081, Transcript 20 July 2006, pp. 85-86.
[2491] DAB-081, Transcript 20 July 2006, pp. 89-90, Transcript 21 July 2006 p.10.
[2492] DAB-081, Transcript 20 July 2006, pp. 89-90.
[2493] DAB-081, Transcript 20 July 2006, p. 91.
[2494] TF1-153, Transcript 22 September 2005, pp. 41-42, 44-45.
[2495] TF1-153, Transcript 22 September 2005, p. 45.
[2496] TF1-153, Transcript 22 September 2005, pp. 47-48.
[2497] TF1-153, Transcript 22 September 2005, p. 49.
[2498] TF1-153, Transcript 22 September 2005, pp. 6-7.

forced by Gbundema's men to carry one bag of rice on his head to Koinadugu[2499] He was released upon his arrival because by chance one of the soldiers there was his cousin.[2500]

(iv) Other locations in Koinadugu District

1344. On 22 May 1998, witness DAB-078 was captured during an attack on his town in Koinadugu District by three armed men, one wearing a soldier's uniform and the other two wearing civilian clothing.[2501] He was forced to carry loads, along with about 15 other captured civilians, on the road to Makeni.[2502] He overheard his captors saying that their leaders were 'Captain Ishmael' and 'Colonel Born Trouble'.[2503] 'Captain Ishmael' was a deputy to 'Savage'.[2504] Witness DAB-078 overheard in discussion that both 'Ishmael' and 'Savage' were SLA soldiers.[2505] When the group reached Kanikay that same night, the witness managed to escape.[2506]

1345. Witness DAB-085 testified that between early September 1998 until about March 1999, 'Savage' and his men, including 'Ishmael', regularly looted his town in Koinadugu District.[2507] 'Savage's men would force young people from the witness's community to carry loads from the town to their base at Kamabai.[2508] As the Indictment period for Koinadugu District for Count 13 ends at 30 September 1998, the Trial Chamber relies on the witness's evidence primarily to corroborate the evidence of enslavement of other witnesses in relation to Koinadugu District.

1346. At an unspecified time after February 1998, rebels wearing civilian clothing captured witness DAB-082 and 14 other civilians in their village in Koinadugu District.[2509] The following day, the rebels sent witness DAB-082 and other civilians on food-finding missions.[2510] According to the witness, the civilians were told by the rebels to build a farm hut for themselves to use, and the rebels decided to call this place "Joe Bush". Every morning, the rebels would "bring out" the

[2499] TF1-153, Transcript 22 September 2005, p. 51.
[2500] TF1-153, Transcript 22 September 2005, pp. 52-53.
[2501] DAB-078, Transcript 6 September 2006, pp. 12-13. Name of his town admitted under seal: Exhibit D.23.
[2502] DAB-078, Transcript 6 September 2006, pp.13-14, 18, 54.
[2503] DAB-078, Transcript 6 September 2006, p. 22.
[2504] DAB-078, Transcript 6 September 2006, pp.51-52.
[2505] DAB-078, Transcript 6 September 2006, p. 57.
[2506] DAB-078, Transcript 6 September 2006, pp.21-22.
[2507] The witness gave the name of his town in closed session: DAB-085, Transcript 20 July 2006. pp. 43-44.
[2508] DAB-085, Transcript 20 July 2006. pp. 43-44.
[2509] The name of the witness's village was given in closed session: DAB-082, Transcript 21 July 2006, pp. 62-64, 70-71.
[2510] DAB-082, Transcript 21 July 2006, pp. 72-73.

civilians and tell them to go to "Joe Bush". The civilians would spend the day there and return in the evening.[2511]

1347. While the Trial Chamber found the witness credible, his evidence lacked detail. It is unclear whether the civilians were forced to obey the instructions given to them by the rebels or whether their autonomy was restricted in any other aspect. The witness did not explain what he and other civilians did at "Joe Bush", and therefore there is no evidence that the rebels accrued any gain from the civilians' activities. In the absence of such indicia, the Trial Chamber finds that it is not established beyond reasonable doubt that witness DAB-082 or other civilians in his company were used as forced labour.

1348. Witness DAB-090 testified that at an unspecified time after April 1998, rebels attacked Yifin. They remained in Yifin until the end of the year when they were disarmed.[2512] Throughout this period, the rebels used the children of Yifin to carry rice and other looted goods in loads on their heads to Kayima. The children told the witness that if they did not walk very fast on these trips they were seriously beaten.[2513] The rebels also forced the civilians of Yifin to cultivate a rice farm for them. The civilians were made to harvest the rice and then hand it over to the rebels.[2514]

1349. Witnesses TF1-094 and DAB-088 testified that in Yomadugu in around August 1998, there were many civilian men, women and children captured from surrounding villages. The civilians were forced to work for the rebels and SLAs, performing tasks such as harvesting rice in the bush, pounding rice, laundering and cooking. If civilians refused to work, they would be beaten or killed, and many such punishments were meted out.[2515]

(v) Findings

1350. In light of the preceding evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 14 February 1998 and 30 September 1998, an unknown number of civilians were abducted and used as forced labour by AFRC/RUF forces in various locations in Koinadugu District, including Kabala, Kumala, Koinadugu, Yifin and Yomadugu. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

[2511] DAB-082, Transcript 21 July 2006, pp. 74-78.
[2512] DAB-090, Transcript 24 July 2006, pp. 97, 102-103.
[2513] DAB-090, Transcript 24 July 2006, pp. 101-102.
[2514] DAB-090, Transcript 24 July 2006, p. 104.
[2515] TF1-094, Transcript 13 July 2005, pp. 31-32; DAB-088, Transcript 24 July 2006, pp. 40-41.

(d) Bombali District (about May 1998 – 31 November [sic] 1998)

1351. The Indictment alleges that "[b]etween about 1 May 1998 and 31 November [sic] 1998, in Bombali District, members of the AFRC/RUF abducted an unknown number of civilians and used them as forced labour".[2516]

1352. The evidence adduced on Bombali District concerns the alleged enslavement of civilians by AFRC troops between approximately April and July 1998 during their movement from Mansofinia (Koinadugu District) to Rosos (Bombali District) under the command of the Accused Brima, accompanied by the Accused Kamara and Kanu.[2517] The Trial Chamber will consider first the evidence pertaining to incidents which took place during the journey to Rosos and then the evidence regarding events that occurred while the troops were at Rosos.

1353. In arriving at the following findings, the Trial Chamber has considered the evidence adduced, in particular the testimony of Prosecution witnesses George Johnson, TF1-334, TF1-184, TF1-157, TF1-158, TF1-055 and TF1-058 and Defence witnesses DBK-101, DBK-100, DBK-089 and DBK-094.

1354. The Trial Chamber recalls that Prosecution witnesses TF1-157 and TF1-158 were abducted from Bornoya in 1998 by AFRC troops en route to Rosos and used as child soldiers. Their evidence, considered in the Trial Chamber's findings on Count 12, establishes beyond reasonable doubt that these witnesses were enslaved in Bombali District.[2518] Their testimony is considered below insofar as it demonstrates that an unknown number of other civilians were abducted and used as forced labour in Bombali District.

(i) Journey to Rosos

1355. Witness TF1-334 testified that 'Gullit' ordered at Mansofinia that any strong civilian encountered on the journey north should be captured and made part of the troop.[2519]

1356. Witnesses DBK-101 and DBK-100 testified that fighters abducted a number of civilians in the attack on Kamagbengbeh in May 1998. When some of the abductees subsequently escaped and

[2516] Indictment, para. 62.
[2517] *See* Role of Accused, para 465 for further detail on the journey from Mansofinia to Rosos.
[2518] Facts and Findings Child Soldiers, paras 1252-1258.
[2519] TF1-334, Transcript 23 May 2005, p. 17.

returned to the village, they told the other civilians that the attackers had forced them, under threat of violence, to carry loads to Kamabai.[2520]

1357. Witnesses living in Karina at the time of the AFRC forces' attack testified that the troops abducted a number of civilians, some of whom were personally known to the civilians.[2521] Witness TF1-058 was captured during the attack on Karina and ordered to sit with a group of other civilians being guarded by armed "juntas".[2522] The "juntas" instructed some of the civilians to stand up and form two lines. The men were forced to carry goods and the women to follow behind. All of the women were naked, except for one who was wearing a loincloth. Armed men accompanied the civilians.[2523]

1358. Witness TF1-334 was present during the attack on Karina, which he stated took place in the early morning, from around 2am until 7am.[2524] He testified that around 35 women were abducted in Karina and placed under the command of one Woyoh, who stripped the women naked.[2525] Small children were also abducted. Woyoh then handed control of the women to the Chief of Staff 'Five-Five'.[2526] 'Gullit' subsequently ordered, in the presence of the witness, that the children be distributed among the various commanders.[2527] After the attack on Karina, the soldiers arrived in Gbendembu, where they captured several young men and women.[2528]

1359. While the evidence above relates primarily to abductions, witnesses George Johnson and TF1-157, who were travelling with the troops, testified that the abducted civilians were used as forced labour. Johnson stated that hundreds of civilians were forcefully captured in the villages on the journey and the women were used as cooks, while the men were either used to carry arms, ammunition and food, or trained as fighters.[2529] Witness TF1-157 stated that civilians were forcefully abducted in Bornoya, Daraya, Mayogbo, Kagbemneh, Kamanameh, Kamatelun, Kamabai and Karina in Bombali District and compelled to carry looted goods for the rebels to Rosos.[2530]

(ii) Rosos

[2520] DBK-100, Transcript 17 July 2006, pp. 13-16; DBK-101, Transcript 14 July 2006, pp. 72-77.
[2521] The names of twelve women in total were given to the Trial Chamber in evidence by the various witnesses: TF1-055, Transcript 12 July 2005, pp. 134-137; DBK-089, Transcript 14 July 2006, pp. 22, 31-35, 46; Exhibit D16 (under seal); DBK-094, Transcript 11 July 2006, pp. 34, 40, 52-55, 73; TF1-058, Transcript 14 July 2005, p. 67.
[2522] TF1-058, Transcript 14 July 2005, p. 61-64.
[2523] TF1-058, Transcript 14 July 2005, p. 63-65.
[2524] TF1-334, 23 May 2005, p. 75.
[2525] TF1-334, 23 May 2005, pp. 72-73.
[2526] TF1-334, 23 May 2005, p. 73
[2527] TF1-334, 23 May 2005, pp. 74-75.
[2528] TF1-334, Transcript 23 May 2005, p. 84.
[2529] George Johnson Transcript 15 September 2005, pp. 58-59, 64.
[2530] TF1-157, Transcript 22 July 2005, p. 66-87.

1360. While at Rosos, the troops staged an operation to nearby village of Gbendembu, where additional civilians were abducted.[2531] The troops remained at Rosos for three months.[2532] Civilian abductees were used in this period to perform domestic labour, including food finding, fetching water and cleaning dishes.[2533]

1361. Abductees were also forced to undergo military training.[2534] Trainees that attempted to escape were killed.[2535] The duration of the training program at Rosos was three weeks.[2536] The exercises encompassed weapon handling, tactics, firing and maneuvering.[2537] Witness George Johnson estimated that approximately 520 civilians, including both adults and children, were trained in this manner at Rosos.[2538] At the completion of the training program, the civilians were integrated into the battalions by FAT Sesay.[2539]

1362. The Trial Chamber notes that witness TF1-184, who travelled with SAJ Musa's group of troops to meet the Accused Brima's group at 'Colonel Eddie Town', testified that SAJ Musa's group was accompanied by civilians who were free to leave at any time without fear of reprisal.[2540] The Kanu Defence submits that these civilians were not subjected to enslavement.[2541] Given that the AFRC faction led by the Accused Brima was not with SAJ Musa's group or subject to SAJ Musa's command until after they departed from Rosos, this evidence is not material to the Trial Chamber's consideration of the above evidence on Bombali District.

(iii) Findings

1363. In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that between about 1 May 1998 and 30 November 1998, an unknown number of civilians were abducted and used as forced labour, as well as being forced to undergo military training, by AFRC troops in various locations in Bombali District including Bornoya, Kamagbengbeh, Karina, Daraya, Mayogbo, Kagbemneh, Kamanameh, Kamatelun, Kamabai, Rosos and Gbendembu. The Trial

[2531] George Johnson, Transcript 15 September 2005, p. 63; TF1-158, Transcript 26 July 2005, p. 44.
[2532] TF1-334, Transcript 23 May 2005, p. 103.
[2533] TF1-158, Transcript 26 July 2005, pp. 38-39; TF1-157, Transcript 22 July 2005, pp. 96, 104; Transcript 25 July 2005, pp. 9-10.
[2534] TF1-334, Transcript 24 May 2005, p. 24; TF1-158, Transcript 26 July 2005, pp. 39-40; TF1-157, Transcript 25 July 2005, pp. 3-4.
[2535] George Johnson, Transcript 15 September 2005, pp. 64-65.
[2536] TF1-334, Transcript 24 May 2005, p. 28; George Johnson, Transcript 15 September 2005, p. 65.
[2537] George Johnson, Transcript 15 September 2005, pp. 65-66.
[2538] George Johnson, Transcript 15 September 2005, p. 66.
[2539] George Johnson, Transcript 15 September 2005, pp. 65-66.
[2540] TF1-184, Transcript 29 September 2005, pp. 32, 35-37.
[2541] Kanu Defence Final Brief, paras 85-86.

Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established in Bombali District.

(e) Kailahun District (all times relevant to Indictment)

1364. The Indictment alleges that "[a]t all times relevant to the Indictment, captured men, women and children were brought to various locations within the District and used as forced labour".[2542]

1365. In reaching the following factual findings, the Trial Chamber has considered the evidence adduced, in particular the testimony of Prosecution witnesses TF1-113 and TF1-114 and Defence witnesses DAB-135, DAB-140 and DAB-027.

1366. The Trial Chamber has divided the evidence on Kailahun District into two periods, the first being the AFRC government period from May 1997 to February 1998, and the second the period from February 1998 until January 2000.

(i) May 1997 – February 1998

1367. The Trial Chamber notes the evidence of witness TF1-113 that 67 persons accused by AFRC/RUF soldiers of being Kamajors were detained and used as forced labour in Kailahun Town for approximately two or three months during this period. As it has not been established beyond reasonable doubt that these persons were in fact civilians, the Trial Chamber makes no finding of enslavement on this evidence.[2543]

1368. Around May 1997, witness DAB-135 was captured with 19 other civilians in the fields near Jagbwema Town by armed RUF rebels wearing mixed combat and civilian clothing.[2544] The rebels took thirteen of the civilians to Jagbwema Town where they met other civilians that had been captured. Witness DAB-135 was taken before the rebel leader Major Kangoma, who questioned him, kicked him and hit him with a gun butt.[2545] A rebel named 'Captain Death Squad' then took witness DAB-135 and two of his sisters and ordered them to pound a drum of husk rice and launder clothes for him.[2546]

[2542] Indictment, para. 71.
[2543] TF1-113, Transcript 18 July 2005, pp. 84-89. *See* consideration of this evidence in Factual Findings, Unlawful Killings, paras 860-861, *supra*.
[2544] DAB-135, Transcript 11 September 2006, pp. 34, 37-38, 46-47, 55-56.
[2545] DAB-135, Transcript 11 September 2006, p. 42.
[2546] DAB-135, Transcript 11 September 2006, p. 44.

1369. The following day the civilians were taken to Tueyor, where they were again forced to pound rice and launder clothes, without being fed.[2547] Three days later, witness DAB-135 was ordered to go to Buedu in Kailahun Chiefdom with the rebels, carrying loads for them.[2548] The witness spent about two days in Kailahun Chiefdom, working for the rebels while being given very little food.[2549] The rebels then took witness DAB-135 back to Kono District, stopping along the way in a village called Manjama where the rebels forced the witness to pound rice and they captured other civilians.[2550] Upon returning to Kono, the witness spent two years and six months with the rebels before being reunited with his family.[2551]

1370. In approximately May 1997, Witness DAB-140 was captured by rebels in the bush near Buedu and brought into Buedu Town. The rebels, whose commander was Sam Bockarie, required the witness, along with other civilians in Buedu, to "report for duty" every morning to a rebel leader.[2552] One of the tasks that the witness was regularly forced to undertake was carrying heavy loads.[2553] Specifically, the witness stated that the rebels used to take corrugated iron and doors from people's houses in Buedu and force civilians, under threat of violence, to carry the iron to Liberia and the doors to Guinea.[2554] Civilians who refused to take loads were beaten or killed.[2555]

(ii) February 1998 – January 2000

1371. Witness TF1-114, a military police adjutant in Buedu, testified that the RUF engaged in forced labour after February 1998.[2556] One of his duties was to take the names of civilians reporting for 'government work'. 'Government work' typically included working on commanders' farms, constructing roads and carrying loads for commanders and was carried out involuntarily by civilians who received no remuneration.[2557]

1372. The Kanu Defence submits that the evidence of witness TF1-114 in relation to forced labour in Kailahun establishes that the responsibility for this crime falls to members of the RUF.[2558] Under cross-examination, Witness TF1-114 gave confusing and contradictory evidence regarding his

[2547] DAB-135, Transcript 11 September 2006, pp. 45-46.
[2548] DAB-135, Transcript 11 September 2006, p. 47.
[2549] DAB-135, Transcript 11 September 2006, pp. 48-49.
[2550] DAB-135, Transcript 11 September 2006, pp. 50-51.
[2551] DAB-135, Transcript 11 September 2006, p. 51.
[2552] DAB-140, Transcript 19 September 2006, pp. 68-69.
[2553] DAB-140, Transcript 19 September 2006, pp. 69-70.
[2554] DAB-140, Transcript 19 September 2006, pp. 85-86.
[2555] DAB-140, Transcript 19 September 2006, pp. 69-70.
[2556] TF1-114, Transcript 14 July 2005, p. 128.
[2557] TF1-114, Transcript 14 July 2005, pp. 129-130.
[2558] Kanu Defence Final Brief, para. 383.

affiliation with the SLA and RUF factions. He consistently asserted that throughout the period he worked in Buedu, he was a member of the RUF.[2559] Accordingly, the Trial Chamber finds that it has not been established beyond reasonable doubt that the AFRC was involved in the forced labour described.

1373. At an unspecified time in 1998, witness DAB-027 and a group of other civilians were captured in the bush near Bendu by RUF rebels and taken to Jagbema village.[2560] After several days, the civilians were taken to Tueyor, from where they were divided into two groups.[2561] The younger ones, including the witness, were taken to Bunumbu Camp Lion Training Base, in Kailahun District.[2562] Witness DAB-027 and many other captive civilians were given military training at Bunumbu.[2563] Over a month later, the witness was then sent to Gandorhun, in Kono District, and some time later to Sengema. Throughout this time he was required to work for RUF rebels.[2564]

(iii) Findings

1374. In light of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that during the Indictment period, RUF troops abducted an unknown number of civilians and used them as forced labour, including military training, in various locations in Kailahun District, including Jagbwema Town, Buedu and Bunumbu. The Trial Chamber accordingly finds that the elements of enslavement, as charged in Count 13, are established. However, the Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that AFRC troops were involved in the enslavement of civilians in Kailahun District.

(f) Freetown and the Western Area (6 January 1999 – 28 February 1999)

1375. The Indictment alleges that "[b]etween 6 January 1999 and 28 February 1999, in particular as the AFRC/RUF were being driven out of Freetown and the Western Area, members of the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas in Freetown and the Western Area, including Peacock Farm, Kissy, and Calaba Town. These abducted civilians were used as forced labour."[2565]

[2559] TF1-114, Transcript 18 July 2005, p. 12.
[2560] DAB-027, Transcript 4 September 2006, p. 105.
[2561] DAB-027, Transcript 4 September 2006, p. 106.
[2562] DAB-027, Transcript 4 September 2006, pp. 107-108, 113.
[2563] DAB-027, Transcript 4 September 2006, pp. 109-112.
[2564] DAB-027, Transcript 4 September 2006, pp. 112-115, Transcript 5 September 2006, pp. 2-4, 7.
[2565] Indictment, para. 72.

1376. No evidence of enslavement was led in relation to Peacock Farm.[2566]

1377. In reaching the following findings of fact, the Trial Chamber has taken into account the evidence adduced, in particular the testimony of Prosecution witnesses TF1-024, TF1-227, TF1-084, TF1-023, TF1-085, George Johnson and TF1-334.

1378. The Trial Chamber has considered the evidence of Prosecution witnesses TF1-023 and TF1-085 in its findings under Count 9[2567] and TF1-157 under Count 12.[2568] The evidence therein establishes beyond reasonable doubt that these witnesses were enslaved in Freetown and the Western Area. Their testimony is considered below insofar as it demonstrates that an unknown number of other civilians were abducted and used as forced labour.

(i) Freetown

1379. Prosecution witness George Johnson testified that as the AFRC faction advanced on Freetown on 6 January 1999, they were accompanied by a large number of abductees who carried arms, ammunition and foodstuffs.[2569]

1380. Approximately three weeks later, at a meeting of senior commanders in the Upgun area during the retreat from Freetown, 'Gullit' ordered that troops should begin abducting civilians, saying that this would attract the attention of the international community.[2570] Witness TF1-334 subsequently observed troops breaking into houses and capturing civilians, especially young girls, and taking them to headquarters at the PWD.[2571] The witness stated that at this time 'almost everybody had civilians,' including the commanders.[2572] It was the responsibility of the abducting commander to ensure that the civilians were 'well-secured', which the witness explained meant that they could not escape.[2573]

(ii) Kissy

1381. While the troop was based at Ferry Junction, during the retreat from Freetown, 'Gullit' issued a further order for abductions to start again.[2574] As ECOMOG advanced towards Ferry

[2566] Rule 98 Decision, para. 236.
[2567] Facts and Findings, Outrages on Personal Dignity, paras 2285-1159, *supra*.
[2568] Facts and Findings, Child Soldiers, paras 1252-1255, *supra*.
[2569] George Johnson, Transcript 16 September 2005, pp. 8, 21.
[2570] TF1-334, Transcript 14 June 2005, pp. 62-63.
[2571] TF1-334, Transcript 14 June 2005, pp. 63-64.
[2572] TF1-334, Transcript 14 June 2005, pp. 118-119.
[2573] TF1-334, Transcript 14 June 2005, p. 119.
[2574] TF1-334, Transcript 14 June 2005, pp. 77-78.

Junction, the AFRC withdrew towards Kissy. In accordance with the Accused Brima's orders, the troops captured civilians as they withdrew. These civilians were taken to Kissy Mental Home.[2575]

1382. This evidence is corroborated by Witness TF1-084, who was in Kissy, Freetown, during the January 1999 retreat. He observed 'rebels' in military dress capturing people, putting them in vehicles and driving them away. The witness testified that among those captured he recognised a 14 year old girl. He did not see any of the people captured again.[2576]

(iii) Calaba Town

1383. Witness TF1-024 testified that on 8 January 1999, he was captured in Freetown by three armed rebel boys who were dressed in ECOMOG uniforms and taken to State House.[2577] The rebel boys who had captured the witness beat him and then locked him inside the kitchen at State House.[2578] The witness stated that there were 50 other civilians in the kitchen and they remained locked there for four days without food or water.[2579] After four days, as ECOMOG approached State House, the rebels forced witness TF1-024 and the other civilians to accompany them on their flight out of Freetown. The rebels made the witness carry a heavy bomb to Calaba Town.[2580] At Calaba Town, the rebels took the bomb from witness TF1-024 and he escaped.[2581]

1384. On the afternoon of 22 January 1999, witness TF1-023 and ten other civilians were captured by an armed young boy in Calaba Town. The boy was with a group of about 200 people, consisting of rebels and civilians whom the rebels had just captured.[2582] The rebels took the civilians to a location that the witness was unable to identify. The civilians were told that they had been captured to use as human shields, but that they would not be harmed and so they should not be scared. The rebels gave the civilians food and the boy that had captured Witness TF1-023 gave her a small bag to carry. The following day, the civilians were taken to Allen Town, where they met around 300-400 armed rebels and around 100 other civilians.[2583] The civilians were guarded by armed boys that prevented them from moving around freely.[2584]

[2575] TF1-334, Transcript 14 June 2005, pp. 79-80; Transcript 15 June 2005 pp. 8-9; George Johnson, Transcript 16 September 2005, pp. 52-53.
[2576] TF1-084, Transcript 6 April 2005, pp. 38-40.
[2577] TF1-024, Transcript 7 March 2005, pp. 43-45, 63-65.
[2578] TF1-024, Transcript 7 March 2005, p. 44.
[2579] TF1-024, Transcript 7 March 2005, pp. 48-49.
[2580] TF1-024, Transcript 7 March 2005, pp. 48, 50-51, 53, 81.
[2581] TF1-024, Transcript 7 March 2005, p. 53.
[2582] TF1-023, Transcript 9 March 2005, pp. 30-31.
[2583] TF1-023, Transcript 9 March 2005, pp. 32-34.
[2584] TF1-023, Transcript 9 March 2005, p. 35.

(iv) Other locations in Freetown and Western Area

1385. In late January 1999, witness TF1-227 was captured in Kola Tree by soldiers who accused him of being a Kamajor.[2585] Witness TF1-227 remained in captivity for 10 months. At Kola Tree, there were about 200 civilians who were forced by the AFRC to join them in the retreat to Benguema.[2586]

1386. While the above evidence relates primarily to abductions, the Trial Chamber is satisfied on the basis of the following evidence that AFRC soldiers used the civilians abducted during the retreat from Freetown as forced labour.

1387. Witness TF1-227 testified that during the retreat to Benguema, AFRC soldiers used civilians to carry loads, perform domestic tasks or act as guards. [2587] Witnesses TF1-334 and TF1-227 testified that when the troops arrived at Benguema, they were accompanied by several hundred civilians who had been abducted in Freetown. During the month in which the troops were based there, the civilians went on food finding missions, pounded rice, carried looted items and participated in cooking.[2588] Witness TF1-334 stated that the civilians were obliged to perform these tasks because there was no way that they could escape.[2589]

1388. From Benguema, the troops retreated to Newton, where they remained about a month, performing similar tasks.[2590] At Newton, 'Five-Five' was responsible for all the young girls at the camp. Witness TF1-334 observed problems with the girls being reported to him.[2591]

(v) Findings

1389. On the basis of the evidence above, the Trial Chamber is satisfied beyond reasonable doubt that between 6 January 1999 and 28 February 1999, members of the AFRC abducted large numbers of civilians from locations including Freetown, Kissy, Calaba Town and Kola Tree and used these civilians as forced labour in locations including Benguema and Newton in the Western Area. The Trial Chamber accordingly finds, without predetermining the individual responsibility of the three Accused, that the elements in relation to Count 13 have been established.

[2585] TF1-227, Transcript 8 April 2005, p. 96.
[2586] TF1-227, Transcript 8 April 2005, p. 98; Transcript 11 April 2005, p. 6.
[2587] TF1-227, Transcript 8 April 2005, p. 98; Transcript 11 April 2005, p. 6.
[2588] TF1-334, Transcript 14 June 2005, p. 113-116; TF1-227, Transcript 11 April 2005, pp. 12-13.
[2589] TF1-334, Transcript 14 June 2005, pp. 119-120.
[2590] TF1-334, Transcript 15 June 2005, p. 13-15.
[2591] TF1-334, Transcript 15 June 2005, p. 15.

(g) Port Loko District (about February 1999)

1390. The Indictment alleges that "[a]bout the month of February 1999, the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Members of the AFRC/RUF used civilians, including those that had been abducted from Freetown and the Western Area, as forced labour in various locations throughout the Port Loko District including Port Loko, Lunsar and Masiaka. AFRC/RUF forces also abducted and used as forced labour civilians from various locations in the Port Loko District, including Tendakum and Nonkoba".[2592]

1391. In arriving at the following findings, the Trial Chamber has examined the entire evidence in relation to enslavement in Port Loko District, in particular the testimony of witnesses TF1-334 and George Johnson. No evidence was adduced of enslavement in February 1999 in Port Loko, Lunsar, Tendakum and Nonkoba.

(i) Other locations in Port Loko District

1392. In Mamamah Town, the troops were ordered by the Accused Kamara to use civilians to dig a large ditch in the road to create an obstacle for ECOMOG forces. Civilians did so, using pick axes, under the supervision of the Accused Kamara.[2593] The Trial Chamber is of the view that this isolated incident of forced labour of short duration does not involve the exercise of powers attaching to the right of ownership over the victims. It is therefore of an insufficient gravity to prove the *actus reus* of enslavement.

1393. Witnesses testified that about 700 people, including abducted civilians, were at the AFRC base in Gberi Bana under the command of the Accused Kamara.[2594] However, in the absence of further evidence as to whether the abductees were used as forced labour, and in light of the evidence of witness TF1-334 that civilians joined the AFRC troops retreating from Benguema did so since they feared for their lives,[2595] the Trial Chamber finds that there is reasonable doubt as to whether these civilians were enslaved.

(ii) Findings

1394. The Trial Chamber accordingly finds that the Prosecution has failed to establish that civilians were enslaved in February 1999 in Port Loko District.

[2592] Indictment, para. 73.
[2593] TF1-334, Transcript 15 June 2005, pp. 21-22.

G. Count 14 (Pillage)

1. Allegations and Submissions

1395. The Indictment alleges that members of the AFRC/RUF subordinate to and/or acting in concert with the Accused carried out "[w]idespread unlawful taking and destruction by burning of civilian property".[2596] This looting and burning was allegedly carried out in various locations in the territory of Sierra Leone including Bo District between 1 June 1997 and 30 June 1997; Koinadugu District between about 14 February 1998 and 30 September 1998; Kono District between about 14 February and 30 June 1998; Bombali District between about 1 March 1998 and 30 November 1998; and Freetown and the Western Area between 6 January 1999 and 28 February 1999.[2597]

1396. Submissions by the Parties with regard to specific incidents and witnesses will be discussed as they arise in the evidence below.

2. Evidence and Deliberations

1397. The Trial Chamber recalls its finding that the burning of property does not satisfy the legal elements of pillage.[2598] Therefore, the Trial Chamber will only examine the evidence relating to the underlying acts of looting.

1398. The Trial Chamber recalls that on several occasions, senior AFRC and RUF commanders declared operations that authorised their forces to plunder civilian property. Following the retreat from Freetown in February 1998, Johnny Paul Koroma declared "Operation Pay Yourself" over BBC Radio.[2599] Witness TF1-334 testified that Koroma announced this operation, which encouraged the troops to loot property, since without access to state revenue he could no longer pay them.[2600] Sam Bockarie declared a similar operation to his soldiers in Kenema District in February 1998.[2601] Looting with reference to 'Operation Pay Yourself' continued long after their announcement.[2602]

[2594] TF1-334, Transcript 15 June 2005, p. 31; George Johnson, Transcript 16 September 2005, p. 72. *See* Role of Accused, paras 485-500, *supra*, for further detail on the Accused Kamara in Port Loko District in this period.
[2595] TF1-334, Transcript 15 June 2005, p. 10.
[2596] Indictment, para. 74.
[2597] Indictment, paras 75-79.
[2598] Applicable Law, para. 757, *supra*.
[2599] TF1-334, Transcript 17 May 2005, pp. 72-73.
[2600] TF1-334, Transcript 17 May 2005, pp. 72-73; TF1-216, Transcript 27 June 2005, pp. 78-80, 96.
[2601] TF1-045, Transcript 19 July 2005, p. 82.
[2602] Witness TF1-216 testified that soldiers referred to 'Operation Pay Yourself' following the capture of Koidu Town in March 1998: Transcript 27 June 2005, pp. 78-80, 96. Witness TF1-334 testified that the operation continued up to

1399. Given this context, the Trial Chamber is satisfied that the looting described below was directly linked to the war efforts of the AFRC and RUF and that the perpetrators were aware of the existence of an armed conflict and of the protected status of the owner of the property.

1400. The Trial Chamber is satisfied, in respect of each incident of looting described below, that the perpetrators intended to deprive the civilians of their property, without their consent, and appropriate it for their personal use.

(a) Bo District (1 June 1997 - 30 June 1997)

1401. The Prosecution alleges that "[b]etween 1 June 1997 and 30 June 1997, AFRC/RUF forces looted [...] in Telu, Sembehun, Mamboma and Tikonko".[2603]

1402. The Trial Chamber has previously found that no evidence on pillage was adduced with respect to Telu, Sembehun and Mamboma.[2604] The Trial Chamber finds that no evidence has been adduced of acts of looting with respect to Tikonko.

(b) Koinadugu District (14 February 1998-30 September 1998)

1403. The Prosecution alleges that "[b]etween about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in widespread looting [...] in the District, including Heremakono, Kabala, Kamadugu and Fadugu".[2605]

1404. The Trial Chamber has previously held that the Prosecution has not led evidence on pillage with respect to Heremakono and Kamadugu.[2606] No evidence was adduced of looting within the Indictment period in Fadugu.

1405. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-147, TF1-153 and TF1-199, Defence witness DAB-078 and Exhibit P-57.

(i) Kabala

Kono District: Transcript 20 June 2005, pp. 104-10. Witness TF1-157 testified that looting AFRC soldiers referred to 'Operation Pay Yourself' in Bombali District in April/May 1998: Transcript 22 July 2005, p. 68.

[2603] Indictment, para. 75.

[2604] Rule 98 Decision, para. 261.

[2605] Indictment, para. 76.

[2606] Rule 98 Decision, para. 261.

1406. Witness TF1-147 testified that following a "rebel" attack on Kabala on 27 July 1998, property of civilians, including his personal belongings, were looted.[2607] The witness did not see the perpetrators, but concluded that the "rebels" who attacked the town were responsible.[2608] In a second attack on 17 September 1998, fighters again looted civilian property from houses.[2609] The witness believed that the attack was conducted by the same "rebels" who had staged the July attack.[2610]

1407. Witness TF1-147 was not able to identify the faction that attacked Kabala town on those two occasions. However, witness DAB-078 stated that around September 1998 he heard that troops under the command of 'Savage' had looted a house in Kabala.[2611]

1408. Form the date given of the attacks and the overall evidence adduced, the Trial Chamber finds beyond reasonable doubt that the attacks on Kabala were conducted by troops associated with SAJ Musa and/or Dennis Mingo.

(ii) Finding

1409. On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond a reasonable doubt that between about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in looting in Kabala in Koinadugu District.

(c) Kono District (14 February 1998 - 30 June 1998)

1410. The Prosecution alleges that "[b]etween about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted [...]."[2612]

1411. The Trial Chamber has previously found that no evidence on pillage was led with respect to Foindu.[2613]

[2607] TF1-147, Transcript 13 July 2005, p. 10; TF1-199, Transcript 6 October 2005, p. 88.
[2608] TF1-147, Transcript 13 July 2005, pp. 10-12.
[2609] TF1-147, Transcript 13 July 2005, p. 14.
[2610] TF1-147, Transcript 13 July 2005, p. 13.
[2611] DAB-078, Transcript 6 September 2006, pp. 41, 43-44.
[2612] Indictment, para. 77.
[2613] Rule 98 Decision, para. 261.

1412. In reaching its factual findings and having examined the entire evidence, the Trial Chamber relies on Prosecution witnesses TF1-019 and TF1-072.

(i) Tombodu

1413. Witness TF1-072 testified that in March 1998, soldiers under the command of 'Savage'[2614] on the way to Tombodu forcefully appropriated five gallons of palm wine from a civilian and consumed the palm wine.[2615]

(ii) Yardu Sando

1414. Witness TF1-019 testified that on 16 April 1998, AFRC soldiers and RUF rebels attacked Yardu Sando[2616] and took boxes and other valuable property from civilian houses.[2617] The fighters were singing in joy about the property they looted.[2618]

(iii) Findings

1415. On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond a reasonable doubt that between about 14 February 1998 and 30 June 1998, AFRC/RUF forces engaged in looting in Tombodu and Yardu Sando in Kono District.

(d) Bombali District (1 March 1998-31 November 1998)

1416. The Prosecution alleges that "[b]etween about 1 March 1998 and 31 November 1998, AFRC/RUF forces burnt an unknown number of civilian buildings in locations in Bombali District, such as Karina and Mateboi".[2619]

1417. Although the Prosecution adduced evidence with respect to looting in Karina, Makeni and Camp Rosos, acts of looting are not alleged in the Indictment with regard to Bombali District. The Trial Chamber accordingly makes no findings on this evidence.

[2614] TF1-072, Transcript 1 July 2005, pp. 21-22.
[2615] TF1-072, Transcript 1 July 2005, pp. 11-12.
[2616] TF1-019, Transcript 30 June 2005, pp. 89, 94-95.
[2617] TF1-019, Transcript 30 June 2005, pp. 89-91.
[2618] TF1-019, Transcript 30 June 2005, p. 114.
[2619] Indictment, para. 78.

(e) Freetown and the Western area (6 January 1999-28 February 1999)

1418. The Prosecution alleges that "[b]etween 6 January 1999 and 28 February 1999, AFRC/RUF forces engaged in widespread looting [...] throughout Freetown and the Western Area".[2620]

1419. Given that burning does not constitute an act of pillage, the Trial Chamber has not made findings on the destruction of civilian houses in Kissy, Wellington and Calaba Town, as pleaded in the Indictment.[2621] The Trial Chamber makes findings only on incidents of looting which occurred within Freetown and not the greater Western Area.

1420. In arriving at the following findings of fact, the Trial Chamber has considered the available evidence and relies on the testimony of Prosecution witnesses Gibril Massaquoi, TF1-334, and TF1-083.

(i) State House

1421. On 6 January 1999 at State House, witness TF1-334 was present when the Accused Brima ordered the Operation Commander to collect the vehicles parked at UN House and bring them to State House, since the commanders needed vehicles for transportation within the city. Following the order, the Operation Commander moved towards 'UN House' and subsequently returned to State House with jeeps and Toyota Land Cruisers.[2622]

1422. Moreover, Gibril Massaquoi testified that whilst present at State House during the January 1999 invasion of Freetown, he observed that "almost all" AFRC faction commanders had vehicles. He stated that he saw the Accused Brima entering State House with a jeep, the Accused Kanu with a white 'Hilux' with an 'UNDP' logo, and other vehicles being used with the 'UNWFP' logo.[2623] Accordingly, the witness understood that these vehicles had been looted.[2624]

1423. Witness TF1-334 testified that on 6 January 1999 he observed extensive looting within State House. He stated that the Presidential Office and all other offices were completely vandalised.[2625] The Trial Chamber is satisfied that this looting was carried out by AFRC troops, as State House was the headquarters of the AFRC troops during the Freetown invasion.

[2620] Indictment, para. 79.
[2621] Indictment, para. 79.
[2622] TF1-334, Transcript 14 June 2005, p. 24.
[2623] Gibril Massaquoi, Transcript 7 October 2005, p. 126.
[2624] Gibril Massaquoi, Transcript 7 October 2005, p. 126.
[2625] TF1-334, Transcript 14 June 2005, pp. 25-26.

(ii) Kissy

1424. On 6 January 1999, two men wearing plain clothes and military trousers and one other man wearing full military uniform and carrying a gun took away money and food from witness TF1-104 and his family.[2626]

1425. One Friday at about 12:30 p.m. during the January 1999 invasion of Freetown, a congregation of people were gathered inside Rogbalan mosque to attend Juma prayers when "armed men" carrying guns, cutlasses and axes attacked the people. Witness TF1-021 testified that these armed men took 15,000 Leones from his pocket.[2627]

1426. During the January 1999 invasion of Freetown, "rebels" wearing military uniforms raided Kissy area and stole civilian property.[2628] Witness TF1-084 was present in Kissy area and saw the looting taking place. He stated that the "rebels" led by 'Akim' entered civilian houses, loaded televisions, radios and other goods onto their vehicles and drove off.[2629] The rebels also attacked houses on Rowe Street where they captured eight civilians, including witness TF1-084, and took away all their money.[2630] Shortly thereafter, Commander 'Tafaiko' removed the witness' gold plated wrist watch and took it from him. 'Tafaiko' also took an amount of $200 which he had removed from the witness's pocket.[2631]

1427. On 22 January 1999, "rebels" wearing combat and armed with guns and machetes broke into a house on Old Road. Witness TF1-083 stated that the "rebels" demanded money and other valuables, including clothes, which they took from him and other civilians in the house.[2632]

1428. On the same day, Witness TF1-083 also encountered several "rebels" armed with guns, machetes, knives and axes at Locust and Samuel's area at Old Road. One of the "rebels" took the witness's shirt and wore it. Another "rebel" took money from the witness's pockets.[2633]

(iii) Findings

1429. On the basis on the foregoing evidence and without predetermining the individual responsibility of the three Accused, the Trial Chamber finds beyond reasonable doubt that between

[2626] TF1-104, Transcript 30 June 2005, pp. 30, 31.
[2627] TF1-021, Transcript 15 April 2005, pp. 26, 34-35.
[2628] TF1-084, Transcript 6 April 2005, p. 39.
[2629] TF1-084, Transcript 6 April 2005, pp. 38-39.
[2630] TF1-084, Transcript 6 April 2005, pp. 40-41.
[2631] TF1-084, Transcript 6 April 2005, pp. 41-42.
[2632] TF1-083, Transcript 8 April 2005, pp. 59-60.
[2633] TF1-083, Transcript 8 April 2005, pp. 62-63.

6 January 1999 and 28 February 1999, AFRC forces engaged in looting in State House in Freetown and Kissy in the Western Area.

H. Acts of Terrorism (Count 1) and Collective Punishment (Count 2)

1430. The Indictment alleges that at all times relevant to the Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), subordinate to and/or acting in concert with the three Accused conducted armed attacks throughout the territory of the Republic of Sierra Leone, including Bo, Kono, Kenema, Koinadugu, Bombali, Kailahun and Port Loko Districts and the City of Freetown and the Western Area. Targets of the armed attacks included civilians.[2634]

1431. The Indictment alleges that these attacks were carried out primarily to terrorize the civilian population but were also used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The Indictment further alleges that the attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. It is alleged that many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.[2635]

1432. The Indictment alleges that as part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. It alleges that captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour; and that some of these women and girls were held captive for years. It alleges that men and boys who were abducted were also used as forced labour; some of them were also held captive for years; and that many abducted boys and girls were given combat training and used in active fighting. It is alleged that AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving "AFRC" and "RUF" on their bodies.[2636]

1433. The Indictment alleges that members of the AFRC/RUF subordinate to and/or acting in concert with Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu committed the crimes set forth in paragraphs 42 through 79 and charged in Counts 3 through 14 (Counts 3-5: Unlawful Killings; Counts 6-9: Sexual Violence; Counts 10-11: Physical Violence; Count 12: Use of Child Soldiers; Count 13: Abductions and Forced Labour; Count 14: Looting and Burning) as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The Indictment alleges that the AFRC/RUF also committed the crimes to

[2634] Indictment para. 38; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 26.
[2635] Indictment para. 39; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 26.
[2636] Indictment para. 40; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 27.

punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.[2637]

1434. The Indictment charges that, by their acts or omissions in relation to these events, the three Accused, pursuant to Article 6.1 and/or alternatively, Article 6.3 of the Statute, are individually criminally responsible for the crimes alleged in Count 1, Acts of Terrorism, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.d. of the Statute,[2638] and in Count 2, Collective Punishments, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II punishable under Article 3.b. of the Statute.[2639]

1. Allegations and Submissions

(a) Evidentiary basis

1435. In its Supplemental Pre-Trial and Final Briefs, the Prosecution asserted that the evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment, 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.[2640]

1436. The Trial Chamber notes that the *actus reus* of the crime of terror involves "acts or threats of violence directed against protected persons or their property". A plain reading suggests that the factual basis of this element could, in theory, encompass a broader range of facts than those necessary to prove the *actus reus* elements of the crimes charged in Counts 3 to 14 of the Indictment. As set out by this Chamber in the Applicable Law, *supra,* the *Galić* Appeals Chamber has confirmed that "the nature of the acts or threats of violence directed at the civilian population can vary; the primary concern [...] is that those acts or threats of violence can be committed with the specific intent to spread terror among the civilian population."[2641] This Chamber has held that acts of terrorism are not restricted to violence, or threats of violence, targeted at protected persons but may include threats of attacks on, or destruction of, people's property or means of survival.

[2637] Indictment para. 41.
[2638] Indictment para. 41; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 27.
[2639] Indictment para. 41; *See also* Prosecution Opening Statement, Transcript 7 March 2005, p. 27.
[2640] Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004, 21 April 2004, para. 14. ["Prosecution Supplemental Pre-Trial Brief"]; Prosecution Final Brief, paras 543, 560, 1373, 1288, 1488, 1517, 1561.
[2641] *Galić* Appeal Judgement, para. 102.

1437. The Trial Chamber notes also that some evidence has been adduced by the Prosecution in this case which does not go to the proof of the crimes indicted in Counts 3 - 14. While such evidence might theoretically go to proof of the *actus reus* of the crime of Terror in an abstract consideration, the Trial Chamber does not rely upon it in this case as to do so would place an unfair burden upon the Defence who cannot be said to have been put on notice of such in the Prosecution's case against the Accused. This is similarly the case with any evidence of threats of violence which may have been adduced by the Prosecution, but which have not been expressly pleaded by the Prosecution. The Trial Chamber, therefore, has limited its examination of the evidence adduced in relation to the crime of terror in this case to acts of violence which have been pleaded by the Prosecution as going to crimes laid out in the Indictment.

1438. The Trial Chamber, does however, make an exception to this limitation with regards to evidence which relates to acts of burning civilian property. The Trial Chamber has found that burning, as alleged by the Prosecution, is not inclusive of the crime of pillage.[2642] However, the Trial Chamber is of the opinion that burning, unlike other evidence adduced by the Prosecution which does not go to proof of the crimes alleged, has been sufficiently particularized by the Prosecution in the Indictment under Count 14, and that therefore, the Defence has been put on adequate notice. The Trial Chamber will therefore take into consideration evidence of burning in relation to the *actus reus* of the crime of the crime of terror as an act of violence directed against protected persons or their property.

1439. With regards to the element of the crime of terror that the acts or threats of violence directed against protected persons or their property were committed with the primary purpose of spreading terror among the civilian population, the Trial Chamber may rely on evidence which demonstrates a pattern of similar attacks, the context of the act, or is otherwise indicative of the purpose relative to any acts of violence committed, regardless of the nature of that evidence. The Trial Chamber will therefore examine the whole of the evidentiary record in this regard.

1440. The Trial Chamber therefore adopts a two-step approach to the examination of the crime of terror as follows:

Were acts of violence particularised in the Indictment wilfully directed against protected persons or their property by members of the AFRC?

[2642] Rule 98 Decision.

If so, is there evidence which proves beyond a reasonable doubt that these acts were committed with the primary intent of spreading terror among the civilian population?

(b) Primary purpose

1441. In its Final Brief, the Kanu Defence argues that the intent required for a finding of terror is a special intent, namely, that the Accused must not only be aware of the possibility that terror would result, but that terror was the result that was specifically intended.[2643] The Kanu Defence argues that from the time the AFRC was ousted from Freetown by ECOMOG in February 1998, SAJ Musa was the overall commander of the AFRC and that the overall goal of the AFRC was to reinstate the army in Freetown. As such, the Kanu Defence argues that all crimes allegedly committed during this time were in furtherance of this goal and that the Prosecution did not lead any evidence that Kanu's primary goal was to spread terror.[2644]

1442. The Appeals Chamber in the *Galić* case held:

> [...] the purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration.[2645]

1443. The Trial Chamber therefore finds as a preliminary observation, that the possibility that another purpose to acts of violence may have existed does not in and of itself disprove that the primary purpose was to spread terror among the civilian population. Whether such a purpose was the *primary* purpose is a question to be determined in relation to the events outlined below.

1444. The Trial Chamber refers to paragraphs 38 and 39 of the Indictment in which the Prosecution sets out the particulars of Count 1, Terror. It is stated in paragraph 38 that "members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF) [...] conducted armed attacks throughout the territory of the Republic of Sierra Leone [...]."[2646] Paragraph 39 continues, "These attacks were carried out primarily to terrorize the civilian population, but were also used to punish the population for failing to provide sufficient support to the Kabbah government or pro-government forces."[2647] The alleged attacks to which the Indictment refers occurred in the context of an internal armed conflict in which various parties, each maintaining their own overall goals,

[2643] Kanu Final Brief, p. 135.
[2644] Kanu Final Brief, para. 400.
[2645] *Galić* Appeal Judgement, para 104.
[2646] Indictment, para. 38.

engaged with each other and with the civilian population in a number of encounters. Any given encounter or attack within the context of the overall conflict may have been undertaken for any number of strategic, necessary or other reasons. It is a question of whether any particular attack or series of attacks was waged with the primary purpose to spread terror among the civilian population that the Indictment bids the Trial Chamber to determine. The Trial Chamber finds therefore, that the Kanu Defence submission that all the crimes allegedly committed during this time were in furtherance of the overall goal of SAJ Musa to reinstate the army in Freetown does not address the question before it with regards to Count 1.

2. Evidence and Deliberations

(a) Primary purpose of certain acts of violence

1445. As a preliminary observation, the Trial Chamber is of the opinion that the purpose behind an individual act of violence may not necessarily correspond with that of the campaign in which it simultaneously occurs. It follows that certain acts of violence, even when committed in the context of other acts of violence the primary purpose of which may be to terrorise the civilian population, may not have been committed in furtherance of such a campaign. The Trial Chamber is of the opinion that this is the case with regards to certain acts of violence underlying Counts 3 through 14 of the Indictment, as outlined below.

1446. Conversely, the Trial Chamber is also of the opinion that certain acts of violence are of such a nature that the primary purpose can only be reasonably inferred to be to spread terror among the civilian population regardless of the context in which they were committed.

(i) Child soldiers

1447. The Trial Chamber has found that children abducted by the AFRC/RUF were forced to undergo military training[2648] and were organised into "Small Boy Units" (SBUs)[2649] and battalions.[2650] Child soldiers were forced to fight along side the AFRC/RUF[2651] and to guard strategic points of interest such as Cyborg Pit, a diamond mine in Kenema District, diamonds being the main source of conflict in the region. Child soldiers were forced into labour which supported and maintained the troops. Such labour included carrying loads of food and other "luggage",

[2647] Indictment, para. 39.
[2648] Factual Findings, Child Soldiers, para. 1254, *supra*.
[2649] Factual Findings, Child Soldiers, para. 1271, *supra*.
[2650] Factual Findings, Child Soldiers, para. 1271, *supra*.
[2651] Factual Findings, Child Soldiers, para. 1255, *supra*.

fetching water and pounding rice. Child soldiers were forced to flog captured civilians[2652], act as bodyguards[2653], amputate civilians[2654] and were used as human shields.[2655]

1448. Generally speaking, the Trial Chamber has concluded that Junta forces abducted children for military purposes in Kenema District during the Junta period, that AFRC forces abducted children for military purposes in Kono, Koinadugu and Bombali Districts in 1998 and in Freetown and the Western Area in 1999. The Trial Chamber has also concluded that children were used for military purposes in Kenema District in 1997-1998, Kono District in 1998, and Freetown and Western Area in 1999.[2656] On the basis of the evidence of expert witnesses, the Trial Chamber has also concluded that persons under the age of 15 were used for military purposes by all factions, including the AFRC, during the conflict including the period 25 May 1997-mid 1999.

1449. The Trial Chamber notes the evidence of Witness TF1-334 who stated that during the 1999 invasion of Freetown, the Accused Brima ordered the capture of civilians saying it would attract the attention of the international community[2657] and the finding of the Chamber that children were among those captured. While this evidence suggests that a non-military purpose also drove the AFRC to abduct children in this context, the Trial Chamber finds this purpose was subordinate given the overwhelming evidence of the conscription and use of child soldiers for military purposes. This is supported by the further evidence of Witness TF1-334 who testified that the children abducted from Freetown were later trained to be SBUs.[2658]

1450. The Trial Chamber finds that the primary purpose of the conscription and use of child soldiers by the AFRC during the conflict in Sierra Leone, was not to spread terror among the civilian population, but rather was primarily military in nature. Therefore, even where such acts may have occurred simultaneously with other acts of violence considered by this Chamber with regards to the crime of terror, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed as part of any such campaign. That is, in this particular factual context, the conscription and use of child soldiers cannot be considered as acts in furtherance of a primary purpose to terrorise protected persons.

(ii) Abductions and Forced Labour

[2652] Factual Findings, Child Soldiers, para. 1262, *supra*.
[2653] Factual Findings, Child Soldiers, para. 1268, *supra*.
[2654] Factual Findings, Child Soldiers, para. 1270, *supra*.
[2655] Factual Findings, Child Soldiers, para. 1275, *supra*.
[2656] Factual Findings, Child Soldiers paras 1278, *supra*.
[2657] TF1-334, Transcript 14 June 2005, pp. 118-119, *supra*.
[2658] TF1-334, Transcript 14 June 2005, pp. 182, *supra*.

1451. The Trial Chamber has found that civilians abducted by the AFRC/RUF were forced to mine for diamonds at Cyborg Pit in Tongo Field, Kenema District.[2659] Witness TF1-334 testified that the Accused Brima ordered his troops to capture any civilian who looked strong in order to make them part of the troops prior to attacks in Koinadugu and Bombali Districts.[2660] The Trial Chamber has found that abducted civilians were trained to use arms[2661] and were given military training in Rosos, Bombali District.[2662] They were also pressed into forced labour[2663] including being forced to carry equipment and other goods for the troops.[2664]

1452. The Trial Chamber notes the evidence of Witness TF1-334 who testified that Brima ordered the abduction of civilians from Freetown during the attack in order to attract the attention of the international community.[2665] Similar to child soldiers, while this evidence suggests that a non-military purpose may have also driven the AFRC to abduct civilians in this context, the Trial Chamber is satisfied that this purpose was subordinate given the overwhelming evidence of the abduction of civilians for use as slave labour and/or to strengthen the number of the troops. The Trial Chamber notes its further findings that the Accused Brima told his fighters to force captured civilians to join their forces in order to compensate for those fighters killed by ECOMOG.[2666] The Trial Chamber has also found that civilians captured in Freetown were forced to join the rebel forces, that they accompanied the troops out of Freetown and were forced to carry loads. The Trial Chamber has also found that rebels told the civilians captured in Freetown that they had captured them to use them as human shields.[2667]

1453. The Trial Chamber does not discount that the abduction and detention of persons from their homes and their subjection to forced labour under conditions of violence spread terror among the civilian population. However, the Trial Chamber finds this "side-effect" of terror is not sufficient to establish the specific intent element of the crime with regards to these acts.

1454. The Trial Chamber finds, therefore, that the primary purpose behind commission of abductions and forced labour was not to spread terror among the civilian population, but rather was primarily utilitarian or military in nature. As with evidence of the abduction and use of child soldiers, therefore, even where abductions and forced labour occurred simultaneously with other

[2659] Factual Findings, Enslavement, paras 1289-1309, *supra*.
[2660] TF1-334, Transcript 23 May 2005, pp. 15-17.
[2661] Factual Findings Enslavement, para. 1363, *supra*.
[2662] Factual Findings Enslavement, paras 1355-1359, *supra*.
[2663] Factual Findings Enslavement, paras 1355-1359, *supra*.
[2664] Factual Findings Enslavement, paras 1355-1359, *supra*.
[2665] TF1-334, Transcript 14 June 2005, pp. 62-64.
[2666] Factual Findings, Unlawful Killings, para. 914, *supra*.

acts of violence otherwise examined by this Chamber with regards to the crime of terror, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed with the primary purpose to terrorise protected persons.

(iii) Sexual Slavery

1455. The Trial Chamber has found that many women abducted by the AFRC troops were detained for many months, repeatedly raped and forced to do domestic work such as cooking, washing clothes and to carry loads. Many women were told by the perpetrators that they were now their "wives".[2668]

1456. Witness TF1-334 testified that at Rosos, civilians were captured by "rebels" from the surrounding villages. Those who tried to escape were executed.[2669] Women – particularly the young and beautiful ones – were placed under the full control of "commanders"; they became their "wives". As their "wives" the women cooked for the rebels and the other soldiers in Kono. They were also "used sexually."[2670] This was an open practice. The Witness testified that he and other soldiers all "had sexual intercourse" with captured women.[2671]

1457. Witness TF1-133 testified that all the women who were captured at the same time as her were given to men as their wives which meant that the women had to have sex with the men.[2672] She testified further that in Krubola, the captured women cooked, "had sex" with the rebels and were forced to be their "wives". The Witness stated that when a woman was "betrothed" to a man, she became his "wife" which according to the Witness, meant that "whoever you were with would have sex with you." The Witness testified that when the rebels captured women, they would have sex with them before bringing them to where the rebels were based. When the captured women were taken to the base, they would be handed over to a person who would have sex with that woman all the time. The "bosses and stronger guys" all had wives who were captured but the subordinates were not allowed to have wives. The subordinates would be sent to the front and they would always bring back captured civilians, including women.

[2667] Factual Findings, Enslavement, para. 1384, *supra*.
[2668] Factual Findings, Outrages upon Personal Dignity, *supra*.
[2669] TF1-334, Transcript 20 May 2005, pp. 4-5.
[2670] TF1-334, Transcript 20 May 2005, pp. 4-6.
[2671] TF1-334, Transcript 20 May 2005, p. 7.
[2672] TF1-133, Transcript 7 July 2005, pp. 90-92.

1458. The practice of sexual slavery was regulated by the AFRC troops through a system of ownership and punishment for transgressing the rules.[2673] Witness TF1-094 testified that she believed that if she refused to have sex with her captor, she would have been killed.[2674] Some women were transferred as "wives" between two or more different soldiers.[2675]

1459. The Trial Chamber therefore finds that in the particular factual circumstances before it, the primary purpose behind commission of sexual slavery was not to spread terror among the civilian population, but rather was committed by the AFRC troops to take advantage of the spoils of war, by treating women as property and using them to satisfy their sexual desires and to fulfil other conjugal needs. As with evidence of the other enslavement crimes, namely the abduction and use of child soldiers and forced labour therefore, even where sexual slavery occurred simultaneously with other acts of violence examined by this Chamber with regards to the crime of terror, the Trial Chamber is of the opinion that such acts cannot be considered to have been committed with the primary purpose to terrorise the civilian population.

(iv) Physical Violence: Amputations

1460. The Trial Chamber has found that amputations of civilians were carried out by members of the AFRC in Kono and Koinadugu Districts as well as in the City of Freetown. In Tombodu, Kono District, the Trial Chamber has found amputations were carried out by members of the AFRC in retaliation for alleged civilian killings of AFRC soldiers, as a warning to other civilians, and because civilians did not support the AFRC but supported the government. Civilians whose hands were amputated by members of the AFRC were told to ask President Kabbah for new hands.[2676]

1461. The Trial Chamber has found that civilians throughout Freetown, during the January 1999 invasion also had their hands amputated by members of the AFRC and were told to go to President Kabbah and ask him for new hands. During a raid of the PWD areas an AFRC operation was carried out called 'Operation Cut Hand' in which civilians were given the cruel choice of having either "short sleeves" or "long sleeves" meaning amputations of the arm at the bicep or of the hand at the wrist. In the Upgun, Ross Road and Fourah Bay area, civilians were "taught a lesson" and had their hands amputated and were hacked to death. Civilians there were told that as they had voted for "Pa Kabbah" they should go to him as he had hands to give them. They were also told to go to "Pa

[2673] TF1-133, Transcript 7 July 2005, pp. 98-102, pp. 102-106; TF1-334, Transcript 23 May 2005, pp. 76-77; TF1-033, Transcript 12 July 2005, p. 9.
[2674] TF1-094, Transcript 13 July 2005, pp. 28-29, 49.
[2675] DAB-156, Transcript 29 September 2006, pp. 39-40, 42-49; TF1-023, Transcript 9 March 2005, p. 46.
[2676] *See* generally Factual Findings, Physical Violence, *supra*.

Kabbah" or ECOMOG to complain. Civilians near Shell Company at Old Road had their hands amputated and were told to go to "Pa Kabbah" because they had voted for him and he would give back their hands. At Kissy mental home, civilians had their hands amputated because they were thought to have divulged the location of AFRC troops to ECOMOG. Civilians were amputated at Kissy Mental Home, Fataraman Street, Parsonage Street and told to go to Kabbah. At Parsonage Street, the amputated civilians were told expressly, to tell Kabbah "this is what we have done. Go tell him no more politics, no more voting." This pattern continued until late January or early February when the AFRC were forced to flee Freetown.[2677]

1462. The Trial Chamber is satisfied on the basis of the express statements of the perpetrators made at the time many of the amputations were carried out that such amputations were used by the AFRC with the primary purpose to spread terror among the civilian population. The Trial Chamber also notes that such amputations were carried out primarily against unarmed civilians, in or near their homes, villages, and farms, and the Trial Chamber is satisfied that the attacks could not have been primarily for military advantage.

1463. The mutilation of individuals in such a manner also carried with it an inherent public message regardless of the explicit statements of the perpetrators. The brutal amputation of civilian limbs served as a visible lifelong sign to all other civilians not to resist the AFRC and not to back President Ahmed Tejan Kabbah or his supporters. The Trial Chamber is also satisfied on this basis that the primary purpose of amputations carried out by members of the AFRC during the conflict in Sierra Leone could only reasonably be inferred to have been to terrorise the civilian population

1464. The Trial Chamber is therefore convinced that amputations carried out by members of the AFRC Trial Chamber throughout the conflict, regardless of the context in which they were committed, were acts of violence committed against protected persons with the primary purpose to terrorise protected persons.

(b) Kenema District (25 May 1997 – 19 February 1998)

1465. In its Pre-Trial Brief, the Prosecution submitted that following the AFRC coup in May 1997, AFRC/RUF forces engaged in sustained attacks throughout Kenema District on positions held by local militias, namely the CDF or Kamajors. The Prosecution submitted that as part of the campaign of terror and collective punishment, AFRC/RUF forces routinely targeted civilians for killings,

[2677] Factual Findings, Physical Violence, para.1235, *supra*.

detention, physical violence and ill-treatment for allegedly being sympathetic to, or collaborating with the CDF/Kamajors.[2678]

1466. In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on various villages in Kenema District where it was perceived that the civilians were supporting and/or harbouring the CDF/Kamajors as well as the burning of civilian property performed as part of many of the attacks is evidence of collective punishment.[2679]

1467. In its Opening Statement, the Prosecution submitted that in Kenema Town, the AFRC/RUF rounded up prominent elders of the community including Mr. B.S. Massaquoi, and accused them of supporting the Kamajors and then ruthlessly beat them, tortured them for days and finally killed them.[2680]

1468. The Trial Chamber has found that acts of violence were carried out against protected persons in Kenema Town (Unlawful Killings; Physical Violence); and in Tongo Field (Enslavement). The Trial Chamber has also found that child soldiers were abducted and used for military purposes in Kono District. As discussed above, the Trial Chamber does not consider that acts of enslavement and the abduction and use of child soldiers were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

1469. The Indictment does not allege burning in Kenema District.

(i) Kenema Town

1470. The Trial Chamber has previously found in its Factual Findings that civilians in Kenema Town were accused of being Kamajors or of supporting the Kamajors and were unlawfully killed or subject to physical violence by members of the AFRC/RUF.

1471. In particular, the Trial Chamber relies on its findings that after the Coup in 1997, both "RUF" rebels" and "AFRC Juntas" took over control of Kenema Town and remained in Kenema until February, 1998.[2681]

1472. The Trial Chamber also accepts the evidence of Prosecution Witness TF1-122, not previously examined by the Chamber, that later, in December 1997, the AFRC/RUF launched

[2678] Prosecution Pre-Trial Brief, para. 78.
[2679] Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.
[2680] Prosecution Opening Statement, 7 March 2005, p. 34.

'Operation No Living Thing' in Kenema and that as part of this operation members of the AFRC/RUF would parade the streets of Kenema Town during the day accusing people of being Kamajors, entering people's homes, harassing them, and looting their property alleging that they had Kamajors in their houses. The Witness testified that members of the AFRC/RUF would "search you in the street, take whatever you have in your pocket and they will allege that you have Kamajor in your pocket" and that the RUF/AFRC "were shooting all over the air."[2682]

1473. The Trial Chamber has found that during this time, "RUF rebels" and "AFRC juntas" were seen dancing around the body of a civilian singing that they would kill all Kamajors. The rebels and juntas then split his abdomen and stretched his intestines across Hangh Road where the body stayed for three days.[2683]

1474. The Trial Chamber has previously found that in early February 1998 Sam Bockarie arrested a number of persons on the grounds that they were 'Kamajor supporters'. They were brought to the AFRC Secretariat, physically abused and detained for about three days. They were brought to the police and later rearrested by members of the AFRC/RUF, beaten and killed.[2684]

(ii) Findings

1475. On the basis of the circumstances of the attacks, namely that civilians were deliberately targeted on the premise that they supported Kamajors; the sustained duration of attacks of a similar nature, spanning May 1997 through December 1998; and the particularly brutal nature of some of the attacks including the burning of civilians in a house and the grotesque public display of a mutilated body, the Trial Chamber is satisfied that it has been proven beyond reasonable doubt that the primary purpose of the acts of violence described in Kenema Town was to spread terror among the civilian population.

1476. The Trial Chamber is further satisfied that the unlawful killings and subjection to physical violence also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance Kamajors, nor whether the protected persons in fact failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus*

[2681] Factual Findings, Unlawful Killings, para. 829, *supra*.
[2682] TF1-122, Transcript 24 June 2005, pp. 32-33, 35.
[2683] Factual Findings, Unlawful Killings, para. 836, *supra*.
[2684] *See* Factual Findings, Unlawful Killings para. 832, *supra*.

of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2685] The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly being or supporting Kamajors by members of the AFRC/RUF.

(c) Bo District (1 June 1997 – 30 June 1997)

1477. In its Pre-Trial Brief, the Prosecution alleged that after the coup in May 1997, there was significant fighting between CDF/Kamajors and the AFRC/RUF forces in Bo District and civilians were often targeted as being sympathetic or collaborating with either the CDF or the AFRC/RUF. The Prosecution alleged that there were several instances of the AFRC/RUF forces executing civilians perceived to be working or sympathizing with the CDF during the Junta period.[2686]

1478. Also in its Pre-Trial Brief, the Prosecution alleged that in the weeks following the coup, there was an offensive launched by the AFRC/RUF from Bo Town against the surrounding villages for their perceived sympathy or assistance to Kamajors in the region. It is alleged by the Prosecution that in approximately June 1997, AFRC/RUF forces attacked five villages in the region, including Tikonko and Gerihun in the region; namely, Sembehun, Tikonko, Mamboma, Gerihun, and Telu. In these attacks, the Prosecution alleged that the AFRC/RUF intentionally killed many civilians that were remaining in the villages and in most of the attacks, looted and burned houses.[2687]

1479. In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on various villages in Bo District where it was perceived that the civilians were supporting and/or harbouring the CDF/Kamajors as well as the burning of civilian property performed as part of many of the attacks is evidence of collective punishment.[2688]

1480. In its Final Brief, the Prosecution submitted that it was a policy of the AFRC Government to eliminate all opposition to it and that the AFRC Government ordered, as a matter of policy, attacks on villages like Tikonko which supported the former SLPP Government. The Prosecution submitted that AFRC attacks including the burning of the SLPP building in Bo Town, the attack in Gerihun in which an AFRC delegation said they wanted to join forces with the Kamajors but instead shot

[2685] Applicable Law, para. 680-681, *supra*.
[2686] Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73*bis*) of 13 February 2004), 05 March 2004, para. 46. ["Prosecution Pre-Trial Brief"]
[2687] Prosecution Pre-Trial Brief, paras 47-48.

civilians, attacked the Vice President's house with an RPG and killed Chief Demby, sent a clear message that was "you are either for us or against us," with elimination being the consequence of resistance.[2689]

1481. The Trial Chamber has found that acts of violence were carried out against protected persons in Tikonko (Unlawful Killings) and Gerihun (Unlawful Killings).

1482. In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that AFRC/RUF forces burned an unknown number of civilian homes in Telu, Sembehun, Mamboma and Tikonko. The Trial Chamber has found that the Prosecution conceded that it had not led evidence in respect of Telu, Sembehun and Mamboma.[2690] The Trial Chamber finds there is evidence of burning in Tikonko. This evidence will be evaluated, below.

(i) Tikonko

1483. The Trial Chamber has previously found on the evidence of Prosecution Witness TF1-004, that on or around 25 June 1997, AFRC and/or RUF rebels attacked the villages of Tikonko and killed civilians.[2691] In particular the Trial Chamber relies on its previous findings that two groups of attackers came to the village that day. The Trial Chamber has found that the first group came with the intent to kill Kamajors but the second group shot indiscriminately at civilians and Kamajors alike killing five civilians and three Kamajors at Tikonko Junction. During the attack on the village, the Trial Chamber has found a minimum of 18 more civilians were killed but that no evidence was adduced that any other Kamajors were killed. The Trial Chamber also relies in particular on its findings that the soldiers entering the village were heard to say "the people of Tikonko will know them today"; that three civilian women had their bellies split open, two of whom died from their injuries; that civilians, including a child, were killed in their houses; and that a corpse of a man was mutilated, the skin removed from the forehead.[2692]

1484. The Trial Chamber also accepts the evidence of Prosecution Witness TF1-004, not previously evaluated by the Chamber, that there was burning in Tikonko. The Witness testified that as he was walking towards his home he noticed that there was a lot of smoke in the town and that houses were burnt. When he reached his own house, he saw that it had been burnt, that items,

[2688] Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.
[2689] Prosecution Final Brief, paras 541-542.
[2690] Rule 98 Decision, para. 261.
[2691] Factual Findings, Unlawful Killings, paras 810-818, *supra*.

including rice, had been looted from the house or pulled out in front of the house and burned.[2693] The Witness testified that he did not know of anyone in the village who had petrol available to burn the houses.[2694]

1485. The Trial Chamber finds the evidence of Prosecution Witness TF1-004 to be credible and consistent. The evidence of the Witness on burning was not challenged by the Defence. The Trial Chamber is convinced by the circumstantial evidence adduced, namely the burnt remains of houses and other items, and lingering smoke in the village following the attack, that the property of protected persons was burnt by members of the AFRC/RUF who attacked Tikonko that day.

(ii) Gerihun

1486. The Trial Chamber has found previously in its Factual Findings that civilians were unlawfully killed in Gerihun.[2695] The Trial Chamber relies in particular on its previous findings that during an AFRC/RUF attack on Gerihun on 26 June 1997, Paramount Chief Demby and his caretaker were murdered by soldiers while the Paramount Chief was lying sick in his home.[2696]

1487. Relying on the evidence of Witness TF1-054 and TF1-053 set out below and not previously examined in this Judgement, the Trial Chamber finds that the unlawful killing of Paramount Chief Demby was one act of violence committed as part of a series of attacks carried out by members of the AFRC/RUF against civilian and SLPP Government targets in the area.

1488. Witness TF1-053 testified that he was in Bo Town on 25 May 1997 where he observed soldiers in uniform shooting in the street, causing people to run away, and hurling insults against persons affiliated with the SLPP. The Witness testified that at this time the SLPP Party Office on Kpondahun Road was burnt down. The Trial Chamber finds it reasonable to infer that the SLPP Party was burnt down by AFRC/RUF soldiers.[2697]

1489. Roughly a month later, shortly before the killing of Paramount Chief Demby, Witness TF1-054 testified that he too was present in Bo Town, at the Demby Hotel when armed "soldiers" wearing combat arrived at roughly 1:00 a.m. The soldiers stated that they were looking for Kamajors but the Witness testified that they did not find any at the hotel. The soldiers asked the Witness the whereabouts of Paramount Chief Demby and he told them that he was in his Chiefdom

[2692] Factual Findings, Unlawful Killings, para. 814, *supra*.
[2693] TF1-004, Transcript 23 June 2005, p. 24.
[2694] TF1-004, Transcript 23 June 2005, p. 27.
[2695] Factual Findings, Unlawful Killings, *supra*.
[2696] Factual Findings, Unlawful Killings, paras 13-15, *supra*.

in Gerihun Town. Witness TF1-054 testified that the soldiers harassed and beat civilians staying at the hotel, including wife of Paramount Chief Demby. The soldiers also stole property belonging to the patrons of the hotel.[2698]

1490. Witness TF1-053 also testified that he observed "soldiers" launch an RPG into the house of the former vice-president, Mr. Albert Joe Demby (Paramount Chief Demby's brother) during the attack on Gerihun in which Paramount Chief Demby was killed.[2699]

1491. However, the Trial Chamber finds that the Prosecution assertion that the attack on Gerihun was preceded by an AFRC delegation which said they wanted to join forces with the Kamajors but instead shot civilians, an incident not previously evaluated by the Trial Chamber in its Factual Findings, mischaracterises the evidence brought before the Court. The Trial Chamber has carefully reviewed the evidence of Witness TF1-054 on this point. The Witness testified that the afternoon prior to the attack on Gerihun at about 3:00 pm, he, together with a group of students and Kamajors, attended a meeting at a school in Gerihun with four persons whom the witness stated had come from Freetown.[2700] The Witness described the persons as a certain Mike Lamin, a certain Mr. Gbao and two others. According to the Witness, the four came to Gerihun to speak with the people there and to request that the Kamajors in Gerihun unite together with the AFRC soldiers. The Witness testified that during the meeting he heard gun fire near the entrance to the town of Gerihun at which point the persons in attendance at the meeting disbursed.[2701] In the absence of any further facts establishing the identities of the persons at the meeting and linking them to the subsequent attack on Gerihun, the Trial Chamber finds the evidence is insufficient to support the conclusions drawn by the Prosecution.

(iii) Findings

1492. The Trial Chamber notes the targeted nature of the attacks against civilians in Tikonko by the second group of soldiers described by Witness TF1-004. Specifically the Trial Chamber notes that the soldiers were not making any selection in their killings which, taken together with the evidence of civilian deaths, the Trial Chamber is satisfied is indicative of the intent of the soldiers to target civilians and Kamajors alike. This inference is supported by the express statement, relayed

[2697] TF1-053, 18 April 2005 pp. 96-99.
[2698] TF1-054, Transcript 19 April 2005, pp. 80-85.
[2699] TF1-054, Transcript 19 April 2005, pp. 89-90, 95.
[2700] TF1-054, Transcript 19 April 2005, pp. 86-87.
[2701] TF1-054, Transcript 19 April 2005, pp. 87-88.

by Witness TF1-004 that the soldiers were singing that the people of Tikonko will know them today.

1493. The Trial Chamber notes the circumstances of the attack against Tikonko; namely that armed soldiers entered and killed unarmed civilians, including a child, in their houses with no apparent military purpose. The civilians were killed or their bodies mutilated, in some instances in a particularly brutal manner, as for instance the splitting open of the belly of a pregnant women.

1494. The Trial Chamber also notes the close timing between the attacks on Tikonko and the attack in Gerihun, both of which targeted civilians for their supposed support for opposition groups to the AFRC.

1495. The Trial Chamber is satisfied on the basis of this evidence that the acts of violence described in Tikonko and Gerihun were carried out with the primary purpose of spreading terror.

1496. The Trial Chamber is further satisfied that the unlawful killings and burning also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance Kamajors or the SLPP party, nor whether in fact the protected persons failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2702]

1497. The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly being or supporting Kamajors or members of the SLPP Government by members of the AFRC/RUF.

(d) Kailahun District (14 February 1998 – 30 June 1998)

1498. In its Pre-Trial Brief, the Prosecution submitted that civilians in Kailahun District were killed by AFRC/RUF forces as part of their campaign of terror and punishment.[2703] The Prosecution submitted that many civilians were deliberately killed on orders from senior AFRC/RUF commanders for their alleged membership or support for civil militia forces, the CDF/Kamajors,

[2702] General Requirements of Articles 2, 3 and 4 of the Statute, paras 218-219, *supra*.
[2703] Prosecution Pre-Trial Brief, para. 71.

including a mass execution that was undertaken in Kailahun Town.[2704] The Prosecution submitted that attacks against civilians also included the abduction of women from other parts of Sierra Leone and their subjection to sexual violence in Kailahun; the capture of men, women and children and their use as forced labour in various locations in Kailahun; and the training of forcibly conscripted men, women and children.[2705]

1499. In its Final Brief, the Prosecution argued that "[t]he 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).[2706]

1500. The Trial Chamber has found that acts of violence were carried out against protected persons in Kailahun Town (Unlawful Killings). The Trial Chamber has also found that civilians were enslaved in Kailahun District. As discussed above, the Trial Chamber does not consider that acts of enslavement were acts the primary purpose of which was to spread terror among the civilian population. Evidence on this will not be considered further in this regard.

1501. The Indictment does not allege burning in Kailahun District.

(i) Kailahun Town

1502. The Trial Chamber has previously found that persons in Kailahun Town were abducted, accused of being Kamajors and unlawfully killed. In particular, the Trial Chamber relies on its previous findings that on the orders of Sam Bockarie, 67 persons accused of being Kamajors, were arrested in several villages in Kailahun District and detained at the G5 office in Kailahun Town. Ten of these persons were killed by Sam Bockarie personally, and the rest were shot on his orders. The Trial Chamber has found the persons killed were *hors de combat*.[2707]

(ii) Findings

1503. The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that the persons in Kailahun Town were abducted and killed with the primary purpose of spreading terror among the civilian population.

1504. The Trial Chamber is not satisfied that the evidence establishes beyond reasonable doubt that persons in Kailahun Town were collectively punished for supporting Kamajors.

[2704] Prosecution Pre-Trial Brief, para. 71.
[2705] Prosecution Pre-Trial Brief, paras 72-74.

(e) Kono District (14 February 1998 – 30 June 1998)

1505. In its Pre-Trial Brief, the Prosecution submitted that widespread and systematic attacks were carried out by AFRC/RUF forces as part of a campaign of terror against the civilian population in order to gain control over Kono District, in particular the diamond mining areas. It was submitted that after the ECOMOG intervention in February 1998, AFRC/RUF forces retreating from Freetown and Makeni regrouped and travelled through Bombali and Koinadugu Districts to Kono District, specifically Koidu Town.[2708]

1506. In its Pre-Trial Brief and Supplemental Pre-Trial Brief, the Prosecution submitted that throughout Kono District, AFRC/RUF forces carried out organised amputations of limbs, including the chopping of hands of those accused of voting for President Kabbah. It is submitted that civilians who were present at the scene were forced to laugh or clap during amputations, while victims were told to return to President Kabbah and request their limbs back.[2709]

1507. It is submitted by the Prosecution in its Pre-Trial Brief that upon arrival in Koidu Town, AFRC/RUF forces commenced widespread attacks throughout the District demonstrating a pattern of widespread killings, physical and sexual violence, abductions, forced labour and conscription of civilians and widespread looting and destruction of civilian and public properties undertaken by AFRC/RUF forces in Kono throughout 1998. It is submitted that the AFRC/RUF terrorization of the civilian population enabled geographic control of the Kono area, particularly the diamond mining areas, where forced mining by civilians was being undertaken under the supervision of senior AFRC/RUF command.[2710]

1508. In its Supplemental Pre-Trial Brief, the Prosecution submits that the burning of civilian property performed as part of the attacks on many villages throughout the District is evidence of collective punishment.[2711]

1509. The Trial Chamber has found that acts of violence were carried out against protected persons or their property in Koidu (Unlawful Killings; Enslavement); in Tombodu (Unlawful Killings; Physical Violence; Enslavement; Pillage); in Mortema (Unlawful Killings); in Wondedu (Rape; Enslavement); in Kaima/Kayima (Physical Violence) and in Yardu Sando (Pillage). The

[2706] Prosecution Final Brief, para. 341.
[2707] Factual Findings, Unlawful Killings, paras 860-863, *supra*.
[2708] Prosecution Pre-Trial Brief, para. 92.
[2709] Prosecution Pre-Trial Brief, para. 96; Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.
[2710] Prosecution Pre-Trial Brief, para. 94.
[2711] Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.

Trial Chamber has also found that civilians were pressed into sexual slavery and that child soldiers were abducted and used for military purposes in Kono District. As discussed above, the Trial Chamber does not consider that acts of enslavement, the conscription and use of child soldiers, nor sexual slavery were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

1510. In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that the AFRC/RUF engaged in widespread burning in Tombodu, Foindu and Yardu Sando, where virtually every home in the village was burned.[2712] The Trial Chamber has found that the Prosecution conceded that it had not led evidence on burning in relation to Foindu. Where evidence has been led on burning in the remaining locations which may go the proof of Count 1, the Trial Chamber will examine it below.

(i) Koidu Town

1511. The Trial Chamber has previously found that civilians in Koidu Town were targeted by AFRC/RUF soldiers and were killed.[2713]

1512. The Trial Chamber accepts the further evidence of witness TF1-334 that Johnny Paul Koroma addressed the commanders in Kono and told them that Kono must be retained as it was a defensive ground for the AFRC/RUF forces. Witness TF1-334 testified that Koroma stated that the civilians in Kono had betrayed them by calling in the Kamajors and therefore, they must not be tolerated any longer in Koidu Town. He stated that in order to secure the area, civilian houses should be completely burnt down so that no civilians would be able to settle there.[2714]

1513. Koroma declared Kono a "civilian no-go area" and ordered that civilians who refused to join "the movement" should be executed so that they would not provide information regarding the location of the troops. Issa Sesay, in the presence of a number of other commanders, then reiterated what Johnny Paul Koroma had said, and added that the civilians had proven to be traitors and that this must not be tolerated at all. The witness testified that the orders of Johnny Paul Koroma and Issa Hassan Sesay were immediately carried out. Civilians were driven out of Koidu Town and their houses were burnt down.[2715]

[2712] Indictment, para. 77.
[2713] Factual Findings, Unlawful Killings, paras 845-847, *supra*.
[2714] TF1-334, Transcript 18 May 2005, pp. 3-4.
[2715] TF1-334, Transcript 18 May 2005, pp. 4-6.

1514. The Trial Chamber also accepts the evidence of witness TF1-217, not previously examined by this Chamber in this Judgement, who similarly testified that rebels and juntas burnt buildings in Koidu Town in February or March, 1998 to make Koidu into a "farm". This meant that they did not want any civilians there. The troops were led by Akim Sesay and Lieutenant T.[2716]

1515. The Trial Chamber relies on its previous findings that after Johnny Paul Koroma declared Koidu a "no go" area for civilians an unknown number of civilians were killed, although it has been unable to determine beyond reasonable doubt whether these killing are attributable to AFRC and/or RUF forces.

(ii) Tombodu

1516. The Trial Chamber has found that following an order of Johnny Paul Koroma in March 1998, children were abducted and trained to perform amputations on civilians in areas within Kono District including Tombodu.[2717]

1517. The Trial Chamber accepts the evidence of Prosecution witness TF1-334, that in March 1998, 'Savage', the commander in Tombodu, sent a message to 'Bazzy' in Koidu saying that civilians in Tombodu were celebrating because they believed ECOMOG had taken over the area. ECOMOG had not, in fact, taken over the area. Witness TF1-334 testified that, in fact, the civilians had been led to believe this because 'Savage' was wearing a Nigerian ECOMOG uniform. As a result, the Witness, together with a certain 'Colonel Momoh Dorty', went to Tombodu to see the civilians that 'Savage' had said were "jubilating".[2718]

1518. The Trial Chamber has found on the basis of the evidence of Witness TF1-072 that in about March 1998, the Witness and thirteen other civilians were captured by "soldiers" and brought before 'Savage' in Tombodu. 'Savage' used a cutlass to slap the witness on his back, accusing him of killing soldiers. He then cut the Witness severely with the cutlass on his upper right calf and on his left calf. Witness TF1-072 was also stabbed by one of Savage's subordinates, 'Small Mosquito', in the left rib area following an order by 'Savage'. The Trial Chamber was able to observe the scars from these incidents.[2719]

[2716] TF1-217, Transcript 17 October 2005, pp. 7-9, 32-34, 47-49, 51-53.
[2717] Factual Findings, Physical Violence, para. 1201, *supra*.
[2718] TF1-334, Transcript 20 May 2005, pp. 12.
[2719] TF1-072, Transcript 1 July 2005, pp. 15-16.

1519. 'Savage' then announced that he would cut off the hands of the fourteen captives, including witness TF1-072.[2720] The men were forced to lie on ground and were tied together. 'Small Mosquito' urinated on them. He then covered them with a mattress that he set on fire with the men still lying underneath. Witness TF1-072 was burnt on his shoulder before he managed to free himself. On account of his attempted escape 'Savage' flogged the witness on his face so severely that his vision is permanently impaired.[2721] 'Savage' then ordered the witness to place his hand on a nearby tree stump and attempted to amputate his right hand. The witness was so terrified that he defecated. His right hand was not entirely amputated, but permanently disfigured. The Trial Chamber was able to observe that the witness' fingers are mangled. He stated that he is unable to read or write as result of the assault.[2722]

1520. The Trial Chamber relies on its previous findings that when witness TF1-334 arrived in Tombodu, he personally observed 'Savage' amputate the hands of about fifteen people.[2723] Witness TF1-334 testified that 'Savage' told the victims that they should tell ECOMOG that 'Savage' was in Tombodu and that this was a warning to the other citizens.[2724] The Trial Chamber has found that 'Savage' locked 15 civilians into a house which he then set ablaze and that none of the civilians escaped, and that 'Savage' and a certain 'Guitar Boy' beheaded 47 and threw their bodies into a diamond pit[2725]

1521. The Trial Chamber relies on its findings, on the basis of the evidence of witness TF1-033, that the AFRC carried out an unknown number of amputations in March 1998.[2726]

1522. The Trial Chamber has found on the basis of the evidence of witness TF1-216 that in April 1998, he and other civilians were taken by members of the AFRC to Tombodu. 'Staff Alhaji' ordered the hands of the witness and five others to be cut off. Their hands were cut off with a cutlass and they were told to go see President Kabbah as he had a container of hands.[2727] The Trial Chamber also relies in particular on its findings with regards to witness TF1-216 that in or about April 1998 on the orders of 'Staff Alhaji Bayo' 53 civilians were burnt alive by "juntas" in a house.[2728]

[2720] TF1-072, 1 July 2005, p. 16.
[2721] TF1-072, 1 July 2005, p. 18.
[2722] TF1-072, 1 July 2005, pp. 19, 26.
[2723] Factual Findings, Unlawful Killings, para. 1204, *supra*.
[2724] TF1-334, Transcript 20 May 2005, p. 13.
[2725] Factual Findings, Unlawful Killings, para. 849, *supra*.
[2726] Factual Findings, Physical Violence, para. 1205, *supra*.
[2727] Factual Findings, Physical Violence, para. 1206, *supra*.
[2728] Factual Findings, Unlawful Killings, para. 855, *supra*.

1523. The Trial Chamber accepts the testimony of Prosecution witness TF1-334, not previously examined by the Chamber, that prior to the pull out of the AFRC from Koidu Town in mid-May 1998, Johnny Paul Koroma ordered that houses should be burnt in Kono District and that following this Tombodu was completely burnt down.[2729] The witness testified that he knew this as he was an Operation Commander and monitored orders given to other commanders.[2730] At the time that 'Savage' had informed 'Bazzy' that civilians in Tombodu were celebrating because they believed ECOMOG had overtaken the town, described above, the witness went to Tombodu and personally observed that Tombodu was completely burnt down by a joint SLA and RUF force. The witness testified that Johnny Paul Koroma had given the order to burn the villages so the civilians would not occupy them and that the witness, other Operations Commanders, soldiers and 'Bazzy' ensured that these orders were carried out.[2731]

(iii) Yardu Sando

1524. The Trial Chamber relies on its previous findings on the basis of the testimony of Witness TF1-019 that "AFRC soldiers" and "rebels" attacked Yardu Sando on 16 April 1998 and that during the attack soldiers looted valuable property from civilian houses.[2732] The Trial Chamber also accepts the testimony of Witness TF1-019, not previously examined, that during this attack the village was largely burnt down by the AFRC/RUF. The Witness stated that prior to the attack there were approximately 100 houses in the village and that following the burning, only 3 or 4 remained standing.[2733]

(iv) Findings

1525. The Trial Chamber infers from the circumstances of the attacks against civilians in Koidu Town and Tombodu, namely that civilians were repeatedly targeted and that a great number were deliberately killed; the sustained duration of the attacks; the particularly brutal nature of some of the attacks including civilians who were burnt alive when they were locked in houses which were set on fire; the great number of repeated mutilations of civilians whose missing hands were left as a grotesque and lingering public reminder of the attacks; the widespread destruction of civilian property in Tombodu; as well as the repeated and express statements of members of the AFRC/RUF that such attacks were committed to intimidate civilians; proves that the primary purpose of the

[2729] TF1-334, Transcript 20 May 2005, pp. 7-9.
[2730] TF1-334, Transcript 20 May 2005, pp. 9-11.
[2731] TF1-334, Transcript 20 May 2005, pp. 16-17.
[2732] Factual Findings, Pillage, para. 19, *supra*.
[2733] TF1-019, Transcript 20 June 2005, pp. 90-91.

attacks was to spread terror among the civilian population. The Trial Chamber is therefore satisfied that acts of terror were committed in Koidu Town and Tombodu.

1526. However, the Trial Chamber is not satisfied that is has been proven that the acts of looting and burning which took place in Yardu Sando were committed with the primary purpose of spreading terror among the civilian population.

1527. The Trial Chamber is further satisfied that the crimes committed in Koidu Town and Tombodu also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact kill any AFRC/RUF soldiers and therefore whether they in fact did or did not fail to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2734] The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly having killed an AFRC/RUF soldier by members of the AFRC/RUF.

(f) Koinadugu District (14 February 1998 – 30 September 1998)

1528. In its Pre-Trial Brief, the Prosecution submitted that from approximately 4 February 1998, after the AFRC/RUF were driven out of Freetown by the ECOMOG intervention force, successive attacks in Koinadugu District involved widespread killings, physical and sexual violence against civilian men, women and children, looting and destruction of property and the abduction and forced labour and/or conscription of men, women and children. The Prosecution submitted that these crimes were committed in furtherance of a campaign of terror and collective punishment during AFRC/RUF troop movements and attacks on towns and villages throughout the entire District, including Fadugu, Heremakono, Kabala, Kamadugu, Katambo, Koinadugu Town, Kumalu, Kurubonla, Moriya, Seraduya, Serekolia, Sokorola, and Yifin.[2735]

1529. The Prosecution further submits in its Pre-Trial Brief that some acts of physical violence were undertaken by the AFRC/RUF forces in Koinadugu District as collective punishment against the civilian population. It is submitted that AFRC/RUF forces organized amputations of limbs of

[2734] Applicable Law, paras. 676-681, *supra*.
[2735] Prosecution Pre-Trial Brief, paras 82-91; *See also* Prosecution Opening Statement, Transcript 7 March 2005, pp. 35-36.

men, women and children, who were given letters and/or told to go to President Kabbah to ask for their limbs back.[2736]

1530. In its Final Brief, the Prosecution asserted, "The attacks on Yiffin and other villages, all in close proximity to each other, were carefully designed and organised 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."[2737]

1531. The Trial Chamber has found that acts of violence were committed against protected persons or their property in Kabala (Unlawful Killings, Rape, Physical Violence, Enslavement, Pillage); in Kurubonla (Unlawful Killings); in Koinadugu Town (Unlawful Killings, Rape, Enslavement); in Fadugu (Unlawful Killings, Rape, Enslavement, Pillage); and in Kumala (Enslavement). The Trial Chamber has also found that women were subjected to sexual slavery and that children were abducted for use as child soldiers in Koinadugu District. The Trial Chamber has also found that enslavement, the abduction and use of child soldiers and sexual slavery are acts of violence the primary purpose of which, in the factual circumstances of the conflict in Sierra Leone, was not to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

1532. In relation to the crime of terror, the Trial Chamber will consider evidence of burning of civilian property as an act of violence. The Indictment alleges that AFRC/RUF forces engaged in widespread looting and burning of civilian homes in Heremakono, Kabala, Kamadugu and Fadugu.[2738] The Trial Chamber has found that the Prosecution conceded that it had not led evidence of burning in Heremakono and Kamadugu.[2739] Where evidence has been led on burning in the remaining locations which may go the proof of Count 1, the Trial Chamber will examine it below.

(i) Kabala, Fadugu, Koinadugu Town and Kurubonla

1533. The Trial Chamber has found that a number of acts of violence were committed in Kabala, Fadugu, Koinadugu Town and Kurubonla during the indicted period.

[2736] Prosecution Pre-Trial Brief, para. 90; Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.
[2737] Prosecution Final Brief, p. 342-343.
[2738] Indictment, para. 76.
[2739] Rule 98 Decision, para. 261.

1534. The Trial Chamber has found that Kabala Town was attacked by AFRC/RUF forces in mid-May 1998 and that the hands of an unknown number of civilians were amputated after the forces had successfully captured the town.[2740] On 27 July 1998 AFRC troops under the command of 'Savage' accompanied by "rebels" attacked Kabala Town for four to five days. Seven loyal SLA soldiers were captured and executed[2741] and the fighters looted civilian property.[2742] The Trial Chamber has found that Kabala was attacked again by 'Savage' and fighters under his command on 17 September 1998 and that fighters looted civilian property from houses.[2743]

1535. The Trial Chamber has found that at a checkpoint in Fadugu on 22 May 1998 eight soldiers belonging to an unidentified faction captured a civilian they believed to be a member of the CDF. The soldiers beat the man to death, cut open his stomach and removed his intestines. The intestines were displayed openly at the checkpoint. In close vicinity to the checkpoint, a teacher and his younger brother were killed.[2744] The Trial Chamber has also found that during a later attack, on 11 September 1998, there was a second attack on Fadugu by "rebels" in a campaign known as "Operation Die." An unknown number of civilians were killed in the course of this attack, including the local paramount chief of Mabolo who was burnt to death in his house.[2745] Four members of the AFRC or RUF under the command of 'Savage' raped a girl and forced another civilian who happened upon them to watch as it happened. The girl subsequently died from her injuries.[2746]

1536. The Trial Chamber has found that Koinadugu Town was attacked by "SLA" and "RUF fighters" under the command of SAJ Musa and Superman respectively in late July 1998 and that at least ten civilians were killed on the orders of 'Superman'. The Trial Chamber has also found that at least one civilian was repeatedly raped.

1537. The Trial Chamber notes, but does accept, the testimony of Witness TF1-199 with regards to possible evidence of burning in Kabala and Fadugu in 1998.[2747] While the Witness did not give a specific date with regards to his arrival in Kabala, the Witness testified that he was abducted by the AFRC/RUF in Bombali District at Christmas time in 1998 and travelled with the AFRC/RUF to

[2740] Factual Findings, Physical Violence, paras 1217-1218, *supra*.
[2741] Factual Findings, Unlawful Killings, para. 871, *supra*.
[2742] Factual Findings, Pillage, para. 1406, *supra*.
[2743] Factual Findings, Pillage, para. 1407, *supra*.
[2744] Factual Findings, Killings, para. 877, *supra*.
[2745] Factual Findings, Killings, para. 878, *supra*.
[2746] Factual Findings, Rape, paras 1021-1025, *supra*.
[2747] TF1-199, Transcript 06 October 2005, pp. 86-88.

several places before arriving in Kabala.[2748] As such, he could not have been in Kabala prior to 30 September 1998, the end of the indicted period for acts of burning.

(ii) Findings

1538. As described above, the Trial Chamber is satisfied that acts of physical violence, specifically amputations such as those carried out in Kabala Town in mid-May 1998, in the context of the conflict in Sierra Leone, are acts of violence the primary purpose of which was to terrorise the civilian population. However, the Trial Chamber finds the evidence does not prove that the other acts of violence committed during the attacks on Kabala Town were acts the primary purpose of which was to spread terror among the civilian population.

1539. Similarly, the Trial Chamber is satisfied that the grotesque mutilation and public display of the body of a civilian suspected to be a member of the CDF is an act the primary purpose of which is to spread terror among the civilian population. However, the Trial Chamber is not satisfied that it can be determined beyond reasonable doubt that the other acts of violence committed during the attacks on Fadugu were acts the primary purpose of which was to spread terror among the civilian population.

1540. The Trial Chamber finds that no evidence has been adduced that would demonstrate that the acts of violence committed in Koinadugu Town were committed with the primary purpose to spread terror among the civilian population.

1541. The Trial Chamber is neither satisfied that the elements in relation to Count 2 (Collective Punishment) are established in relation to Koinadugu District.

(g) Bombali District (1 May 1998 – 30 November 1998)

1542. In its Pre-Trial Brief, the Prosecution submitted that a large contingent of AFRC/RUF returned to Bombali District in April or May 1998 and established a base at Rosos. The Prosecution submitted that they engaged in the forced labour and military training of abducted civilians, including children, and attacked several villages in the area including Karin, Gbendembu, Bonyoyo (or Bornoya), Mayombo, Mafabu, Malama and Mandaha. It submitted that AFRC/RUF forces engaged in wide spread atrocities against civilians during these and other attacks throughout the district including, intentional killing of civilians in Bonyoyo (or Bornoya), Karina, Mafabu, Mateboi, Pendembu, Malama and Gbendembu, acts of sexual violence including rape, sexual

[2748] TF1-199, Transcript 06 October 2005, pp. 69-70, 75, 89.

slavery and other forms of sexual violence in locations throughout the district including Mandaha and Rosos, mutilations and amputations in several locations throughout the district including Lohondi, Malama, Mamaka, and Rosos, and the burning of houses and looting of property in many locations throughout the district including Karina and Mateboi.[2749]

1543. In its Supplemental Pre-Trial Brief, the Prosecution submits that the amputation of limbs by members of the AFRC/RUF in Bombali District where civilians were told to "go to Kabbah" for new hands and that the burning of civilian property performed as part of the attacks on many villages throughout the District is evidence of collective punishment.[2750]

1544. In its Final Brief, the Prosecution submitted that "[...] 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" in Bombali District.[2751]

1545. In its Closing Arguments, the Prosecution argued that the evidence has shown that all the Accused travelled as commanders with their troops through Bombali attacking villages on the way. The Prosecution argued that their intent was to spread terror and to punish the civilian population for not supporting them and that their ultimate objective was to retain power.[2752]

1546. The Trial Chamber has found that acts of violence were committed against protected persons in Bornoya (Unlawful Killings); Karina (Unlawful Killings); Mateboi (Unlawful Killings); Gbendembu (Unlawful Killings); and Rosos (Rape, Physical Violence). The Trial Chamber has also found that incidents of Sexual Slavery and Enslavement occurred in the District. However, as the Trial Chamber has also found that enslavement and sexual slavery are acts of violence the primary purpose of which, in the factual circumstances of the conflict in Sierra Leone, was not to spread terror among the civilian population, evidence on these counts will not be considered further in this regard.

1547. The Trial Chamber will consider any evidence of burning in the locations in Bombali District particularised in the Indictment, namely, Karina and Mateboi. The Trial Chamber did not find that any locations were conceded by the Prosecution with regards to Count 14 at the Rule 98

[2749] Prosecution Pre-Trial Brief, paras 52-53.
[2750] Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.
[2751] Prosecution Final Brief, para. 1516.
[2752] Prosecution Closing Arguments, Transcript 7 December 2006, p. 41.

stage.[2753] The evidence of burning in Karina and Mateboi which was adduced by the Prosecution will be examined below.

(i) Mansofinia (Koinadugu District) to Camp Rosos (Bombali District)

1548. The evidence adduced with regards to Bombali District has demonstrated that AFRC troops moved from Mansofinia (Koinadugu District) to Camp Rosos (Bombali District). Specifically, the Trial Chamber has found that the Accused Brima returned to Mansofinia and led his troops to Rosos via the following path: from Mansofinia they first headed south into Kono district and passed Kondea (Kono), Worodu (Kono) and Yarya (Kono). From Yarya, the 'hometown' of the Accused Brima, the troops headed north east, back into Koinadugu district to Yifin (Koinadugu) and from there eastwards passing Kumala (Koinadugu), Bendugu (Koinadugu) toward the area near Bumbuna (Tonkolili district). From there the troops headed further towards the north east into Bombali district and passed Kamagbengbeh[2754], Bonoya (Bombali), Karina (Bombali), Pendembu[2755] (Bombali), Mateboi (Bombali) and finally Rosos (Bombali).[2756] The Trial Chamber has established beyond a reasonable doubt that the civilian population was routinely targeted and attacked by soldiers and fighters on that route. The troops settled in Rosos and later a village named Major Eddie Town until the arrival of SAJ Musa in October/ November 1998.

1549. Although no findings have been made on acts of violence per Counts 3 – 14 in a number of these locations, the evidence demonstrates a consistent pattern of attacks against the civilian population during this time which is indicative of the primary purpose of the attacks.

a. Mansofinia (Koinadugu District)

1550. In Mansofinia in May 1998, the First Accused Brima, gave orders to attack civilians. Witness TF1-334 testified that during a meeting convened in Mansofinia to plan the trip North to Bombali District, Brima ordered that any civilian who tried to run away should be shot on sight and that if troops were attacked in any village that village should be burnt down. The Witness testified that Brima warned the soldiers "Minus you, plus you" which TF1-334 explained meant that if a soldier should fail to go by those orders the operation would continue without him.[2757]

[2753] Rule 98 Decision, para. 261.
[2754] Also referred to as Magbengbeh.
[2755] Also referred to as Gbendembu.
[2756] Exhibit P-30(a), "Map of Sierra Leone."
[2757] TF1-334, Transcript 23 May 2005, pp. 15-17.

1551. Witness George Johnson gave evidence that he arrived in Mansofinia in April 1998, after the withdrawal of the troops from Kono. On his arrival, Alex Tamba Brima, Santigie Kanu and some other commanders went to meet SAJ Musa at Krubola. Upon their return, Brima and Kanu told Bazzy that the troops should be restructured and that a camp, later Camp Rosos, should be made at the Bombali axis.[2758] A muster parade was called and the fighters were divided into battalions by FAT Sesay and promotions were given by Brima. The Witness was promoted to the rank of Provost-Marshal and given the role of ensuring disciplinary actions were taken against "the fighters" and to ensure that on all operations during the march to Camp Rosos the fighters adhered who broke the laws of "jungle justice" would be arrested and judged.[2759] These laws included a prohibition against stealing government property, namely arms, ammunition and medical supplies and a prohibition against rape. Fighters who broke these laws would be punished by death or flogging.[2760]

b. Yaya (Kono District)

1552. The Trial Chamber recalls the evidence of witness TF1-033 that Brima addressed his troops publicly in Yaya[2761] and advocated attacks on civilians. [2762] The Trial Chamber is satisfied that the witness was in fact referring to the speech made by the Accused Brima at Mansofinia and therefore makes no further findings on this evidence.[2763]

c. Kamagbengbeh (Bombali District)

1553. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334, not previously evaluated by the Chamber, that at Kamagbengbeh in June of 1998, 'Gullit' tried to divide the troops and sent one group to attack Kambai and another to attack Karina. The troops argued against this division and 'Gullit' agreed instead to focus the attack on Karina. TF1-334 testified that 'Gullit' called Karina a strategic point and said that it was the home town of President Ahmed Tejan Kabbah. 'Gullit' told the junta forces that they should demonstrate their power in Karina. He ordered the troops to burn down Karina, to capture strong male civilians, and to amputate civilians. 'Gullit' stated that he wanted the attack on Karina to shock the whole country and the international

[2758] George Johnson, Transcript 15 September 2005, pp. 47-48.
[2759] George Johnson, Transcript 15 September 2005, p. 49.
[2760] George Johnson, Transcript 15 September 2005, p. 49.
[2761] Also referred to as Yarya.
[2762] TF1-033, Transcript 11 July 2005, pp. 8-15; Transcript 12 July 2005, p. 56.
[2763] *See* discussion of this evidence in Military Structure of the AFRC Fighting Force, para. 584, *supra*.

community. Kamara and Kanu were present during this speech and during the subsequent attack on Karina. There were no ECOMOG or Kamajor troops in Karina at the time.[2764]

d. Bornoya and Mateboi

1554. In its Opening Statement, the Prosecution submitted that "It is crucial for the Trial Chamber to appreciate that Bornoya, Karina, Mandaha and Mateboi were villages all in extremely close proximity too each other so one attack on one village was followed almost immediately by an attack on one of the other villages."[2765] The Prosecution submitted that the neighbouring villages of Bornoya, Daraya and Mayombo were attacked first, followed by an attack against Karina on the same day.[2766] In its Closing Arguments the Prosecution argued that the attacks on the villages in Bombali are strikingly similar and create a consistent pattern of how the Accused operated against civilians throughout the campaign, namely, attack their village, kill them, amputate them, burn their houses and abduct the strong men and children.[2767]

1555. The Trial Chamber has found that Bornoya was attacked in May of 1998 by AFRC troops including 'Gullit', and 'Five-Five' 'and that civilians were targeted and brutally assaulted during the attack. In particular, the Trial Chamber relies on its findings that during the attack, troops split open the stomach of a pregnant woman named 'Isatta' and removed the foetus. The woman died as a result. Two children were burnt to death when they were placed under a mattress which was set on fire. An unspecified number of other civilians were killed during the course of the attack.[2768]

1556. The Trial Chamber relies on its previous findings that at an unspecified time in 1998, the Accused Brima sent an AFRC "advance team" under the command of 'Captain Arthur' to Mateboi, a village close to Camp Rosos.[2769] Upon return to Camp Rosos, 'Captain Arthur' brought the decapitated head of the chief of Mateboi and handed it over the commanders at headquarters, which included the Accused Brima and Kamara.[2770]

e. Karina

[2764] TF1-334, Transcript 23 May 2005, pp. 56-60, 61, 64-65.
[2765] Prosecution Final Brief, para. 1500.
[2766] Prosecution Opening Statement, Transcript 7 March 2005, p. 39.
[2767] Prosecution Closing Arguments, Transcript 7 December 2006, p. 42.
[2768] Factual Findings, Unlawful Killings, para. 884, *supra*.
[2769] George Johnson, Transcript 15 September 2005, pp. 60-61.
[2770] George Johnson, Transcript 15 September 2005, pp. 61-63.

1557. In its Supplemental Pre-Trial Brief, the Prosecution submitted that the crimes committed during attacks on Mayombo, Bonoyo (or Bonyoyo), Daraya and Karina were carried out in a single day because it was believed that the inhabitants belonged to the Mandingo ethnic group, the same ethnic group as President Kabbah.[2771]

1558. In its Final Brief, the Prosecution argued that, "[...] 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."[2772]

1559. The Trial Chamber accepts the evidence of Prosecution Witness TF1-157 that after the attack on Karina, he heard rebels say that the town had been attacked because it was the home town of President Kabbah.[2773] The Trial Chamber also accepts the evidence of Witness TF1-033 that he heard 'Gullit' say that Karina was the birthplace of President Ahmed Tejan Kabbah who had caused a lot of suffering against the AFRC and its supporters and that the AFRC should now return the same fate against the people of Karina and Bornoya.[2774] Witness TF1-033 testified that he also heard 'Gullit' give an order that civilian women should be stripped naked and raped during the attack on Karina, and the neighbouring town of Bornoya.[2775] Witness George Johnson also testified that he heard 'Gullit', in the presence of Kamara and Kanu, order that Karina should be burnt down and the civilian inhabitants killed because it was the home town of Tejan Kabbah.[2776]

1560. The Trial Chamber has found that following these orders, on or about 8 May 1998, Karina was attacked by AFRC/Junta forces and that a number of such acts of violence were in fact carried out.

1561. The Trial Chamber has found that, the Accused Kamara and two other "juntas" locked five young girls into a house and subsequently set it ablaze. The five girls were burnt alive. "Juntas" threw an unspecified number of little children into the flames of burning houses. The children were burnt alive. Soldiers stabbed a pregnant woman to death. A certain Saccoh Kankoh Fanta was injured during the attack and subsequently died. An unspecified number of children were killed during the attack.[2777]

[2771] Prosecution Supplemental Pre-Trial Brief, paras 17, 300, 583.
[2772] Prosecution Final Brief, para. 986.
[2773] TF1-157, Transcript 25 September 2005, pp. 29-30, 58-60; Transcript 26 September 2005, pp. 9, 23-24, 30.
[2774] TF1-033, Transcript 11 July 2005, pp. 18-19.
[2775] TF1-033, Transcript 11 July 2005, pp. 18-20.
[2776] George Johnson, Transcript 15 September 2005, pp. 53-54.
[2777] Factual Findings, Unlawful Killings, para. 888, *supra*.

1562. 'Cyborg', a security to the Accused Kamara, threw at least four children aged between five and ten years from a two-storey building in Karina; however, it was not established beyond reasonable doubt that these children died as a result.[2778] A certain Eddie Williams, a.k.a. 'Maf', wrapped into an unknown number of people in a carpet inside a house and thereafter set the house on fire. The people were burnt alive.[2779]

1563. The Trial Chamber has found that the mosque in Karina was attacked and a number of civilians, including the man leading the prayers, were killed. The Trial Chamber accepts the evidence of witness TF1-334 that the Accused Brima was at the mosque and accused the man leading the prayers of supporting President Kabbah. Brima said to him: "You, you are the one that pray for people. You are one of Pa Kabbah's family [...] [s]o you are the worst people here." The Trial Chamber has found that civilians were killed on a massive scale in Karina. [2780]

f. Gbendembu

1564. The Trial Chamber has found that in or around August 1998, 'Gullit' ordered two AFRC commanders to attack Gbendembu because there were purportedly ECOMOG and loyal SLA troops there. Witness TF1-033 heard that 25 civilians were killed in the attack and that 'Gullit' commended his men on a 'job well done'.

g. Rosos

1565. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334 that AFRC troops set up a base at Rosos in June of 1998 and remained there for approximately three months. The Accused Brima ordered that the troops should occupy the surrounding villages and that there should be no civilians within 15 miles of Rosos. He ordered captured civilians be executed rather than brought back to the camp and that he would take disciplinary action against any soldier who brought a civilian to the camp. He ordered "Operation Clear the Area" according to which the villages surrounding Rosos were burnt down and looted.[2781]

1566. The Trial Chamber also accepts the evidence of witness TF1-033 that in June 1998, he heard Brima order soldiers to kill any civilians they came in contact with in Rosos.[2782] The Trial Chamber

[2778] Factual Findings, Unlawful Killings, para. 889, *supra*.
[2779] Factual Findings, Unlawful Killings, para. 890, *supra*.
[2780] Factual Findings, Unlawful Killings, para. 891, *supra*.
[2781] TF1-334, Transcript 23 May 2005, pp. 100-106.
[2782] TF1-033, Transcript 11 July 2005, pp. 24-25.

notes that witness TF1-267 similarly testified that rebels told her that civilians who did not leave Rothung near Rosos would be killed.[2783]

1567. The Trial Chamber has found that while the troops were at Camp Rosos, at least three civilians were raped in or near Rosos[2784] and that one was gang-raped and was badly beaten and stabbed during the attack.[2785]

(ii) Findings

1568. The acts of violence carried out by members of the AFRC against protected persons or their property in Bornoya, Mateboi, Karina, Gbendembu and Rosos were carried out in the context of a series of attacks in which civilians were deliberately targeted for allegedly failing to sufficiently support the AFRC. There is evidence to suggest that these attacks were explicitly ordered by the First Accused in Mansofinia in May 1998 and in Yaya in April 1998. In Kamagbengbeh in June of 1998, the First Accused ordered the AFRC troops to attack Karina and to deliberately target civilians in order to "shock the whole country and the international community". In Rosos, in June of 1998, the First Accused ordered that civilians should be cleared from the area within 15 miles from Rosos, that they should be executed rather than brought back to the Camp and that the surrounding villages should be burned and looted.

1569. The Trial Chamber has not been presented with any indication that the civilians in the villages attacked by the AFRC described above were armed. No evidence been adduced to suggest that these villages were military targets in the sense that no discernable strategic advantage was gained from the attacks leading up to Camp Rosos nor was any territory held by the troops following the attacks. Rather, the troops moved on to the next village, ultimately settling in Camp Rosos. Once the troops arrived in Camp Rosos the attacks continued against civilians in the area.

1570. The Trial Chamber notes the particularly brutal nature of a number of the acts of violence committed against civilians during the attacks including the splitting open of the stomach of a pregnant woman and removal of the foetus and the burning of civilians alive. Similarly the Trial Chamber notes that a number of the acts of violence were carried out against particularly vulnerable persons – children and pregnant women.

[2783] TF1-267, Transcript 27 July 2005, pp. 8-9, 10-11, 17, 23-26, 29-30.
[2784] Factual Findings, Rape, para. 1034, *supra*.
[2785] Factual Findings, Physical Violence, paras 1282-2224, *supra*.

1571. On this basis, the Trial Chamber is satisfied that the acts of violence committed by members of the AFRC against protected persons or the property in Bornoya, Mateboi, Mandaya, Karina, Gbendembu and Rosos can only reasonably be inferred to have been carried out with the primary purpose to spread terror among the civilian population.

1572. The Trial Chamber is further satisfied that the crimes committed also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted in these attacks did or did not in fact support the elected government of President Ahmed Tejan Kabbah or factions aligned with that government. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2786]

1573. The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished for allegedly supporting the President Ahmed Tejan Kabbah by members of the AFRC/RUF.

(h) Freetown and Western Area (6 January 1999 – 28 January 1999)

1574. In its Final Brief, the Prosecution argued that

> "[i]n 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.
>
> 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, the continuation of this practice whilst the SLAs were in the jungle, the numerous occasions when the civilians had betrayed the SLAs to the Kamajors and ECOMOG whilst they were in the jungle, 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.
>
> 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 [sic] soldiers, and SLPP collaborators should be targeted and killed during the attack on Freetown. An order which was endorsed by the First Accused when he assumed command after the death of SAJ Musa." [2787]

[2786] Applicable Law, paras 668-669, *supra*.
[2787] Prosecution Final Brief, para. 395.

1575. In its Final Brief, the Prosecution asserted that the Accused " [...] gave orders for, and actively encouraged, killings, mutilations and sexual violence and widespread burning of houses amounting to a campaign of terrorism."[2788]

1576. The Prosecution has argued that the attacks against civilians continued as the AFRC retreated from Freetown. In its Pre-Trial Brief, the Prosecution submitted that the bulk of the AFRC/RUF forces finally were pushed out of the city of Freetown by early February at which time the AFRC/RUF regrouped in Waterloo and coordinated later attacks on Tombo and Hastings before being completely pushed out of the Western Area.[2789] In its Opening Statement, the Prosecution submitted that as the rebels were forced to withdraw by ECOMOG, they intensified the pace of their killings, amputations, looting and burning particularly in the Kissy area.[2790]

1577. The Trial Chamber has found that acts of violence were carried out against protected persons or their property in Freetown (Unlawful Killings, Rape, Physical Violence, Pillage, Enslavement) and that civilians were subjected to sexual slavery in Freetown and the Western Area. The Trial Chamber has also found that children were abducted and used for military purposes in Freetown and the Western Area. As discussed above, the Trial Chamber does not consider that acts of enslavement, the abduction and use of child soldiers nor sexual slavery were acts the primary purpose of which was to spread terror among the civilian population. Evidence on these counts will not be considered further in this regard.

1578. The Prosecution has adduced evidence on acts of burning in Freetown. The Trial Chamber will consider this evidence below.

(i) State House

1579. The Trial Chamber has found that on 6 January 1999, AFRC forces under the command of the Accused Brima, and including the Accused Kamara and Kanu, invaded the city of Freetown. They gained control of Freetown and large parts of the Western Area.[2791]

1580. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334 who testified that he was present when 'Gullit' announced that it was time to attack Freetown and that the Sierra Leone People's Party government was responsible for denying the success of the rebel troops. The Witness testified that 'Gullit' ordered that Freetown should be looted and burnt down, that anyone

[2788] Prosecution Final Brief, para. 1640.
[2789] Prosecution Pre-Trial Brief, para. 63.
[2790] Prosecution Opening Statement, 7 March 2005, p. 33.

who opposed the troops should be a considered a collaborator and should be killed.[2792] This testimony is corroborated by Witness TF1-033 who heard Gullit order the burning of houses and the murder of civilians during the attack on Freetown.[2793] Witness TF1-157 testified that when the ARFC entered Freetown, they ordered the civilians to sing while they were burning their houses.[2794]

1581. The Trial Chamber relies also on its previous findings that during the subsequent attack on Freetown in January 1999, civilians were mutilated and killed by ARFC forces because the AFRC believed the people of Freetown supported President Tejan Kabbah or failed to support the AFRC/RUF.

1582. In particular, the Trial Chamber relies upon its findings that a certain "Junior Sheriff" brought a boy to the State House who was from Guinea-Bissau and shot him[2795] and that at least four persons suspected to be Nigerian ECOMOG soldiers were executed, *hors de combat* by AFRC troops in the State House area. An AFRC commander named Lieutenant Colonel Kido shot and killed approximately six civilians because they had "overlooked" him, meaning that they did not pay sufficient respect to him.[2796]

1583. The Trial Chamber has found that 'Gullit' told his fighters to force captured civilians to join the AFRC troops on their retreat, in order to replace those fighters killed by ECOMOG. Civilians who refused to join were shot in the presence of the Accused Brima and their dead bodies were thrown out the back of State House. The Trial Chamber has found that at least thirty civilians were killed. The Trial Chamber has found at least six other civilians were killed by AFRC troops at or near State House.[2797]

(ii) Kingtom

1584. The Trial Chamber relies in particular on its findings that an unknown number of civilians in the area of Kingtom were killed by AFRC troops for allegedly collaborating with ECOMOG. The Trial Chamber has found that in the second week of the invasion, during an operation to reclaim Kingtom from ECOMOG soldiers broke civilian houses and killed the civilians inside because they perceived them as 'traitors' who were collaborating with ECOMOG. Witness TF1-334 testified that

[2791] Context of Alleged Crimes, paras 202-205, *supra*.
[2792] TF1-334, Transcript 13 June 2005, pp. 100-104.
[2793] TF1-033, Transcript 11 July 2005, pp. 60-64.
[2794] TF1-157, Transcript 26 September 2005, pp. 18-19, 23-24, 26, 29-30.
[2795] Factual Findings, Unlawful Killings, para. 904, *supra*.
[2796] Factual Findings, Unlawful Killings, para. 913, *supra*.
[2797] Factual Findings, Unlawful Killings, para. 914, *supra*.

soldiers would knock on the door of the house and if the door was not opened, they would force it open and "[t]he first person who came out was a dead person."[2798]

(iii) Fourah Bay

1585. The Trial Chamber has found that during the attack on Freetown, in early January, AFRC troops retaliated against civilians in the Fourah Bay area and punished them for allegedly killing an AFRC soldier.

1586. Specifically, the Trial Chamber relies on its findings that after the troops lost State House and Eastern Police, the Accused Brima received information that the people of Fourah Bay had killed one of his soldiers and announced that he would lead the AFRC troops to Fourah Bay to burn houses and kill people in retaliation. The troops attacked Fourah Bay and a large number of civilians were killed including men, women and children burned inside houses. Soldiers shot people who attempted to escape from burning houses. The attack was not limited to Fourah Bay Road but encompassed the entire Fourah Bay area.[2799]

1587. The Trial Chamber has found that prior to the attack the Accused Brima ordered a soldier named "Mines" to go to the SLRA to collect cutlasses. "Mines" subsequently returned with cutlasses, which he distributed to the troops with the assistance of one of the battalion commanders 'Changabulanga'.[2800]

1588. The Accused Kanu gave a demonstration on amputation of civilians to AFRC troops in the Kissy Old Road area. Kanu demonstrated an amputation on a civilian, explaining to them that a 'long hand' is the amputation of the hand, while a 'short hand' is the amputation of an arm around the bicep area (above the elbow and below the shoulder).[2801]

1589. Brima then ordered the soldiers to move to the Upgun roundabout via Kissy Road. Upon arrival at Upgun, the troops were summoned in a muster parade. The Accused Kanu and the Accused Brima held a discussion and then Kanu told the troops that Brima had said that the civilians should be taught a lesson. Kanu then ordered that any civilian the troops saw from Ross

[2798] Factual Findings, Unlawful Killings, paras 917-918, *supra*.
[2799] Factual Findings, Unlawful Killings, paras 919-921, *supra*.
[2800] Factual Findings, Physical Violence, para. 921, *supra*.
[2801] Factual Findings, Physical Violence, para. 922, *supra*.

Road until Fourah Bay Road should be amputated and killed and the entire area should be burned down.[2802]

1590. The troops were divided for the attack on Fourah Bay with the Accused Kanu as the commander of one group. After carrying out the orders, the troops were called back to where 'Gullit' was near Kissy Road.[2803] On cross-examination, witness TF1-184 gave more detail about the alleged involvement of the Accused Kamara in burning in Kissy Road, Ross Road and Fourah Bay Road after a muster parade at Upgun, but the evidence was not linked explicitly to the attack involving the retaliatory killing of civilians.

1591. Following the attack on Fourah Bay, the Accused Kanu gave a further demonstration at Upgun. Kanu announced that it was time for the amputations to begin. He stated that he would carry out the first amputations in order to set an example for the others. Kanu called for two civilians nearby to be brought to him and he amputated both hands of both civilians with a machete at their wrists, explaining the difference between what he referred to as 'short sleeve' and 'long sleeve' amputations. Kanu then told the civilians that since they voted for 'Pa Kabbah' they should go to him and ask him for hands. Ten more civilians were then rounded up, amputated at the elbow and told them to go to 'Pa Kabbah' or ECOMOG to complain.[2804]

1592. The Trial Chamber has found on the basis of the evidence of Prosecution Witness TF1-153 that while the AFRC headquarters was at PWD, a soldier came from Fourah Bay "with his head bust" reporting that the civilians there had been fighting the soldiers. The witness subsequently heard that 'Bazzy' had raided a WFP warehouse in the nearby area and collected a number of machetes he found there. Later that evening, the witness saw 'Bazzy' and overheard a conversation between him and SAJ Musa's wife. Tina Musa asked 'Bazzy' why his men were holding machetes. According to the witness, 'Bazzy' replied "We are just [returning] from Operation Cut Hand". The witness testified that from this conversation he understood that the machetes from the warehouse had been used to amputate people.[2805]

(iv) Kissy

a. Good Shepherd Hospital

[2802] Factual Findings, Unlawful Killings, paras 919-926, *supra*.
[2803] Factual Findings, Unlawful Killings, paras 919-926, *supra*.
[2804] Factual Findings, Physical Violence, para. 1229, *supra*.
[2805] Factual Findings, Physical Violence, para. 1231, *supra*.

1593. The Trial Chamber has found that on 18 January 1999, a group of "juntas" went to the Good Shepherd Hospital in Kissy and accused personnel there of treating ECOMOG and Kamajors. They forced everybody out of the hospital – patients, nurses, staff, and visitors – and beat them with a large stick called a 'coboko', which has a rope tied to it.[2806]

1594. Civilians were taken from the Hospital, to a certain 'Pa Zubay's' house a short distance away. The civilians were made to stand against a wall and the juntas opened fire and began shooting randomly from different directions. Fifteen civilians were killed as a result of the shooting.[2807]

b. Rogbalan Mosque

1595. The Trial Chamber has found that AFRC fighters attacked a mosque in Kissy killing a number of civilians who were accused of being "enemies." Witnesses testified that the civilians were targeted because the AFRC fighters believed they were supporting President Kabbah and/or ECOMOG. Witness TF1-334 testified that the Accused Brima told commanders prior to the attack that he had received information that civilians were harbouring ECOMOG forces in mosques. Brima further stated that AFRC troops should shoot and kill people they encounter in mosques, as these people were enemies. The witness stated that while the area had many mosques, Brima referred in particular to a mosque "down towards Shell Old Road, towards the junction" that was housing "collaborators".

1596. Witness TF1-021 testified that over fifteen men armed with guns and machetes, stormed into the compound of the mosque. The men asked the civilians if they were praying, to which the civilians responded affirmatively. The witness stated that the men told the civilians "As you are here now, you are people who voted for Tejan Kabbah. We are going to kill all of you." The civilians collected money and offered it to their assailants so that they would leave. The men took the money and then began firing indiscriminately, killing people throughout the mosque. According to the witness, the men stated that the killings were not their fault, as they came in peace, but that of President Kabbah, since he did not recognise the People's Army.

1597. The Trial Chamber has found that at least 70 persons were killed during the attack.[2808]

c. Old Shell Road

[2806] Factual Findings, Physical Violence, paras 928-930, *supra*.

1598. The Trial Chamber has found that at Old Shell road, immediately prior to the troops' arrival at Kissy Mental Home, Osman Sesay a.k.a. 'Changamulanga' amputated six young civilian men at the elbow. 'Changamulanga' told the men to go to 'Pa Kabbah' and he would give them back their hands because they had voted for him.[2809]

d. Kissy Mental Home

1599. Trial Chamber relies on its findings that one evening in January 1999, on the day that the AFRC troops arrived at Kissy Mental Home during the retreat from Freetown, the Accused Brima, in the presence of commanders including the Accused Kamara and Kanu, ordered troops to go out from the mental home and "clear up" the area. Brima stated that civilians were to be killed and amputated and houses burned as punishment for their support of ECOMOG. Specifically, he ordered the witness, 'Pikin', 'Shrimp', 'Hassim' and others to go as far as they could towards "PWD" killing people.[2810]

1600. The witness stated that his group accordingly moved from the Kissy Mental Home, along the Old Road, towards Kissy market, where they heard civilians celebrating. The soldiers began firing machine guns at the civilians, killing an unspecified number of them. The troops went as far as Fisher Lane and then retreated to Kissy Mental Home, where they reported to 'Gullit' that the mission had been accomplished. [2811]

1601. The Trial Chamber further found on the evidence of witness George Johnson that on the same day the Accused Kanu ordered the soldiers, in the presence of the Accused Brima, the Accused Kamara and other commanders, to go to the eastern part of Freetown and amputate up to 200 civilians and send them to Ferry Junction. After the order was given, the witness observed fighters, including Kabila, 'Born Naked', 'Cyborg', and 'SBU Killer', moving towards the eastern part of Freetown. On their return, their machetes were covered with blood and they brought with them many amputated arms. [2812]

1602. The Trial Chamber relies on its findings on the basis of the evidence of Witness TF1-184 that 'Mines' amputated an unknown number of civilians pursuant to an order issued by the Accused Brima. While the troops were at Kissy Mental Home, AFRC soldier Kabila told 'Gullit' that "the

[2807] Factual Findings, Unlawful Killings, paras 934-936, *supra*.
[2808] Factual Findings, Unlawful Killings, para. 1236, *supra*.
[2809] Factual Findings, Physical Violence, para. 1237, *supra*.
[2810] Factual Findings, Unlawful Killings, para. 1239, *supra*.
[2811] Factual Findings, Unlawful Killings, paras 1237-1241, *supra*.

civilians are pointing their hands at our own crowd here," implying that the civilians were divulging the troops' position to ECOMOG. In the presence of the witness, 'Gullit' said "that the hand that they are pointing at us, the fingers that are pointing at us, we shall ensure that all their hands are amputated." When asked if anything occurred as a result of the Accused Brima's words, the witness testified that about one and a half hours later, AFRC soldier 'Mines' returned to Kissy Mental Home with a bag full of hands which he showed to 'Gullit' and others, including the witness. Witness TF1-184 also testified that during the period that the troops were at Kissy Mental Home, he observed 'Gullit' amputating a civilian's hand at Shell Company by Old Road.[2813]

e. Rowe Street

1603. The Trial Chamber has found that at unspecified time in January 1999, at Rowe Street in the Kissy area of Freetown, AFRC fighters or persons associated with them captured eight civilians, lined them up and shot seven of them dead. The rebels put the remaining civilian's hand on the ground, stood on his chest, stretched out his arms, and intentionally chopped off his hand with an axe.[2814]

f. Fatamaran Street

1604. The Trial Chamber has found that on approximately 18 January 1999 rebels amputated the hands of the seven captured persons. At least one person died as a result of the amputation.[2815]

g. Old Road (Locust and Samuels area)

1605. The Trial Chamber has found that on 22 January 1999, on Old Road in the Locust and Samuels area, witness TF1-083 and his family were captured by a group of rebels. The rebel commander told witness TF1-083 and others to lie flat on their backs to be killed or amputated. The rebels took two people to a corner and then returned with bloody knives. The commander ordered the rebels to cut off the hands of the remaining people. He said anyone whose hand is cut should go to Kabbah and ask him for a hand. One rebel stabbed witness TF1-083 with a knife in the left upper arm. The rebels chopped witness TF1-083's hand off with two blows of an axe. The hand of a man named Pa Sorie was also cut. The rebels cut off the fingers of a man named Mussa. The commander

[2812] Factual Findings, Physical Violence, para.1230, *supra*.
[2813] Factual Findings, Physical Violence, para. 1232, *supra*.
[2814] Factual Findings, Physical Violence, para. 1233, *supra*.
[2815] Factual Findings, Physical Violence, paras 1056-1060, *supra*.

ordered the rebels to cut off the entire hand and when Mussa begged for mercy, the rebels killed him.[2816]

h. Parsonage Street

1606. The Trial Chamber has found that on 22 January 1999, witness TF1-278 was fleeing from the rebels with his family and some of his tenants with their families when they were stopped by four persons wearing SLA uniforms and one person wearing civilian clothes near Parsonage Street in Freetown. A soldier named 'Captain Two Hand' ordered the soldiers to cut off the tenant's hands. A rebel in civilian clothes used an axe to cut off both of his hands. The soldiers told the tenant to "go and tell Tejan Kabbah this is what we have done. Go and tell no more politics, no more voting." Soldiers then amputated witness TF1-278's left hand. The witness testified that his child shouted "Hey, soldier, don't cut my father's hand, please. He is working for us." One of the soldiers ordered that the child's hand be amputated. The witness asked the soldier to amputate his right hand in exchange for sparing his child. The rebels amputated his right hand, before releasing the witness and the other civilians, telling them "You are the messenger of Tejan Kabbah. Go and tell Tejan Kabbah that we cut off your hand. Since you did not allow for peace we are saying good-bye to you."

i. PWD

1607. The Trial Chamber has also found that roughly three weeks after the 6 January 1999 invasion of Freetown, Brima, Kamara and Kanu went to PWD Junction to call for reinforcements from the RUF. After a failed attempt to recapture the State House, Brima returned to PWD which became a temporary headquarters. Around that time, Brima ordered the "troops" to abduct civilians in order to attract the attention of the international community. Kamara and Kanu were present also. Civilians, including a number of young girls were then abducted by the rebels and the commanders from Freetown and brought to the headquarters at PWD.

1608. The Trial Chamber finds additionally that civilian property was wilfully burned by members of the AFRC during the retreat from Freetown. The Trial Chamber accepts the evidence of Prosecution Witness Gibril Massaquoi, not previously evaluated by the Chamber, that during the retreat from Freetown the Accused Kanu ordered "the war candle to be put on" meaning that houses in Freetown should be burnt.[2817] The Trial Chamber also accepts the evidence of Prosecution

[2816] Factual Findings, Unlawful Killings, para. 1235, *supra*.
[2817] Gibril Massaquoi, Transcript 10 October 2005, p. 14.

Witness TF1-169 that the Kanu ordered the burning of houses at Goba Water.[2818] Witness TF1-184 testified that Kanu distributed petrol for the burning of Freetown.[2819] Witness TF1-344 testified that the Accused Brima ordered Calaba Town burnt down[2820] and that the Accused Kanu participated in the burnings.[2821]

(v) Findings

1609. The acts of violence carried out by members of the AFRC against protected persons or their property during the AFRC invasion of Freetown in January 1999, were part of a planned and deliberate attack, ordered or carried out by all three Accused, in which protected persons were specifically targeted. These attacks continued during the AFRC retreat. The Trial Chamber notes the particularly brutal nature of some of the acts of violence. Members of the AFRC repeatedly amputated the hands a great number of protected persons. These mutilations can only be reasonably understood to have served as a grotesque public warning to civilians not to interfere with the AFRC troops. The Trial Chamber notes that a great number of protected persons were deliberately killed by members of the AFRC in targeted attacks or through indiscriminate shooting. The Trial Chamber also notes the repeated and express statements of members of the AFRC that such acts of violence were being committed because the civilian population had allegedly supported opponents of the AFRC, namely President Tejan Kabbah and the ECOMOG forces.

1610. On this basis, the Trial Chamber is satisfied that the acts of violence committed by members of the AFRC against protected persons or property during the AFRC invasion and retreat from Freetown in early 1999 were carried out with the primary purpose to spread terror among the civilian population.

1611. The Trial Chamber is further satisfied that these crimes also served as a punishment against protected persons. No evidence has been adduced to indicate whether the protected persons targeted during the invasion and retreat from Freetown did or did not in fact support the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, in this instance ECOMOG, the Police and Nigerians, nor whether in fact the protected persons failed to provide sufficient support to the AFRC/RUF. The Trial Chamber has held that the material element in the *actus reus* of the crime of collective punishment is not whether the acts were actually committed or

[2818] TF1-169, Transcript 6 July 2005, pp. 20-21.
[2819] TF1-184, Transcript 27 September 2005, p. 65.
[2820] TF1-334, Transcript 14 June 2005, p. 100.
[2821] TF1-334, Transcript 14 June 2005, p. 100.

not by the victims, but whether the perpetrator indiscriminately and collectively punished these individuals for acts that they might or might not have committed.[2822]

1612. The Trial Chamber is satisfied, on the basis of the evidence specified above, that protected persons were collectively punished by members of the AFRC/RUF for allegedly supporting President Ahmed Tejan Kabbah, ECOMOG or other factions aligned with the government or for allegedly failing to provide sufficient support to the AFRC/RUF.

(i) Port Loko District (13 February 1998 – June 1999) (January-April 1999)

1613. In its Final Brief, the Prosecution asserts that Kamara "[...] gave orders for, and actively encouraged, killings, physical and sexual violence and the burning of villages amounting to a campaign of terrorism"[2823] in Port Loko District. It also asserted that, "[i]n 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 terrorise and punish civilians."[2824]

1614. The Trial Chamber has found that acts of violence were carried out by members of the AFRC against protected persons or their property in Manaarma (Unlawful Killings) and in Nonkoba (Unlawful Killings). The Trial Chamber has also found that civilians were forced into sexual slavery in Port Loko District, however, as sexual slavery, in the context of the conflict in Sierra Leone, has not been found to be acts the primary purpose of which was to spread terror among the civilian population, the Trial Chamber makes no further findings in this regard. Burning was not particularised in Port Loko District and thus the Trial Chamber makes no findings on the basis of any evidence of such adduced by the Prosecution.

(i) Attacks on the way to and from Gberi Bana

1615. The Trial Chamber accepts the evidence of Prosecution Witness TF1-334, not previously evaluated by the Chamber, that the troops leaving Freetown went through Benguema (Western Area), Waterloo (Western Area), Newton (Western Area), Mamamah (Port Loko District), Mile 38 (Port Loko District), Magbeni (Port Loko District) and ultimately made a camp at a village called Gberi Bana (Port Loko District).[2825] This route is largely corroborated by the testimony of Witness George Johnson; however, Witness George Johnson stated that the troops went through Four Mile

[2822] Applicable Law, paras 677-681, *supra*.
[2823] Prosecution Final Brief, para. 1724.
[2824] Prosecution Final Brief, para. 1766.

close to Newton Junction, not through Newton itself. He also did not mention having gone through Magbeni and testified that the troops set up base at "Gberibana", also called "West Side" which the Trial Chamber is satisfied is the same location as "Gberi Bana".[2826]

1616. During this time, the AFRC troops, under the overall command of the Second Accused Kamara, conducted a series of attacks on the proximate villages.

1617. The Trial Chamber relies in particular on the evidence of Prosecution Witness TF1-334 that after the troops left Newton, in approximately March 1999, they passed through a small village referred to by the Witness as "RDF". There the Accused Kamara, ordered a certain 'Kankada', his personal security officer, to take some men to "decorate" Mamamah Town. The Witness testified that the Accused Kamara explained that by "decorate" he meant that soldiers should execute any civilians they captured and display them at Mamamah Junction. The Witness went to Mamamah Town and observed the bodies of 15 persons who had been executed and mutilated. Two of the victims were women, and three were children. The Witness testified that the Accused Kamara congratulated his men on a job well done.[2827] Witness TF1-334 also testified that 'Bazzy' said that Mamamah should be set on fire and himself participated in the burning.[2828] Similarly, Witness TF1-334 testified that 'Bazzy' ordered that Mile 38 should be set on fire and himself participated in the burning.

1618. This evidence is generally corroborated by that of Witness George Johnson who testified that he was with the Accused Kamara in "Mamamah" and that Kamara ordered soldiers to "make the terrain more fearful to slow the movement of the ECOMOG troops." Witness George Johnson testified that by this Kamara meant that people should be killed and put on display. The Witness testified that five men, civilians of Mamamah, were killed by 'Cyborg' with a machete and their remains were put on display on the main highway. The Witness also testified that before the troops pulled out of Mamamah, Kamara ordered a house burnt down. The Witness testified that were a number of civilians in the house, including some children aged 10 to 15. The Witness was present outside the house when one of the children trapped inside tried to escape. Kamara forced him at gunpoint back into the house and the child was burnt to death.[2829]

[2825] TF1-334, Transcript 15 June 2005, pp. 10-31.
[2826] George Johnson, Transcript 15 September 2005, pp. 59-67.
[2827] TF1-334, Transcript 15 June 2005, pp. 20-21.
[2828] TF1-334, Transcript 15 June 2005, p. 23.
[2829] George Johnson, Transcript 15 September 2005, pp. 63-67.

1619. This evidence is also generally corroborated by that of Witness TF1-023 that in approximately March of 1999, in Mile 38, he witnessed 'Bazzy' ordered the rebels to attack civilians in Mamamah Village in order to spread fear. The Witness stated that 'Bazzy' said that the rebels should kill people and instil fear as ECOMOG was already pushing them out.[2830] The Witness also testified that following the attack, he saw the rebels kill about 20 people Their heads were cut off and placed on sticks at roadblocks.[2831]

1620. Defence Witness DBK-129 testified that he was at Mamamah during an SLA battle with ECOMOG during this period. He testified that 'Junior Lion' gave the order to 'Kankada' to make the area "fearful". The Witness testified that civilians were killed and their heads displayed at checkpoints in order to scare the ECOMOG troops.[2832]

1621. Witness TF1-334 testified that after passing through Mile 38, 'Bazzy' and the troops arrived at Magbeni.[2833] There, 'Bazzy' ordered some of his men to cross the river and go to a village called Gberi Bana and make it a "civilian free area". The Witness testified that 'Bazzy' explained that civilians should be executed. The Witness subsequently went to Gberi Bana and saw approximately 15 "chopped" bodies. 'Bazzy' was present and commended his men on a job well done.[2834]

1622. Witness TF1-334 testified that from the base in Gberi Bana, 'Bazzy' gave a number of orders to attack villages in the surrounding area. 'Bazzy' said that ECOMOG has taken over Masiaka and gave an order that those areas where ECOMOG was based should be attacked, burnt down and that any civilian captured should be executed.[2835]

1623. Witness TF1-334 testified that 'Bazzy' called for Port Loko (Town) to be attacked. He also ordered that any village the troops reached on the way should be burnt down and civilians killed. The Witness testified that 'Bazzy' stated that he did not want to see any civilians there other than those who were captured with the troops.[2836]

1624. Witness George Johnson also testified that Kamara, in a meeting at Geri Bana, ordered an attack on Port Loko which was carried out sometime before 27 April 1999 (Independence Day in Sierra Leone)[2837]. However, George Johnson testified that the purpose of the operation was to get

[2830] TF1-023, Transcript 10 March 1005, p. 36-37.
[2831] TF1-023, Transcript 10 March 1005, p. 36-37.
[2832] DBK-129, Transcript 9 October 2006, p. 88.
[2833] TF1-334, Transcript 15 June 2005, p. 24.
[2834] TF1-334, Transcript 15 June 2005, pp. 28-29.
[2835] TF1-334, Transcript 15 June 2005, p. 32.
[2836] TF1-334, Transcript 15 June 2005, p. 35.
[2837] George Johnson, Transcript 15 September 2005, p.79.

arms and ammunition from Malian troops stationed there. George Johnson went on the operation which he described as successful. In unknown villages on the way to Port Loko, witness George Johnson observed civilians who had been killed and amputated. The Witness testified that these acts were committed in part by SLA advance "blocking" troops, who went before him. Witness George Johnson believed 'Cyborg' was responsible for these acts and complained about this to Kamara upon his return to Geri Bana. The Witness testified that he complained because the operation was meant to be purely to attack the Malians not to kill civilians.[2838]

1625. Witness George Johnson testified that during the attack on Port Loko he came across a young woman who had her hands amputated. The Witness instructed a certain 'Sammy', an Intelligence Officer' to write a letter addressed to the Malians and place it around her neck, which he did.[2839]

1626. Witness TF1-334 testified that from the base in Gberi Bana, 'Bazzy' ordered an operation to take place at Makolo. According to the Witness, 'Bazzy' stated that ECOMOG forces have a base there and that the troops should destroy the entire village, burn it down and that if they encountered any civilians they should be executed. The Witness went on this operation and observed that three ECOMOG soldiers were executed and that three young women were chopped to death with an axe.[2840]

1627. Witness George Johnson testified that from the base in Geri Bana, Kamara ordered operations on Newton junction and Mile 38. The witness was the operation commander for both these attacks. Unlike the attacks described by witness TF1-334, witness George Johnson testified that the purpose of these attacks was to find arms and ammunition.[2841]

(ii) Manaarma

1628. The Trial Chamber has found a group of rebels under the command of 'Junior Lion' attacked Manaarma en route to Port Loko, where they engaged the Malian ECOMOG soldiers in combat at Shelenker/Shelenka secondary school. The Trial Chamber has also found that on an unspecified date, soldiers took an unknown number of women to a house where they were all killed. Witness TF1-253 testified that in April 1999, he saw a pregnant woman whose head had been severed and her stomach opened by the "rebels".

[2838] George Johnson, Transcript 15 September 2005, pp. 75-77.
[2839] George Johnson, Transcript 15 September 2005, pp. 77-78.
[2840] TF1-334, Transcript 15 June 2005, p. 39.
[2841] George Johnson, Transcript 15 September 2005, pp. 79-80.

(iii) Nonkoba

1629. On the morning of 28 April 1999, "rebels" attacked the village of Nonkoba. Witness DBK-111 and other inhabitants of Nonkoba fled to the bush. The witness later learned that 36 villagers were killed in this attack, including his mother-in-law. He observed several dead bodies with severed heads.[2842]

(j) Finding

1630. The Trial Chamber finds there is evidence to suggest that a pattern of attacks against protected persons or their property was conducted with the purpose of terrorising the civilian population. However, given the evidence of witness George Johnson, the Trial Chamber is of the opinion that spreading terror was not the only purpose and in fact, may not have been the primary purpose of the attacks ordered by the Accused Brima or others. Regardless, the Trial Chamber finds that there is insufficient evidence linking the acts of violence found by the Chamber to have occurred in Manaarma, Nonkoba and Tendekum - the only acts of violence which have been established beyond a reasonable doubt by this Chamber and the only acts particularised in the Indictment in which the Defence was put on notice - with the attacks ordered by the Accused Brima.

1631. The Trial Chamber is therefore not satisfied that these acts of violence were committed against protected persons or their property in Manaarma or Nonkoba with the primary purpose of spreading terror among the civilian population.

1632. The Trial Chamber is neither satisfied that the crimes committed in Manaarma and Nonkoba served as punishment against protected persons.

3. Finding on Count 1

1633. By virtue of the foregoing and of the Trial Chamber's findings with regards to the Chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 1 (Terror) are established.

[2842] DBK-111, Transcript 18 September 2006, pp. 43-45.

4. Finding on Count 2

1634. By virtue of the foregoing and of the Trial Chamber's findings with regards to the Chapeau elements of war crimes, the Trial Chamber is satisfied that the elements in relation to Count 2 (Collective Punishment) are established.

XI. RESPONSIBILITY OF THE ACCUSED

A. Preliminary Remarks

1635. The Prosecution alleges that "Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, by their acts or omissions, are individually criminally responsible pursuant to Article 6.1 of the Statute for the crimes referred to in Articles 2,3 and 4 of the Statute as alleged in the Indictment, which crimes each of them planned, instigated, ordered, committed or in whose planning, preparation or execution each Accused otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which each Accused participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which each Accused participated."[2843]

1636. The Prosecution further alleges that "In addition, or alternatively, pursuant to Article 6.3 of the Statute, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, while holding positions of superior responsibility and exercising effective control, over their subordinates, are each individually criminally responsible for the crimes referred to in Articles 2,3 and 4 of the Statute. Each Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and each Accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."[2844]

1637. The Indictment alleges additionally, in relation to the Counts set out therein, that "by their acts or omissions in relation to these events, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, pursuant to Article 6.1. and, or alternatively, Article 6.3. are individually criminally responsible for the crimes alleged [...]".[2845]

1638. The Trial Chamber's factual findings with regard to the crimes committed under the various Counts in the Indictment are contained in Chapter 10 of this Judgement.[2846] In making the following findings on the individual criminal responsibility of each of the Accused, the Trial Chamber takes into account its factual findings in that Chapter and the detailed assessment contained in that Chapter as well as other relevant Chapters of the Judgement. In this Chapter, the Trial Chamber will determine in light of the evidence on record, whether each of the Accused bears individually criminal liability for such crimes under Article 6(1) or 6(3) of the Statute. Where the Parties have

[2843] Indictment, para. 35.
[2844] Indictment, para. 36.
[2845] Indictment paras 41, 50, 57, 64, 65, 73, 79.
[2846] *See* Factual Findings, *supra*.

made specific submissions with regard to an Accused, crime base or mode of liability, these have been considered as they arise in the findings below.

1639. Finally, in view of the Trial Chamber's earlier finding that the Prosecution's pleading of "joint criminal enterprise" as a mode of liability in the Indictment was defective[2847], the Trial Chamber makes no findings on the alleged individual criminal responsibility of the Accused under a 'joint criminal enterprise'.

B. The Accused Brima

1. Allegations in the Indictment

1640. The Indictment alleges:

> At all times relevant to this Indictment, Alex Tamba Brima was a senior member of the AFRC/RUF forces.
>
> Alex Tamba Brima was a member of the group which staged the coup and ousted the government of President Kabbah. Johnny Paul Koroma, Chairman and leader of the AFRC, appointed Alex Tamba Brima a Public [sic] Liaison Officer (PLO) within the AFRC. In addition, Alex Tamba Brima was a member of the Junta governing body.
>
> Between mid February 1998 and about 30 April 1998, Alex Tamba Brima was in direct command of AFRC/RUF forces in the Kono District. In addition, Alex Tamba Brima was in direct command of AFRC/RUF forces which conducted armed operations throughout the north eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Bombali District between about May 1998 and 31 July 1998. As of about 22 December 1998, Alex Tamba Brima was in command of AFRC/RUF forces which attacked Freetown on 6 January 1999.
>
> [...]
>
> In [his] positions referred to above, Alex Tamba Brima, [...] individually or in concert with [the Accused Kamara and the Accused Kanu], Johnny Paul Koroma aka JPK, Foday Saybana Sankoh, Sam Bockarie aka Mosquito aka Maskita, Issa Hassan Sesay aka Issa Sesay, Morris Kallon aka Belai Karim, Augustine Gbao aka Augustine Bao and/or other superiors in the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.
>
> [...]
>
> Alex Tamba Brima, [...] by [his] acts or omissions, [is] individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes [he] planned, instigated, ordered, committed or in whose planning, preparation or execution [he] otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which [he] participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which [he] participated.
>
> In addition, or alternatively, pursuant to Article 6.3. of the Statute, Alex Tamba Brima, [...] while holding positions of superior responsibility and exercising effective control over [his] subordinates, [is] individually criminally responsible for the crimes referred to in Articles 2, 3 and

[2847] Alleged Defects in Form of Indictment, para. 56, *supra.*

> 4 of the Statute. [The] Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and [...] failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.[2848]

2. Bo, Kenema and Kailahun Districts

1641. In its factual findings, the Trial Chamber found that in Bo District in June 1997 AFRC/RUF forces unlawfully killed an unknown number of civilians, as charged under Counts 4 through 5,[2849] and terrorised civilians and subjected them to collective punishment, as charged under Counts 1 and 2.[2850]

1642. The Trial Chamber also found that in Kenema District between 25 May 1997 – 14 February 1998, AFRC/RUF forces committed a number of crimes including unlawfully killing a number of civilians, as charged under Counts 4 and 5;[2851] inflicting physical violence on an unknown number of civilians as charged under Count 10;[2852] illegally recruiting and using children under the age of 15 years for military purposes, as charged under Count 12;[2853] abducting an unknown number of civilians and using them as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13;[2854] and terrorising civilians and subjecting them to collective punishment, as charged under Count 1 and 2.[2855]

1643. The Trial Chamber further found that in Kailahun District during the Junta period, RUF troops abducted civilians and used them as forced labour, as charged under Count 13.[2856]

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1644. In its Final Trial Brief the Prosecution makes no submissions with regard to the individual criminal responsibility of the Accused Brima pursuant to Article 6(1) of the Statute. The Prosecution only alleges that "[f]or all crimes committed in Kailahun District during the Indictment period, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were in the contemplation of the common enterprise or were a

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[2848] Indictment, paras 22-24, 31, 35-36.
[2849] Factual Findings, para. 826, *supra.*
[2850] Factual Findings, para. 1497, *supra.*
[2851] Factual Findings, para. 840, *supra.*
[2852] Factual Findings, para. 1197, *supra.*
[2853] Factual Findings, para. 1277, *supra.*
[2854] Factual Findings, para. 1309, *supra.*
[2855] Factual Findings, paras 1475-1476, *supra.*
[2856] Factual Findings, para. 1374, *supra.*

reasonably foreseeable consequence of its implementation".[2857] The Prosecution further submits that the Accused Brima held a significant position in the AFRC government and that he attended meetings at which crimes were discussed. The Prosecution submits that this is evidence of planning, instigating and aiding and abetting.[2858] The Prosecution makes no submissions as to whether or not the Accused Brima ordered or committed the alleged crimes.

1645. In its Final Trial Brief, the Brima Defence submits that no reliable evidence of instigation, ordering, committing, or aiding or abetting has been adduced by the Prosecution against the Accused Brima in relation to the Districts of Bo, Kenema and Kailahun during the relevant Indictment period.[2859] The Brima Defence further submits that the Prosecution led no evidence of any attack on Bo by the AFRC in general or the Accused Brima in particular;[2860] nor evidence to prove that the Accused Brima had superior control over the perpetrators of the alleged crimes in those Districts. The Brima Defence instead relies on Brima's alibi defence for those Districts.[2861] The Brima Defence submits that throughout the Indictment period Kailahun District was under the control of the RUF.[2862] In addition, it argues that the Accused was detained by the RUF in Kailahun District during the relevant period and was not in a position of superior commander over the perpetrators of the alleged crimes in Kailahun.[2863]

(ii) Findings

a. Committing

1646. The Prosecution has not adduced any evidence that the Accused Brima committed any of the crimes that occurred in Bo, Kenema and Kailahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

b. Ordering

1647. The Prosecution has not adduced any evidence that the Accused Brima ordered the commission of any of the crimes committed in Bo, Kenema and Kailahun Districts during the

[2857] Prosecution Final Brief, para. 1372.
[2858] Prosecution Final Brief, para. 498.
[2859] Brima Final Brief, paras 84, 87, 90, 93.
[2860] Brima Final Brief, para. 241.
[2861] Brima Final Brief, paras 248-255, 206-213.
[2862] Brima Final Brief, para. 227.
[2863] Brima Final Brief, paras 207-213, 224, 288.

relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

c. Planning

1648. The Trial Chamber recalls its finding that the Accused Brima participated in high-level coordination meetings of the AFRC government during the Junta period but that no evidence was adduced that the crimes committed in Bo, Kenema and Kailahun Districts were planned at these meetings.[2864] The Trial Chamber is therefore not satisfied that the Accused Brima made a substantial contribution to the planning of these crimes and finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

d. Instigating

1649. The Prosecution has not adduced any evidence that the Accused Brima prompted or influenced the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

e. Otherwise aiding and abetting

1650. The Prosecution has not adduced any evidence that the Accused Brima gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bo, Kenema and Kailahun Districts during the relevant Indictment period. The Trial Chamber therefore finds pursuant to Article 6(1) of the Statute that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima in respect of the crimes committed in those Districts during the relevant Indictment period.

[2864] Role of the Accused, para. 318, *supra*.

(b) Responsibility of the Accused Brima under Article 6(3) of the Statute

(i) Submissions

1651. In its Final Brief, the Prosecution submits that the Accused Brima is individually criminally responsible under Article 6(3) of the Statute for crimes committed by his subordinates during the AFRC Government period by virtue of his membership of the Supreme Council, which had control over the police and political authority over the military.[2865] The Prosecution points to evidence establishing that the Accused regularly attended Supreme Council meetings and held an important position in the mining industry. The Prosecution further contends that that he had power and authority over soldiers and officers of higher rank during the AFRC/RUF Government period.[2866]

1652. The Brima Defence submits that the Accused Brima possessed no military authority and played "at best" a political role within the AFRC Government.[2867]

(ii) Findings

a. Existence of a superior-subordinate relationship

1653. It is well established that relationships of effective control exist in civilian organisational structures.[2868] The Trial Chamber reiterates that the existence of a superior-subordinate relationship is a question of fact, to be determined in light of all the available evidence. In each case what is required is proof beyond reasonable doubt that the Accused possessed the actual or material ability to effectively control his or her subordinates.[2869] Before turning to the crimes committed in each District, the Trial Chamber will set out the evidence relating to the Accused Brima's superior position in general.

1654. The Trial Chamber found that the Accused Brima was a member of the AFRC Supreme Council and was appointed Principal Liaison Officer 2, in which capacity he supervised and monitored various Government ministries.[2870] The Prosecution in its Supplementary Pre-Trial Brief stated that the Accused Brima "held a position, individually or in concert with other AFRC/RUF superiors, superior to the AFRC/RUF subordinates".[2871] The Prosecution therefore relies on the

[2865] Prosecution Final Brief, paras 521-524.
[2866] Prosecution Final Brief, paras 500-504.
[2867] Brima Final Brief, para. 103.
[2868] Applicable Law, para. 782, *supra.*
[2869] *See Čelebići* Trial Judgement, paras 735-736; also at paras 377-378, cited with approval in *Čelebići* Appeal Judgement; cited with approval in *Bagilishema* Trial Judgement, 7 June 2001, at paras 42, 45.
[2870] Role of the Accused, paras 321-325, *supra.*
[2871] Prosecution Supplementary Pre-Trial Brief, paras 24, 32.

Accused Brima's *de jure* position as a senior member of the AFRC Government to prove that he was in a superior-subordinate relationship with the AFRC/RUF members who committed crimes in the various Districts. The Trial Chamber is not persuaded by this reasoning for three reasons.

1655. Firstly, the Prosecution's general characterisation of both RUF and AFRC members as "the Accused Brima's subordinates" is untenable for the following reasons. Although the two groups were allied in one Government and worked closely together during the AFRC Government period, the available evidence suggests that individuals continued to identify themselves as either RUF or SLA and that at an organisational level separate commanders for each group co-existed in the Districts.[2872] The Trial Chamber is therefore not satisfied that the Accused Brima exercised effective control over members of the RUF merely by virtue of his *de jure* position within the AFRC Government administration in Freetown.

1656. Secondly, the Trial Chamber found that the Prosecution did not establish that the members of the Supreme Council had the collective ability to effectively control the military, as the military retained its own distinct chain of command and organisational structure. In this regard the Trial Chamber recalls the following evidence. Witness TF1-184 stated in cross-examination that the top army officers during the AFRC period were the Army Chief SO Williams, the Defence Deputy Avivavo, the Chief of Defence Staff Koroma, the battalion commanders and from then on down the ranks of the military. He stated that the military headquarters at Cockerill were distinct from the Council members and that in some cases the military had complete control over military operations, in other cases the civil authorities would 'interfere' with the military and vice versa.[2873] There was definite overlap between the two institutions, as witness Gibril Massaquoi testified that Chief of Army Staff Colonel SO Williams and Chief of Defence Staff SFY Koroma were members of Supreme Council,[2874] as were SAJ Musa and lower ranking soldiers like the three Accused. However, the Supreme Council was the body that oversaw law-making and decision-making in the country. It met once a month, apart from emergency meetings.[2875] The Trial Chamber is not satisfied, in light of the above evidence, that the Supreme Council was involved in or responsible for planning the day-to-day operations of the military throughout the country.

1657. Thirdly, the Trial Chamber notes that very little evidence has been adduced relating to the Accused Brima's *de facto* position and functions as a senior member of the AFRC so as to enable

[2872] Gibril Massaquoi, Transcript 10 October 2005, p. 98.
[2873] TF1-184, Transcript 30 September 2005, pp. 47-49.
[2874] Gibril Massaquoi, Transcript 7 October 2005, p. 73.
[2875] Gibril Massaquoi, Transcript 7 October 2005, p. 72.

the Trial Chamber to reach any conclusion regarding his relationship with alleged subordinates based on that position alone. Membership of the Supreme Council and attendance at meetings *per se,* does not suffice to prove beyond reasonable doubt that Brima was in a superior-subordinate relationship with the perpetrators of the offences committed in Bo, Kenema and Kailahun Districts during the relevant Indictment period. As stated above in the Trial Chamber's discussion of the applicable law, the authority of members of a power-sharing collegiate body like the Supreme Council must be assessed on a case-by-case basis and requires an analysis of the functions of the particular Accused.[2876] The Trial Chamber finds that there is no evidence that within the Supreme Council the Accused Brima possessed any individual decision-making capability.

1658. The only evidence before the Trial Chamber relating to his actual functions as PLO 2 is that he was nominally in charge of several Government ministries.[2877] It is assumed that the Accused Brima would have had the power to give orders in relation to work carried out under his Ministries. However, there is no evidence regarding the type of issues that came within his portfolios or to whom he would have been entitled to issue orders, even apart from the question of whether such orders were issued and obeyed.

1659. The Prosecution submits that the Accused's position as "an Honourable" gave him authority over soldiers and officers of higher rank, on the basis that position precedes rank in the military. The Prosecution consequently submits that the Accused Brima was subordinate only to Johnny Paul Koroma, Foday Sankoh and Abu Sankoh. The Trial Chamber is thus invited to accept that the Accused was capable of exercising control over any other person in the AFRC. The Trial Chamber is not persuaded by this theory. Proof of superior responsibility requires conclusive evidence of the actual exercise of command and control over an identifiable group of subordinates. The Trial Chamber agrees that the Accused Brima enjoyed a privileged position on the Supreme Council as one of the original coup-plotters, as an 'Honourable' and as PLO 2. However, the Prosecution evidence adduced regarding his *de jure* position is insufficient to persuade the Trial Chamber to draw a conclusion, based on that position alone, that Brima had effective control over subordinate perpetrators of the crimes in the said districts, during the AFRC Government period.

1660. The evidentiary burden required to establish 'effective control' is high. For example in *Kordić*, the court failed to find 'control' despite the fact that the defendant, a civilian, wore a military uniform, held the title of 'colonel,' issued orders for military equipment and supplies, managed personnel, represented the Croatian forces in UN negotiations, exercised control over

[2876] Applicable Law, para. 786, *supra.*

roads, roadblocks, and prisoners, participated in planning, was physically present during military operations, and provided "political authorization" for ethnic cleansing campaigns.[2878] The Trial Chamber will now examine the evidence adduced by the Prosecution regarding Brima's alleged superior responsibility in relation to the Districts of Bo, Kenema and Kailahun in which crimes were found to have been committed by AFRC/RUF troops during the Junta period.

i. Bo District (1 – 30 June 1997)

1661. The Prosecution evidence showed that administratively, Bo District fell within the responsibility of AFRC Secretary of State East Eddie Kanneh.[2879] Although superior responsibility is not precluded by the existence of other superiors in relation to the same subordinates, there is no evidence that the Accused Brima's responsibilities as PLO 2 overseeing Eddie Kanneh entailed command of AFRC/RUF forces stationed in Bo District.

ii. Kenema District (25 May 1997 – 19 February 1998)

1662. Evidence before the Trial Chamber shows that AFRC forces in Kenema District were under the command of Secretary of State East Eddie Kanneh, who reported directly to Johnny Paul Koroma.[2880] The Trial Chamber heard evidence that the Accused Brima was involved in mining activities in Kono District but that he did not have any executive powers in relation to these activities.[2881] The Trial Chamber notes that the three Accused have not been charged with enslavement in Kono District during the Junta period. The Accused Brima's involvement in Kono District is insufficient to prove that he possessed the material ability to prevent or punish the persons responsible for the use of civilians as forced labour in Kenema District during the Junta period.

iii. Kailahun District (27 May 1997 – 14 February 1998)

1663. It has not been established beyond reasonable doubt that AFRC troops were present in Kailahun during this period. Indeed, Prosecution witness TF1-334 testified that there were no AFRC troops in Kailahun during the Junta period.[2882] The area was controlled by Sam Bockarie of

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[2877] Role of the Accused, Brima, para. 321, *supra.*
[2878] *Kordić* Trial Judgement, paras 546-631, 838.
[2879] TF1-334, Transcript 17 May 2005, pp. 54, 57.
[2880] TF1-334, Transcript 17 May 2005, pp. 54, 57.
[2881] Although witness TF1-334 testified that 'Gullit' was in overall charge of mining operations in Kono: Transcript 17 May 2005, pp. 52-53.
[2882] TF1-334, Transcript 16 June 2005, p. 77.

the RUF and his deputy Issa Sesay.[2883] In the absence of evidence that the Accused Brima exercised any superior authority or control over the RUF troops in Kailahun District, the Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Brima is individually criminally responsible pursuant to Article 6(3) of the Statute for the crimes committed in Kailahun District during the Junta period.

b. Findings

1664. The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Brima was in a superior-subordinate relationship with the perpetrators of any of the crimes committed in Bo, Kenema and Kailahun Districts during the Junta period. As the absence this first element of superior responsibility is fatal to proof of liability under Article 6(3), the Trial Chamber will not consider the evidence relating to the Accused Brima's actual or imputed knowledge of crimes committed and his ability to prevent or punish the perpetrators.

3. Kono District

1665. The Trial Chamber found that in the period mid-February to June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians,[2884] committed sexual slavery and physical violence against civilian population;[2885] abducted civilians and used them as forced labour;[2886] and illegally recruited and used children under the age of 15 years for military purposes, as charged under the Indictment.[2887] The Trial Chamber also found that AFRC/RUF troops engaged in widespread looting;[2888] and committed various crimes against the civilian population as collective punishments.[2889]

(a) Responsibility of the Accused Brima under Article 6(1)

(i) Submissions

1666. The Prosecution in its Final Brief, submits that all three Accused are liable for crimes committed in Kono District under its theory of JCE. The Prosecution then submits that only Kamara

[2883] Context of Alleged Crimes, para. 188, *supra*.
[2884] Factual Findings, para. 857, *supra*.
[2885] Factual Findings, paras 1109, 1213, *supra*.
[2886] Factual Findings, para. 1333, *supra*.
[2887] Factual Findings, paras 1277-1278, *supra*.
[2888] Factual Findings, para. 1415, *supra*.
[2889] Factual Findings, paras 1525-1527, *supra*.

bears liability under Articles 6(1) and (3) of the Statute.[2890] In its closing arguments the Prosecution asserts that

> for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE.[2891]

1667. The Brima Defence submits that the Prosecution failed to establish a nexus linking the Accused Brima to the crimes committed in Kono District. Furthermore, the Brima Defence submits that the Accused Brima arrived in Kono around May 1998 only to be arrested and detained by Sam Bockarie in Kailahun.[2892] The Brima Defence also relies on its submissions regarding the Accused Brima's alibi for this period,[2893] which the Trial Chamber has considered above.[2894]

(ii) Findings

1668. The Trial Chamber has already held above that it will not consider any responsibility under joint criminal enterprise. The Prosecution has not adduced any evidence that the Accused Brima committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Brima for the crimes committed in the Kono District.

(b) Responsibility of the Accused Brima under Article 6(3) of the Statute

(i) Submissions

1669. The Prosecution, in its Final Brief, concedes that the Accused Brima left Kono for Kailahun during the ECOMOG Intervention in Freetown of February 1998, but argues that he returned to Kono by late April or early May 1998.[2895] It contends that while the Accused may have had some disagreement with the RUF faction under Sam Bockarie in Kailahun, this only lasted a few days after which the Accused was "back on good terms with Sam Bockarie and other RUF commanders in Kailahun".[2896] In other words, the Prosecution contends that despite his physical absence the Accused continued to play an influential role in the events that took place in Kono District and in the joint criminal enterprise with the RUF.

[2890] Prosecution Final Brief, para. 1279.
[2891] Transcript, 7 December 2006, pp. 34-35.
[2892] Brima Final Brief, para 224.
[2893] Brima Final Brief, paras 206-210.
[2894] Role of the Accused, para 342, *supra*.

1670. The Prosecution in its Final Brief makes no submissions on the superior responsibility of the Accused Brima in relation to Kono District during the period mid-February 1998 to the end of April 1998. The Prosecution concedes that the Accused Brima arrived in Kono District only at the end of April or beginning of May.

1671. The Brima Defence submits that the Prosecution has failed to provide clear evidence on the command and control structure of the SLAs in Kono District.[2897] The Brima Defence also submits that 'Savage' was in command of Tombodu and was not controlled by his SLA superiors.[2898] The Accused Brima argues that he cannot be held responsible for the activities of persons over whom he exercised no control.[2899]

(ii) Findings

1672. The Trial Chamber has found that the Accused Brima arrived in Kono District from Kailahun District at the end of April or beginning of May 1998.[2900] Upon his arrival, the Accused Brima assumed command of the AFRC troops from the Accused Kamara.[2901] There are a number of indicia from the evidence that demonstrate that upon assuming command of the AFRC troops, the Accused Brima exercised effective control over the AFRC troops in Kono District. The Accused Brima immediately summoned the Accused Kamara, the Operations Commander and other senior SLA soldiers including 'Leather Boot' a.k.a. Idrissa Kamara, 'Adams', Colonel Ibrahim Bioh Sesay, 'Coachy Borno' and Colonel Momoh Dorty to a meeting at Five-Five Spot.[2902] Both witness TF1-334 and witness George Johnson a.k.a. 'Junior Lion' attended this meeting. The Accused Brima ordered the commanders to regroup with their soldiers at Tombodu in preparation for the withdrawal to join SAJ Musa in Koinadugu.[2903] Upon arrival at Tombodu, the commanders reported to the Accused Brima.[2904] He ordered them to withdraw their troops to Mansofinia in Koinadugu District and this occurred.[2905]

1673. The crimes detailed in the factual findings were committed prior to the Accused Brima's assumption of command. The ICTY Appeals Chamber in *Hadžihasanović* held that there is no

[2895] Prosecution Final Brief, para. 1214.
[2896] Prosecution Final Brief, para. 601.
[2897] Brima Final Brief, para. 105.
[2898] Brima Final Brief, para. 281.
[2899] Brima Final Brief, para. 282.
[2900] Role of Accused, Brima, paras 339-341, *supra*.
[2901] TF1-334, Transcript 20 May 2005, pp. 56-57.
[2902] TF1-334, Transcript 19 May 2005, p. 10.
[2903] TF1-334, Transcript 19 May 2005, pp. 14-15; TF1-334, Transcript 20 May 2005, pp. 28, 38-40.
[2904] TF1-334, Transcript 20 May 2005, pp. 61, 65-66, 71-72.
[2905] TF1-334, Transcript 20 May 2005, pp. 56, 72-73.

support in customary international law for the proposition that a commander can be held responsible for crimes committed by a subordinate prior to his or her assumption of command.[2906]

4. Kailahun District

1674. The Trial Chamber found in relation to Kailahun District that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Count 5,[2907] and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in the period following 14 February 1998.[2908]

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1675. In its Final Brief, the Prosecution makes no submissions with regard to the individual criminal responsibility of the Accused Brima pursuant to Article 6(1) of the Statute. The Prosecution only alleges that "[f]or all crimes committed in Kailahun District during the Indictment period, the three Accused are individually criminally responsible under the theory of joint criminal enterprise, in that the crimes were in the contemplation of the common enterprise or were a reasonably foreseeable consequence of its implementation". [2909]

1676. The Brima Defence submits that throughout the Indictment period Kailahun District was under the control of the RUF.[2910] In addition, it argues that the Accused was detained by the RUF in Kailahun District during the relevant period and was not in a position of superior command over the perpetrators of the alleged crimes in Kailahun.[2911]

1677. The Trial Chamber found that the Prosecution proved beyond reasonable doubt that AFRC/RUF troops unlawfully killed a number of civilians in Kailahun District between February and June 1998, as charged under Count 5.[2912] The issue for determination here is whether the

[2906] *Hadžihasanović* Appeal Decision on Command Responsibility, paras 45-46, *but see* Partial Dissenting Opinion of Judge Shahabuddeen, para. 43; Separate and Partially Dissenting Opinion of Judge David Hunt - Command Responsibility Appeal, para. 8; *Orić* Trial Judgement, para. 335.
[2907] Factual Findings, para. 864, *supra.*
[2908] Factual Findings, para. 1374, *supra.*
[2909] Prosecution Final Brief, para. 1409.
[2910] Brima Final Brief, para. 227.
[2911] Brima Final Brief, paras 227-229.
[2912] Factual Findings, Unlawful Killings, para. 864, *supra.*

Accused Brima bears individual criminal responsibility for those crimes pursuant to Article 6(1) of the Statute.

(ii) Findings

1678. The Prosecution has not adduced any evidence that the Accused Brima committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Brima for the crimes committed in the Kailahun District.

(b) Responsibility of the Accused Brima under Article 6(3) of the Statute

(i) Submissions

1679. Neither the Prosecution nor the Brima Defence in their Final Briefs make submissions on the superior responsibility of the Accused Brima specifically in relation to Kailahun District.

1680. The Trial Chamber notes that Accused Brima submits as part of his alibi defence that he was under RUF arrest in Kailahun District throughout the relevant Indictment period and that as a detainee himself, he was not in a position of superior command over the perpetrators of the alleged crimes in Kailahun.[2913]

(ii) Findings

1681. The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed in Kailahun District during this period were members of the RUF and its finding that the AFRC faction and the RUF were not working together in Kailahun during this period.[2914]

1682. The Trial Chamber also recalls its finding that the Accused Brima was detained by the RUF in Kailahun District from February to late April/early May 1998, a much shorter period than he claimed to be under detention.[2915] During this period he was detained by the RUF and did not exercise any control over any troops in the District.

[2913] Brima Final Brief, paras 209-210.
[2914] Context of Alleged Crimes, para 187, *supra*.
[2915] Role of the Accused, paras 339-341, *supra*.

1683. The Trial Chamber further found that after his release from detention in Kailahun in early May 1998, the Accused Brima travelled to Kono District and then travelled to Koinadugu and Bombali Districts in June and July 1998.[2916]

1684. While the presence of a commander in the location in which crimes were committed is not necessary to prove effective control, the Trial Chamber finds that the Prosecution has not proved beyond reasonable doubt that the Accused Brima was able to exercise effective control over the RUF in Kailahun District after February 1998.

1685. In the absence of this first element of superior responsibility, the Trial Chamber does not consider it necessary to consider whether there is any evidence that the Accused Brima had actual or imputed knowledge of the crimes committed and that he failed to prevent or punish the perpetrators. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Kailahun District.

5. Koinadugu District

1686. Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the period February through September 1998, as charged under Counts 4 through 5, 6 through 9 and 10 respectively.[2917] In addition, the Trial Chamber found that AFRC/RUF forces abducted an unknown number of civilians and used them as forced labour in that District, as charged under Count 13.[2918] In addition, the Trial Chamber found that AFRC/RUF forces illegally recruited children under the age of 15 years and used them for military purposes in that District, as charged under Count 12.[2919] Finally, the Trial Chamber found that AFRC/RUF forces also engaged in widespread looting of civilian homes, as charged in Count 14.[2920]

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

[2916] Role of Accused, para. 342, *supra*.
[2917] Factual Findings, *supra*, paras 879 (Unlawful Killings), 1026 (Rape), 1133 (Outrages on Personal Dignity), 1218 (Physical Violence).
[2918] Factual Findings, para. 1333, *supra*.
[2919] Factual Findings, Child Soldiers, para. 1277.
[2920] Factual Findings, Pillage, para. 1409.

1687. In its Final Brief the Prosecution submits that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District.[2921] It argues that the crimes committed in Koinadugu followed a consistent pattern. This pattern involved repeated attacks by AFRC/RUF forces against civilians for either supporting ECOMOG or failing to support the AFRC/RUF.[2922]

1688. The Prosecution emphasises in particular the evidence regarding the attack on Yifin.[2923] On this submission, the Trial Chamber notes that the Prosecution did not plead the location of Yifin under Counts 3 through 6, 8 through 11 or 14 of the Indictment, and thus no findings have been made on evidence adduced in this regard. The Trial Chamber notes further that the Prosecution did not adduce any with respect to Yifin under Counts 7, 12 or 13.

1689. The Brima Defence submits that the overall commander of the AFRC troops in Koinadugu District was SAJ Musa.[2924] It adds that no evidence was adduced that any of the operations in Koinadugu District were associated with the faction which the Prosecution alleges was led by the Accused Brima.[2925] Finally, the Brima Defence argues that its own witnesses from Koinadugu District, who were credible and reliable, had never heard the name of the Accused mentioned in connection with the crimes committed in that District.[2926]

(ii) Findings

a. Committing

1690. The Prosecution has not adduced any evidence that the Accused Brima personally committed any of the crimes found to have been perpetrated in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

b. Ordering/Instigating

i. Order at Mansofinia to terrorise the civilian population

[2921] Prosecution Final Brief, para. 1412.
[2922] Prosecution Final Brief, para. 1412.
[2923] Prosecution Final Brief, para. 1412.
[2924] Brima Final Brief, para. 233.
[2925] Brima Final Brief, paras 234-235, 238.
[2926] Brima Final Brief, paras 236-237.

1691. Witness TF1-334 testified that at Mansofinia, Brima gave a strict warning to the civilians that as they headed into Bombali District, any civilian who tried to run away was a betrayer and would be shot on sight. He warned the troops in his own words "minus you, plus you [...]." The witness further testified that Brima ordered the troops as they moved northwards to capture strong civilians to add to the strength of the troops.[2927]

1692. This evidence was not challenged in cross-examination. The Trial Chamber recalls that although Prosecution witness George Johnson does not mention this instruction in his evidence, he corroborates other details about the relevant muster parade.[2928]

1693. Prosecution witness TF1-033 also gave evidence of an order in similar terms; however he stated that this occurred at Yarya.[2929] The Trial Chamber has found that the witness was mistaken in his recollection of the location and was in fact referring to the same speech described by witness TF1-334. Witness TF1-033 stated that he heard Alex Tamba Brima claim that civilians had been involved in attacking the AFRC, AFRC families and AFRC sympathisers when the AFRC was ousted from Freetown and that therefore, the AFRC should now do the same to the civilians. Brima declared "Operation Spare No Soul" and instructed his troops to kill, maim or amputate any civilian with whom they came into contact. Towns and villages were to be burned and women and girls were "free to satisfy [the soldiers'] sexual desires".[2930]

1694. The Defence disputed this evidence as unreliable on the grounds that Defence witnesses as well as other Prosecution witnesses put Brima elsewhere during the month of March 1998. Prosecution witness TF1-033 recalls 'Gullit' stating, "You all know what befell on us when the ECOMOG forces removed us from power in Freetown. Our colleagues, soldiers, sympathisers, relatives, were killed by civilians as well as ECOMOG soldiers. So for that reason, we are going back to Freetown. We are going back to Freetown and we should all return that fell on us [...] So we are not going to spare any civilian, only those we desire to be with us. [...] Young girls and women are free to satisfy your sexual desire. This is Operation Spare No Soul."[2931] On cross-

[2927] TF1-334, Transcript 23 May 2005, pp. 15-17.
[2928] George Johnson, Transcript 15 September 2005, pp. 47-48
[2929] TF1-033, Transcript 11 July 2005, pp. 13-15. The witness refers to the location as 'Yaya', but the Trial Chamber is satisfied that this is the same place as 'Yarya' given that the witness also describes it as Brima's home town.
[2930] TF1-033, Transcript 11 July 2005, pp. 12-14.
[2931] TF1-033, Transcript 11 July 2005, pp. 12-15; Transcript 12 July 2005 pp. 7, 34-35.

examination the witness stated that these were 'Gullit's exact words.[2932] The witness stated that as a result, "the journey of atrocities destined for Freetown started that evening".[2933]

1695. The Trial Chamber finds that the above orders, insofar as they were targeted at civilians, were intended to spread fear among the civilian population. The Prosecution has proved beyond reasonable doubt that Accused Brima, while at Mansofinia, did order the AFRC forces subordinate to him to commit acts of terror against the civilian population. However, the Trial Chamber has found that the crimes arising out of this particular order were not committed in Koinadugu District, but in Bombali District. Therefore the Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Brima in relation to the crimes committed in Koinadugu District.

c. Planning and otherwise aiding and abetting

1696. No evidence was adduced that the Accused Brima planned the commission of crimes or gave practical assistance, encouragement or moral support which had a substantial effect on the commission of crimes in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute

(i) Submissions

1697. The Prosecution in its Final Brief submits that each of the three Accused bears superior responsibility for crimes committed in the attack on Yifin.[2934] As stated above, the Trial Chamber notes the Prosecution did not include the location of Yifin in the particulars under Counts 3 through 6, 8 through 11 or 14, and thus no findings have been made on evidence adduced in this regard. The Trial Chamber notes further that no evidence with respect to Yifin has been adduced under Counts 9, 12 or 13.

1698. The Brima Defence makes no submissions specific to Koinadugu District in relation to the superior responsibility of the Accused Brima.

(ii) Findings

[2932] TF1-033, Transcript 12 July 2005, pp. 34-35.
[2933] TF1-033, Transcript 11 July 2005, p. 15.
[2934] Prosecution Final Brief, paras 1415-1416.

1699. The Trial Chamber finds that the crimes committed in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and 'Superman'. While there is evidence that the Accused Brima was in sporadic contact with SAJ Musa between May and July 1998, the Prosecution has not submitted, nor is there evidence to the effect that, the Accused Brima exercised effective control over the troops of SAJ Musa or Superman. In the absence of proof of the existence of a superior-subordinate relationship between the Accused Brima and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider whether there is any evidence that the Accused Brima had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Koinadugu District.

6. Bombali District

1700. The Trial Chamber found that AFRC troops in Bombali District engaged in unlawful killings of civilians[2935] and inflicted sexual violence on civilians,[2936] as charged in the Indictment. AFRC troops also abducted civilians and used them as forced labour and illegally recruited and used children for military purposes.[2937] Finally, the Trial Chamber found that AFRC troops terrorised and committed crimes of collective punishments against the civilian population.[2938]

(a) Responsibility of the Accused Brima Under Article 6(1) of the Statute

(i) Submissions

1701. The Prosecution conceded that with regards to the Accused Brima, it did not adduce evidence of sexual violence in respect of Mandaha.[2939] In its Final Brief, the Prosecution submits that the Accused Brima committed, planned, ordered, instigated and otherwise aided and abetted attacks on Karina, Bornoya, Mateboi and Mandaha and the crimes associated with those locations outlined in the Indictment.[2940] More specifically, it argues that the Accused Brima ordered the attack on Karina in order to demonstrate the power of his forces. Attacks on the surrounding villages were carefully designed and organised by the Accused who intended the commission of all the crimes pleaded in the Indictment. In addition, the Prosecution submits that the Accused

[2935] Factual Findings, Unlawful Killings, para. 897, *supra.*
[2936] Factual Findings, Sexual Violence, paras 1041, 1145, *supra.*
[2937] Factual Findings, Child Soldiers, paras 1227-1228, *supra.*
[2938] Factual Findings, Acts of Terror and Collective Punishment, paras 1605-1606, *supra.*
[2939] Prosecution Response to Defence Motions for Judgement of Acquittal Pursuant to Rule 98, 23 January 2006, para. 146.

prompted others to participate in the unlawful acts.[2941] The Prosecution further submitted that "[...] 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" in Bombali District.[2942] The Prosecution further submitted that the First Accused ordered 'Operation Clear the Area' meaning that all villages surrounding Rosos were to be burnt down and looted, and that these orders were in fact carried out.[2943]

1702. The Brima Defence argues that the Prosecution witnesses who testified regarding crimes committed in Bombali District provided contradictory and self-serving accounts of the events.[2944] The Brima Defence refers to the testimony of its own witnesses that they did not hear the Accused's name mentioned in connection with the events that took place in Bombali.[2945] The Brima Defence therefore submits that Defence witnesses have established reasonable doubt regarding the responsibility of the Accused Brima for instigating or aiding and abetting the crimes committed in Bombali District.[2946]

(ii) Findings

a. Committing

i. Murder and Extermination at Karina

1703. The Trial Chamber considered the evidence presented by the Prosecution witness TF1-334 on the killing of 12 civilians at a mosque in Karina and found that on 8 May 1998, the Accused Brima participated in a mass killing of 12 civilians at a mosque in Karina. The finding was based on the testimony of eye witness TF1-334 who was with the Accused Brima during the attack on the mosque at Karina. Witness TF1-334 stated that he moved with the Accused Brima to the town of Karina where they found a mosque. While the witness was standing with soldiers at the mosque, Brima questioned the Imam for praying for the people and accused him of being a relative of 'Pa Kabbah's family.' When the Imam responded, Brima shot dead the Imam, six men and five women, in front of the witness.[2947]

[2940] Prosecution Final Brief, para. 1497, 1503-1508.
[2941] Prosecution Final Brief, paras 1503-1505.
[2942] Prosecution Final Brief, para. 1516.
[2943] Prosecution Final Brief, para. 633.
[2944] Brima Final Brief, paras 241-242.
[2945] Brima Final Brief, paras 243-245.
[2946] Brima Final Brief, paras 245-246.

1704. Witness George Johnson also testified that he met and saw "plenty of dead bodies with gun shot wounds" inside and outside the mosque at Karina town. Although the witness did not see what had happened to the dead bodies, he stated that they were attacked by Alhaji Kamanda a.k.a. "Gun Boot"[2948] without giving further information on the means with which he committed the attack. The evidence of Defence witness DBK-094, a relative to the Imam of the mosque, is corroborated by that of DBK-089. Both witnesses claim that during the attack on the mosque in Karina, the Imam's brother was the one actually leading the prayers and that the Imam himself had left the town three days before the attack and could therefore not have been killed during this attack.

1705. The Trial Chamber notes that there are inconsistencies in the evidence of the identity of the person who led the prayers that day, with Prosecution witnesses stating that it was "the Imam" and the defence witnesses stating that the Imam is still alive. The Chamber is of the view that the exact identity of the individual who led the prayers that day is not paramount but rather the fact that the leader of the prayers was indeed killed. This fact is not in dispute. In that regard, the Trial Chamber finds the evidence of eye witness TF1-334 who was present at the mosque and actually saw the Accused Brima shooting civilians including the leader of the prayers at the mosque in Karina is credible and reliable. The fact that several civilians died as a result of the shooting is corroborated by TF1-167. In the Trial Chamber's view, the Prosecution evidence is not challenged by the evidence of DBK-094 and DBK-089 who only testified about the absence of the Imam during the attack on the mosque. They do not dispute the fact that mass killings of civilians including the person who led the prayers that day, took place at the mosque. However, before the Trial Chamber relies on the Prosecution evidence to determine whether the Accused Brima is individually criminally responsible for the Karina killings, it must take the following factors into account.

1706. The Indictment does not plead the material facts of this specific incident with regard to the Accused Brima.[2949] The Prosecution failed to include these particulars in the Indictment and rendered the Indictment defective.

1707. From the outset of its case, the Prosecution was aware of material facts regarding the Karina attack including the means with which the Accused Brima committed this attack on Karina and details of the killings at the mosque in Karina. The Prosecution Supplemental Pre-Trial Brief generally provides information that the Accused Brima ordered that AFRC/RUF should make its

[2947] TF1-334, Transcript 23 May 2005, pp. 68-69.
[2948] George Johnson, Transcript 15 September 2005, pp. 56-57.

mark on Karina and that no one should be spared. It also alleges that the Accused Brima participated in the shooting on the attack on Karina.[2950] However, it does not specify the details of the attack on the mosque; that is the means and purpose of the attack or a description of the victims. In addition, the OTP Opening Statement does not specify the Accused Brima participation in the killing of civilians at a mosque in Karina. Instead, the Prosecution indicated that when the people of Karina village were assembled at the mosque at 5:00 o'clock for morning prayers, AFRC/RUF forces led by the three Accused descended on them with guns, machetes and axes. They lined them up and one after the other hacked them to death.[2951]

1708. The Trial Chamber notes that the Prosecution disclosure materials of a Witness Statement of TF1-334 dated 6 November 2003, does not mention the shooting of the Imam by the Accused Brima. However, it specifically states that Witness TF1-334 saw 'Gullit' going to a mosque in Karina and questioned the people as morning prayers were going on. Thereafter, the witness saw 'Gullit' remove his pistol and shoot the civilians dead.[2952] Therefore, the Trial Chamber finds that the above constitutes sufficient notice of the material particulars relating to Brima's participation in the Karina killings and that the defect in the Indictment with regard to this crime was cured by clear, timely and consistent notice to the Defence.

1709. In light of the foregoing considerations and the Trial Chamber's finding that the Accused Brima participated in a mass killing of at least 12 civilians at a mosque in Karina, the Trial Chamber finds that the Prosecution has established beyond reasonable doubt the Accused's responsibility by committing on a large scale the massacre of civilians at a mosque in Karina. The Trial Chamber is further satisfied that the Accused Brima was aware that his participation in the killings on such a massive scale amounted to the crime of extermination.

b. Ordering

i. Order to terrorise and kill the civilian population at Karina

1710. Around June 1998, at Kamagbengbe and in the presence of Kamara and Kanu, the Accused Brima gave orders to the AFRC troops to attack Karina. Brima referred to Karina as a strategic location because it was the home town of President Ahmed Tejan Kabbah. The witness stated that

[2949] *See* test applied by the Trial Chamber in Alleged Defects in Form of Indictment, para. 55, *supra.*
[2950] Prosecution Supplemental Pre-Trial Brief, p. 24.
[2951] Prosecution Opening Statement, Transcript 7 March 2005, p. 39.
[2952] Statement of Witness TF1-334, 6 November 2003, CMS p. 6557 [confidential].

Brima ordered the troops to burn down Karina, capture strong male civilians, and amputate civilians. Brima concluded that he wanted the attack on Karina to shock "the whole country" and the international community. The Trial Chamber has found that there were no ECOMOG or Kamajor troops in Karina at the time and that all the victims were civilians.[2953] Witness TF1-157 testified that after the attack on Karina, he heard rebels say that the town had been attacked because it was the home town of President Kabbah.[2954] Witness TF1-033 testified that he heard 'Gullit' order that civilian women should be stripped naked and raped during the attack on Karina, and the neighbouring town of Bornoya.[2955] The Trial Chamber found this evidence detailed, consistent and credible.

1711. The Trial Chamber is therefore satisfied that the Accused Brima ordered his subordinates to perpetrate crimes against the civilian population in Karina and its environs with the specific intent of instilling terror in the civilian population.

ii. Order to terrorise the civilian population around Rosos

1712. Witness TF1-334 testified that during the rainy season in 1998, the AFRC/Junta forces established a base at Rosos and remained there for approximately three months. While at Rosos, the witness heard Brima order the troops to occupy the surrounding villages and ensure that no civilians remained within 15 miles of the village.[2956] Brima ordered that any civilians be executed rather than brought back to the camp, and added that he would take disciplinary action against any soldier who brought a civilian to the camp. Brima named this action "Operation Clear the Area". Witness TF1-334 testified that villages surrounding Rosos were burnt down and looted following this order.[2957] Witness TF1-033 corroborated the evidence of Witness TF1-334 testifying that he heard Brima order his soldiers to kill any civilians in the area of Rosos.[2958] Witness TF1-267 also testified that rebels told her that civilians who did not leave a village near Rosos would be killed.[2959]

1713. The Indictment does not charge unlawful killings at Rosos and therefore will not make any findings on the killings perpetrated following Brima's order. However, the evidence shows that the Accused Brima, in issuing such orders to his subordinates specifically intended to terrorise the civilian population in the areas surrounding Rosos. The Trial Chamber concludes that Brima's

[2953] TF1-334, Transcript 23 May 2005, pp. 56-60, 61, 64-65; George Johnson, Transcript 15 September 2005, pp. 53-54.
[2954] TF1-157, Transcript 25 September 2005, pp. 29-30, 58-60; Transcript 26 September 2005, pp. 9, 23-24, 30.
[2955] TF1-033, Transcript 11 July 2005, pp. 18-20.
[2956] TF1-334, Transcript 23 May 2005, p. 104; Transcript 24 May 2005, pp. 2-5.
[2957] TF1-334, Transcript 23 May 2005, pp. 100-106.
[2958] TF1-033, Transcript 11 July 2005, pp. 24-25.

generalised instruction created a climate of criminality which endured in the months following the order.

iii. Order for killings at Mateboi and Gbendembu

1714. Witness TF1-334 testified that after the Accused Brima banned civilians from the area surrounding 'Camp Rosos',[2960] an AFRC commander executed six civilians, four men and two women, with an AK-47 rifle in a village near Mateboi.[2961]

1715. Witness TF1-033 testified that in or around August 1998 at 'Colonel Eddie Town,' the Accused Brima ordered two AFRC commanders named Salifu Mansaray and 'Arthur' to attack Gbendembu because ECOMOG and "loyal" Sierra Leonean Army troops were present there.[2962] When the Operations Commander returned from the operation he reported to Brima that the troops had captured arms and ammunition and that 25 civilians had been killed. Brima commended his men for "a job well done."[2963]

1716. The Trial Chamber finds that as overall commander in Bombali District the Accused Brima had sufficient authority over his troops to order the commission of the crimes in the expectation that his orders would be implemented. The Trial Chamber is therefore satisfied that the Accused Brima was aware of the substantial likelihood that crimes would be committed in the execution of the order given at 'Colonel Eddie Town.' The Trial Chamber therefore finds that the Accused Brima ordered the murder of civilians in the villages of Mateboi and Gbendembu.

iv. Order at Rosos to recruitment children for military purposes

1717. Witness TF1-334 testified that during a three week training program at Rosos [2964] 77 civilian abductees, including children under the age of 15 years, underwent military training. He was able to provide this estimate because he conducted head counts during muster parades.[2965] Witness George Johnson also confirmed this training at Rosos but estimated that 520 civilians were trained at Rosos. The Trial Chamber observes that Witness TF1-334 referred to the number of civilians trained

[2959] TF1-267, Transcript 27 July 2005, pp. 8-9, 10-11, 17, 23-26, 29-30
[2960] TF1-334, Transcript 23 May 2005, p. 105.
[2961] TF1-334, Transcript 24 May 2005, pp. 2-5; exhibit P-16 (under seal).
[2962] TF1-033, Transcript 11 July 2005, pp. 32-33; TF1-334, Transcript 23 May 2005, pp. 81, 84.
[2963] TF1-033, Transcript 11 July 2005, p. 34.
[2964] TF1-334, Transcript 24 May 2005, p. 28.
[2965] TF1-334, Transcript 24 May 2005, p. 23; TF1-334, Transcript 23 May 2005, pp. 74-75.

during one three week period, while George Johnson refers to the number of civilians trained overall at Rosos. Therefore the Trial Chamber does not consider the discrepancy in numbers to be significant. Witness TF1-334 testified that following the completion of the training period, the trainees were addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the male children be distributed to the various company commanders, while the girls and women were to be turned over to "their husbands" meaning the soldiers and commanders.[2966]

1718. Witness TF1-158, a former child soldier, testified that he was abducted by the AFRC forces and spent one week at Rosos. Upon arrival in Rosos, a commander named 'Staff Alhaji' gave the civilians guns and ordered them to search the town for food.[2967] 'Staff Alhaji' told witness TF1-158 and the other civilians that this order came from the Accused Brima.[2968] During the week at Rosos, the witness was given military training together with approximately 300 other civilians. [2969]

1719. The Trial Chamber has found these witnesses to be credible and is therefore satisfied that the Accused Brima ordered the abduction of children under the age of 15 years for military purposes.

c. Planning, Instigating and otherwise aiding and abetting

1720. The Prosecution has not adduced any evidence that the Accused Brima planned, instigated or otherwise aided and abetted any of the crimes committed under Counts 1-6, 10 and 14 in Bombali District. The Trial Chamber finds that the Prosecution has not proved any of these modes of criminal responsibility against the Accused Brima for the crimes committed under Counts 1-6, 10 and 14 in Bombali District. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that they span across several Districts, the Trial Chamber will discuss the Accused Brima's responsibility for these crimes below.[2970]

(b) Responsibility of the Accused Brima under Article 6(3) of the Statute

(i) Submissions

[2966] TF1-334, Transcript 24 May 2005, pp. 29-31.
[2967] TF1-158, Transcript 26 July 2005, pp. 38-39.
[2968] TF1-158, Transcript 26 July 2005, p. 38.
[2969] TF1-158, Transcript 26 July 2005, pp. 39-40.
[2970] Responsibility of the Accused, Brima, paras 1820-1838, *infra*.

1721. The Prosecution in its Final Brief submits that the Accused Brima, as a superior over the subordinate perpetrators, bears individual criminal responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998.[2971]

1722. The Brima Defence in its Final Brief submitted that the Accused Brima was under arrest at Colonel Eddie Town and therefore not in a position to command the alleged perpetrators of the crimes.[2972] The crimes in Bombali District were committed by AFRC troops prior to their arrival in 'Colonel Eddie Town' in September 1998.

(ii) Findings

a. Existence of a superior-subordinate relationship

1723. The Trial Chamber has found that the Accused Brima was the overall commander of the AFRC forces that committed the crimes in Bombali District.[2973] It has been established that the AFRC in this period had a functioning chain of command, planning and orders process, and disciplinary system.[2974] Structures were therefore in place to facilitate the effective control by the Accused Brima of his subordinates. The Trial Chamber will now examine the evidence pertaining to the troops' activities in this period to determine whether the command structure functioned and the Accused Brima was able to actually exercise effective control over the AFRC troops on a day-to-day basis.

1724. There is ample unchallenged evidence that the Accused Brima's orders were obeyed.[2975] For example, upon arrival at Rosos, the Accused Brima gave orders distributing the companies out to various surrounding villages.[2976] The Accused Brima ordered an advance troop to depart from Rosos to find a suitable new location for the camp.[2977] Upon this location being found at 'Colonel Eddie Town', Brima ordered the entire brigade to move there.[2978] In addition the Trial Chamber refers to its previous findings that the Accused Brima gave a number of orders to commit crimes which were obeyed by AFRC troops.[2979]

[2971] Prosecution Final Brief, para. 1513.
[2972] Brima Final Brief, para. 105.
[2973] Role of the Accused, Brima, para. 378, *supra*.
[2974] Military Structure of the AFRC Fighting Force, para. 600, *supra*.
[2975] George Johnson, Transcript 15 September 2005, pp. 60, 61; TF1-334, Transcript 23 May 2005, pp. 42, 52-53, 74, 79, 81-87, 104-106; TF1-033, Transcript 11 July 2005, pp. 32-33.
[2976] TF1-334, Transcript 23 May 2005, p. 106; *see also* George Johnson, Transcript 15 September 2005, p. 60.
[2977] TF1-334, Transcript 24 May 2005, pp. 72-73.
[2978] TF1-334, Transcript 24 May 2005, pp. 73-74.
[2979] Responsibility of the Accused, Brima, paras 1709-1718, *supra*.

1725. The Trial Chamber is satisfied that the Accused Brima's exercise of effective control was not sporadic, but constant. His orders remained effective and applicable to incidents that occurred some time after their issuance. For example, at Kamagbengbe, prior to arrival at Rosos, a number of civilian abductees attempted to escape from the troops. They were recaptured and brought before the Accused Brima. He ordered one of the company commanders, Lieutenant Tito, to immediately execute them, on the basis of his prior order at Mansofinia that persons attempting to escape would be shot. Lieutenant Tito shot the civilians.[2980]

1726. Similarly, at Rosos, the Accused Brima warned the troops that disciplinary action would be taken against soldiers that brought captured civilians to camp.[2981] There is evidence of the subsequent implementation of this order by his subordinates in his absence. Witness TF1-334 testified that on one occasion, he and a number of other troops captured six civilians in a village and brought them to their commander, whose identity was revealed in closed session. The commander ordered their execution on the basis that this was what the Accused Brima had ordered.[2982]

1727. The Trial Chamber has observed that the Accused Brima habitually addressed the troops publicly, often using this as a forum to issue orders. One example of this is the speech made by the Accused Brima at Kamagbengbe, in the course of which he ordered the attack on Karina.[2983] Witness TF1-334 described a particular field at Rosos as 'the field where Gullit normally addressed the troops'.[2984] Witness TF1-334 also testified that at the completion of the military training program for civilian abductees at Rosos, the trainees were addressed by 'Gullit' and 'Five-Five'.[2985] Thus, the Accused Brima clearly had a high public profile among the troops and was able to assemble and address them.

1728. On the basis of the foregoing evidence, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima was able to effectively control the AFRC troops under his command. The Trial Chamber accordingly finds that a superior-subordinate relationship existed between the Accused Brima and the perpetrators of crimes committed in Bombali District.

b. Actual or Imputed Knowledge

[2980] TF1-334, Transcript 23 May 2005, pp. 55-56.
[2981] TF1-334, Transcript 23 May 2005, pp. 104-106.
[2982] TF1-334, Transcript 24 May 2005, pp. 2-4.
[2983] TF1-334, Transcript 23 May 2005, p. 56; TF1-033, Transcript 11 July 2005, pp. 18-19.
[2984] TF1-334, Transcript 24 May 2005, pp. 9-10.
[2985] TF1-334, Transcript 24 May 2005, pp. 9-10.

1729. The Prosecution submits that '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 [...] while the crimes were being carried out'.[2986]

1730. The Trial Chamber is satisfied that in many cases actual knowledge of the crimes committed by the Accused Brima's subordinates without his direct participation can be inferred from circumstantial evidence for three reasons.

1731. Firstly, the occurrence of the crimes was widespread and involved a typical *modus operandi* of attacks against civilians.[2987] The frequency and pattern of crimes, coupled with the evidence that the Accused Brima ordered attacks on civilians on several occasions,[2988] indicates that he had actual knowledge that crimes were about to occur whenever his troops went on operations.

1732. Secondly, actual knowledge can be inferred from the evidence that the troops systematically reported to their commanders, and often to the Accused Brima himself, at the conclusion of operations.[2989]

1733. Thirdly, the Accused Brima was at all times physically proximate to the locations in which crimes were committed. The Trial Chamber observes that the context in which the Accused Brima exercised effective control was different to that of overall commanders in traditional military armies, who are often removed from the front line of the conflict and may receive reports of incidents that have passed through several commanders up a vertical chain of command. Instead, the AFRC troops in Bombali District moved together to Rosos and upon arrival were all located in Rosos itself or satellite camps nearby. The Accused Brima was thus consistently on the ground with the troops, even if he did not accompany them on every operation.

1734. The Trial Chamber is also satisfied that the Accused Brima had reason to know of the crimes committed in Bombali District. The standard for proof of imputed knowledge is strict. Nonetheless, the Trial Chamber finds that there can be no reasonable doubt that the Accused Brima was in possession of information that put him on notice of the likelihood of illegal acts being committed by his subordinates. He directly participated in the commission of a number of

[2986] Prosecution Final Brief, para. 1515.
[2987] *See* General Requirements of Articles 2, 3 and 4 of the Statute, paras 233-235, *supra*.
[2988] TF1-334, Transcript 23 May 2005, pp. 57-65; George Johnson, Transcript 15 September 2005, pp. 53-54, 58; TF1-033, Transcript 11 July 2005, pp. 18-19; DBK-094, Transcript 11 July 2006, pp. 26, 27.

crimes.[2990] He witnessed the commission of crimes by his subordinates.[2991] He received reports of the commission of crimes.[2992]

1735. The Trial Chamber accordingly finds that the Accused Brima knew, or had reason to know, of the crimes committed by his subordinates in Bombali District in which he did not directly participate.

c. Failure to Prevent or Punish

1736. In its Final Trial Brief the Prosecution submits that as one of "the key commanders in the field", the Accused Brima had "necessary and reasonable measures" at his disposal to prevent or punish his subordinates but that he did not do so.[2993]

1737. The Brima Defence does not make any submissions on whether the Accused Brima attempted to prevent the commission of crimes or punish offending subordinates. Rather, the Brima Defence submits that this third limb of superior responsibility is only applicable where the first two limbs have been established. The Brima Defence argues that the Prosecution has failed to prove these first two elements and the case against the Accused Brima under Article 6(3) of the Statute must therefore be dismissed.[2994]

1738. Before turning to the available evidence, the Trial Chamber wishes to emphasise that any analysis of the type of preventative or punitive measures required on the part of the Accused Brima must recognise that the AFRC was not a traditional military organisation. It is not useful to inquire whether the Accused Brima adopted measures commonly cited in the jurisprudence, such as reporting the perpetrators to competent authorities or commencing formal investigations.[2995] Nonetheless, the fundamental question remains whether there were measures of any type reasonably open to the Accused Brima, taking into account the extent of his ability to control his subordinates, which he failed to take.

1739. The Trial Chamber found that the AFRC faction had a functioning disciplinary system in Bombali District.[2996] The Trial Chamber accepts that this system was not advanced in the sense of being properly codified and formally sanctioned by competent authorities. Nevertheless, the Trial

[2989] TF1-334, Transcript 23 May 2005, p. 96, 98-99, 101.
[2990] *See* Responsibility of the Accused, paras 1698-1716, *supra*.
[2991] TF1-334, Transcript 23 May 2005, pp. 61, 65.
[2992] TF1-334, Transcript 23 May 2005, pp. 96, 98-99, 101.
[2993] Prosecution Final Brief, para. 1516.
[2994] Brima Final Brief, paras 109-110.
[2995] *See* Applicable Law, para. 799, *supra*.

Chamber finds that that this disciplinary system could have been employed by the Accused Brima. Instead, there is no evidence that the Accused Brima took measures to punish subordinates for the commission of crimes. To the contrary, witnesses testified that on occasion the Accused Brima commended offending subordinates.[2997] The only evidence that soldiers were punished for crimes refers to their punishment for the rape of other soldiers' wives.[2998] The Trial Chamber does not consider this sufficient, as the soldier in such cases was not being punished for committing the crime of rape, but for the fact that his victim 'belonged' to another perpetrator.

1740. Insofar as the prevention of offences is concerned, the Trial Chamber recalls that the nature of the measures that must be taken by commanders depends on the degree of their control over their subordinates as well as the severity and imminence of the crimes.[2999] The Trial Chamber notes that it is likely that the Accused Brima had less control over his troops than a commander would have over highly disciplined troops in a regular army. It is possible that some of the Accused Brima's troops may have committed crimes even if they were not ordered to do so. This is similarly possible in a traditional military organisation. The law does not require proof that the Accused Brima could have prevented the commission of the crimes. The law requires that the Accused Brima took all steps reasonably open to him in an attempt to do so.

1741. The only evidence of the Accused Brima taking any steps to prevent the crimes committed is that he appointed a Provost Marshal who was in charge of ensuring that "jungle justice" was adhered to. "Jungle justice" included a "law" prohibiting rapes during operations[3000] and permitted that any fighter who raped another fighter's 'wife' would be put to death.[3001] The Trial Chamber finds that rules regarding which troops were entitled to rape civilians or rules that prohibited rape at specified times do not demonstrate the Accused's attempt to prevent or punish these crimes. Rather they are indicative of the tolerance and institutionalised nature of the commission of the crimes within the AFRC forces.

1742. There is also evidence that the Provost Marshal was in charge of ensuring that "government property," meaning arms, ammunition and medical supplies belonging to the AFRC fighting forces,

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[2996] Military Structure of AFRC Fighting Force, para. 1739, *supra*.
[2997] TF1-033, Transcript 11 July 2005, pp. 32-35.
[2998] Military Structure of AFRC Fighting Force, para. 595, *supra* for discussion on laws regulating the use of women by troops at Rosos.
[2999] Applicable Law, paras 797-798, *supra*.
[3000] Military Structure of AFRC Fighting Force, para. 594, *supra*.
[3001] TF1-033, Transcript 12 July 2005, p. 9.

was not stolen.[3002] The Trial Chamber is of the opinion that this prohibition does not demonstrate the Accused's intention to prevent general looting of civilian property by the troops.

1743. The Trial Chamber accordingly finds that the Accused Brima failed to take necessary and reasonable measures to prevent the crimes committed in Bombali District or punish the perpetrators thereof.

(iii) Conclusion

1744. On the basis of the foregoing, the Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused Brima as a superior, bears individual criminal responsibility under Article 6(3) for the crimes committed by his subordinates in Bombali District between 1 May 1998 and 30 November 1998 in which he did not directly participate.

7. Freetown and Western Area

1745. The Trial Chamber found in relation to Freetown and the Western Area that AFRC troops committed unlawful killings of civilians[3003] and inflicted sexual[3004] and physical[3005] violence on civilians; that AFRC troops also abducted civilians and used them as forced labour;[3006] that AFRC troops illegally recruited and used children under the age of 15 years for military purposes in the attack on Freetown;[3007] and that AFRC troops engaged in looting,[3008] and committed collective punishments and acts of terror against the civilian population,[3009] as charged in the Indictment.

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1746. In its Final Trial Brief, the Prosecution asserts that the Accused Brima together with the Accused Kamara and Kanu planned and led the invasion of Freetown, and that the attack on Freetown was designed and organised by Brima. The Prosecution further asks the Trial Chamber to infer that the Accused, based on his position and participation in the commission of crimes in Freetown, intended the commission of the crimes pleaded in the Indictment in Freetown 1999, or

[3002] George Johnson, Transcript 15 September 2005, p. 49.
[3003] Factual Findings, Unlawful Killings, paras 902-949, *supra*.
[3004] Factual Findings, Sexual Violence, paras 1048-1049, 1056-1057, *supra*.
[3005] Factual Findings, Physical Violence, paras 1229-1242, *supra*.
[3006] Factual Findings, Enslavement, para. 1389, *supra*.
[3007] Factual Findings, Child Soldiers, para. 1278, *supra*.
[3008] Factual Findings, Pillage, para. 1429, *supra*.
[3009] Factual Findings, Acts of Terror and Collective Punishments, paras 1609-1611, *supra*.

was aware of the substantial likelihood that the crimes would occur.[3010] Alternatively, it submits that the Accused Brima 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 operations.[3011]

1747. The Prosecution further contends that Freetown was attacked pursuant to the orders of the Accused Brima, and that given his position of authority, it may reasonably be inferred that Brima ordered the commission of all the crimes in Freetown.[3012] It adds that the Accused gave specific orders to burn down police stations and all of Calaba Town; issued a general order to execute "collaborators"; and ordered specific unlawful killings, amputations, abductions and looting.[3013]

1748. In addition, the Prosecution submits, the Accused Brima committed numerous killings, amputations and burnings and that he further committed, instigated or aided and abetting acts of sexual violence.[3014]

1749. The Brima Defence contends that the evidence adduced by the Prosecution is insufficient to support any theory that the Accused was liable by his acts or omissions for the crimes committed in Freetown and the Western Area in 1999.[3015] The Brima Defence argues that Brima never came to Freetown during the January 1999 invasion nor was he part of the attack there, a fact supported by various Defence witnesses.[3016]

(ii) Findings

a. Committing

i. Killings of three persons at State House

1750. Prosecution evidence that during the 6 January 1999 invasion of Freetown by the AFRC forces, the Accused Brima personally shot and killed three men whom he believed to be Nigerians at State House went unchallenged.[3017] Witness TF1-184, who was an AFRC commander at the time, stated that whilst inside State House, he saw junior soldiers bring four civilians including one woman to State House from the Paramount Hotel. The Accused Kanu took the woman and the three

[3010] Prosecution Final Brief, para. 1615.
[3011] Prosecution Final Brief, para. 1617.
[3012] Prosecution Final Brief, para. 1618.
[3013] Prosecution Final Brief, paras 1619-1620.
[3014] Prosecution Final Brief, paras 1621-1623.
[3015] Brima Final Brief, para. 250.
[3016] Brima Final Brief, paras 211-213.
[3017] TF1-184, Transcript 27 September 2005, pp. 61-62.

civilians who were accused of being "Nigerians". The witness then saw the Accused Brima shoot and kill them.[3018] The testimony of witness TF1-184 was corroborated by that of witness TF1-334. In support of Brima's alibi defence, Defence witness DBK-126 stated that she would take food to the Accused Kamara at the State House but that she did not see the Accused Brima while there.[3019]

1751. The Trial Chamber is of the view that the evidence of witness DBK-126 does not undermine the evidence of Prosecution witnesses TF1-184 and TF1-334[3020] who were present at State House and saw the Accused Brima commit crimes there. The Trial Chamber will now determine whether the Indictment particularised these crimes.

1752. The Indictment provided not one material fact regarding the specific incident described above. Instead, it alleged that "AFRC/RUF conducted armed attacks throughout the city of Freetown." Given this failure to adequately plead critical material facts, the Trial Chamber finds the Indictment defective. The Trial Chamber must therefore determine whether this defect in the Indictment was cured by clear, timely and consistent notice of the material facts to the Brima Defence.

1753. Material facts were not provided in the Prosecution Supplemental Pre-Trial Brief nor its Opening Statement. The only document referring to the incident is a pre-trial statement of Prosecution witness TF1-184 stating that:

> On the 7 January 1999, a Nigerian Civilian was captured by our soldiers. This man told us that his friends were staying at the Paramount Hotel. After that, the three other Nigerians, two men and one woman, were captured and all of them were brought to State House and presented to Gullit. Gullit said that the men should die. Then he took his pistol and shot one Nigerian in the head, one in the chest and the last one in the side. [3021]

1754. The Trial Chamber notes that among its disclosure materials the Prosecution included a document entitled "Additional Information provided by Witness TF1-184 on 20 May 2005 and 17 June 2005." In that document, the witness said that the Accused Brima murdered three civilians at State House on 7 January 1999. This document might have put the Defence on notice of the particulars of the charge against Brima, as it details the manner in which the three men were captured and killed. The Trial Chamber, however, observes that this information was not disclosed to the Defence until at least two months after the opening of the trial. Thus, the notice provided cannot be described as 'timely' nor can it qualify as 'consistent.' However, the Brima Defence did

[3018] TF1-184, Transcript 27 September 2005, pp. 61-62.
[3019] DBK-126, Transcript 25 October 2006, pp. 56, 57.
[3020] TF1-334, Transcript 14 June 2005, pp. 22, 27.
[3021] Additional Information provided by witness TF1-184 on 20 May 2005 and 17 June 2005, CMS p. 9830 [confidential].

not object to the leading of evidence of this incident. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Brima Defence to prepare its case.

1755. Accordingly, the Trial Chamber finds the Accused Brima criminally responsible for committing the murder of three civilian Nigerian men at State House as part of a widespread and systematic attack against the civilian population.

ii. Killing of a soldier's wife at the State House Area

1756. The Trial Chamber has found that the Accused Brima personally killed the wife of one of his soldiers outside State House in Freetown in early January 1999.[3022] Witness TF1-184 stated that he heard the husband of the victim assert that "[t]his Papay [the Accused Brima] had been after my woman for quite sometime."[3023]

1757. Yet again this incident is not pleaded in the Indictment, rendering the Indictment defective. The Trial Chamber must therefore determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Brima Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. The only document that does refer to the incident is a prior statement of Prosecution witness TF1-334, dated 7 November 2003, which described the killing in the following terms:

> [...] I returned to State House. Surprisingly Gullit started firing soldiers who, according to him, were not members of the troop, who were not cooperating. Also, some Nigerian soldiers we have captured, Gullit fired them. Also, in my presence, he killed a certain lady we had brought from the jungle.[3024]

1758. As the date of disclosure was not provided to the Trial Chamber, it is unable to determine the timeliness of the notice to the Defence.

1759. Prosecution witness TF1-334 did not ultimately give evidence of this incident in his oral testimony, but Prosecution witness TF1-184 did. The Trial Chamber is unable to determine the passage of time between the initial disclosure of the Prosecution material and the testimony of witness TF1-184, and is therefore unable to determine the timeliness of the notice. However, the Brima Defence did not object. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Brima Defence to prepare its case.

[3022] TF1-184, Transcript 27 September 2005, p. 62; TF1-334, Transcript 14 June 2005, pp. 22, 27.
[3023] TF1-184, Transcript 27 September 2005, p. 62.
[3024] Statement of Witness TF1-334 dated 7 November 2003, CMS p. 6585 [confidential].

1760. The Trial Chamber accordingly finds that the Accused Brima is criminally responsible for personally killing a soldier's wife at the State House area.

iii. Unlawful killings at Kissy Mental Home/Portee area

1761. The Trial Chamber heard unchallenged evidence that shortly after the AFRC forces invaded Freetown in early January 1999, on the way from Kissy Mental Home towards the Portee area, the Accused Brima personally shot dead a nun.[3025] Witness TF1-153 stated that he moved together with the AFRC troops to the Portee area by the Cotton Tree where they met nuns and that after 'Gullit' ordered the nuns to walk faster, he later took out his pistol and shot dead "a black nun".[3026]

1762. The Trial Chamber finds that once again, the Indictment does not plead the incident of the killing of a nun by the Accused Brima around the Portee area, which renders the Indictment defective. The Trial Chamber observes that the Prosecution Supplemental Pre-Trial Brief and its Opening Statement do not mention the killing of a nun in the Portee area. However, this defect was cured by the information provided in the pre-trial statement of witness TF1-153 dated 28 February 2003.

1763. Although the pre-trial statement of witness TF1-153 does not provide specific details on the killing of a nun by the Accused Brima, the information contained therein put the Defence on adequate notice.[3027] Further information was contained in the pre-trial statement of witness TF1-153 on the conduct of the Accused Brima upon the AFRC troops' retreat from Freetown, and the witness responded to the question put to him in relation to the killing of the black nun. In addition, the Defence cross examined the witness on this incident.[3028]

1764. Taking these statements together, the Trial Chamber finds that adequate notice was given to the Brima Defence of this incident. Accordingly, the Trial Chamber finds the Accused Brima individually criminally liable for committing the murder of a nun around the Kissy Mental Home/Portee area, as part of a widespread and systematic attack against the civilian population.

iv. Unlawful killings in the Wellington area

[3025] TF1-153, Transcript 23 September 2005, pp. 21-22.
[3026] TF1-153, Transcript 23 September 2005, p. 22.
[3027] TF1-153, Prior Witness Statement, 28 February 2003, CMS pp. 10269-10272 [confidential].
[3028] TF1-153, Transcript 23 September 2005, pp. 50-51.

1765. Witness TF1-334 testified that in early January 1999, AFRC forces in the Wellington area, including the Accused Brima, shot at civilians.[3029] The witness stated that all the three Accused participated in the shooting of civilians and that he saw 'Gullit' shooting with his own gun. The witness did not state whether any persons died as a result of the shooting.

1766. Furthermore, the Indictment does not plead the particulars of the incidents that took place around the Wellington area in which the Accused Brima is alleged to have shot at civilians, and the Prosecution Supplemental Pre-Trial Brief, Opening Statement and witness statements provide no information on this specific incident with regard to the Accused Brima. The Trial Chamber will therefore make no finding on this incident.

v. Amputation of a civilian's hand at Old Road area

1767. The Trial Chamber heard unchallenged evidence that 'Gullit' (the Accused Brima) intentionally amputated the hand of a man at Shell Company by Old Road in Freetown in January 1999.[3030] The Indictment does not plead the material facts regarding this specific incident with regard to the Accused Brima and is therefore defective. The Trial Chamber must therefore determine whether this defect was cured by clear, timely and consistent notice to the Brima Defence.

1768. The Prosecution's Pre-Trial Brief and Opening Statement do not refer to this incident. Annex A of the Prosecution Supplemental Pre-Trial Brief states that "Alex Tamba Brima *ordered* amputations of civilians because they had pointed out the rebel positions to ECOMOG" [emphasis added].[3031] This information does not put the Defence on notice of the Prosecution's intent to charge the Accused with the personal commission of an amputation. The Trial Chamber notes however, that the pre-trial statement of witness TF1-184 specifically refers to the commission of the act by the Accused Brima:

> In late January 1999, around the Kissy mental hospital, I saw Kabila telling members of the high command including Gullit that the civilians where showing ECOMOG where we were hiding. I then heard Gullit say 'well those hands that point against us, cut them of'. After this I saw several victims' amputations. The commander in charge of cutting hands was Lt Col Changabulanga. The amputations were done on the Old Road, Shell Company. Changabulanga, Gullit and 55 were

[3029] TF1-334, Transcript 14 June 2005, p. 98.
[3030] TF1-184, Transcript 27 September 2005, p. 80.
[3031] Prosecution Supplemental Pre-Trial Brief, Annexure A, p. 100.

there. I saw Gullit cutting hands of one man with [a] cutlass. The boys were doing this too. I saw 6 persons whose hands were cut. [3032]

The Trial Chamber cannot determine whether this information was disclosed to the Defence before the start of trial. Therefore the Trial Chamber considers that the Defence was not given timely and consistent notice of critical material facts.

1769. The Trial Chamber notes however that the Defence cross examined the witness with respect to this incident, [3033] and therefore finds that the failure to provide adequate notice did not materially impair the ability of the Brima Defence to prepare its case. Accordingly, the Trial Chamber finds the Accused Brima individually criminally liable, pursuant to Article 6(1) of the Statute, for committing the amputation of one civilian at Shell Company, Old Road, as part of a widespread and systematic attack against the civilian population in January 1999.

b. Ordering/Instigating

i. Order to kill civilians in Fourah Bay area

1770. The Trial Chamber has found that the Accused Brima ordered his soldiers to kill civilians in the Fourah Bay area in retaliation for the killing of an AFRC soldier.[3034] The Trial Chamber is satisfied that the Accused Brima ordered the commission of these crimes in the awareness that the crimes were likely to be committed.

ii. Orders to terrorise and collectively punish the civilian population

1771. The Trial Chamber heard the following unchallenged evidence of witness TF1-184 who was with the AFRC troops during the Freetown invasion of January 1999. The witness testified that in the presence of the Accused Kanu, 'Gullit' ordered 'Major Mines' to collect cutlasses and to distribute them to the soldiers so that amputations could be carried out. 'Changabulanga' distributed the cutlasses to the soldiers. Describing the manner in which the amputations were carried out, the witness stated that "[c]ivilians were given either "long sleeves" meaning that the hand from the wrist downwards was removed, or "short sleeves" meaning that the entire arm from the bicep or elbow downwards was removed".[3035] The witness further stated that a new battalion under the command of 'Changabulanga' was created by 'Kande'. The aim of the battalion was to create fear

[3032] Statement of witness TF1-184 dated 20 May 2005, CMS p. 9824 [confidential].
[3033] TF1-184, Transcript 27 September 2005, p. 80.
[3034] Factual Findings, Unlawful Killings, para. 925, *supra*.
[3035] TF1-184, Transcript 27 September 2005, p. 74.

among the civilian population. To do this, they amputated civilians' hands.[3036] The Trial Chamber also heard that during the retreat, the Accused Brima ordered the hands of all those who were pointing out the AFRC positions to ECOMOG forces to be amputated. As a result, "Mines" came back with a bag full of hands an hour and a half later.[3037] From the pattern of the events, the Trial Chamber has no doubt that the hands were amputated from civilians by AFRC forces.

1772. Witness TF1-334 told the Trial Chamber that on an unspecified day during the January 1999 invasion of Freetown, AFRC troops occupied the area of Kissy Mental Home in the eastern part of Freetown. In the evening hours 'Gullit' (the Accused Brima), in the presence of senior AFRC commanders including 'Bazzy' (the Accused Kamara) and 'Five-Five' (the Accused Kanu), ordered his troops to "clear up" the area by killing civilians as punishment for their support of ECOMOG.[3038] The Accused Brima in presence of the Accused Kamara and Accused Kanu, ordered his troops to go to the "low-cost area" and amputate the arms of civilians, kill civilians and burn property "because the civilians were celebrating the arrival of ECOMOG".[3039]

1773. The orders of the Accused Brima to the perpetrators of the amputations, together with the fact that a battalion was created not for military strategy but specifically to instil fear amongst the civilian population in Freetown, clearly indicate an intention to terrorise the civilians. The Trial Chamber also heard the following unchallenged evidence of witness TF1-084 who stated that during the rebel attack on Freetown in January 1999, civilians were mutilated and killed by ARFC forces because the AFRC believed that the people of Freetown supported President Tejan Kabbah.[3040] Witness TF1-334 was present when 'Gullit' announced that it was time to attack Freetown and that the Sierra Leone People's Party government was responsible for denying the success of the rebel troops. He ordered that Freetown should be looted and burnt down, that anyone who opposed the troops should be considered a "collaborator" and should be killed.[3041] This testimony is corroborated by witness TF1-033 who also heard 'Gullit' order the burning of houses and the murder of civilians during the attack on Freetown.[3042] This evidence was unchallenged and is credible.

1774. The Trial Chamber also heard that in early January 1999 during the Freetown invasion, at State House, the Accused told his fighters to force captured civilians to join the AFRC forces in

[3036] TF1-184, Transcript 29 September 2005, pp. 15-16.
[3037] TF1-184, Transcript 27 September 2005, pp. 81-82.
[3038] TF1-334, Transcript 14 June 2005, pp. 83-84.
[3039] Prosecution Final Brief, para. 1663; TF1-334, Transcript 14 June 2005, pp. 84, 87.
[3040] TF1-084, Transcript 6 March 2005, pp. 42-47; TF1-227, Transcript 11 March 2005, pp. 62-63, 101-103.
[3041] TF1-334, Transcript 13 June 2005, pp. 100-104.

order to compensate for those fighters killed by ECOMOG. Following the order, civilians who refused to join the AFRC forces were shot in the presence of the Accused Brima, and their dead bodies thrown out of the back of State House.[3043] In addition, witness TF1-334 also testified that Brima ordered the abduction of civilians from Freetown during the attack "so as to attract the attention of the international community".[3044] During the attack civilians were indeed abducted. Another witness testified that when the ARFC entered Freetown, they ordered the civilians to sing while they were burning their houses.[3045] The Trial Chamber found the above Prosecution evidence, which was unchallenged, credible.

1775. The Trial Chamber also heard evidence that soon after the troops lost State House the Accused Brima was informed by a soldier that one of the troops had been hacked to death by civilians at the Fourah Bay crossroad.[3046] In response, the Accused Brima called 'Major Mines', one of his subordinates, and instructed him to collect cutlasses at the SLRA[3047] compound. 'Major Mines' returned with cutlasses, some of which he kept for himself while the remainder he distributed to 'Changabulanga' who was the "battalion commander for amputations". The Accused Brima then ordered his men to go to Upgun roundabout where he told his fighters that "these people we should teach them a lesson." He ordered his men to amputate and kill civilians and burn the area down. The Trial Chamber has found that the order to commit these crimes was carried out.[3048] On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed. Witnesses TF1-334 and TF1-104 testified that the amputations and killings of civilians continued during the AFRC retreat from Freetown. When it became clear that Guinean troops had taken over, 'Gullit' saw that the civilian population was celebrating. In the presence of the Accused Kamara and Kanu, 'Gullit' stated that the people of Freetown were ungrateful and ordered the troops to go as far as they could burning and killing people. Attacks on civilians were then carried out by the troops around the area of the Kissy Mental Hospital, Blackhall Road and the Kissy Police Station up to PWD Junction near Shankardass.[3049] Witness TF1-334 testified that he personally saw six civilians

[3042] TF1-033, Transcript 11 July 2005, pp. 60-64.
[3043] TF1-024, Transcript 7 March 2005, pp. 46-48, 72-74.
[3044] TF1-334, Transcript 14 June 2005, pp. 62-64.
[3045] TF1-157, Transcript 26 September 2005, pp. 18-19, 23-24, 26, 29-30.
[3046] TF1-184, Transcript 27 September 2005, pp. 71-72.
[3047] "Sierra Leone Roads Authority", clarified upon question from the Bench, Transcript 30 September 2005, p. 5.
[3048] Factual Findings, Unlawful Killings, paras 919-926, *supra*.
[3049] TF1-334, Transcript 14 June 2005, pp. 83-87; TF1-104, Transcript 30 June 2005, pp. 31-33.

whose arms were amputated by 'Changabulanga'. The arms of the civilians were chopped off at the elbow and 'Osman Sesay' told them to "go to Pa Tejan Kabbah to get new hands".[3050]

1776. Prosecution witness TF1-033 testified that after the AFRC lost the battle in Freetown he remained with the AFRC troops during their retreat for three weeks. During this time the eastern part of Freetown was occupied by AFRC fighters under the command of 'Gullit'. The witness saw and heard 'Gullit' ordering his men to commit atrocities against the civilian population as they were retreating. As a result of the order, girls and women were raped by the fighters.[3051] This evidence was not challenged. The Trial Chamber finds that through the above unchallenged evidence, the Prosecution has proved beyond reasonable doubt that the Accused Brima is individually criminally responsible for ordering his subordinates to commit those crimes, as part of a widespread attack on the civilian population during the January 1999 invasion of and retreat from Freetown.

iii. Orders to kill collaborators

1777. The Trial Chamber also heard evidence that during the January 1999 attack on Freetown, the police were specifically targeted and punished by the AFRC troops who saw them as "collaborators" of the Kabbah Government. Witness TF1-334 heard 'Gullit' giving orders to the AFRC troops in Freetown, specifying that "[p]olice stations should be targeted and burnt down" and "collaborators" killed.[3052] Witness TF1-157 confirmed the fact that the invading AFRC troops searched Freetown for police officers and killed them and "their people", meaning their families. The witness also saw the AFRC troops attack the Eastern Police Station.[3053]

iv. Order to loot UN Vehicles and civilian property

1778. The Trial Chamber heard the unchallenged evidence of witness TF1-334 that on 6 January 1999, the Accused Brima ordered the Operations Commander to loot vehicles at United Nations headquarters and to bring them back to State House and that the Operations Commander complied with the order.[3054] Another witness, Gibril Massaquoi, testified that soon after the January 1999 Freetown invasion, he saw the Accused Kanu and other commanders driving UN vehicles in Freetown.[3055] The Trial Chamber is satisfied on the basis of this evidence that the Accused Brima

[3050] TF1-334, Transcript 14 June 2005, pp. 81-82.
[3051] TF1-033, Transcript 11 July 2005, pp. 65-66.
[3052] TF1-334, Transcript 13 June 2005, pp. 100-102.
[3053] TF1-157, Transcript 25 September 2005, pp. 19-20, 22, 29-30, 58-60; Transcript 26 September 2005, pp. 23-24.
[3054] TF1-334, Transcript 14 June 2005, pp. 5, 21-26.
[3055] Gibril Massaquoi, Transcript 7 October 2005, p. 126.

ordered the commission of this crime in full awareness that the crime was likely to be committed and that the order was carried out. The Trial Chamber heard evidence that in Allen Town, on the eve of the invasion of Freetown in January 1999, the Accused Brima gathered his troops and instructed them to execute "collaborators" - a term witness TF1-334 explained was used to refer to any person who did not support the AFRC troops. Brima also informed his troops that as he did not have the means to pay them they were free to loot from the civilian population. Brima also instructed the troops to burn down all police stations.[3056]

v. Order to kill 14 captive Nigerian ECOMOG soldiers at State House

1779. The Trial Chamber has found that at State House on an unknown date during the Freetown attack, Brima ordered the execution of 14 to 16 captive and unarmed Nigerian ECOMOG soldiers.[3057] Although the Prosecution witnesses TF1-334 and TF1-033 gave varying accounts of why the Nigerians were killed, they were all consistent regarding the fact that the Accused Brima gave the order for the Nigerians to be killed.[3058] The Trial Chamber found that these ECOMOG soldiers, *hors de combat*, were subsequently killed.[3059] On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

vi. Order to kill three nuns at Kissy Mental Home

1780. A number of Prosecution witnesses testified that on an unspecified day in early January 1999, AFRC troops captured two clerics and eight nuns at Kissy Mental Home. After ECOMOG began bombarding the troops there, the two abducted clerics escaped. 'Gullit' ordered his fighters to execute the eight nuns "so as to prevent them escaping and leaking information". Pursuant to this order, Foday Bah Marah a.k.a. 'Bulldoze' executed five nuns. [3060] The witness stated that following the execution of the nuns, the Accused explained to his troops that they were trapped and that it was time "for a complete bulldoze." The entire brigade then began to withdraw towards Wellington killing civilians and burning houses as they went.[3061] Witness George Johnson also testified that the troops had eight abducted nuns at Kissy Mental Home. However, he stated that when ECOMOG

[3056] TF1-334, Transcript 13 June pp. 100-103.
[3057] Factual Findings, Unlawful Killings, paras 911-912, *supra*.
[3058] TF1-033, Transcript 11 July 205, pp 63-65; Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116; TF1-334, Transcript 14 June 2005, pp. 22-28.
[3059] Factual Findings, Unlawful Killings, para. 912, *supra*.
[3060] TF1-334, Transcript 14 June 2005, pp. 95-97; George Johnson, Transcript 16 September 2005, p. 55; TF1-184, Transcript 27 September 2005, pp. 82-84.

attacked the troops, Foday Bah Marah killed three nuns and the others escaped. The witness did not state whether this was pursuant to any order.[3062] Witness TF1-184 corroborated the evidence that three nuns were killed when the Nigerians attacked the mental home. He does not state who killed the nuns, but he testified that it was 'Gullit' who ordered their execution.[3063] The Trial Chamber is satisfied that the Accused Brima gave the order to kill the nuns and that the killing was carried out. On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

vii. Order to massacre civilians in Rogbalan Mosque

1781. The Trial Chamber heard unchallenged evidence that at Kissy Mental Home while the AFRC were retreating from Freetown, the Accused Brima called several senior commanders together and informed them that he had received information that civilians were harbouring ECOMOG troops in a nearby mosque. He told his commanders not to assume that mosques were housing civilians and ordered that all those found in the mosque be killed. On these instructions, the Accused Kanu set off with the soldiers. Once they reached the mosque the Accused Kanu ordered the troops to begin firing. The witness observed that the mosque was full of civilians and that many people were killed.[3064] The evidence of this massacre was corroborated by the following witnesses.

1782. Witnesses TF1-083 and TF1-021 both testified about a massacre at Rogbalan Mosque in Freetown in January 1999. Towards the end of January 1999,[3065] witness TF1-083 was told that there was an ongoing fire fight between ECOMOG troops and rebels. He therefore decided to seek refuge in Rogbalan Mosque. When he arrived he found approximately 70 dead bodies inside the mosque.[3066] Witness TF1-021 testified that he was present in Rogbalan Mosque at midday on a Friday in January 1999 when men wearing "mixed clothing" (partly combat uniform and partly civilian clothing) and carrying guns and machetes attacked the mosque. The attackers first robbed the worshippers and then told them that they would all be killed for supporting President Kabbah. The attackers then began shooting. The witness estimated that 71 worshippers were killed in this attack. The witness stressed that the victims were civilian worshippers who had gathered for the traditional 14:00 prayers.[3067] The Trial Chamber is satisfied that the Accused Brima gave the order

[3061] TF1-334, Transcript 14 June 2005, pp. 97-98.
[3062] George Johnson, Transcript 16 September 2005, p. 55.
[3063] TF1-184, Transcript 27 September 2005, pp. 82-84.
[3064] TF1-334, Transcript 14 June 2005, pp. 87-89.
[3065] TF1-083, Transcript 8 April 2005, p. 58.
[3066] TF1-083, Transcript 8 April 2005, pp. 69-71.
[3067] TF1-021, Transcript 15 April 2005, pp. 25-32.

to kill the civilians at Rogbalan Mosque and that the killing was carried out by his subordinates. On the basis of this evidence the Trial Chamber is satisfied that the Accused Brima ordered the commission of crimes in full awareness that the crimes were likely to be committed.

viii. Order to abduct and enslave civilians including child soldiers

1783. The Trial Chamber heard evidence that during the retreat of the AFRC fighters from Freetown, the Accused Brima ordered the abduction of civilians "in order to attract the attention of the international community". Civilians were then abducted by the AFRC troops and used to carry loads. On Brima's orders, the young boys under the age of fifteen years were later trained and forced into Small Boys Units.[3068] The Trial Chamber notes the evidence of Prosecution witness TF1-024 that the Accused Brima ordered the abduction of civilians because he had lost so many troops and needed reinforcements from among the civilian population.[3069] On the basis of all the Prosecution evidence narrated above, the Trial Chamber is satisfied that the Accused Brima ordered the commission of these crimes in full awareness that they were likely to be committed. The Trial Chamber finds, pursuant to Article 6(1) of the Statute, that the Prosecution has proved beyond reasonable doubt that the Accused Brima ordered his subordinates to commit crimes against the civilian population in Freetown in January 1999 as part of a widespread attack on the population.

c. Planning

1784. No evidence was adduced that the Accused Brima planned any of the crimes committed under Counts 1-6, 10 and 14 in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved this mode of criminal responsibility against the Accused Brima in relation to Counts 1-6, 10 and 14 in Freetown and the Western Area. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that they span across several Districts, the Trial Chamber will discuss the Accused Brima's responsibility for these crimes below.[3070]

d. Otherwise aiding and abetting

1785. As stated above with regards to liability for commission of crimes in Fourah Bay, the Trial Chamber has found that there is evidence that the Accused Brima participated in the attack on

[3068] Factual Findings, Child Soldiers, para. 1278, *supra*; TF1-334, Transcript 14 June 2005, pp. 62-64, 118-121; Transcript 15 June 2005, pp. 14-15.
[3069] TF1-024, Transcript 7 March 2005, p. 47.
[3070] Responsibility of the Accused, Brima, paras 1820-1838, *infra*.

Fourah Bay in which civilians were killed and houses burnt. The Trial Chamber found that the Accused Brima was present during the commission of the crimes and either himself participated or failed to admonish the troops from committing the crimes.

1786. Given his authority as commander of the troops, the Trial Chamber finds Brima's presence at the scene gave moral support which had a substantial effect on the perpetration of the crime. In addition, given the systematic pattern of crimes committed by the AFRC troops throughout the District, the Trial Chamber is satisfied that the Accused Brima was aware of the substantial likelihood that his presence would assist the commission of the crime by the perpetrators.

(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute

(i) Submissions

1787. The Prosecution submits in its Final Brief that the Accused Brima has superior responsibility for all crimes committed by his subordinates in Freetown between 6 January 1999 until around 28 January 1999.[3071]

1788. The Brima Defence submits that the evidence of mutiny by junior soldiers at Colonel Eddie Town, which led to the arrest and 'long detention' of the three Accused, 'weakens any responsible chain of command and the existence of superior authority'.[3072] The Brima Defence further submits that there was no effective command or control over the fighters that attacked Freetown, citing in support of this argument the Prosecution Military Expert's conclusion that 'the AFRC faction had a strong command capability which failed on 6th January 1999'.[3073]

(ii) Findings

a. Existence of a superior-subordinate relationship

1789. The Trial Chamber has found that the Accused Brima was overall commander of the troops in Freetown.[3074] The Trial Chamber will now consider the evidence pertaining to the Accused Brima's control of the troops from the time he regained command throughout the attack on Freetown until the retreat of the troops to Benguema in February 1999 in order to ascertain whether a superior-subordinate relationship existed.

[3071] Prosecution Final Brief, paras 1637-1640.
[3072] Brima Final Brief, para. 105.
[3073] Brima Final Brief, para. 195; *see also* exhibit P-36, Iron Report, para. E6.1.
[3074] Role of the Accused, Brima, para. 420, *supra*.

1790. At Allen Town on 5 January 1999, the Accused Brima ordered the invasion of Freetown and specified the locations to be captured, including State House. 'Gullit' announced that the troops were entitled to loot civilian property as he was unable to pay them. However, he also stated that diamonds and dollars were 'government' property and should be given to the Brigade. [3075] The Trial Chamber considers the limits placed by the Accused Brima on the permissible excesses of his troops indicative of his ability to control their behaviour.

1791. Witness TF1-334 described at length the movement of the troops towards State House on 6 January 1999. His evidence reveals a steady, organised advance pursuant to the orders of the Accused Brima who had specified the locations to be captured. The witness was part of the advance troop and he refers to a number of occasions where they captured new ground and then waited for the brigade senior command, including the Accused Brima, to arrive and tell them what to do next.[3076] At one point the witness stated that he and the other soldiers "will not do anything without the command of Gullit".[3077] The witness states that Gullit ordered the soldiers to set fire to vehicles and this was a deliberate tactic to create an obstacle to prevent ECOMOG armoured cars reaching the AFRC position.[3078] The witness refers to a number of other occasions prior to the troops' arrival at State House on which the Accused Brima gave orders which were obeyed.[3079]

1792. Witness George Johnson also describes a co-ordinated advance to State House. The troops advanced in battalions and his role as task force commander was to ensure that they moved the right way and maintained discipline. He reported throughout this time to the Accused Brima, who gave orders to the troops throughout the advance.[3080]

1793. The troops' acquiescence in the Accused Brima's assumption of command suggests that he was able to effectively control them, notwithstanding any lingering loyalties to SAJ Musa. The Trial Chamber therefore rejects the submission of the Brima Defence that the disruption to Brima's authority due to his arrest in Eddie Town prevented him from resuming the control necessary for a finding of superior responsibility.

[3075] TF1-334, Transcript 25 May 2005, pp. 100-103.
[3076] TF1-334, Transcript 13 June 2005, pp. 104-112.
[3077] TF1-334, Transcript 13 June 2005, p. 112.
[3078] TF1-334, Transcript 13 June 2005, pp. 110-111.
[3079] TF1-334, Transcript 13 June 2005, pp. 105, 107, 109, 118.
[3080] George Johnson, Transcript 16 September 2005, pp. 20-26.

1794. Upon capturing State House, the AFRC established its headquarters there. The Accused Brima was in command.[3081] Other senior commanders including the Accused Kamara and Kanu were also present there from time to time.[3082] On arrival at State House, Brima ordered the opening of Pademba Road prison.[3083] There is evidence of the Accused Brima giving other orders at this time which were obeyed.[3084]

1795. The movement of the troops throughout 6 January remained ordered and strategic. Witness George Johnson describes the deployment of the various battalions at different locations, which he marked on a map of Freetown.[3085] There is evidence of commanders reporting the progress of their troops to the Accused Brima.[3086] Witness Gibril Massaquoi testified that on the evening of 6 January he attended a meeting at State House to plan an attack on ECOMOG at Wilberforce. All three Accused were present and Gullit commanded the meeting.[3087]

1796. 'Mosquito' announced over Radio France International on 6 January that the troops commanded by the Accused Brima had captured Freetown and would continue to defend Freetown.[3088] Later that same day, Brigade Administrator Colonel FAT Sesay, in the presence of all of the Accused, gave a message in the same terms over BBC Radio.[3089] Witnesses DBK-037 and DBK-012 also stated that FAT Sesay gave an interview to the BBC while in Freetown, although they did not testify as to its content.[3090]

1797. However, the presence of the AFRC headquarters at State House was the high point of the AFRC dominance during invasion. It appears from the evidence of Prosecution and Defence witnesses that in the days following 6 January, ECOMOG regained the upper hand and in the next two to three weeks the AFRC was dislodged from Freetown and was in continual retreat. The precise movement of the troops during the retreat was difficult to ascertain from the testimony of Prosecution and Defence witnesses. Witness George Johnson testified that approximately a week after 6 January, with ECOMOG advancing, the AFRC headquarters moved to Ferry Junction, near Shankardass.[3091] From Shankardass, they pulled out to Kissy Mental Home.[3092] Witness TF1-334

[3081] TF1-334, Transcript 14 June 2005, pp. 21-22; Gibril Massaquoi, Transcript 7 October 2006, p. 115; George Johnson, Transcript 16 September 2005, p. 27.
[3082] TF1-334, Transcript 14 June 2005, pp. 21-22; TF1-153, Transcript 22 September 2005, p. 99.
[3083] George Johnson, Transcript 16 September 2005, p. 27.
[3084] TF1-334, Transcript 14 June 2005, pp. 17, 23-24.
[3085] George Johnson, Transcript 16 September 2005, pp. 29-37.
[3086] George Johnson, Transcript 16 September 2005, p. 34; TF1-334, Transcript 14 June 2005, p. 100.
[3087] Gibril Massaquoi, Transcript 7 October 2006, pp. 119-120.
[3088] TF1-334, Transcript 14 June 2005, p. 20; TF1-153, Transcript 23 September 2005, pp. 4-6.
[3089] TF1-334, Transcript 14 June 2005, pp. 20-21 ; George Johnson, Transcript 16 September 2005, p. 39.
[3090] DBK-037, Transcript 4 October 2006, p. 30; DBK-012, Transcript 9 October 2006, p. 45.
[3091] George Johnson, Transcript 16 September 2005, pp. 45-46.

states that towards the third week the troops then retreated to Eastern Police.[3093] Witness George Johnson testified that after several days at Kissy the troops pulled out and retreated through Calaba Town and eventually to Benguema.[3094]

1798. Prosecution military expert Colonel Iron's report notes that the command structure began to break down in Freetown and the military chain of command failed after the capture of State House, since commanders gave orders to soldiers nearest them without using battalion structure.[3095]

1799. Colonel Iron further concludes that the fighting force retained cohesion in retreat although the battalion structure had completely broken down.[3096] He opines that the AFRC force "was still a capable fighting force. Commanders were still able to make sound decisions, and the command structure was effective enough to be able to conduct a relatively complex manoeuvre."[3097]

1800. The Trial Chamber examined the following evidence in light of the above expert opinion of Colonel Iron.

1801. Witness TF1-334 testified that he remained mostly with the brigade administration while in Freetown, but he states that "the troops were all scattered, everybody was just about".[3098] He stated that any time the commanders needed reinforcements to go on a battle, he and his supervisor needed to move around raising soldiers to go on the mission.[3099] This evidence was corroborated by witness TF1-184, who was ordered by 'Gullit' to find manpower to carry out a mission,[3100] and Gibril Massaquoi who reports 'Five-Five' issuing a similar order to look for men.[3101] Witness George Johnson no longer described the movement of the troops in terms of battalions led by commanders, rather his testimony becomes a description of a series of isolated incidents that he witnessed as he moved around Freetown. He states that after the headquarters lost State House arms and ammunition were nearly finished and were no longer being distributed by the G4, but "everybody had his or her own arms and ammunition".[3102] Witness TF1-184 agreed with Colonel Iron's conclusion that the battalion structure was no longer operating. He stated that "everyone was disorganised" and "everybody was just doing what he want [sic]". Commanders took the soldiers

[3092] George Johnson, Transcript 16 September 2005, p. 52.
[3093] TF1-334, Transcript 14 June 2005, pp. 54-55.
[3094] George Johnson, Transcript 16 September 2005, pp. 58-59.
[3095] Exhibit P-36, Iron Report, para. D4.
[3096] Exhibit P-36, Iron Report, para. D5-1.
[3097] Exhibit P-36, Iron Report, para. D5-6.
[3098] TF1-334, 14 June 2005, p. 41.
[3099] TF1-334, 14 June 2005, pp. 41-42.
[3100] TF1-184, Transcript 30 September 2005, pp. 8-9.
[3101] Gibril Massaquoi, Transcript 7 October 2005, pp. 13-15.
[3102] George Johnson, Transcript 16 September 2005, p. 48.

around them "who they think they were able to control and were listening to them" and started amputations.[3103]

1802. Witness TF1-334 testified that Gullit told the troops at Kissy mental home 'Gentleman (sic), now the jungle has started'.[3104] Witness Gibril Massaquoi testified that after losing State House, looting and burning increased. He described an incident in which a female civilian complained to 'Five-Five' about her house being burned down, in response to which Five-Five arrested the soldier responsible. Five-Five stated that there had been no order to do this and that things were becoming 'very rampant'.[3105] Witness TF1-184 stated that the troops at Kissy with 'Gullit' and 'Bazzy' were losing ground because they were in 'a confused state'.[3106] 'Gullit' complained to the witness that 'Five-Five' had been acting contrary to his wishes.[3107] He testified that during the retreat from Kissy, the soldiers called on the civilian carrying their ammunition so that they could stage an attack, but he had thrown it away while running.[3108] Witness Gibril Massaquoi stated under cross-examination that by the time the troops left Freetown he did not believe that the commanders knew everything that was being done by their men.[3109]

1803. The Trial Chamber notes from the above evidence that the Accused Brima remained able to exercise command over the troops in his immediate surroundings. There is ample evidence of the Accused Brima giving orders to troops in Freetown which were obeyed.[3110] A number of these orders were issued by the Accused Brima in the presence of the Accused Kamara and Kanu.[3111] He was also able to refuse requests from his subordinates. Witness TF1-153 at one point approached 'Gullit' to ask him to release the priests and nuns held captive at PWD, but 'Gullit' refused.[3112]

1804. The Trial Chamber agrees with Col. Iron's opinion above that the AFRC fighting force "retained cohesion in retreat although the battalion structure had completely broken down" and that the AFRC force "was still a capable fighting force. Commanders were still able to make sound

[3103] TF1-184, Transcript 29 September 2005, pp. 104-105.
[3104] TF1-334, Transcript 14 June 2005, p. 83.
[3105] Gibril Massaquoi, Transcript 7 October 2005, pp. 13-15.
[3106] TF1-184, Transcript 27 September 2005, p. 71.
[3107] TF1-184, Transcript 27 September 2005, p. 77.
[3108] TF1-184, Transcript 27 September 2005, p. 83.
[3109] Gibril Massaquoi, Transcript 11 October 2005, p. 60.
[3110] TF1-184, Transcript 27 September 2005, pp. 64, 71-75, 81-84; TF1-334, Transcript 14 June 2005, pp, 19-21, 32, 63, 66-67, 83-88, 95-97, 100; TF1-104, Transcript 30 June 2005, pp. 31-33; George Johnson, Transcript 16 September 2005, pp. 25, 27, 42-43, 55; TF1-023, Transcript 10 March 2005, pp. 29-30, 33; Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116; TF1-024, Transcript 7 March 2005, p. 45, 51-52; TF1-033, Transcript 11 July 2005, pp. 63-66.
[3111] TF1-104, Transcript 30 June 2005, pp. 31-33; TF1-334, 14 June 2005, pp. 54, 62-63, 83-87, 118-119.
[3112] TF1-153, 23 September 2005, pp. 12-14; Gibril Massaquoi, Transcript 11 October p. 19.

decisions, and the command structure was effective enough to be able to conduct a relatively complex manoeuvre".

1805. The foregoing evidence establishes a superior-subordinate relationship existed between the Accused Brima and the AFRC troops in Freetown after the troops lost State House. The Trial Chamber therefore finds that the Accused Brima was in a superior-subordinate relationship with the AFRC troops that committed crimes in Freetown even after the "Headquarters" were dislodged from State House.

b. Actual or Imputed Knowledge

1806. The Prosecution submits that '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.'[3113]

1807. The Trial Chamber is satisfied that the Accused Brima ought reasonably to have known of the commission of crimes committed in which he was not directly involved. He directly participated in the commission of a number of crimes.[3114] The crimes were committed on a wide scale in physical proximity to the Accused Brima at State House.

1808. The Trial Chamber therefore finds that there can be no reasonable doubt that the Accused Brima was in possession of information to put him on notice that crimes were being committed by his subordinates, although he may not have been directly involved in such crimes.

c. Failure to prevent or punish

1809. There is no evidence that the Accused Brima took any measures to prevent the troops under his control in Freetown from committing crimes against or punish the perpetrators of such crimes.

(iii) Conclusion

1810. The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused Brima is liable as a superior under Article 6(3) for crimes committed in Freetown and the Western Area during the relevant Indictment period.

[3113] Prosecution Final Brief, para. 1639.
[3114] *See* Responsibility of the Accused, Brima, paras 1750-1786 *supra*.

8. Port Loko District

1811. The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 4 through 5.[3115] In addition, AFRC troops held persons in sexual slavery as charged under Count 9.[3116] AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

(a) Responsibility of the Accused Brima under Article 6(1) of the Statute

(i) Submissions

1812. In its Final Brief, the Prosecution argues that the Accused Brima is liable for the crimes committed in Port Loko District as a principal in a joint criminal enterprise.[3117]

1813. The Brima Defence invites the Trial Chamber to disregard the testimony of witness TF1-256 on the grounds that it is unreliable and alternatively submits that as the Accused Brima was under detention at the material time, he had no relationship with the alleged perpetrators of the crimes committed in Port Loko District and there is no nexus between the events in Nonkoba described by witness TF1-256 and the Accused.[3118]

(ii) Findings

1814. No evidence was adduced that the Accused Brima individually committed, ordered, planned, instigated or aided and abetted the commission of any of the crimes that occurred in Port Loko District. The Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Brima for the crimes committed in Port Loko District during the relevant Indictment period.

(b) Responsibility of the Accused Brima Under Article 6(3) of the Statute

(i) Submissions

1815. The Indictment alleges that the Accused Brima, while holding a position of superior responsibility and exercising effective control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute.[3119] The Trial Chamber

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[3115] Factual Findings, Unlawful Killings, para. 965.
[3116] Factual Findings, Outrages upon Personal Dignity, para. 1187.
[3117] Prosecution Final Brief, paras 1755-1756.
[3118] Brima Final Brief, paras 251-252.
[3119] Indictment, para. 36.

finds that this is sufficient to charge the Accused Brima with liability under 6(3) for crimes committed in Port Loko District, although it is not specifically referred to in the Indictment as one of the Districts in which the Accused Brima held a command position.[3120] The Trial Chamber notes that the charge of superior responsibility is subsequently reiterated separately in relation to all Counts for which crimes are alleged in Port Loko District.[3121] In addition, the Prosecution in its Supplementary Pre-Trial Brief stated its case that the Accused Brima is liable under Article 6(3) for crimes committed by his subordinates in Port Loko.[3122] The Brima Defence were therefore put on notice at an early stage of the charge against the Accused.

1816. The Prosecution in its Final Brief makes no submissions as to the superior responsibility of the Accused Brima for crimes committed in Port Loko District after the retreat from Freetown in late January 1999.[3123]

1817. The Brima Defence submits that the alleged perpetrators of the crimes in Port Loko District were not under the control of the Accused Brima as he was not in Port Loko District at the material time.[3124]

(ii) Findings

1818. The Trial Chamber found that following the second unsuccessful attack on Freetown staged jointly by AFRC/RUF commanders, the Accused Brima, accompanied by the Accused Kanu and a group of AFRC troops, went to Lunsar to assist 'Superman', who was fighting against Issa Sesay at the time.[3125] No evidence has been adduced on the organisation of the troops accompanying the Accused Brima or whether this group fought alongside 'Superman' or under his overall command. The Trial Chamber finds that the Prosecution has failed to establish that the Accused Brima had effective control over the AFRC troops fighting in these areas.

(iii) Conclusion

1819. The Trial Chamber finds pursuant to Article 6(3) of the Statute, that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Brima, for the crimes committed in Port Loko District during the relevant Indictment period.

[3120] *See* Indictment, para. 24.
[3121] Indictment, paras 41, 50, 57, 64, 65, 73.
[3122] Prosecution Supplementary Pre-Trial Brief, paras 80-82, 129-131.
[3123] Submissions on superior responsibility for crimes committed in Port Loko District are made only in relation to the Accused Kamara: *see* Prosecution Final Brief, paras 1761-1764.
[3124] Brima Final Brief, para. 252.
[3125] Role of Accused, para. 478, *supra*.

9. Responsibility for Crimes of Enslavement, Sexual Slavery and Child Soldiers

1820. The Trial Chamber has found that civilians were subjected to sexual slavery as charged under Count 9; that children under the age of 15 were conscripted into the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13. Because of the continuing nature of these crimes and the fact that victims were in most cases forced to follow the perpetrators on a journey that spans across a number of districts, the Trial Chamber has deemed it fit to consider these additional findings on responsibility of the Accused Brima for these crimes here. These findings do not detract from the Trial Chamber's findings elsewhere in this Judgement with regard to these three crimes.

1821. The evidence demonstrates that abducted civilians were used to perform a multiplicity of critical tasks for the troops. Both in Bombali District and Freetown, abducted civilians were used to carry food, military supplies and ammunition.[3126] At 'Colonel Eddie Town', abductees were used to harvest rice crops, the main source of food.[3127] At Lunsar, civilians were abducted specifically to help guide the troops as they moved at night.[3128] Once brutalised, trained and often forced to ingest illicit substances, child soldiers were forced to perform a number of military functions. More generally, the large number of abducted civilians gave the impression to the local population that the troops enjoyed greater support than they actually did.

1822. Once the AFRC troops had established a base at Camp Rosos in Bombali District, abductees were forced to undergo a three week military training program. Civilians that attempted to escape were executed.[3129] The Prosecution Military Expert, Colonel Iron, stated: "The AFRC had little choice but to run this training: there was a finite number of trained ex-SLA soldiers, and each casualty or loss could not be otherwise replaced".[3130] Although the Trial Chamber accepts that the primary purpose of these abductions was to support the military effort, it rejects Colonel Iron's conclusion that the AFRC had "little choice" in adopting this strategy.

1823. The Trial Chamber heard that sexual slavery was systemic amongst the perpetrators. Abducted women were distributed to soldiers and commanders who signed for them. There were disciplinary measures regulating the conduct of sexual slaves and their rebel 'husbands'. This system was overseen by commanders who appointed a 'Mammy Queen' to assist them. At Camp

[3126] Factual Findings, Enslavement, paras 1379-1380, *supra*; exhibit P-36, Iron Report, paras C5.7-C5.8.
[3127] Exhibit P-36, Iron Report, para. C3.8.
[3128] Exhibit P-36, Iron Report, para. C5.9
[3129] George Johnson, Transcript 15 September 2005, pp. 65-66. *See also* TF1-334, Transcript 24 May 2005, p. 28 on the length of military training program for civilians at Rosos.

Rosos, abducted young women were forced to provide sexual services and to perform domestic tasks.[3131]

1824. The magnitude of commission of the three enslavement crimes by AFRC troops indicates their systemic nature. The Trial Chamber notes that the Brigade included a position in which an individual was appointed specific responsibility for abducted civilians.[3132] Although the Trial Chamber is unable to make a finding on the total number of civilians abducted and forced to undergo military training, the example provided by Colonel Iron that one battalion at 'Colonel Eddie Town' consisted of approximately 150 trained soldiers supplemented by approximately 200 abducted civilians[3133] corroborates the evidence of fact-based witnesses that these crimes were committed on a large scale.[3134]

1825. Indeed, it would appear that once established the *modus operandi* of enslavement became so deeply entrenched that it was difficult to break. Col. Iron's conclusion about the abduction of civilians during the withdrawal from Freetown is instructive.

> There can be little military justification for what happened" during the retreat from Freetown [...] The abductions seem particularly self-defeating: at a time when there was benefit in reducing the size of the force to make it faster moving during the escape, the abductees swelled the size of the column, slowed it down, and made it a bigger target. One reason given for the abductions was to make the fighting strength seem larger than it was; *but I suspect that the truth is more simply that abductions were now common practice for the AFRC.*[3135] [emphasis added]

1826. Based on the large scale, continuous and organised nature of the enslavement crimes, the Trial Chamber is satisfied that the only reasonable inference is that a substantial degree of planning and preparation were required to commit the crimes.

1827. On the basis of the evidence below, the Trial Chamber is further satisfied that the Accused Brima, alone or with others, designed the commission of the three crimes (enslavement, sexual slavery and recruitment and use of child soldiers) and that although these crimes were largely committed by his subordinates, his contribution was substantial.

1828. The Accused played a substantial role in the system of exploitation and cruelty. The Trial Chamber has found that the Accused Brima was the overall commander of both the AFRC troops that moved from Mansofinia, Koinadugu District to Camp Rosos, Bombali District and of the

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[3130] Exhibit P-36, Iron Report, para. C3.2.
[3131] Factual Findings, Outrages upon Personal Dignity, paras 1138-1139, *supra.*
[3132] Exhibit P-36, Iron Report, para. C3.5; TF1-153, Transcript 23 September 2005, p. 102.
[3133] Exhibit P-36, Iron Report, para. C3.5.
[3134] Factual Findings, Enslavement, para. 1359, *supra.*
[3135] Exhibit P-36, Iron Report, para. D5.4.

AFRC troops that later invaded Freetown on 6 January 1999. As the overall commander, the Accused Brima was substantially involved in planning the various operations in these Districts.[3136]

1829. The Trial Chamber has found that, on a number of occasions, the Accused Brima publicly addressed the troops and advocated criminal conduct.[3137]

1830. The Accused Brima also directly participated in and made a substantial contribution to the planning and execution of the said crimes. In Mansofinia, at the start of the journey of the AFRC troops through Bombali District, the Accused Brima ordered that any strong civilian encountered by the troops on the journey should be captured and made to join the troops.[3138] Following this order, hundreds of civilians were abducted in Bombali District.[3139] These civilians were used as forced labour.[3140] During the attack on Karina, Bombali District, Brima ordered the distribution of children captured among the commanders.[3141] Upon completion of civilian military training at Camp Rosos, the trainees were addressed by both the Accused Kanu and the Accused Brima. Brima then ordered that the boys should be distributed to the various companies, while the women were sent back to the soldiers and commanders who had taken them as their "wives".[3142]

1831. During the withdrawal from Freetown in January 1999, the Accused Brima held a meeting attended by the Accused Kamara and Kanu, among others. At this meeting, the Accused Brima ordered his troops to begin abducting civilians, saying that this would attract the attention of the international community.[3143] Troops immediately began breaking into houses and capturing civilians, especially young girls, and taking them to headquarters at the PWD.[3144] Witness TF1-334 testified that "[a]lmost everybody" had civilians, including the commanders,[3145] and abducting commanders were formally responsible for ensuring that civilians did not escape.[3146] Several days later, the Accused Brima ordered the further abduction of civilians.[3147] This order was also implemented by the troops.[3148]

[3136] Military Structure of the AFRC Fighting Force, paras 586-590, *supra*.
[3137] Responsibility of the Accused, Brima, paras 1770-1783, *supra*.
[3138] Factual Findings, Enslavement, para. 1355, *supra*; TF1-334, Transcript 23 May 2005, p. 17.
[3139] Factual Findings, Enslavement, para. 1359, *supra*; George Johnson, Transcript 15 September 2005, pp. 58-59.
[3140] Factual Findings, Enslavement, para. 1359, *supra*; George Johnson, Transcript 15 September 2005, p. 64. TF1-334, Transcript 24 May 2005, pp. 29-31.
[3143] TF1-334, Transcript 14 June 2005, pp. 62-63.
[3144] TF1-334, Transcript 14 June 2005, pp. 63-64.
[3145] TF1-334, Transcript 14 June 2005, pp. 118-119.
[3146] TF1-334, Transcript 14 June 2005, p. 119.
[3147] TF1-334, Transcript 14 June 2005, pp. 77-78.
[3148] TF1-334, Transcript 14 June 2005, pp. 79-80.

1832. As was the pattern with all operations overseen by the Accused Brima, AFRC fighters exhibited a depraved indifference towards human life in abducting and enslaving civilians. Children watched their abductors executing family members.[3149] Throughout the conflict women and young girls were treated as war bounty, abducted from their homes and repeatedly raped.[3150] Child soldiers were terrorised, drugged and forced to commit crimes against other civilians.[3151] Given his authority, the Accused was in a position to shut down this system of exploitation entirely, to deter the excesses committed by his troops, and to alleviate the plight of the victims. On the evidence adduced the Trial Chamber finds that he failed to do so.

1833. The Trial Chamber stresses that the above evidence relates entirely to enslavement crimes committed in Bombali and the Western Area. The Trial Chamber has found that the Accused Brima was not involved in the commission of crimes in Bo, Kenema, Kailahun, Kono, Koinadugu and Port Loko Districts.

1834. The Trial Chamber is satisfied that the Accused planned, ordered, organised and implemented the system to abduct and enslave civilians which was in fact committed by AFRC troops in Bombali and Western Area. It is further satisfied that the Accused had the direct intent to set up and implement the system of exploitation involving the three enslavement crimes, namely, sexual slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.

(a) Responsibility under Article 6(1) for Count 9 (Outrages on Personal Dignity)

1835. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of the crime of outrages on personal dignity in Bombali District and Freetown and the Western Area.

(b) Responsibility under Article 6(1) for Count 12 (Child Soldiers)

1836. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of conscription of children under the age of 15 into the armed group or using them to participate actively in hostilities in Bombali District and the Western Area.

[3149] TF1-158, Transcript 26 July 2005, pp. 33-34.
[3150] Factual Findings, Sexual Violence, paras 973-980, 1044-1049, *supra*.
[3151] Factual Findings, Child Soldiers, para. 1254, *supra*.

(c) Responsibility under Article 6(1) for Count 13 (Enslavement)

1837. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Brima is individually criminally responsible under Article 6(1) of the Statute for planning the commission of enslavement in Bombali District and the Western Area.

(d) Responsibility under Article 6(3) for Counts 9, 12 and 13

1838. As the Trial Chamber has already found the Accused Brima criminally responsible for the planning of the enslavement crimes, it is not necessary to examine his responsibility under Article 6(3).

C. The Accused Kamara

1. Allegations in the Indictment

1839. The Indictment alleges:

> At all times relevant to this Indictment, Brima Bazzy Kamara was a senior member of the AFRC/ Junta and RUF forces.
>
> Brima Bazzy Kamara was a member of the group which staged the coup and ousted the government of President Kabbah. Johnny Paul Koroma, Chairman and leader of the AFRC, appointed Brima Bazzy Kamara a Public [sic] Liaison Officer (PLO) within the AFRC. In addition, Brima Bazzy Kamara was a member of the Junta governing body.
>
> Between about mid February 1998 and about 30 April 1998, Brima Bazzy Kamara was a commander of AFRC/RUF forces based in Kono District. In addition, Brima Bazzy Kamara was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. Brima Bazzy Kamara was a commander of AFRC/RUF forces which attacked Freetown on 6 January 1999.
>
> [...]
>
> In [his] positions referred to above, [...] Brima Bazzy Kamara [...], individually or in concert with [the Accused Brima and the Accused Kanu], Johnny Paul Koroma aka JPK, Foday Saybana Sankoh, Sam Bockarie aka Mosquito aka Maskita, Issa Hassan Sesay aka Issa Sesay, Morris Kallon aka Belai Karim, Augustine Gbao aka Augustine Bao and/or other superiors in the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.
>
> [...]
>
> [...] Brima Bazzy Kamara [...], by [his] acts or omissions, [is] individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes [he] planned, instigated, ordered, committed or in whose planning, preparation or execution [he] otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which [he] participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which [he] participated.

> In addition, or alternatively, pursuant to Article 6.3. of the Statute, Brima Bazzy Kamara [...], while holding positions of superior responsibility and exercising effective control over [his] subordinates, [is] individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. [The] Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and [...] failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.[3152]

1840. The Trial Chamber notes that the Indictment alleges additionally, in relation to the Counts set out therein, that "by their acts or omissions in relation to these events, Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu, pursuant to Article 6.1. and, or alternatively, Article 6.3. are individually criminally responsible for the crimes alleged [...]".[3153]

1841. Where there have been submissions by the Parties specific to each Accused, District and mode of liability, they have been considered as they arise in the findings below.

2. Bo, Kenema and Kailahun Districts (25 May 1997 – 14 February 1998)

1842. In its factual findings, the Trial Chamber has found that an unknown number of civilians were unlawfully killed by AFRC/RUF forces in Bo District in June 1997, as charged under Counts 4 through 5. Civilians were also terrorised and subjected to collective punishment, as charged under Counts 1 and 2.[3154]

1843. The Trial Chamber has also found that AFRC/RUF forces committed a number of crimes in Kenema District in this period. Civilians were unlawfully killed, as charged under Counts 4 and 5,[3155] and physical violence was inflicted on an unknown number of civilians as charged under Count 10.[3156] Children were illegally recruited and used for military purposes, as charged under Count 12.[3157] An unknown number of civilians were abducted and used as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13.[3158] Finally, civilians were terrorised and subjected to collective punishment, as charged under Counts 1 and 2.

1844. The Trial Chamber has further found that RUF troops abducted civilians and used them as forced labour in Kailahun District during the AFRC Government period, as charged under Count

[3152] Indictment, paras 25-27, 31, 35-36.
[3153] Indictment, paras 41, 50, 57, 64, 65, 73, 79.
[3154] Factual Findings, Unlawful Killings, paras 1475-1476, *supra*.
[3155] Factual Findings, Physical Violence, para. 840, *supra*.
[3156] Factual Findings, Child Soldiers, para. 1197, *supra*.
[3157] Factual Findings, Enslavement, para. 1277, *supra*.
[3158] Factual Findings, Acts of Terror and Collective Punishments, para. 1309, *supra*.

13.[3159] Finally, civilians were terrorised and subjected to collective punishment, as charged under Counts 1 and 2.

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1845. In its Final Brief, the Prosecution argues that given his position in the government, the Accused Kamara must have been aware of AFRC government policies which included the use of forced labour in Bo and Kenema Districts.[3160] The Prosecution concludes that Kamara is therefore liable for planning, instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Bo, as well as killings and other crimes committed during the AFRC Government period.[3161]

1846. In its Final Brief, the Kamara Defence submits that the Prosecution failed to prove beyond reasonable doubt that the Accused Kamara planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes committed in Bo and Kenema Districts.[3162]

(ii) Findings

1847. The Prosecution adduced no evidence that the Accused Kamara committed, ordered, instigated, planned or otherwise aided and abetted any of the crimes that occurred in Bo, Kenema and Kailahun Districts. The Prosecution has not proved beyond reasonable doubt that the Accused Kamara is criminally responsible for crimes committed in the Kono District. The Trial Chamber finds that the Prosecution has not proved any mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bo, Kenema and Kailahun Districts.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1848. The Prosecution submits in its Final Brief that the Accused Kamara bears superior responsibility for crimes committed during the period 25 May 1997 to 14 February 1998 by virtue

[3159] Factual Findings, Enslavement, para. 1374, *supra*.
[3160] Prosecution Final Brief, paras 508-509.
[3161] Prosecution Final Brief, para. 512
[3162] Kamara Final Brief, paras 121, 134.

of his position as Principal Liaison Officer 3 and membership of the Supreme Council, which had control over the police and political authority over the military.[3163]

1849. The Kamara Defence submits that the Accused Kamara possessed no military authority and played "at best" a political role within the AFRC Government.[3164] The Kamara Defence further submits that the Prosecution failed to show that the Accused Kamara had command and control over Sam Bockarie, Eddie Kanneh or any of the soldiers in Kenema.[3165] The Kamara Defence further submitted that Sam Bockarie was in command of Kailahun District and no evidence was led to prove that persons under the command of the Accused Kamara took part in the crimes committed there.[3166] No submissions were made specific to Bo District.

(ii) Findings

a. Existence of a superior-subordinate relationship

1850. The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of any of the crimes committed in Bo, Kenema and Kailahun Districts during the period 25 May 1997 to 14 February 1998.

1851. As preliminary observation, the Trial Chamber reiterates that the existence of a superior-subordinate relationship is not precluded by the superior's civilian status.[3167]

1852. The Trial Chamber refers to its findings above in relation to the Accused Brima, where it was found that membership of the Supreme Council and proof of a *de jure* position of authority as a Principal Liaison Officer within the AFRC government is insufficient *per se* to prove the existence of a superior-subordinate relationship. The Prosecution must prove that the Accused Kamara's individual functions as PLO 3 and/or member of the Supreme Council enabled him to exercise effective control over the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts.

1853. The Trial Chamber notes that there is little evidence on the Accused Kamara's activities during the AFRC Government period, apart from his attendance at Supreme Council meetings.[3168] It

[3163] Prosecution Final Brief, paras 506, 522.
[3164] Kamara Final Brief, para. 64.
[3165] Kamara Final Brief, para. 135.
[3166] Kamara Final Brief, para. 162.
[3167] Applicable Law, paras 784-790, *supra*.
[3168] Exhibit P-34, "Minutes of Emergency Meeting."

has not been established that the Accused Kamara possessed any individual decision making capacity within the Council. Witnesses testified that 'Bazzy' had people working under him in the ministries he supervised, but did not specify what the work of these people involved.[3169] The Trial Chamber has found that there is no evidence that the Accused Kamara had any particular responsibility for internal or external security.[3170]

1854. The Trial Chamber therefore accepts the Kamara Defence's submissions that the Prosecution has failed to prove that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of the crimes in Kenema and Kailahun Districts. It has similarly not been established that the Accused Kamara was in a superior-subordinate relationship with the perpetrators of crimes committed in Bo District. As the absence this first element of superior responsibility is fatal to proof of liability under Article 6(3), the Trial Chamber will not consider the evidence relating to the Accused Kamara's actual or imputed knowledge of crimes committed and his ability to prevent or punish the perpetrators.

b. Conclusion

1855. The Trial Chamber finds that it has not been established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Bo, Kenema and Kailahun Districts between 25 May 1997 and 14 February 1998.

3. Kono District

1856. The Trial Chamber has found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,[3171] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3172] AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,[3173] and used illegally recruited children for military purposes, as charged under Count 12.[3174] Finally, AFRC/RUF troops engaged in widespread looting, as charged under

[3169] TF1-334, Transcript 20 June 2005, p. 93; George Johnson, Transcript 15 September 2005, pp. 17, 20.
[3170] Role of Accused, Kamara, para 439, *supra*.
[3171] Factual Findings, Unlawful Killings, para. 857, *supra*.
[3172] Factual Findings, Sexual Violence, para 1109, *supra*; Physical Violence, para. 1213, *supra*.
[3173] Factual Findings, Enslavement, para. 1333, *supra*.
[3174] Factual Findings, Child Soldiers, para. 1278, *supra*.

Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3175]

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1857. In its Final Brief, the Prosecution contends that the Accused Kamara was the second in command to Denis Mingo (RUF) in Kono District and as such was involved in planning and designing the operations and crimes committed in Kono District.[3176] The Prosecution then submits that only Kamara bears liability under articles 6(1) and (3) of the Statute.[3177] Furthermore, the Prosecution submits in its closing arguments that:

> for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE.[3178]

The Prosecution adds given the position of the Accused, his role in planning, and the reports he received, the Accused intended that the crimes would occur, or was aware of the substantial likelihood of the occurrence of all the crimes. It concludes that he is therefore liable for planning and instigating the crimes charged, or in the alternative that he actively encouraged the commission of such acts.[3179]

1858. Finally, the Prosecution alleges that the Accused Kamara gave direct orders to burn houses, and argues that given his position it may be inferred that he gave orders for all the crimes charged in Kono District.[3180]

1859. In its Final Trial Brief, the Kamara Defence submits that the RUF was in complete control of Kono District, and that the Prosecution failed to prove that the Accused Kamara planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of the crimes committed in Kono District. It further argues that numerous witnesses who testified regarding crimes committed in Kono did not mention Kamara.[3181]

(ii) Findings

[3175] Factual Findings, Pillage, paras 1525-1527, *supra*.
[3176] Prosecution Final Brief, para. 1281.
[3177] Prosecution Final Brief, para. 1279.
[3178] Transcript, 7 December 2006, p. 34-35.
[3179] Prosecution Final Brief, para. 1282.
[3180] Prosecution Final Brief, para. 1283.
[3181] Kamara Final Brief, paras 152-157.

1860. The Trial Chamber has found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,[3182] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3183] AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,[3184] and used illegally recruited children for military purposes, as charged under Count 12.[3185] Finally, AFRC/RUF troops engaged in looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3186]

1861. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Kono District.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1862. The Prosecution submits that the evidence 'coupled with the high level of authority possessed by the Second Accused' proves that there was a superior-subordinate relationship between the Second Accused and the perpetrators of crimes committed in Kono District in this period.[3187]

1863. The Kamara Defence submits that the evidence of both Prosecution and Defence witnesses alike proves that Kono District after February 1998 was completely controlled by the RUF, to whom the AFRC troops were subordinate.[3188]

(ii) Findings

a. Existence of a superior-subordinate relationship

[3182] Factual Findings, Unlawful Killings, para. 857, *supra*.
[3183] Factual Findings, Sexual Violence, para.1109, *supra*; Physical Violence, para. 1213, *supra*.
[3184] Factual Findings, Enslavement, para. 1333, *supra*.
[3185] Factual Findings, Child Soldiers, para. 1278, *supra*.
[3186] Factual Findings, Pillage, paras 1525-1527, *supra*.
[3187] Prosecution Final Brief, paras 1284-1287.
[3188] *See for example*: Kanu Final Brief, para. 341; Kamara Final Brief, paras 151-157.

1864. The Prosecution has not demonstrated beyond a reasonable doubt that crimes were committed by members of the AFRC/RUF during the initial attack on Koidu Town in early March 1998 as troops advanced together into Kono District. Thus there can be no findings of liability pursuant to Article 6(3) during this attack.

1865. The Trial Chamber recalls its finding that after the departure of Johnny Paul Koroma from Kono District, the AFRC was subordinated to the RUF and the Accused Kamara became the highest ranking AFRC soldier in the District. The Trial Chamber further found that the AFRC and RUF worked closely together in Kono District. AFRC and RUF commanders each supervised mixed battalions of AFRC and RUF troops.[3189]

1866. The Trial Chamber is satisfied, on the basis of the evidence that follows, that the Prosecution has proved beyond reasonable doubt that the Accused Kamara exercised effective control over some mixed battalions of AFRC/RUF troops in Kono District.

1867. Witness TF1-334 testified in cross-examination that while Kamara was subordinate to Denis Mingo, the AFRC maintained their own command. He stated that Kamara received orders from Denis Mingo and was answerable to him in terms of operations, but that the AFRC operated under their command and were answerable to the AFRC commanders.[3190] Witness George Johnson corroborated the evidence of witness TF1-334 that the Accused Kamara was the senior AFRC commander, subordinate to Denis Mingo.[3191]

1868. Witness TF1-334 testified that the Accused Kamara gave orders through his subordinate the Operations Commander, whose name was given to the Court in closed session.[3192] The Accused Kamara also appointed Colonel Foday Kallay as Deputy Operations Commander.[3193] Battalions consisting of both RUF and AFRC soldiers (but predominantly the latter) were under AFRC command in Jagbwema Fiama, Tombodu, Bumpe, Sewafe, Yengema, and Woama.[3194] Witness TF1-334 testified that the battalion commanders were subordinate to the Operations Commander and reported directly to him.[3195] Witness TF1-334 testified that the Accused Kamara promoted these individuals in rank after the capture of Kono District. [3196]

[3189] Role of the Accused, para. 183, *supra*. Military Structure of the AFRC Fighting Force, para. 450, *supra*.
[3190] TF1-334, Transcript 21 June 2005, pp. 17-19.
[3191] George Johnson, Transcript 15 September 2005, pp. 37-38.
[3192] TF1-334, Transcript 18 May 2005, pp. 22-23, Transcript 19 May 2005, p. 15.
[3193] TF1-334, Transcript 19 May 2005, p. 16.
[3194] TF1-334, Transcript 19 May 2005, pp. 16-26.
[3195] TF1-334, Transcript 19 May 2005, p. 21.
[3196] TF1-334, Transcript 19 May 2005, p. 50.

1869. The Accused Kamara was based, along with other senior commanders, at the AFRC headquarters in Kono District, in Masingbi Road.[3197] Witness TF1-334 testified that discussions were held regularly between the military supervisors, the Accused Kamara and the Operations Commander.[3198] The witness went on patrol with the Operations Commander and soldiers under his command as they monitored the various battalions.[3199] Witness TF1-334 also testified that the AFRC troops held muster parades every week in Kono, until they were prohibited from doing so by Morris Kallon (RUF).[3200] The Trial Chamber notes that the prohibition on AFRC musters therefore occurred only at the end of the period in which crimes were committed in Kono. The witness explained that 'mustering' is a military term that refers to the force being brought together and addressed publicly. This procedure is indicative of an organised force that is responsive to superior command.

1870. There is evidence that the Accused Kamara's orders were followed. Witness TF1-334 testified that Kamara ordered the troops to attack ECOMOG forces.[3201] In May 1998, the Accused Kamara ordered the burning of houses surrounding the AFRC headquarters in Masingbi Road. This order was obeyed by soldiers including witness TF1-334.[3202] The commanders of surrounding villages including Yengema, Bumpe, Jagbwema Fiama and Tombodu were also ordered to burn those villages and witness TF1-334 accompanied the Operations Commander to monitor the carrying out of these orders. Witness TF1-334 also testified that Kamara organised a squad called "wild dogs" who were responsible for "raising", that is, taking things from other soldiers.[3203]

1871. The Trial Chamber recalls that there was a parallel presence and authority of RUF and AFRC commanders active in Kono District in this period.[3204] While the Trial Chamber is satisfied that the Accused Kamara maintained effective control over some mixed battalions of AFRC and RUF troops, given evidence of the Accused Kamara's subordination to Denis Mingo: evidence of RUF dominancy over the AFRC; and indications that independent RUF chains of command may have also existed during this time period, the Trial Chamber finds that it has not been established beyond reasonable doubt that the Accused Kamara's authority extended to all battalions active in Kono District. Thus, it cannot be stated with certainty that Kamara exercised effective control over

[3197] TF1-334, Transcript 19 May 2005, pp. 26-27.
[3198] TF1-334, Transcript 19 May 2005, p. 38.
[3199] TF1-334, Transcript 19 May 2005, pp. 20, 23, 25-26, 32.
[3200] TF1-334, Transcript 19 May 2005, pp. 9-10.
[3201] TF1-334, Transcript 20 May 2005, p. 7.
[3202] TF1-334, Transcript 20 May 2005, pp. 7-8, 10.
[3203] TF1-334, Transcript 20 May 2005, p. 34.
[3204] Role of Accused, paras 460-461, *supra*. Military Structure of the AFRC Fighting Forces, paras 564-571, *supra*.

the entire AFRC and RUF troops in Kono District during this period. This however does not exclude that he had effective control over some troops.

1872. The Prosecution did not generally attempt to differentiate between crimes committed by AFRC troops and those committed by RUF rebels. They instead referred to 'AFRC/RUF troops' as the perpetrators of crimes in Kono District. For many crimes, the Trial Chamber has been unable to determine beyond reasonable doubt the affiliation of the perpetrators nor to which specific commanders they were subordinate.

1873. The Trial Chamber is, however, satisfied that it has been established beyond a reasonable doubt that crimes were committed by 'Savage' and persons under his authority in Tombodu during this period.[3205] The question that remains to be determined is whether he was subordinate to the Accused Kamara, and whether Accused Kamara was in a position to exercise effective control over him.

1874. Witness TF1-334 testified that Captain Mohamed 'Savage' (alias Changabulanga) was a commander in Tombodu. His deputy was Staff Alhaji and he reported to the AFRC Operation Commander.[3206] Witness TF1-334 testified that the Accused Kamara promoted Staff Alhaji to Lieutenant after the capture of Kono District.[3207] He was a staff sergeant until 'Savage' recommended him for promotion.[3208] Witness George Johnson also stated that 'Savage' was in charge of a battalion in Tombodu and described him as being an SLA soldier.[3209]

1875. There is also evidence that the Accused Kamara actively exerted authority over 'Savage' by directly or indirectly supervising his activities in Tombodu. Witness TF1-334 testified that the AFRC Operation Commander,[3210] subordinate to the Accused Kamara, patrolled the battalions in various locations including Tombodu. Witness George Johnson testified that Kamara, the Operations Commander and others went to Tombodu on several occasions during the Kono period.[3211] The witness testified that the Accused Kamara, together with Hassan Papa Bangura and others went to Tombodu to drink palm wine. On one of these occasions, the witness observed 'Savage' order the flogging of approximately seven civilians. On cross-examination he testified that

[3205] Factual Findings, Physical Violence, para. 1202, *supra*.
[3206] TF1-334, Transcript 19 May 2005, pp. 16, 21.
[3207] TF1-334, Transcript 19 May 2005, pp. 50-51.
[3208] TF1-334, Transcript 19 May 2005, p. 22.
[3209] George Johnson, Transcript 15 September pp. 38, 40.
[3210] Name of Company Commander admitted under seal: exhibit P-12.
[3211] George Johnson, Transcript 15 September 2005, pp. 45-46.

'Savage' would beat people nearly every day and that it was a "common drill".[3212] The Trial Chamber notes that there is no indication on the evidence that the Accused Kamara also observed this event.[3213] Witness TF1-334 testified that the Accused Kamara visited Tombodu with other military supervisors to ensure that Johnny Paul Koroma's orders to burn Tombodu were carried out.[3214]

1876. Witness TF1-334 testified that 'Savage' informed the Accused Kamara that civilians in Tombodu were celebrating because they believed that ECOMOG had taken over the area and that as a result of this communication the AFRC Operations Commander, the witness and Colonel Momoh Dorty went to Tombodu to see what was happening.[3215] When the witness arrived he observed that 'Savage' and his soldiers had amputated and killed a large number of civilians – actions which this Trial Chamber has found constitute crimes as alleged by the Prosecution.[3216]

1877. Witness George Johnson similarly testified that as the Nigerian ECOMOG troops pressured them out of the District, the Witness together with the three Accused, passed through Tombodu.[3217] There, they met Battalion Commander 'Savage' and the three Accused saw that a large number of civilians had been killed by machete and their bodies had been thrown into a pit.[3218]

1878. The Trial Chamber notes that there is also evidence that 'Savage' was subordinate to the RUF. Witness TF1-334 stated that in addition to reporting to the Operations Commander, 'Savage' also reported to Denis Mingo.[3219] Significantly, the witness puts Denis Mingo in Tombodu shortly after the crimes were committed. The witness testified that Denis Mingo reacted to the crimes by telling 'Savage' that he was committing crimes against humanity.[3220]

1879. Prosecution witness George Johnson similarly testified that 'Savage' was battalion commander at Tombodu but that he was appointed to the rank of Lieutenant by Denis Mingo[3221] He also testified that 'Savage' remained under the command of Denis Mingo while some of his battalion fighters left with the witness's group to go to Mansofinia.[3222]

[3212] George Johnson, Transcript 15 September 2005, p. 49.
[3213] George Johnson, Transcript 19 May 2005, p. 46.
[3214] TF1-334, Transcript 20 May 2005, p. 18.
[3215] TF1-334, Transcript 20 May 2005, pp. 11-15.
[3216] Factual Findings, Unlawful Killings, para. 854, *supra*; Physical Violence, paras 1201-1206, *supra*.
[3217] George Johnson, Transcript 19 May 2005, pp. 43-44.
[3218] George Johnson, Transcript 19 May 2005, p. 45.
[3219] TF1-334, Transcript 19 May 2005, pp. 22-23.
[3220] TF1-334, Transcript 20 May 2005, p. 17.
[3221] George Johnson, Transcript 19 September 2005, p. 46.
[3222] TF1-334, Transcript 20 May 2005, pp. 56, 58, 70.

1880. Defence witness DAB-095 testified that Savage was the commander of a battalion of mixed AFRC and RUF troops in Tombodu.[3223] Defence witness DBK-117 testified on re-examination that he visited Tombodu after December 1998.[3224] He stated that by that time, 'Staff Alhaji' was the commander in Tombodu and that 'Savage' was his deputy. At that time they were all under the control of the RUF.[3225]

1881. The Trial Chamber also notes that there is evidence that regardless of which faction he adhered to, 'Savage' was unruly in character and operated independently from his superiors. Prosecution witness George Johnson testified in cross-examination that 'Savage' was very difficult to control and was an "unpredictable character".[3226]

1882. He testified that "in the early stages" 'Savage' was under the command of Denis Mingo and would listen to his instructions and carry them out, but later became "abnormal" and stated that he would not listen to anyone except Johnny Paul Koroma.[3227] On one occasion, prior to the time 'Savage' became "abnormal", the witness saw 'Savage' flogging two individuals in the presence of the Accused Brima and the Accused Kanu. Brima told him to stop, which he did, but witness George Johnson testified that after they returned to Koidu Town, 'Savage' executed the two men.[3228]

1883. He also testified that 'Savage' had possession of enough weapons to protect himself and his men and that because of this no one dared to tell him what to do or not to do.[3229]

1884. On the basis of the evidence examined above, the Trial Chamber is satisfied that the Accused Kamara exercised effective control over 'Savage'. There is clear evidence that 'Savage' was subordinate to the Accused Kamara; that Kamara both directly and indirectly through the SLA Operations Commander was in a position to supervise the activities of 'Savage'; that the Accused Kamara promoted 'Savage'; that 'Savage' himself reported to the Accused Kamara; and that the Accused Kamara was physically present in Tombodu when it was under the control of 'Savage.'

1885. The fact that 'Savage' also reported to Denis Mingo and remained with Denis Mingo after Kamara departed from the District does not preclude Kamara exercising effective control over him.[3230]

[3223] DAB-095, Transcript 28 September 2006, p. 34.
[3224] DBK-117, 16 October 2006, pp. 43-44
[3225] DBK-117, 16 October 2006, p. 38.
[3226] George Johnson, 19 September 2005, pp. 41, 51.
[3227] George Johnson, 19 September 2005, p. 48.

1886. The Trial Chamber is also satisfied that 'Savage's alleged unpredictable character in and of itself does not bar a finding that Kamara was in a position of effective control over him. Evidence of a subordinate's unpredictability or irresponsibility in no way vitiates a superior's responsibility to exercise authority over that subordinate. Rather, it is exactly this type of situation to which a superior is under an obligation to respond by putting in place measures to prevent the commission of crimes by a subordinate or to punish such a subordinate once such crimes have been committed.

1887. Similarly, the Trial Chamber finds the fact that 'Savage' and his men were well armed does not raise a reasonable doubt vis-à-vis the Accused Kamara's ability to exercise effective control over him. Subordinates in any organisation engaged in active combat will be armed or have access to weapons. It remains in all cases for superiors to put in place measures to prevent a malcontent or unstable subordinate from using those weapons for his own purposes. Should a subordinate use the weaponry of the organisation to shore up his own power, it falls also to superiors to quell or at the very least attempt to quell such an initiative. The Trial Chamber is satisfied that as a senior commander of the AFRC, the Accused Kamara himself, or together with other senior commanders such as his immediate superior Denis Mingo, would have had the material ability to control 'Savage' and his subordinates.

b. Actual or Imputed Knowledge

1888. The Prosecution submits that the Accused Kamara either knew or, at least had reason to know, that the subordinates were about to or had committed the offences as the orders were given by him or in his presence. The Prosecution further submits the crimes committed by 'Savage' in Tombodu were so notorious that the Accused must have known.[3231]

1889. The Trial Chamber finds it is not necessary to establish whether the crimes committed by 'Savage' and his battalion in Tombodu were "notorious" as there is clear evidence which establishes beyond a reasonable doubt that the Accused Kamara knew or ought to have known of the crimes. As examined above, there is evidence which establishes that Kamara was routinely apprised of the situation in Tombodu. He was himself repeatedly present in Tombodu and indirectly

[3228] George Johnson, 19 September 2005, pp. 49-50.
[3229] George Johnson, 19 September 2005, p. 47.
[3230] The Trial Chamber recalls that in *Aleksovski*, the ICTY Trial Chamber stated that once effective control was established then "whether the [subordinate] guards came concurrently under another authority, such as the military police commander, in no way detracts from the fact that the accused was their superior within the confines of Kaonik prison." [*Aleksovski* Trial Judgement, para. 106]; and in *Oric* the Trial Chamber held that a superior can have effective control over a subordinate even if another superior has concurrent, effective control and issues contradictory orders. [*Orić* Trial Judgement, para. 313.]

supervised the activities in Tombodu through patrols carried out by the SLA Operation Commander. He worked together with Denis Mingo to whom 'Savage' also reported. There is also evidence that the Accused Kamara was apprised specifically of the crimes committed by 'Savage' and his battalion. 'Savage' sent a message to Kamara prior to the commission of the crimes indicating that the civilians in Tombodu were celebrating. Witness George Johnson testified that the Accused Kamara passed through Tombodu after the commission of the crimes and himself observed the bodies of the civilians killed.

c. Failure to prevent or punish

1890. The Prosecution submits that '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.'[3232]

1891. The Trial Chamber finds on the basis of the evidence examined above that the Accused Kamara had the ability to issue orders which were followed; that he took over authority for promoting AFRC soldiers after Johnny Paul Koroma left Kono District; and that generally, the AFRC troops maintained an effective day-to-day chain of command and regularly mustered, that therefore it was within the Accused's material ability to prevent crimes committed by his subordinates or to punish subordinates for committing crimes.

1892. The Trial Chamber finds further on the evidence the Accused Kamara did not attempt to prevent or punish the crimes committed by 'Savage' and his battalion in Tombodu.

(iii) Conclusion

1893. The Trial Chamber finds that the Accused Kamara was in a position of superior responsibility and criminally responsible under article 6(3) of the Statute, for crimes committed by his subordinates in Kono District; namely, unlawful killings and physical violence, committed with the primary purpose to spread terror and to collectively punish civilians for allegedly failing to provide sufficient support to the AFRC/RUF.

[3231] Prosecution Final Brief, para. 1286.
[3232] Prosecution Final Brief, para. 1287.

4. Kailahun District

1894. The Trial Chamber has found that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Count 5[3233] and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in Kailahun District in the period following 14 February 1998.[3234]

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1895. In its Final Brief, the Prosecution alleges only that the Accused was a principal in a joint criminal enterprise and is therefore liable for the crimes committed in Kailahun District.[3235]

1896. The Kamara Defence, in its Final Brief, argues that Kailahun District was an RUF stronghold and that the Accused Kamara had no role there.[3236]

(ii) Findings

1897. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Kailahun District.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1898. The Prosecution in its Final Brief makes no submissions that the Accused Kamara bears superior responsibility for crimes committed in Kailahun District in the period after the Intervention in February 1998.

1899. The Kamara Defence submits that the Prosecution did not lead any evidence to show that the Accused Kamara was in Kailahun throughout the relevant period and that all the witnesses indicate that the entire Kailahun District was a RUF stronghold.

[3233] Factual Findings, Unlawful Killings, para. 864, *supra*.
[3234] Factual Findings, Enslavement, para. 1374, *supra*.
[3235] Prosecution Final Brief, para. 1372.
[3236] Kamara Final Brief, para. 162.

(ii) Findings

1900. The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed in Kailahun District during this period were members of the RUF. The Trial Chamber also recalls its finding that the AFRC and the RUF were not working together in Kailahun during this period.[3237]

1901. The Trial Chamber finds the evidence insufficient to establish that the Accused Kamara exercised effective control over members of the RUF in Kailahun District after February 1998.

1902. In the absence of this first element of superior responsibility, it is not necessary to consider whether there is any evidence that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

1903. The Trial Chamber accordingly finds that the Prosecution has not proved beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Kailahun District.

5. Koinadugu District

1904. The Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the period February through September 1998, as charged under Counts 4 through 5, 6 through 9 and 10 respectively.[3238] In addition, an unknown number of civilians were abducted and used as forced labour, as charged under Count 13.[3239] Children were used for military purposes, as charged under Count 12.[3240] Finally, AFRC/RUF forces also engaged in looting of civilian homes, as charged in Count 14. [3241]

(a) Responsibility of the Accused Kamara under Article 6(1) of the Statute

(i) Submissions

[3237] Context of the Alleged Crimes, paras 187-188, *supra*.
[3238] Factual Findings, Unlawful Killings, para. 879, *supra*; Sexual Violence, paras 1026, 1133, *supra*; Physical Violence, para. 1218, *supra*.
[3239] Factual Findings, Enslavement, para. 1350, *supra*.
[3240] Factual Findings, Child Soldiers, para. 1277, *supra*.
[3241] Factual Findings, Pillage, para. 1409, *supra*.

1905. In its Final Brief, the Prosecution alleges that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District. It argues that the crimes followed a consistent pattern.[3242]

1906. In its Final Brief, the Kamara Defence contends that those witnesses who testified that the Accused Kamara was present in Koinadugu District during the Indictment period did not allege that he participated in the offences alleged or that he instructed any other persons to do so.[3243]

(ii) Findings

1906a. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Koinadugu District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Koinadugu District.

(b) Responsibility of the Accused Kamara under Article 6(3)

(i) Submissions

1907. The Prosecution submits that the Accused Kamara has superior responsibility for all crimes committed in the attack on Yifin.[3244]

(ii) Findings

1908. As stated above, Yifin was not a location pleaded in the Indictment.

1909. The Trial Chamber has found that the crimes committed in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and Denis Mingo.[3245] The Prosecution has not submitted, nor is there evidence to the effect that, the Accused Kamara exercised effective control over the troops of SAJ Musa or Denis Mingo. In the absence of a superior-subordinate relationship between the Accused Kamara and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider whether there is any evidence that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

[3242] Prosecution Final Brief, paras 1412-1413.
[3243] Kamara Final Brief, para. 184.
[3244] Prosecution Final Brief, paras 1414-1416.
[3245] Factual Findings, Unlawful Killings, para. 892, *supra*.

1910. The Trial Chamber accordingly finds that the Prosecution has not established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed by AFRC/RUF troops in Koinadugu District.

6. Bombali District

1911. The Trial Chamber has found that AFRC troops in Bombali District engaged in unlawful killings of civilians as charged under Counts 3 through 5[3246] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3247] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes, as charged under Counts 13 and 12 respectively.[3248] Finally, AFRC troops terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3249]

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1912. In its Final Trial Brief, the Prosecution submits that the Accused Kamara was present when the order was given to burn down Karina and kill its inhabitants. On this evidence the Prosecution asks the Trial Chamber to infer that Kamara assisted in planning the attack. In addition, the Prosecution contends that Kamara was present in Karina and saw his own security guard carry out unlawful killings. The Prosecution further argues that given that he was present when the order was given to make Camp Rosos a civilian "no go" area, the systematic nature of crimes committed, and his position within the AFRC hierarchy, the Trial Chamber may be able to infer that the Accused promoted or encouraged the commission of crimes, and that he intended the commission of such crimes or was aware of the substantial likelihood that they would be committed. [3250]

1913. In its Final Brief, the Kamara Defence submits that the command structure during the attacks in Bombali District the command structure was not the one described by Prosecution witnesses.[3251] It refers to Prosecution witnesses who testified that the Accused Kamara was detained during a part of the relevant time period.[3252] It further contends that most of the witnesses

[3246] Factual Findings, Unlawful Killings, paras 897-899, *supra*.
[3247] Factual Findings, Physical Violence, para. 1219, *supra*; Sexual Violence, para. 1041, *supra*.
[3248] Factual Findings, Child Soldiers, para. 1278, *supra*; Enslavement, para. 1363, *supra*.
[3249] Factual Findings, Acts of Terror and Collective Punishment, para. 1538, *supra*
[3250] Prosecution Final Brief, para. 1509.
[3251] Kamara Final Brief, paras 195, 197, 201, 203.
[3252] Kamara Final Brief, paras 198-200.

who testified that the Accused Kamara was present in Bombali District during the Indictment period did not allege that he participated in the offences alleged or that he instructed any other persons to do so. Finally, it argues that those witnesses who did allege such participation - in particular TF1-334 and George Johnson - failed to corroborate each others' testimonies.[3253]

(ii) Findings

a. Committing

1914. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bombali District.

b. Ordering

1915. The Trial Chamber finds that the Accused Kamara ordered the unlawful killing of five young girls in Karina. Kamara ordered that the girls be locked in a house and that the house then be set on fire. This order was obeyed by AFRC troops.[3254]

1916. The Trial Chamber finds that as the deputy commander in Bombali District the Accused Kamara had sufficient authority over the troops to instruct the commission of the crimes. On all the evidence adduced, the Trial Chamber finds that the Accused Kamara was aware of the substantial likelihood that the burning to death of the five young girls in Karina would be carried out.

c. Planning

1917. The Trial Chamber recalls its finding that the Accused Brima ordered the attack on Karina in an address to the troops at Kamagbengbe.[3255] In the course of this address, the Accused Brima stated that he wanted to divide the troop and make attacks on both Karina and Kamabai, but that the other commanders suggested to him that keeping the troop together would result in fewer casualties. The Accused Brima agreed to this.[3256] The Trial Chamber notes that this incident was a strategic discussion between commanders which could constitute planning of the attack on Karina and the crimes committed therein. However, witness TF1-334 does not name the commanders involved in this discussion. The Trial Chamber is not prepared to infer merely by virtue of the Accused Kamara's position as deputy commander that he was one of them.

[3253] Kamara Final Brief, para. 204.
[3254] TF1-334, Transcript 23 May 2005, pp. 66-67.

1918. No evidence was adduced that the Accused Kamara made a substantial contribution to the planning of any crimes under Counts 3 through 6, 10 through 11 and 14 in Bombali District.

1919. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that they span across various Districts the Trial Chamber will discuss the Accused Kamara's criminal responsibility for Counts 9, 12 and 13 below.[3257]

d. Instigating and otherwise Aiding and Abetting

1920. No evidence was adduced that the Accused Kamara prompted or influenced or gave practical assistance, encouragement or moral support to the perpetrators of the crimes committed in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kamara for the crimes committed in the Bombali District.

(b) Responsibility of the Accused Kamara under Article 6(3) of the Statute

(i) Submissions

1921. The Prosecution submits that the Accused Kamara bears superior responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998 by virtue of the high level of authority possessed by him as second in command of the AFRC troops.[3258]

1922. The Kamara Defence submits that the evidence adduced does not prove that persons under the 'command, authority or direction' of the Accused Kamara participated in the crimes committed in Bombali District.[3259]

(ii) Findings

a. Existence of a superior-subordinate relationship

1923. The Trial Chamber has found that the Accused Kamara was the deputy commander of the AFRC troops in Bombali District.[3260] Evidence of a *de jure* position of authority does not *per se* suffice to prove the existence of a superior-subordinate relationship, especially in the context of a

[3255] Factual Findings, Unlawful Killings, para. 886, *supra*.
[3256] TF1-334, Transcript 23 May 2005, p. 57.
[3257] Responsibility of the Accused, Kamara, paras 1970-1976, *infra*.
[3258] Prosecution Final Brief, paras 1513-1516.
[3259] Kamara Final Brief, para. 204.
[3260] Military Structure of the AFRC Fighting Force, paras 465-468, *supra*.

non-traditional military organisation such as the AFRC troops.[3261] The Trial Chamber must therefore look at the available evidence to determine whether the Accused Kamara, as deputy commander, was able to exercise effective control over the AFRC troops in Bombali District.

1924. There is evidence that the Accused Kamara played a role at a senior level in military operations in Bombali District. Witness TF1-334 testified that the Accused Kamara was Deputy Brigade Commander[3262] and, at Karina, "[...] the commanders have been monitoring each and every soldier"[3263] The Accused Kamara was one of the senior AFRC commanders who was present at the meeting with SAJ Musa at Kurubonla at which the restructuring of the troops was discussed; however, no evidence was adduced as to his contribution.[3264] Within the structure which was subsequently established by the Accused Brima, the Operations Commander and the Provost-Marshal were required to report to the Accused Kamara. At Rosos, the Accused Kamara was based at 'headquarters', from where operations were planned and orders issued. Whilst there is no direct evidence on the Accused Kamara's precise involvement[3265] Witness TF1-334 testified that the Accused Kamara was one of the commanders who made decisions regarding the brigade;

> Q. Witness, I'm going to ask you to clarify. My question to you was what did you subsequently see the deputy chief in command do as second in command? Just focus on him specifically, please.
> A. He, the chief in command, the chief of staff and the senior military supervisors were responsible for taking decisions in the brigade.
> Q. How do you know that?
> A. I myself was present whenever they want to take a decision in my presence. I was there whenever they were deciding on anything before they can send it out.[3266]

1925. The Trial Chamber has found that the Accused Kamara issued an order to the troops in Karina which was obeyed.[3267] The Trial Chamber is satisfied on the evidence that the Accused Kamara participated in decision making. On the evidence the Trial Chamber is satisfied that the Accused Kamara exercised effective control over the AFRC troops and was aware that the troops under his control committed crimes in Bombali District.

1926. The Trial Chamber finds on the foregoing evidence that there was a formal command structure in the AFRC faction in Bombali District, that the Accused Kamara, in his capacity as

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[3261] Applicable Law, para. 784; Military Structure of the AFRC Fighting Force, para. 580.
[3262] TF1-334 Transcript 23 May 2005, p. 95.
[3263] TF1-334 Transcript 23 May 2005, p. 67.
[3264] George Johnson, Transcript 15 September 2005, p. 47.
[3265] George Johnson, Transcript 15 September 2005, p. 60.
[3266] TF1-334, Transcript 20 May 2005, p. 95.
[3267] Factual Findings, Unlawful Killings, para. 887, *supra*.

Deputy Brigade Commander had and exercised effective control over the troops under his command.

1927. Accordingly the Trial Chamber finds on the evidence adduced that a superior-subordinate relationship existed between the Accused Kamara and the AFRC troops in Bombali District and that the Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

1928. The Trial Chamber accordingly finds that the Prosecution established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Bombali District.

7. Freetown and the Western Area

1929. The Trial Chamber had found that AFRC troops engaged in unlawful killings of civilians as charged under Counts 3 through 5[3268] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3269] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes in the attack on Freetown, as charged under Counts 13 and 12 respectively.[3270] Finally, AFRC troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3271]

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1930. In its Final Brief, the Prosecution submits that the Accused Kamara was present when the attack on Freetown was planned and that it can be inferred from his position as second in command that he was therefore actively involved in the planning phase. It further contends that Kamara was often present when the Accused Brima issued unlawful orders.[3272]

[3268] Factual Findings, Unlawful Killings, para. 951, *supra*.
[3269] Factual Findings, Rape, para. 1068, *supra*; Outrages on Personal Dignity, para. 1170, *supra*; Physical Violence, para. 1203, *supra*.
[3270] Factual Findings, Enslavement, para. 1389, *supra*; Child Soldiers, para. 1278, *supra*.
[3271] Factual Findings, Acts of Terror and Collective Punishment, para. 1612, *supra*.
[3272] Indictment, para.1624

1931. The Prosecution further asserts that 'Captain Blood' carried out Kamara's order to execute civilians, ordered the burning of houses during the retreat towards Waterloo and was present when the Accused Brima ordered other burnings in Freetown and the Western Area.[3273]

1932. Finally, the Prosecution argues that the Accused Kamara carried out killings in Freetown, participated in burnings during the retreat from Freetown, and committed, instigated or aided and abetted the commission of sexual violence in Freetown.[3274]

1933. In its Final Brief, the Kamara Defence submits that the command structure during the Freetown invasion was not as it was described by Prosecution witnesses and that the Accused Kamara was not in Freetown at any time relevant to the Indictment. Therefore, he did not participate directly or indirectly in any of the crimes committed in Freetown.[3275]

(ii) Findings

a. Committing

i. Killings of civilians in the Fourah Bay Area

1934. The Trial Chamber has found that AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for an alleged murder of an AFRC soldier during the 1999 attack on Freetown.[3276] Although the evidence shows that the Accused Kamara "partook" in the attack, it does not specify the way in which he participated in the incident. The Trial Chamber has found that this evidence does not establish that the Accused Kamara personally killed any civilians.[3277]

1935. The Trial Chamber will assess his responsibility with regard to the mode of aiding and abetting.

ii. Killings of civilians at Wellington

1936. In early January 1999, on the way to Wellington, AFRC forces, including the Accused Kamara, shot at civilians.[3278] In the absence of specific evidence that civilians died as a result of Kamara's actions the Trial Chamber is not satisfied that the Accused Kamara personally killed any civilians.

[3273] Prosecution Final Brief, para. 1626, citing TF1-334, Transcript 14 June 2005, pp. 72-73.
[3274] Prosecution Final Brief, paras 1627-1628.
[3275] Kamara Final Brief, paras 210-219.
[3276] TF1-334, Transcript 14 June 2005, pp. 66-67.
[3277] Factual Findings, Unlawful Killings, paras 919-926, *supra*.
[3278] TF1-334, Transcript 14 June 2005, p. 98.

b. Ordering, Planning and Instigating

1937. The Trial Chamber finds no evidence that the Accused Kamara ordered, planned or instigated the commission of crimes in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in the Western Area.

1938. In view of the continuing nature of these crimes charged under Counts 9, 12 and 13 and the fact that they span across various districts the Trial Chamber will discuss the Accused Kamara's criminal responsibility for Counts 9, 12 and 13 below.[3279]

c. Otherwise aiding and abetting

i. Killings of civilians in Fourah Bay

1939. As stated above with regards to liability for commission of crimes in Fourah Bay, the Trial Chamber has found that there is evidence that the Accused Kamara "partook" in the attack on Fourah Bay in which civilians were killed and houses. While the precise meaning of "partook" is unclear, the Trial Chamber has found that Kamara was present during the commission of the crimes and either himself participated or failed to admonish the troops from committing the crimes.

1940. Given his authority as deputy commander of the troops, the Trial Chamber finds Kamara's presence at the scene gave moral support which had a substantial effect on the perpetration of the crime. In addition, given the systematic pattern of crimes committed by the AFRC troops throughout the District, the Trial Chamber is satisfied that the Accused Kamara was aware of the substantial likelihood that his presence would assist the commission of the crime by the perpetrators.

ii. "Operation Cut Hand" in Freetown

1941. The Accused Kamara led an mission to loot machetes from the World Food Program warehouse. He later explained to Tina Musa, the late SAJ Musa's wife, that they had been used that day in "Operation Cut Hand," meaning that his troops had used the machetes to amputate civilians.[3280] The Trial Chamber is satisfied that the Accused, in providing weapons to the troops, with knowledge of how these weapons were to be used, the Accused Kamara gave practical assistance which had a substantial effect on the perpetration of unlawful killings and physical

[3279] Responsibility of the Accused, Kamara, paras 1970-1976, *infra*.

violence in Freetown. It further finds that the Accused Kamara was aware of the substantial likelihood that the use of the machetes would assist in the commission of these crimes. The Trial Chamber therefore finds the Accused Kamara liable for aiding and abetting physical violence.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1942. The Prosecution submits that the Accused Kamara bears superior responsibility for all crimes committed by his subordinates in Freetown between 6 January 1999 until around 28 January 1999.[3281]

1943. The Kamara Defence submits that there was an absence of effective command and control over the fighters that attacked Freetown on 6 January 1999.[3282]

(ii) Findings

a. Existence of a superior-subordinate relationship

1944. The Trial Chamber has found that the Accused Kamara was deputy commander of the AFRC troops during the invasion of Freetown and that a functioning chain of command and a planning and orders process was in place until the senior command moved from State House.[3283]

1945. The Trial Chamber notes that evidence was adduced on the activities of the Accused Kamara during the Freetown invasion. The Accused Kamara was present at the meeting chaired by Brima at Orugu Village on 5 January 1999 in which the invasion of Freetown was planned; however, no evidence was adduced as to Kamara's contribution. The Accused Kamara was present at headquarters at State House immediately after it was captured on 6 January 1999.[3284] There is also evidence that he attended a meeting of senior commanders when an attack on Wilberforce, where ECOMOG forces were based, was discussed; however, no evidence was adduced as to his contribution.[3285] After the capture of the State House, the Accused Brima ordered that Pademba Road Prison should be opened and the prisoners released. The Accused Kamara, together with troops from 1st, 4th and 5th battalion, went to the prison and the door was blasted open. The Accused Kamara ordered that the released prisoners should move to State House; however, while some

[3280] TF1-153, Transcript 23 September 2005, p. 18.
[3281] Prosecution Final Brief, paras 1637-1640.
[3282] Kamara Final Brief, para. 66.
[3283] Role of the Accused, paras. 470-473, *supra*.
[3284] TF1-334, Transcript 14 June 2005, pp. 3-4; George Johnson, Transcript 16 September 2005, p. 39.

prisoners followed this order, others did not do so.[3286] The Accused Kamara spoke with 'Mosquito' on the radio prior to the capture of State House.[3287]

1946. Given the limited resources of the AFRC, the Trial Chamber is satisfied that this evidence proves that the Accused Kamara exercised a degree of authority over the AFRC faction.

1947. The Accused Kamara was present at the State House when the Accused Brima announced to the battalion commanders and others, that they were likely to lose "the ground totally" and that the burning of Freetown should start.[3288] After the loss of State House, the Accused Kamara gave an order to AFRC troops to burn houses.[3289]

1948. The Trial Chamber finds the evidence adduced indicates the continual presence of the Accused Kamara during the invasion of Freetown up until State House was lost. He was often in the company of other senior commanders, including the Accused Brima and the Accused Kanu, and gave a number of orders himself, he participated in decision making and did not distance himself from decisions made. The Trial Chamber is satisfied that the Accused's had both a *de jure* position of authority during this period, and the *de facto* ability to effectively control the AFRC troops under his command in Freetown.

b. Knowledge and failure to prevent or punish

1949. The Accused Kamara had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

c. Conclusion

1950. The Trial Chamber finds that the Prosecution has established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Freetown.

8. Port Loko District

1951. The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 4 through 5.[3290] In addition, AFRC troops

[3285] Gibril Massaquoi, Transcript 7 October 2005, pp. 119-120.
[3286] George Johnson, Transcript 16 September 2005, pp. 27-29.
[3287] TF1-184, Transcript 29 September 2005, p. 61.
[3288] TF1-334, Transcript 14 June 2005, p. 47.
[3289] TF1-184 Transcript 30 September 2005, p. 9.
[3290] Factual Findings, Unlawful Killings, para. 965, *supra*.

held persons in sexual slavery as charged under Count 9.[3291] AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

1952. The Trial Chamber has found that the unlawful killings committed in Manaarma are attributable to troops working with the Accused Kamara.[3292] The Trial Chamber has found that the unlawful killings committed in Nonkoba and the sexual crimes are not attributable beyond reasonable doubt to any particular group of fighters.

(a) Responsibility of the Accused Kamara Under Article 6(1) of the Statute

(i) Submissions

1953. In its Final Brief, the Prosecution asks the Trial Chamber to infer, based on the position of the Accused Kamara and his management of the troops, that he "designed and organised" the attacks on Port Loko District and that he is therefore liable for planning, instigating and/or aiding and abetting the crimes associated with the attacks.[3293] The Prosecution further contends that the Accused Kamara ordered the commission of crimes in Port Loko District.[3294]

1954. Finally, the Prosecution submits that the Accused Kamara committed a killing at Mamamah and a rape at Gberibana.[3295] The Trial Chamber notes that Mamamah and Gberibana were not locations specified in the Indictment under Counts 3-5 and 6 respectively.

1955. In its Final Brief, the Kamara Defence submits that the Accused Kamara was not in Port Loko District at any time relevant to the Indictment and that the command structure in Port Loko District was not as described by Prosecution witnesses.[3296]

(ii) Findings

1955a. The Prosecution has not adduced any evidence that the Accused Kamara committed, ordered, planned, instigated or otherwise aided and abetted any of the crimes committed in the Port Loko District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kamara for the crimes committed in Port Loko District.

[3291] Factual Findings, Outrages upon Personal Dignity, para. 1187, *supra*.
[3292] Factual Findings, Unlawful Killings, paras 955-957, *supra*.
[3293] Prosecution Final Brief, paras 1756-1758.
[3294] Prosecution Final Brief, para. 1759.
[3295] Prosecution Final Brief, para. 1760.
[3296] Kamara Final Brief, paras 224-234.

(b) Responsibility of the Accused Kamara Under Article 6(3) of the Statute

(i) Submissions

1956. The Prosecution submits in its Final Brief that the Accused Kamara bears superior responsibility for crimes committed by the AFRC troops in Port Loko District between January and April 1999 by virtue of his position as their commander.[3297]

1957. The Kamara Defence makes no submissions on the superior responsibility of the Accused specific to Port Loko District. The Kamara Defence relied on the testimony of four Defence witnesses to assert that the Accused Kamara was not commander in the West Side.

(ii) Findings

a. Existence of a superior-subordinate relationship

1958. The Trial Chamber has found that the Accused Kamara was the overall commander of AFRC troops in the area known as the 'West Side' in Port Loko District.[3298] The Trial Chamber has further found that the AFRC faction in Port Loko District had a chain of command and a planning and orders process.[3299]

1959. The Trial Chamber is satisfied, on the basis of the evidence, that the Accused Kamara had effective control over AFRC troops operating in the District. As examined above, Kamara was present in the District throughout the relevant period; established the command structure of the AFRC in the 'West Side'; gave orders to captains and troops which were carried out; appointed and promoted commanders; enforced discipline within the ranks and was in a position of *de jure* authority to other high level commanders including the Operations Commander[3300] who reported to him.

1960. The Trial Chamber is satisfied on the basis of the consistent evidence of both Prosecution and Defence witnesses, including the evidence of George Johnson himself, that George Johnson held a position of command and exercised active authority during the relevant period. However, evidence which suggests the presence and authority of other commanders in the District during the relevant period, does not, in and of itself, create a reasonable doubt of the ability of the Accused Kamara to exercise effective control over subordinates.

[3297] Prosecution Final Brief, paras 1753-1754, 1761-1764.
[3298] Role of Accused, para. 500, *supra*.

1961. The Trial Chamber recalls its findings that unlawful killings were committed in Nonkoba, Tendekum and Manaarma.[3301] The Trial Chamber is satisfied on the basis of the following evidence that only the unlawful killings in Maararma are attributable to AFRC troops under the command of the Accused Kamara.

1962. The Trial Chamber will now consider the available evidence on the role of Kamara in relation to the attack on Port Loko and Manaarma in order to determine whether the Accused Kamara was in effective control of Junior Lion and the troops underneath him.

1963. Witness George Johnson testified that some time prior to 27 April 1999, a meeting of commanders was held, attended by himself, the Accused Kamara, the Operations Director, Tito and the battalion commanders. At this meeting the commanders planned an attack on Port Loko to capture arms and ammunition from the Malians.[3302] Witness TF1-334 also testified that witness George Johnson was the commander that led the operation to Port Loko. He testified that 'Bazzy' ordered Junior Lion to lead the attack and also ordered that troops were to burn down any village and kill civilians en route.[3303]

1964. Witness George Johnson testified that after he led the operation on Port Loko which included the attacks on Manaarma, he established communication with 'Bazzy' who sent 'Tito' with some civilians to collect the arms and ammunition.[3304] On his return to camp, he reported to the Accused Kamara and informed him of the alleged conduct of Cyborg. However, the witness stated that Kamara was so happy about the success of the operation that he neglected to take any action.[3305] Rather, the Accused Kamara sent a 'signal message' to Sam Bockarie in Kailahun recommending the witness for promotion. Bockarie endorsed the recommendation and the witness became a colonel.[3306] Witness George Johnson testified that subsequent operations to obtain arms and ammunition were planned by him and carried out at Newton, Mile 38 and Gberi Junction before the signing of the peace process.[3307] He does not refer to Manaarma in his evidence.

[3299] Military Structure of AFRC Fighting Force, para. 635, *supra*.
[3300] Name admitted under seal: exhibit P-12.
[3301] Factual Findings, Unlawful Killings, paras 955-957, *supra*.
[3302] George Johnson, Transcript 16 September 2005, pp. 72-74, 79.
[3303] TF1-334, Transcript 15 June 2005, p. 35.
[3304] George Johnson, Transcript 16 September 2005, p. 78.
[3305] George Johnson, Transcript 16 September 2005, pp. 76, 78-79.
[3306] George Johnson, Transcript 16 September 2005, p. 79.
[3307] George Johnson, Transcript 16 September 2005, pp. 79-80.

1965. Both witnesses TF1-334 and George Johnson testified that after the attack, 'Bazzy' contacted Mosquito to inform him of its success and the capture of the Malian soldiers.[3308] The Trial Chamber notes that witness Gibril Massaquoi testified that Bazzy sent a message to Gullit regarding the attack on Port Loko.[3309] Neither witnesses George Johnson nor TF1-334 mention this.

b. Actual or Imputed Knowledge

1966. Prosecution Witness George Johnson testified that en route to Port Loko, he sent an advance troop to secure a village ahead. Upon arrival there, he observed a number of dead civilians and 'Sheriff' complained to him that 'Cyborg' had amputated and killed civilians in the villages.[3310] The Trial Chamber has found that this village was Manaarma.

1967. George Johnson further testified that on his return to camp after the successful operation to Port Loko, he reported to the Accused Kamara, informing him of the conduct of 'Cyborg'. The Trial Chamber is accordingly satisfied that the Accused Kamara had actual knowledge of the commission of crimes in Manaarma by his subordinates.

c. Failure to prevent or punish

1968. George Johnson stated that the Accused Kamara did not take any disciplinary action in response to his report regarding the killings in Manaarma. Rather, the Accused Kamara radioed Sam Bockarie in Kailahun and recommended that the witness be promoted to Colonel, and Bockarie subsequently endorsed this promotion. George Johnson testified that the Accused Kamara did not take any action.[3311] Trial Chamber is satisfied that the Accused Kamara failed to punish his subordinates for committing unlawful killings in Port Loko District.

d. Conclusion

1969. The Trial Chamber finds that it has been established beyond reasonable doubt that the Accused Kamara is liable as a superior under Article 6(3) for crimes committed in Manaarma in Port Loko District.

[3308] TF1-334, Transcript 15 June 2005, pp. 36-37.
[3309] Gibril Massaquoi, Transcript 9 October 2005, pp. 87-102.
[3310] George Johnson, Transcript 16 September 2005, pp. 75-76.
[3311] George Johnson, Transcript 16 September 2005, pp. 78-79.

9. Responsibility of the Accused Kamara for Crimes of Enslavement

(a) Responsibility Under Article 6(1) of the Statute

1970. The Trial Chamber has found that civilians were subjected to outrages upon personal dignity as charged under Count 9; that children under the age of 15 were conscripted into the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13.

1971. As with the Accused Brima, the Trial Chamber will examine the evidence in relation to the responsibility of the Accused Kamara for each of the enslavement crimes as a whole. The Trial Chamber recalls its finding that the only reasonable inference available from the systemic commission of these crimes on a large scale is that these crimes were planned.[3312]

1972. While the Trial Chamber has found that the Accused Kamara was overall commander in Kono District after the departure of Johnny Paul Koroma, the Prosecution has not established that he was involved or substantially contributed in this position to the enslavement crimes in that district.[3313] However the Trial Chamber finds that, in his position as overall commander, he was aware that civilians were abducted and subjected to enslavement in that district.

(b) Responsibility Under Article 6(3) of the Statute

(i) Kono District

1973. The Trial Chamber has found that in Kono District an unknown number of civilians were abducted and used as forced labour; civilians were subjected to sexual slavery; and children under the age of 15 were conscripted into armed groups or used to participate in active hostilities. The Trial Chamber recalls its finding that the Accused Kamara had effective control over the AFRC forces in Kono District led by known SLA commanders 'Savage', SLA Operation Commander and witness TF1-334 while Brima was in detention in Kailahun. The Trial Chamber must therefore determine whether the enslavement crimes proven in Kono District are attributable to AFRC forces under the command of the Accused Kamara.

1974. The Trial Chamber has found, on the evidence of witness TF1-334, that from early March 1998, the Operations Commander and other soldiers went to villages in Kono District and captured civilians who were then used as forced labour or subjected to sexual slavery. Children were also

[3312] Responsibility of the Accused, Brima, para. 1823, *supra*.

captured who were conscripted into the AFRC force.[3314] While the Trial Chamber is satisfied that the Operations Commander was under the effective control of the Accused Kamara after the departure of Johnny Paul Koroma from Kono District. The evidence adduced does not establish beyond reasonable doubt whether these crimes were committed prior to the departure of Johnny Paul Koroma or subsequently when the Accused Kamara had effective command over the AFRC commanders who were among the perpetrators.

1975. The Trial Chamber has found that Witnesses DAB-098, TF1-072 and TF1-216, along with an unknown number of other civilians, were captured in approximately March 1998 in Kono District and enslaved in Tombodu. The Trial Chamber is satisfied, from the testimony of these witnesses, that the perpetrators of these crimes were led by AFRC commanders 'Savage' and 'Staff Alhaji', who were under the effective control of the Accused Kamara.

1976. The Trial Chamber accordingly finds the Accused Kamara liable as a superior under Article 6(3) for the crime of enslavement in Kono District.

(ii) Port Loko District

1977. The Trial Chamber has made no findings on Counts 12 and 13. The Trial Chamber notes the evidence of witnesses TF1-282 and TF1-085 who were subjected to sexual slavery in Port Loko District.[3315] However, the evidence adduced does not establish beyond reasonable doubt that the perpetrators of these crimes were troops under the command of the Accused Kamara.

[3313] Role of the Accused, para. 461, *supra*.
[3314] Name admitted under seal: exhibit P-12. *See* Factual Findings, Child Soldiers, para. 1278, *supra*.
[3315] Factual Findings, Outrages on Personal Dignity, paras 1087-1099, 1174-1184, *supra*.

D. The Accused Kanu

1. Allegations in the Indictment

1978. The Indictment alleges:

> At all times relevant to this Indictment, Santigie Borbor Kanu was a senior member of the AFRC, Junta and AFRC/ RUF forces.
>
> Santigie Borbor Kanu was a member of the group of 17 soldiers which staged the coup and ousted the government of President Kabbah. In addition, Santigie Borbor Kanu was a member of Junta governing body, the AFRC Supreme Council.
>
> Between mid February 1998 and 30 April 1998, Santigie Borbor Kanu was a senior commander of the AFRC/RUF forces in Kono District. In addition, Santigie Borbor Kanu was a commander of AFRC/RUF forces which conducted armed operations throughout the north, eastern and central areas of the Republic of Sierra Leone, including, but not limited to, attacks on civilians in Koinadugu and Bombali Districts between about mid February 1998 and 31 December 1998. Santigie Borbor Kanu, along with Alex Tamba Brima and Brima Bazzy Kamara, was also one of three commanders of AFRC/RUF forces during the attack on Freetown on 6 January 1999.
>
> [...]
>
> In [his] positions referred to above, [...] Santigie Borbor Kanu, individually or in concert with [the Accused Brima and the Accused Kamara], Johnny Paul Koroma aka JPK, Foday Saybana Sankoh, Sam Bockarie aka Mosquito aka Maskita, Issa Hassan Sesay aka Issa Sesay, Morris Kallon aka Belai Karim, Augustine Gbao aka Augustine Bao and/or other superiors in the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.
>
> [...]
>
> [...] Santigie Borbor Kanu, by [his] acts or omissions, [is] individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes [he] planned, instigated, ordered, committed or in whose planning, preparation or execution [he] otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which [he] participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which [he] participated.
>
> In addition, or alternatively, pursuant to Article 6.3. of the Statute, [...] Santigie Borbor Kanu, while holding positions of superior responsibility and exercising effective control over [his] subordinates, [is] individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. [The] Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and [...] failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.[3316]

1979. The Trial Chamber notes that the Indictment alleges additionally, in relation to the Counts set out therein, that "by their acts or omissions in relation to these events, Alex Tamba Brima,

[3316] Indictment, paras 28-30, 31, 35-36.

Brima Bazzy Kamara and Santigie Borbor Kanu, pursuant to Article 6.1. and, or alternatively, Article 6.3. are individually criminally responsible for the crimes alleged [...]."[3317]

1980. Where there have been submissions by the Parties specific to each Accused, District and mode of liability, they have been considered as they arise in the findings below.

1981. In view of the continuing nature of the crimes charged under Counts 9, 12 and 13 and the fact that such crimes span various districts, the Trial Chamber has dealt with these counts separately below.

2. Bo, Kenema and Kailahun Districts

1982. In its factual findings, the Trial Chamber found that an unknown number of civilians were unlawfully killed by AFRC/RUF forces in Bo District in June 1997, as charged under Counts 4 through 5. Civilians were also terrorised and subjected to collective punishment, as charged under Counts 1 and 2.[3318]

1983. The Trial Chamber also found that AFRC/RUF forces committed a number of crimes in Kenema District in this period. Civilians were unlawfully killed, as charged under Counts 4 and 5,[3319] and physical violence was inflicted on an unknown number of civilians as charged under Count 10.[3320] Children were illegally recruited and used for military purposes, as charged under Count 12.[3321] An unknown number of civilians were abducted and used as forced labour at Cyborg Pit in Tongo Field, as charged under Count 13.[3322] Finally, civilians were terrorised and subjected to collective punishment, as charged under Counts 1 and 2.

1984. The Trial Chamber further found that RUF troops abducted civilians and used them as forced labour in Kailahun District during the Junta period, as charged under Count 13.[3323]

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

[3317] Indictment paras 41, 50, 57, 64, 65, 73, 79.
[3318] Factual Findings, Acts of Terror and Collective Punishment, para. 826, *supra*.
[3319] Factual Findings, Unlawful Killings, para. 840, *supra*.
[3320] Factual Findings, Physical Violence, para. 1197, *supra*.
[3321] Factual Findings, Child Soldiers, paras 1276-1278, *supra*.
[3322] Factual Findings, Enslavement, para. 1309, *supra*.
[3323] Factual Findings, Enslavement, para. 1374.

1985. In its Final Brief, the Prosecution argues that given his position in the Government, the Accused Kanu was aware of the AFRC Government policies which included the use of forced labour in Bo and Kenema Districts.[3324] It submits that the Accused Kanu is therefore liable for planning, instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the AFRC government period.[3325]

1986. In its Final Brief, the Kanu Defence submits that the perpetrators of the crimes in Bo and Kenema Districts were soldiers who were present in the District before the AFRC coup and who were under the command of their local commanders during the Indictment period.[3326] The Defence submits that the SLA brigades based in Bo and Kenema Districts operated independently from the AFRC Government seated in Freetown.[3327]

(ii) Findings

a. Committing and Ordering

1987. The Prosecution has not adduced any evidence that the Accused Kanu committed or ordered any of the crimes that occurred in Bo, Kenema and Kailahun Districts. The Trial Chamber accordingly finds that the Prosecution has not proved either of these modes of individual criminal responsibility against the Accused Kanu for the crimes that occurred in Bo, Kenema and Kailahun Districts.

b. Planning

1988. The Trial Chamber recalls its finding that the Accused Kanu participated in high-level coordination meetings of the AFRC government, but that no evidence was adduced that the crimes committed in Bo, Kenema and Kailahun Districts were planned at these meetings.[3328]

1989. The Prosecution has not adduced any evidence that the Accused Kanu made a substantial contribution to the planning of the crimes committed in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bo, Kenema and Kailahun Districts.

[3324] Prosecution Final Brief, para. 516.
[3325] Prosecution Final Brief, para. 520.
[3326] Kanu Final Brief, paras 369-371.
[3327] Kanu Final Brief, para. 372.
[3328] Role of the Accused, Kanu, para. 511, *supra*

c. Instigating

1990. The Prosecution has not adduced any evidence that the Accused Kanu prompted or influenced the perpetrators of the crimes committed in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bo, Kenema and Kailahun Districts.

d. Otherwise aiding and abetting

1991. The Prosecution has not adduced any evidence that the Accused Kanu gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bo, Kenema and Kailahun Districts. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for crimes committed in Bo, Kenema and Kailahun Districts.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

1992. The Prosecution submits in its Final Brief that the Accused Kanu bears superior responsibility for crimes committed during the AFRC Government period by virtue of his position as a member of the Supreme Council.[3329] The Prosecution also submits that the Accused Kanu was "only beneath Johnny Paul Koroma, SAJ Musa and the 3 PLOs in the Junta hierarchy".[3330]

1993. The Kanu Defence submits that superior responsibility cannot be based on the Accused Kanu's mere participation in or membership of the AFRC, as this would be "tantamount to strict liability on the basis of organizational responsibility".[3331]

(ii) Findings

1994. The Trial Chamber reiterates its earlier observations that asserting *de jure* seniority does not suffice to prove liability under Article 6(3).[3332] The Trial Chamber emphasises that in evaluating the evidence, the first element of the test for superior responsibility is whether the Accused Kanu was

[3329] Prosecution Final Brief, paras 521-524.
[3330] Prosecution Final Brief, para. 515.
[3331] Kanu Final Brief, para. 190. *See generally* paras 186-193.
[3332] Responsibility of the Accused, para. 1923, *supra*.

personally able to exercise effective control over subordinates. Membership of the Supreme Council alone does not satisfy the evidentiary burden on the Prosecution.

1995. Little evidence was adduced with respect to the role of the Accused Kanu during the AFRC Government period. It has been established that the Accused Kanu was a member of the Supreme Council and attended Council meetings.[3333] There is no evidence that he possessed any particular responsibility or performed any individual functions at such meetings. The Trial Chamber has found that it was not established whether the Accused Kanu made any real practical contributions to the policies or running of the AFRC government.[3334] Beyond his position in the AFRC Government, there is no evidence which links the Accused Kanu as a superior to crimes perpetrated by the troops in Bo, Kenema and Kailahun Districts.

1996. The Trial Chamber therefore finds that the Prosecution has not proved beyond reasonable doubt that a superior-subordinate relationship existed between the Accused Kanu and these troops. In the absence of this first element of superior responsibility, it is unnecessary to consider whether the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators thereof.

3. Kono District

1997. The Trial Chamber found that in the period February through June 1998, AFRC/RUF troops in Kono District unlawfully killed civilians, as charged under Counts 3 through 5,[3335] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3336] AFRC/RUF troops also abducted civilians and used them as forced labour, as charged under Count 13,[3337] and used illegally recruited children for military purposes, as charged under Count 12.[3338] Finally, AFRC/RUF troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3339]

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

[3333] Role of Accused, paras 509-510, *supra*.
[3334] Role of the Accused, para 511, *supra*.
[3335] Factual Findings, Unlawful Killings, para. 857, *supra*.
[3336] Factual Findings, Sexual Violence, para. 1213, *supra*.
[3337] Factual Findings, Physical Violence, para. 1333, *supra*.
[3338] Factual Findings, Child Soldiers, para. 1278, *supra*.
[3339] Factual Findings, Pillage, paras 1525, 1527, *supra*.

1998. In its Final Brief, the Prosecution asserts that the "three Accused are individually criminally responsible under the theory of joint criminal enterprise" and does not refer to other modes of liability. [3340] The Prosecution then submits that only Kamara bears liability under Articles 6(1) and (3) of the Statute.[3341] Furthermore, the Prosecution submits in its Closing Arguments that

> for Kono, during the crimes committed in the Indictment period after the intervention, it is the case of the Prosecution that only Kamara was present when the crimes were committed. Brima and Kanu however can still be held liable for those crimes under the theory of a JCE.[3342]

1999. In its Final Brief, the Kanu Defence submits that the Prosecution failed to provide evidence that the Accused Kanu was present in Kono District for "more than a few days" and that it failed to show that Kanu had any authority during the Indictment period.[3343]

(ii) Findings

2000. The Prosecution has not adduced any evidence that the Accused Kanu committed, ordered, planned, instigated or otherwise aided and abetted any of the crimes committed in Kono District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in Kono District.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

2001. The Prosecution makes no submission in its Final Brief that the Accused Kanu bears superior responsibility for crimes committed in Kono District. The Prosecution case is that the Accused Kanu was shuttling between SAJ Musa in Koinadugu and the Accused Kamara in Kono in order to keep SAJ Musa informed of the developments on the ground in Kono.[3344]

2002. The Kanu Defence cites witness TF1-033 to demonstrate that Kanu was only *one* of the commanders present in Tombodu in 1998, the others being Hassan Papa Bangura, Franklyn Woyo Conteh alias 'Woyo', 'Savage', Ibrahim Bazzy Kamara, Ibrahim Sesay alias 'Biyoh', and Abdul Sesay.[3345] The Kanu Defence asserts that thus, the "evidence is insufficient in holding the Third

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[3340] Prosecution Final Brief, para. 1279.
[3341] Prosecution Final Brief, para. 1279.
[3342] Transcript 7 December 2006, p. 34-35.
[3343] Kanu Final Brief, paras 386-391.
[3344] TF1-334, Transcript 18 May 2005, pp. 19-20, Transcript 16 June 2005, p. 37.
[3345] Kanu Final Brief, para. 406; TF1-033, Transcript 11 July 2005, pp. 11-12.

Accused responsible for superior responsibility for the crime of collective punishment, as his mere presence as a commander, one of many, is mentioned".[3346]

(ii) Findings

2003. The Trial Chamber has already found that the evidence regarding the role of the Accused Kanu in Kono District is inconclusive.[3347] The evidence adduced is insufficient to establish that the Accused Kanu occupied a particular position in the AFRC command structure established by the Accused Kamara or that he had any troops under his effective control.

2004. The Trial Chamber accordingly finds the Prosecution has not established that the Accused Kanu was in a superior-subordinate relationship with the perpetrators of the crimes committed in Kono District. In the absence of this first element of superior responsibility, it is unnecessary to consider whether the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators thereof.

2005. The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in Kono District.

4. Kailahun District

2006. The Trial Chamber found that an unknown number of civilians were unlawfully killed by RUF forces in or around February 1998, as charged under Count 5,[3348] and that RUF troops or troops not established beyond a reasonable doubt to be members of the AFRC abducted civilians and used them as forced labour in Kailahun District in the period following 14 February 1998.[3349]

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

2007. In its Final Brief, the Prosecution alleges that the Accused Kanu was liable for crimes committed in Kailahun as a principal in a joint criminal enterprise and does not refer to any other form of liability.[3350]

[3346] Kanu Final Brief, para. 408.
[3347] Role of Accused, para. 515, *supra*.
[3348] Factual Findings, Unlawful Killings, para 864, *supra*.
[3349] Factual Findings, Enslavement, para 1394, *supra*.
[3350] Prosecution Final Brief, para. 1406.

2008. The Kanu Defence submits that Kailahun District was under the exclusive control of the RUF and that the Accused Kanu was never present there.[3351]

(ii) Findings

2009. The Prosecution has not adduced any evidence that the Accused Kanu committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes committed in the Kailahun District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in the Kailahun District.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

2010. The Prosecution makes no submission in its Final Brief that the Accused Kanu has superior responsibility for crimes committed in Kailahun District in this period. The Kanu Defence does not make submissions specific to Kailahun District in its Final Brief arguments on the superior responsibility of the Accused Kanu.

(ii) Findings

2011. The Trial Chamber recalls its findings that the only proven perpetrators of crimes committed in Kailahun District during this period were members of the RUF. The Trial Chamber also recalls its finding that the AFRC and the RUF were not working together in Kailahun during this period.[3352]

2012. The Trial Chamber found that there is conflicting evidence regarding the activities of the Accused Kanu in the period February-May 1998, when he joined the group of SLA troops led by the Accused Brima in Mansofinia. The Trial Chamber is not satisfied on the evidence adduced that the Accused Kanu exercised effective control over any members of the RUF in Kailahun District after February 1998.

2013. In the absence of this first element of superior responsibility, it is not necessary to consider whether there is any evidence that the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

[3351] Kanu Final Brief, paras 376-384.
[3352] Context of the Alleged Crimes, paras 187-188, *supra*.

2014. The Trial Chamber accordingly finds that the Accused Kanu is not liable under Article 6(3) for crimes committed in Kailahun District.

5. Koinadugu District

2015. The Trial Chamber found that AFRC/RUF forces unlawfully killed or inflicted sexual or physical violence on an unknown number of civilians in Koinadugu District in the period February through September 1998, as charged under Counts 4 through 5, 6 through 9 and 10 respectively.[3353] In addition, an unknown number of civilians were abducted and used as forced labour, as charged under Count 13.[3354] Children were used for military purposes, as charged under Count 12.[3355] Finally, AFRC/RUF forces also engaged in looting of civilian homes, as charged in Count 14. [3356]

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

2016. In its Final Brief, the Prosecution alleges that the three Accused are liable for planning and instigating or otherwise aiding and abetting the crimes committed in Koinadugu District. It argues that the crimes followed a consistent pattern.[3357]

2017. In its Final Brief, the Kanu Defence submits that several AFRC groups moved from Koinadugu District to Bombali District, and that the Accused Kanu was not part of the group that included Prosecution Witness George Johnson.[3358]

(ii) Findings

2018. The Prosecution has not adduced any evidence that the Accused Kanu committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Koinadugu District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in the Koinadugu District.

[3353] Factual Findings, Unlawful Killings, para. 879, *supra*; Sexual Violence, paras 1026, 1133, *supra*; Physical Violence, para. 1218, *supra*.
[3354] Factual Findings, Enslavement, para. 1350, *supra*.
[3355] Factual Findings, Child Soldiers, para. 1277, *supra*.
[3356] Factual Findings, Pillage, para. 1409, *supra*.
[3357] Prosecution Final Brief, paras 1412-1413.
[3358] Kanu Final Brief, paras 392-395.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

2019. The Prosecution submits that the Accused Kanu has superior responsibility for all crimes committed in the attack on Yifin.[3359]

2020. The Kanu Defence makes no submissions on the superior responsibility of the Accused Kanu specifically in relation to crimes committed in Koinadugu District.

(ii) Findings

2021. The Trial Chamber notes that the Prosecution did not specify Yifin as a location in the Indictment under Counts 3 through 6, 8 through 11, and 14 and therefore, no findings have been made in this regard. No evidence has been adduced that the crimes committed under Counts 9, 12 or 13 in Koinadugu District are attributable to the Accused Kanu.[3360]

2022. The Trial Chamber has found that the crimes under Counts 3 to 6, 8 to 11, and 14 committed in other locations in Koinadugu District were perpetrated by AFRC/RUF forces associated with groups led by SAJ Musa and 'Superman'. The evidence on the activities of the Accused Kanu between February and late April or early May 1998 is inconclusive.[3361] The Accused Kanu was then sent by SAJ Musa to accompany the Accused Brima's group from Mansofinia to Rosos.[3362] The Prosecution has not submitted, nor is there evidence to the effect that, the Accused Kanu was in a command position in relation to the troops of SAJ Musa or Superman, either between February and late April or early May, or while he was with the Accused Brima's group thereafter.

2023. In the absence of the existence of a superior-subordinate relationship between the Accused Kanu and the perpetrators of the crimes in Koinadugu District, it is unnecessary to consider whether there is any evidence that the Accused Kanu had actual or imputed knowledge of the crimes committed and failed to prevent or punish the perpetrators.

2024. The Trial Chamber accordingly finds that the Prosecution has not established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed by AFRC/RUF troops in Koinadugu District.

[3359] Prosecution Final Brief, paras 1414-1416.
[3360] Factual Findings, paras 1126, 1350.
[3361] Role of Accused, para 522, *supra*.
[3362] Role of Accused, para 518, *supra*.

6. Bombali District

2025. The Trial Chamber found that AFRC troops in Bombali District engaged in unlawful killings of civilians as charged under Counts 3 through 5[3363] and inflicted sexual and physical violence on civilians as charged under Counts 6 to 9 and 10 and 11 respectively.[3364] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes, as charged under Counts 13 and 12 respectively.[3365] Finally, AFRC troops terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3366]

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

2026. In its Final Brief, the Prosecution contends that the Accused Kanu was present when the order was given to burn Karina and kill its inhabitants and that he assisted in the planning phase. The Prosecution submits that Kanu also helped to lead the attack on Bornoya where numerous civilians were killed.[3367] The Prosecution further argues that it is inferable from the position of the Accused Kanu, coupled with the systematic nature of the crimes committed in Bombali District, that he prompted or encouraged these acts. Additionally, he either intended such acts or was aware of the substantial likelihood that such crimes would be committed.[3368] Finally, the Prosecution asserts that at Camp Rosos, the Accused Kanu was in charge of training child soldiers and was in total control of the women at the camp.[3369]

2027. In its Final Brief, the Kanu Defence submits that several AFRC groups moved from Koinadugu District to Bombali District, and that the Accused Kanu was not part of the group that included Prosecution Witness George Johnson.[3370] The Kanu Defence further contends that the Prosecution has led no evidence regarding the involvement of the Accused Kanu in the illegal recruitment of child soldiers and that the evidence regarding his involvement in training these children for military purposes is vague.[3371]

[3363] Factual Findings, Unlawful Killings, para 897, *supra*.
[3364] Factual Findings, Physical Violence, para 1224, *supra*.
[3365] Factual Findings, Sexual Violence, paras 1253-1254, *supra*.
[3366] Factual Findings, Pillage, paras 1568, 1571, *supra*.
[3367] Prosecution Final Brief, para. 1511.
[3368] Prosecution Final Brief, para. 1512.
[3369] Prosecution Final Brief, para. 1512.
[3370] Kanu Defence Final Brief, paras 392-395.
[3371] Kanu Defence Final Brief, paras 427-434.

(ii) Findings

a. Committing/Ordering

2028. The Prosecution has not adduced any evidence that the Accused Kanu committed or ordered any of the crimes that occurred in Bombali District. The Trial Chamber finds that the Prosecution has not proved either of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in the Bombali District.

b. Planning

2029. The Prosecution has not adduced any evidence that the Accused Kanu planned any crimes under Counts 3 to 6, 10 to 11 and 14 in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed under those counts. The Accused Kanu's criminal responsibility for Counts 9, 12 and 13, which are crimes of a continuing nature spanning various districts, will be discussed below.[3372]

c. Instigating

2030. The Prosecution has not adduced any evidence that the Accused Kanu prompted or influenced the perpetrators of the crimes committed in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in the Bombali District.

d. Otherwise aiding and abetting

2031. The Prosecution has not adduced any evidence that the Accused Kanu gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of crimes in Bombali District. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Bombali District.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

[3372] Responsibility of the Accused, Kanu, paras 2091-2095, *infra*.

2032. The Prosecution submits that the Accused Kanu bears superior responsibility for all crimes committed in Bombali District from 1 May 1998 until 30 November 1998 by virtue of the high level of authority he possessed as third in command.[3373] The Prosecution further submits that the Accused Kanu was in charge of training child soldiers and was in total control of women at the camp.[3374]

2033. The submissions of the Kanu Defence were comparatively detailed and will be discussed further as they arise in the findings below. However, the Kanu Defence's position can be summarised as follows. First, it argues that the Prosecution evidence conflicts on whether the Accused Kanu was Chief of Staff or G5 and that he cannot have occupied both positions. The Kanu Defence further submits that neither position entails command authority, since the Prosecution has not established that the Accused Kanu ever functioned as an operational commander, which it defines as "a military leader in command and control of a fighting unit".[3375] The Kanu Defence then accepts that the Accused Kanu was responsible for civilians but argues that in this role he protected them and this does not equate to command responsibility for operations conducted by the SLAs.[3376]

(ii) Findings

a. Existence of a superior-subordinate relationship

2034. The Trial Chamber found that the AFRC faction had a functioning chain of command, planning and orders process and disciplinary system in Bombali District.[3377] The Trial Chamber found that the Accused Kanu was Chief of Staff, commander in charge of civilians and commander in charge of military training.

2035. The Trial Chamber finds the evidence that the Accused Kanu was Chief of Staff does not of itself permit conclusions to be drawn as to his ability to control his subordinates. Prosecution Military Expert Colonel Iron testified that in traditional military organisations, the Chief of Staff is the person that heads the staff of the commander and is essentially responsible for implementing the commander's decisions.[3378] Colonel Iron stated that from the evidence that he was given, the Accused Kanu appeared to have performed the same function for the Accused Brima.[3379]

[3373] Prosecution Final Brief, para 1513.
[3374] Prosecution Final Brief, para 1512.
[3375] Kanu Final Brief, para. 188.
[3376] *See* Kanu Final Brief, paras 186-279.
[3377] Military Structure of the AFRC Fighting Force, para 600, *supra*.
[3378] Colonel Iron, Transcript 12 October 2005, p. 59.
[3379] Colonel Iron, Transcript 13 October 2005, p. 3.

2036. The Trial Chamber does not find this conclusion particularly helpful, as this description of the Accused Kanu's role does not indicate whether he had effective control over any of the AFRC troops that committed crimes in Bombali District. However, there is other evidence which goes to prove that the Accused Kanu commanded troops on military operations, thus establishing the existence of a superior/subordinate relationship.

2037. Witness TF1-334 testified that while the troops were at Rosos, the Accused Kanu led an operation to Gbinti.[3380] The plan, formulated at Rosos, was to capture the town by pretending to surrender. The soldiers captured a civilian en route, who told them that ECOMOG soldiers were in the town. The Accused Kanu decided that the surrendering tactic would not work. He ordered that the men attack the town immediately, which they did.[3381] The ECOMOG forces withdrew and the Accused Kanu ordered that the town be looted and burned. Soldiers wrote, among other epithets, the words 'Five-Five in town' on the walls.[3382] After this operation, the soldiers returned to Rosos and reported to the Accused Brima.[3383]

2038. Witness George Johnson testified that the Accused Kanu was one of the commanders who led the troops into Karina when the town was burnt and its inhabitants killed.[3384] According to the Witness, the Accused Kanu was a member of the headquarters group who "take care of all the operations, and all the orders come from the headquarters". The Witness also said that "headquarters [was] in charge of planning all operations and giving military orders".[3385] Witness TF1-334 confirmed that the Accused Kanu, as chief of staff, was present when the Accused Brima gave orders to attack and burn Karina, amputate the citizens, and capture strong men, as a demonstration "to shock the whole country."[3386]

2039. Witness TF1-158 gave evidence that the Accused Kanu was one of the leaders of the troops who attacked Bornoya, where looting took place and civilians were amputated and killed.[3387]

2040. The Trial Chamber is satisfied that this evidence proves beyond reasonable doubt that the Accused Kanu had effective control over his AFRC subordinates in Bombali District.

b. Actual or Imputed Knowledge and Failure to Prevent or Punish

[3380] TF1-334, Transcript 24 May 2005, p. 48.
[3381] TF1-334, Transcript 24 May 2005, pp. 48-49.
[3382] TF1-334, Transcript 24 May 2005, p. 50.
[3383] TF1-334, Transcript 24 May 2005, p. 50.
[3384] George Johnson, Transcript 15 September 2005, p. 54.
[3385] George Johnson, Transcript 15 September 2005, p. 60.

2041. The Trial Chamber is also satisfied on the evidence beyond reasonable doubt that in his role as leader of the attacks, the Accused Kanu knew or should have known of the crimes committed by his troops and that it was within his ability to have prevented such crimes or to have punished his subordinates for committing them, but that he failed to take the necessary and reasonable measures to do so.

2042. The Kanu Defence submits that the Accused Kanu's responsibilities with respect to civilians was 'protective'.[3388] The Trial Chamber rejects this submission. The factual findings demonstrate that the Accused Kanu presided over a system that institutionalised serious abuse of civilians. The characterisation of the Accused Kanu's function as 'protective' is incorrect and unacceptable.

2043. The Trial Chamber thus finds that the Prosecution has established beyond reasonable doubt that the Accused Kanu knew or ought to have known of the commission of crimes by his subordinates in Bombali District and failed to prevent or punish the perpetrators thereof.

c. Conclusion

2044. The Trial Chamber finds that the Prosecution has established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in Bombali District.

7. Freetown and the Western Area

2045. The Trial Chamber had found that AFRC troops engaged in unlawful killings of civilians as charged under Counts 3 through 5[3389] and inflicted sexual and physical violence on civilians as charged under Counts 6 through 9 and 10 respectively.[3390] AFRC troops also abducted civilians and used them as forced labour and used children illegally recruited for military purposes in the attack on Freetown, as charged under Counts 13 and 12 respectively.[3391] Finally, AFRC troops engaged in widespread looting, as charged under Count 14, terrorised the civilian population, as charged under Count 1, and committed collective punishments, as charged under Count 2.[3392]

[3386] TF1-334, Transcript 23 May 2005, p. 58.
[3387] TF1-158, Transcript 26 July, 2005, p. 32.
[3388] Kanu Final Brief, paras 267-279.
[3389] Factual Findings, Unlawful Killings, para. 951, *supra*.
[3390] Factual Findings, Sexual Violence, para. 1243, *supra*, Physical Violence, para. 1170, *supra*.
[3391] Factual Findings, Enslavement, para. 1389, *supra*, Child Soldiers, para. 1278, *supra*.
[3392] Factual Findings, Pillage, para. 1429, *supra*, Acts of Terror and Collective Punishments, para. 1609, *supra*.

(a) Responsibility of the Accused Kanu under Article 6(1) of the Statute

(i) Submissions

2046. In its Final Brief, the Prosecution submits that the Accused Kanu personally executed and amputated civilians, burned property, forced civilians to work and committed or aided and abetted acts of sexual violence in Freetown and the Western Area.[3393] The Prosecution argues that the Accused Kanu ordered amputations and executions of civilians.[3394] The Prosecution contends that the Accused Kanu was present during the planning of the attack on Freetown, and that it can be inferred from his position as third in command that he actively participated in this planning phase.[3395] Finally, the Prosecution submits that based on the Accused Kanu's authority and the widespread nature of the crimes committed, it can be reasonably inferred that he prompted or encouraged these acts, and that he intended the acts or was aware of the substantial likelihood that such acts would be committed.[3396]

2047. In its Final Brief, regarding the role of the Accused Kanu in killings at a mosque at Kissy, the Kanu Defence argues that the victims were ECOMOG soldiers and therefore that the Accused cannot be held liable for any crimes under the Statute.[3397] The Kanu Defence further submits that the evidence of Prosecution witness TF1-282, who testified that she had been raped by the Accused Kanu, was unreliable.[3398] The Kanu Defence contends that the Prosecution witness George Johnson's evidence regarding Kanu's order at Kissy Mental Home to amputate civilians is unsafe.[3399] It further contends that Prosecution witness TF1-184's evidence that the Accused Kanu demonstrated a method for carrying out amputations does not suffice to hold him liable under Counts 10 and 11. Finally, it submits that Prosecution witness TF1-334's testimony as a whole, including his testimony regarding the role of the Accused in amputations committed in Freetown, is unreliable.[3400]

(ii) Findings

a. Committing

i. Fourah Bay: The killing of civilians

[3393] Prosecution Final Brief, paras 1634-1636.
[3394] Prosecution Final Brief, para. 1631.
[3395] Prosecution Final Brief, para. 1629.
[3396] Prosecution Final Brief, para. 1630.
[3397] Kanu Final Brief, paras 412-414. *See also* Kanu Closing Arguments, 8 December 2006, p. 37.
[3398] Kanu Final Brief, paras 415-416.

2048. The Trial Chamber has found that AFRC troops killed an unknown number of civilians at Fourah Bay in retaliation for the alleged murder of a soldier during the 1999 attack on Freetown.[3401] While witness TF1-334 testified that the Accused Kanu "partook" in the attack, the witness does not further clarify the manner of his participation.[3402]

2049. The Trial Chamber has found that this evidence does not establish that the Accused Kanu personally killed any civilians.[3403]

ii. Kissy Road: "Demonstration" of an amputation to the troops

2050. The Trial Chamber has found that the Accused Kanu amputated a civilian near Kissy Old Road during the 6 January 1999 invasion in order to "demonstrate" to his troops how best to carry out amputations.[3404] He explained that there were two types of amputation possible, one called a long sleeve, meaning an amputation of the arms, and the other a short sleeve, meaning an amputation of the arm up to the bicep.[3405] The Indictment does not provide any of the particulars of the incident and is therefore defective in this regard.

2051. The Trial Chamber must determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Kanu Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. Nevertheless, the Kanu Defence did not object to the evidence when led and in fact cross-examined the witness on this specific incident during trial. The Trial Chamber therefore finds that the failure to give notice did not materially impair the ability of the Kanu Defence to prepare its case.

2052. The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of physical violence.

iii. Upgun: "Demonstration" of an amputation on a civilian

2053. The Trial Chamber has found that subsequently the Accused Kanu demonstrated how to perform amputations on two other civilians at Upgun during the retreat from Freetown in January

[3399] Kanu Final Brief, paras 420-421.
[3400] Kanu Final Brief, paras 422-424.
[3401] TF1-334, Transcript 14 June 2005, pp. 66-67.
[3402] Factual Findings, Unlawful Killings, para 919, *supra*.
[3403] Factual Findings, Unlawful Killings, para 926, *supra*.
[3404] Factual Findings, Physical Violence, para 1230, *supra*; TF1-184, Transcript 27 September 2005, pp. 72-74.
[3405] TF1-184, Transcript 27 September 2005, p. 74.

1999.[3406] The Trial Chamber is satisfied that this is a separate incident to the act of physical violence described above. The Indictment does not provide any of the particulars of the incident and is therefore defective in this regard.

2054. The Trial Chamber must determine whether this defect in the Indictment was cured by clear, timely and consistent notice to the Brima Defence. The Prosecution Supplemental Pre-Trial Brief and the Prosecution's Opening Statements do not refer to this incident. The Trial Chamber observes that the relevant information did not come into the Prosecution's possession until March or April 2005, and that on 22 April 2005 it disclosed a statement to the defence in which the witness said that

> Whilst we were at Upgun, 55 came with a commander, Major Mines and Captain Kabila and some people were amputated. 55 demonstrated by amputating two people. From then on the amputations started.[3407]

2055. Thus, the Defence was not put on notice of this allegation until over one month after the trial commenced. The Trial Chamber does not consider that this constitutes timely notice. Nevertheless, the Kanu Defence did not object to the evidence when led and in fact cross-examined the witness on this specific incident during trial. The Trial Chamber therefore finds that the failure to give timely notice did not materially impair the ability of the Kanu Defence to prepare its case.

2056. The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of physical violence.

iv. State House: Looting of vehicles

2057. Witness Gibril Massaquoi testified that vehicles were looted by AFRC troops in Freetown and that the Accused Kanu arrived at State House with a stolen vehicle during the 6 January 1999 Freetown invasion.[3408] The Trial Chamber is satisfied beyond a reasonable doubt on this evidence that the Accused Kanu personally looted at least one vehicle in Freetown. The Trial Chamber accordingly finds the Accused Kanu individually criminally responsible for committing an act of pillage.

b. Ordering

[3406] TF1-334, Transcript 14 June 2005, pp. 68-70.
[3407] Statement of witness TF1-334 dated 16 March 2005-20 April 2005, CMS p. 7880 [confidential].
[3408] Gibril Massaquoi, Transcript 7 October 2005, p. 126.

i. Order at State House to kill captive Nigerian ECOMOG soldiers

2058. The Trial Chamber found that the Accused Brima ordered the execution of fourteen to sixteen captive ECOMOG soldiers at State House, and that the Accused Kanu then took the soldiers outside, killed one ECOMOG soldier himself, and ordered his soldiers to execute the remaining captives. The Trial Chamber is satisfied that the executions were carried out[3409] and that the Accused Kanu ordered the commission of this crime in full awareness that the crime was likely to be committed.

ii. Order to kill civilians at a mosque in Kissy

2059. The Trial Chamber found that the Accused Kanu reissued an order given by the Accused Brima on the day after the troops withdrew from Kissy Mental Home that an unknown number of civilians at a mosque were to be killed. The Accused Kanu is not relieved of criminal responsibility for ordering this massacre simply because he was reissuing an order originally made by his commander, the Accused Brima. The Trial Chamber has found that the executions were carried out.[3410] The Trial Chamber is further satisfied that the Accused Kanu ordered the commission of this crime in full awareness that the crime was likely to be committed.

iii. Order to commit amputations in Eastern Freetown

2060. The Trial Chamber has found that when AFRC troops arrived at Kissy Mental Home, during the retreat from Freetown, the Accused Kanu ordered his fighters to go to Eastern Freetown and amputate 200 civilians and then send them to Ferry Junction. The witness George Johnson was present when the order was given, and saw the troops leave towards Eastern Freetown and return with severed arms and blood covered machetes.[3411] The Trial Chamber is satisfied that the amputations were carried out and that the Accused Kanu ordered the commission of this crime in full awareness that the crime was likely to be committed.

2061. The Trial Chamber has found that when the troops reached Upgun during the retreat from Freetown, the Accused Kanu told his commanders, including Col. Mines and Kabila, that it was time for amputations to begin, and that he would begin by demonstrating. Later two civilians were captured and the Accused amputated their arms. The Accused explained that he had begun the

[3409] Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116.
[3410] Factual Findings, Unlawful Killings, para 936, *supra*; Gibril Massaquoi, Transcript 7 October 2005, pp. 115-116.
[3411] George Johnson, Transcript 16 September 2005, p. 53-54.

amputations as an example to his troops of how to proceed. He then told the victims that they should go to President Kabbah to ask for new hands. Later that day, ten other civilians were captured and amputated by Kabila and Mines in Kanu's presence. Mines repeated Kanu's instruction to the victims to seek new hands from President Kabbah.[3412] The Trial Chamber recalls its finding that the Accused is liable for committing two amputations at Upgun. It additionally finds that he ordered the commission of further amputations which were then carried out. The Trial Chamber is satisfied that the Accused Kanu ordered the commission of this crime in full awareness that the amputations were likely to be committed. The Trial Chamber therefore finds that the Prosecution has proved this particular mode of individual criminal responsibility beyond reasonable doubt.

c. Planning

2062. The Prosecution has not adduced any evidence that the Accused Kanu planned any crimes under Counts 3 through 6, 10 through 11 and 14 in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not proved this mode of individual criminal responsibility against the Accused Kanu for any crimes committed under those Counts. The Accused Kanu's criminal responsibility for Counts 9, 12 and 13, which involve crimes of a continuing nature spanning various districts, will be discussed below.[3413]

d. Instigating

2063. The Trial Chamber recalls that on the eve of the 6 January 1999 invasion of Freetown, the Accused Brima chaired a meeting at which the Accused Kanu reminded the AFRC troops present about orders to burn down police stations and kill "targeted persons"/collaborators.[3414] The Trial Chamber has found that a number of civilians were subsequently killed in Freetown. The Trial Chamber is satisfied that the Accused Kanu prompted the perpetrators to kill civilians in Freetown. The Trial Chamber therefore finds that the Prosecution has proved this mode of liability against the Accused Kanu.

e. Otherwise aiding and abetting

2064. The Prosecution has not adduced any evidence that the Accused Kanu aided and abetted any crimes in Freetown and the Western Area. The Trial Chamber finds that the Prosecution has not

[3412] TF1-334, Transcript 14 June 2005, 68-71.
[3413] Responsibility of the Accused, Kanu, para. 2095, *infra*.

proved this mode of individual criminal responsibility against the Accused Kanu for the crimes committed in Freetown and the Western Area.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

2065. The Prosecution submits that the Accused Kanu has superior responsibility for all crimes committed by his subordinates in Freetown from 6 January until about 28 January. The Prosecution argues that the Accused Kanu's actual or imputed knowledge of the crimes can be inferred from the fact that crimes were often ordered by him or in his presence and that as one of the key commanders in the field, the Accused Kanu had the material ability to prevent the commission of crimes or to punish the perpetrators.[3415]

2066. The Kanu Defence submits that the positions of Chief of Staff and commander in charge of civilians are not operational command positions and therefore do not entail superior responsibility.[3416]

(ii) Findings

a. Existence of a superior-subordinate relationship

2067. The Trial Chamber has found that the Accused Kanu was Chief of Staff and the commander in charge of civilians throughout the attack on Freetown on 6 January 1999 until the retreat to Newton in the Western Area.[3417] The Trial Chamber has also found that the AFRC faction had a functioning chain of command and planning and orders process during the initial invasion of Freetown, but that this command structure failed when the troops lost control of State House.[3418]

2068. The Trial Chamber notes that Accused Kanu's functions as Chief of Staff in the Western Area involved responsibilities which did not require the exercise of command over troops. For example, Prosecution witness George Johnson testified that the Accused Kanu ran the meeting at Orugu Village at which the Accused Brima ordered the attack on Freetown.[3419] The Prosecution Military Expert Colonel Iron opined that it is customary in regular armies for the Chief of Staff to

[3414] George Johnson, Transcript 16 September 2005, p. 17.
[3415] Prosecution Final Brief, paras 1637-1640.
[3416] Kanu Final Brief, para. 188.
[3417] Role of Accused, para. 535, *supra*.
[3418] Military Structure of the AFRC Fighting Force, para. 620, *supra*.
[3419] George Johnson, Transcript 16 September 2005, p. 17.

run meetings and for the commander to act as chair, only interjecting when necessary to stress particular points. He also testified that this was the regular practice in the AFRC.[3420]

2069. As with its findings in Bombali District, the Trial Chamber reiterates that it cannot be presumed that the Accused Kanu performed the same role as a Chief of Staff in a regular army. The Trial Chamber accepts the expert evidence of Colonel Iron in this specific regard since it is consistent with the testimony of witness George Johnson. However, as was also demonstrated in Bombali District, there is other evidence upon which the Trial Chamber is satisfied that, in addition to assisting the commander in an administrative capacity, the position of Chief of Staff placed the Accused Kanu in a position of effective control over troops.

2070. The Trial Chamber has found that as Chief of Staff, the Accused Kanu was third in command in Freetown.[3421] The Trial Chamber further recalls its findings that the Operations Director, the Operations Commander, the Task Force Commander and the head of Military Police were all required to report to the Accused Kanu. These men were senior to the battalion commanders.[3422] Thus, although he did not have a particular unit of men under his command, the Trial Chamber rejects the Kanu Defence's submission that as Chief of Staff and commander in charge of civilians, the Accused Kanu was relegated to the role of a non-operational commander.

2071. The Accused Kanu's seniority is also evidenced by the fact that, like the Accused Kamara, he was based at the AFRC headquarters at State House.[3423] He attended the meeting of commanders held there on the evening of 6 January at which an attack on Wilberforce was discussed.[3424] In addition, the Accused Kanu made an announcement over the local radio on 6 January 1999 that the troops had captured Freetown, identifying himself as Chief of Staff.[3425]

2072. The Accused Kanu's *de jure* position, taken together with the following evidence of the Accused Kanu giving orders which were obeyed, establishes that as Chief of Staff he possessed the material ability to effectively control troops in Freetown until the loss of State House.

2073. During the advance towards Freetown, the Accused Kanu commanded a body of troops that went on an operation to attack Tumbo.[3426] While in Freetown, one morning prior to the loss of State

[3420] Exhibit P-36, para. D3-1.
[3421] Role of Accused, para 535, *supra*.
[3422] Military Structure of the AFRC Fighting Force, para 608.
[3423] TF1-334, Transcript 14 June 2005, pp. 4-5 OR 13 June 2005 p. 105; Gibril Massaquoi, Transcript 7 October 2005, p. 122; Gibril Massaquoi Transcript 10 October 2005, p. 3; TF1-153 Transcript 23 September 2005, p. 3.
[3424] Gibril Massaquoi, Transcript 7 October 2005, p. 120; 11 October 2005, pp. 5, 65.
[3425] TF1-334, Transcript 14 June 2005, p. 19
[3426] TF1-153, Transcript 22 September 2005, p. 95.

House, the Accused Kanu ordered the military police to move the dead bodies that were piling up in the vicinity, as the area was beginning to smell.[3427]

2074. Witness Gibril Massaquoi testified that while the senior commanders were still at State House, he observed a soldier coming from the front line who encountered the Accused Kanu near State House. The soldier reported to the Accused Kanu on the current positions of the advancing ECOMOG troops. The witness overheard the Accused Kanu ordering some officers to find men to reinforce that particular area. The officers did so and the Accused Kanu ordered the assembled troops to 'put the war candle on', by which he meant to burn the houses. The Accused Kanu then ordered some kerosene to be brought from State House. This kerosene was distributed by the officers among the troops, who then began setting houses alight.[3428]

2075. Finally, the fact that the Accused Kanu ordered the commission of crimes in Freetown is evidence of his ability to control AFRC troops subordinate to him.

2076. The Trial Chamber therefore finds that a superior-subordinate relationship existed between the Accused Kanu and the AFRC troops in Freetown.

b. Knowledge

2077. The Trial Chamber is satisfied that the Accused Kanu had reason to know of the commission of crimes committed before the loss of State House in which he was not directly involved. He directly participated in the commission of a number of crimes.[3429] The crimes were committed on a wide scale in physical proximity to the Accused Kanu at State House.

2078. The Trial Chamber therefore finds that there can be no reasonable doubt that the Accused Kanu was in possession of information to put him on notice that crimes were being committed by his subordinates before the loss of State House, although he was not directly involved in such crimes.

c. Failure to prevent or punish

[3427] Gibril Massaquoi, Transcript 10 October 2005, p. 12.
[3428] Gibril Massaquoi, Transcript 10 October 2005, pp. 13-15; see also testimony of Witness TF1-184 on what appears to be the same incident: Transcript 27 September 2005, p. 6
[3429] *See* the Trial Chamber's findings on the individual criminal responsibility of the Accused Brima in Freetown and Western Area under Article 6(1): Findings on the Responsibility of the Accused, paras 1750-1785.

2079. There is no evidence that the Accused Kanu took any measures to prevent the troops under his control in Freetown from committing crimes against or punish the perpetrators of such crimes.

d. Conclusion

2080. The Trial Chamber finds that the Prosecution has established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in the Western Area.

8. Port Loko District

2081. The Trial Chamber has found that AFRC/RUF troops unlawfully killed a number of civilians in Port Loko District as charged under Counts 4 through 5.[3430] In addition, AFRC troops held persons in sexual slavery as charged under Count 9.[3431] AFRC/RUF troops used abducted civilians for forced labour, as charged under Count 13.

(a) Responsibility of the Accused Kanu Under Article 6(1) of the Statute

(i) Submissions

2082. In its Final Trial Brief, the Prosecution argues only that the Accused in Kanu is liable for the crimes committed in Port Loko District as a principal in a joint criminal enterprise.[3432]

2083. The Kanu Defence makes no specific submissions regarding the alleged liability of the Accused for crimes committed in Port Loko District in its Final Brief.

(ii) Findings

2084. The Prosecution has not adduced any that the Accused Kanu individually committed, ordered, planned, instigated, or otherwise aided and abetted any of the crimes that occurred in Port Loko District. The Trial Chamber finds that the Prosecution has not proved any of these modes of individual criminal responsibility against the Accused Kanu for the crimes committed in Port Loko District.

[3430] Factual Findings, Unlawful Killings, para. 965, *supra*.
[3431] Factual Findings, Outrages upon Personal Dignity, para. 1187, *supra*.
[3432] Prosecution Final Brief, para. 1755.

(b) Responsibility of the Accused Kanu Under Article 6(3) of the Statute

(i) Submissions

2085. The Prosecution makes no submission in its Final Brief that the Accused Kanu has superior responsibility for crimes committed in Port Loko District between January and April 1999.

2086. The Kanu Defence makes no submissions specific to the superior responsibility of the Accused Kanu in Port Loko District.

(ii) Findings

2087. The Trial Chamber has found that following the second unsuccessful attack on Freetown staged jointly by AFRC/RUF commanders, the Accused Kanu accompanied the Accused Brima to Lunsar to assist Superman, who was fighting against Issa Sesay at the time.[3433] No reliable evidence has been adduced on the organisation of the AFRC troops associated with the Accused Kanu in this period or whether this group fought alongside Superman or under his overall command. It has not been established beyond reasonable doubt that the Accused Kanu had troops under his effective control during this period.

2088. The Trial Chamber finds that the Prosecution has not established beyond reasonable doubt that the Accused Kanu is liable as a superior under Article 6(3) for crimes committed in Port Loko District.

9. Responsibility for Crimes of Enslavement under Article 6(1)

2089. The Trial Chamber has found that civilians were subjected to sexual slavery as charged under Count 9; that children under the age of 15 were conscripted into the AFRC forces and/or used to participate in active hostilities as charged under Count 12; and that civilians were enslaved as charged under Count 13.

2090. As with the Accused Brima, the Trial Chamber will examine the evidence in relation to the responsibility of the Accused Kanu for each of the enslavement crimes as a whole. The Trial Chamber recalls its finding that the only reasonable inference available from the systemic commission of these crimes on a large scale is that these crimes were planned.[3434] The Trial

[3433] Role of Accused, para 537, *supra*.
[3434] Findings on Responsibility, Brima, para. 1826, *supra*.

Chamber will consider the evidence in order to determine whether the Accused Kanu substantially contributed to the planning of these crimes.

2091. The Trial Chamber has found that the Accused Kanu was Chief of Staff and commander in charge of abducted civilians in Bombali District and the Western Area.[3435] As the AFRC troops depended heavily on these civilians for a multitude of tasks, the Accused Kanu's position was a critical one.

2092. In Bombali District the Accused Kanu designed and implemented a system to control abducted girls and women. All abducted women and girls were placed in the custody of the Accused. Any soldier who wanted an abducted girl or woman to be his "wife" had to "sign for her". The Accused informed his fighters that any problems with the women were to be immediately reported back to him, and that he would then monitor the situation.[3436] The Accused issued a disciplinary instruction ordering that any woman caught with another woman's husband should be beaten and locked in a box.[3437] In one instance, Witness TF1-334 observed a Staff Sergeant reporting to Kanu that he suspected his "wife" of misbehaving and the Accused Kanu called the woman before him and found her guilty. He ordered that she be sent to the Mammy Queen, be given a dozen lashes and be locked in the box.[3438]

2093. The Trial Chamber has also found that the Accused Kanu was in charge of the forced military training of civilians at Camp Rosos. Among those forced to undergo training were children below the age of 15 years old.[3439]

2094. The Trial Chamber has found that the Accused Kanu continued in his positions as Chief of Staff and commander in charge of civilians in Freetown and the Western Area. The Trial Chamber has found that the Accused Kanu had approximately ten child combatants in his charge in Benguema following the retreat from Freetown.[3440]

2095. The Trial Chamber is satisfied that the Accused Kanu planned, organised and implemented the system to abduct and enslave civilians which was committed by AFRC troops in Bombali and Western Area. It is further satisfied that the Accused Kanu had the direct intent to establish and implement the system of exploitation involving the three enslavement crimes, namely, sexual

[3435] Role of the Accused, para 535, *supra*.
[3436] TF1-334, Transcript 23 May 2005, pp. 75-77.
[3437] TF1-334, Transcript 24 May 2005, pp. 63-65.
[3438] TF1-334, Transcript 24 May 2005, pp. 67-69.
[3439] TF1-334, Transcript 24 May 2005, pp. 24-25.

slavery, conscription and use of children under the age of 15 for military purposes, and abductions and forced labour.

(a) Responsibility under Article 6(1) for Count 9 (Sexual Slavery)

2096. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Kanu is individually criminally responsible under Article 6(1) of the Statute for planning the commission of the crime of sexual slavery in Bombali District and the Western Area.

(b) Responsibility under Article 6(1) for Count 12 (Child Soldiers)

2097. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Kanu is individually criminally responsible under Article 6(1) of the Statute for planning the commission of conscription of children under the age of 15 into the armed group or using them to participate actively in hostilities in Bombali District and the Western Area.

(c) Responsibility under Article 6(1) for Count 13 (Enslavement)

2098. On the basis of the foregoing, the Trial Chamber is satisfied beyond reasonable doubt that the Accused Kanu is individually criminally responsible under Article 6(1) of the Statute for enslavement in Bombali District and the Western Area.

[3440] Factual Findings, Child Soldiers, para 1263; TF1-227, Transcript 8 April 2005, pp. 95-96; 11 April 2005, pp. 2-3, 16, 21.

XII. CUMULATIVE CONVICTIONS

A. Introduction

2099. The issue of cumulative convictions arises when more than one charge stems out of what is essentially the same criminal conduct. Cumulative convictions entered under different statutory provisions but based on the same conduct are permissible only if each statutory provision involved has a materially distinct element not contained in the other. An element is materially distinct from another if it requires proof of a fact not required by the other.[3441]

2100. Where this test is not met, the Trial Chamber must decide in relation to which offence it will enter a conviction on the basis of the principle that the conviction under the more specific provision should be upheld.[3442] In other words, where a fact forms the basis of two charges under different provisions of the Statute, and where the test set out above is not met, the provision "which contains an additional materially distinct element" should be the one under which a conviction will be entered.[3443]

2101. The *Kunarac* Appeals Chamber observed that in considering cumulative convictions the Trial Chamber must balance the "very real risk of prejudice to an accused" with its obligation to describe the "full culpability of a particular accused."[3444] The Chamber went on to caution that the *Celibići* test was "deceptively simply. In practice, it is difficult to apply in a way that is conceptually coherent and promotes the interests of justice."[3445] Thus it concluded that although the question of whether the same conduct violates two distinct statutory provisions is one of law, nevertheless the Chamber must take into account "the entire situation so as to avoid a mechanical or blind application of its guiding principles."[3446]

B. Submissions of the Parties

2102. The Prosecution has made the following submissions:

[3441] *Čelebići* Appeal Judgement, para. 412.
[3442] *Čelebići* Appeal Judgement, para. 413.
[3443] *Čelebići* Appeal Judgement, para. 413.
[3444] *Kunarac* Appeal Judgement, para. 169.
[3445] *Kunarac* Appeal Judgement, para. 172.
[3446] *Kunarac* Appeal Judgement, para. 174.

(i) that multiple convictions must be entered when they are admissible, because they "serve to describe the full culpability of a particular accused or provide a complete picture of his criminal conduct";[3447]

(ii) that multiple convictions for Crimes against Humanity (Article 2) and for War Crimes (Articles 3 and 4) are permissible as they have separate chapeau requirements;[3448]

(iii) that cumulative convictions on the basis of the same acts under one Article of the Statute – for example, conduct which violates at the same time the prohibition of pillage, acts of terrorism and collective punishments under Article 3 - are permissible provided that each provision has a materially distinct element;[3449]

2103. The Defence has made no submissions on the question of cumulative convictions.

C. Discussion

2104. The Accused Brima has been found individually criminally responsible pursuant to 6(1) of the Statute for offences committed in Bombali District and Freetown and the Western Area as charged under Count 1, Count 2, Count 3, Count 4, Count 5, Count 9, Count 10, Count 12, Count 13 and Count 14. He has also been found individually criminally responsible pursuant to Article 6(3) for offences committed by his subordinates in Bombali District and Freetown and the Western Area as charged under Count 1, Count 2, Count 3, Count 4, Count 5, Count 6, Count 9, Count 10, Count 12, Count 13 and Count 14.

2105. The Accused Kamara has been found individually criminally responsible pursuant to Article 6(1) of the Statute for offences committed in Bombali District and Freetown and the Western Area as charged under Count 3, Count 4, Count 5, Count 9, Count 10, Count 12 and Count 13. He has also been found individually criminally responsible pursuant to Article 6(3) for offences committed by his subordinates in Kono District, Bombali District, Freetown and the Western Area and Port Loko District as charged under Count 1, Count 2, Count 3, Count 4, Count 5, Count 6, Count 9, Count 10, Count 12, Count 13 and Count 14.

2106. The Accused Kanu has been found individually criminally responsible pursuant to Article 6(1) of the Statute for offences committed in Bombali District and Freetown and the Western Area as charged under Count 3, Count 4, Count 5, Count 9, Count 10, Count 12, Count 13 and Count 14.

[3447] Prosecution Final Brief, para. 1921, citing *Kunarac* Appeal Judgement, para. 169.
[3448] Prosecution Final Brief, para. 1923.

He has also been found individually criminally responsible pursuant to Article 6(3) for offences committed by his subordinates in Bombali District and Freetown and the Western Area as charged under Count 1, Count 2, Count 3, Count 4, Count 5, Count 6, Count 9, Count 10, Count 12, Count 13 and Count 14.

2107. Crimes against humanity constitute distinct offences from war crimes under Article 3 and 4 of the Statute as each category of crimes has distinct chapeau elements. Thus convictions are permissible under Articles 2 and 3 of the Statute of the Special Court, and/or Articles 2 and 4 of the Statute.[3450] Therefore, the issue of cumulative convictions under Articles 3 and 4 does not arise in the instant case. It is therefore permissible to enter convictions based on the same conduct for charges of murder brought pursuant to Article 2(a) and 3(a), rape and outrages upon personal dignity pursuant to Article 2(g) and 3(e).

2108. The Trial Chamber considers that collective punishments and acts of terror pursuant to Articles 3(b) and 3(d) both require a specific purpose - either to terrorise or to punish. These crimes do not necessarily require evidence of violence to life, health and physical well-being of persons pursuant to Article 3(a) or Outrages upon Personal Dignity under Article 3(e). As mentioned, each of the acts under Count 1 and 2 have a material distinct element, *i.e.* the intent to terrorise or to punish collectively. Therefore, the Trial Chamber finds that it is permissible to convict an accused under Article 3(b) or 3(d), as well as the underlying crimes charged in Articles 3(a) (murder and mutilation) and Article 3(e) (outrages upon personal dignity).

2109. It is not permissible to convict both for murder and extermination under Article 2(a) and (b) based on the same conduct. The issue was settled by the Appeals Chamber in *Ntakirutimana*, which concluded that convictions for both murder and extermination, as crimes against humanity, based on the same conduct were impermissible as the crime of murder was subsumed by the crime of extermination.[3451] However, the Trial Chamber finds that it is permissible to convict on both counts if each count is based not on the *same* but on *distinct* conduct. Thus, one killing, or series of killings, may have been committed as part of a widespread or systematic attack against any civilian population, constituting murder under Article 2(a) of the Statute. A separate killing, or series of killings, committed with the intent to bring about the destruction of a numerically significant part of a population may be found to constitute extermination under Article 2(b) of the Statute. In the

[3449] Prosecution Final Brief, para. 1924.
[3450] *Kunarac* Appeals Judgement, paras 176-178; *see also Kupreškić* Appeals Judgement, para. 388, and *Jelisić* Appeals Judgement, para. 82.
[3451] *Ntakirutimana* Appeals Chamber, para. 542.

instant case, the Trial Chamber is satisfied that each of the Accused is individually criminally responsible for Extermination based on a distinct set of killings, and also responsible for murder as a crime against humanity based on a different set of killings.

2110. On the issue of concurrent convictions under separate modes of liability, the Appeals Chamber in *Blaskić* concluded that

> in relation to a particular count, it is not appropriate to convict under both Article 7(1) and Article 7(3) of the Statute. Where both Article 7(1) and Article 7(3) responsibility are alleged under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber should enter a conviction on the basis of Article 7(1) only, and consider the accused's superior position as an aggravating factor in sentencing.[3452]

2111. The Trial Chamber finds no reason to depart from this practice. The Trial Chamber has made extensive findings on all the modes of liability in respect of the evidence that led to a finding under each count in *Chapter XI: Responsibility of the Accused.* The extent of the participation of the Accused is therefore adequately described and can be taken into consideration at the sentencing stage.

[3452] *Blaskić* Appeals Judgement, para. 91.

XIII. DISPOSITION

2112. Having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the findings as determined by the Trial Chamber in this Judgement, the Trial Chamber finds as follows:

A. The Accused Brima

2113. The Trial Chamber unanimously finds the Accused **ALEX TAMBA BRIMA GUILTY** of the following crimes pursuant to Article 6(1) of the Statute:

Count 1: Acts of Terrorism, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(d) of the Statute;

Count 2: Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(b) of the Statute;

Count 3: Extermination, a Crime against Humanity, punishable under Article 2(b) of the Statute;

Count 4: **Murder**, a Crime against Humanity, pursuant to Article 2(a) of the Statute;

Count 5: **Violence to life, health and physical or mental well-being of persons, in particular murder**, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(a) of the Statute;

Count 9: Outrages upon personal dignity, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(e) of the Statute;

Count 10: Violence to life, health and physical or mental well-being of persons, as mutilation, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute;

Count 12: Conscripting children under the age of 15 years into an armed group and/or using them to participate actively in hostilities, an other serious violation of international humanitarian law, pursuant to Article 4(c) of the Statute;

Count 13: Enslavement, a Crime against Humanity, pursuant to Article 2(c) of the Statute; and

Count 14: **Pillage**, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(f) of the Statute.

2114. The Trial Chamber unanimously finds the Accused **ALEX TAMBA BRIMA GUILTY** of the following crimes pursuant to Article 6(3) of the Statute:

Count 6: Rape, a Crime against Humanity, pursuant to Article 2(g) of the Statute.

2115. The Trial Chamber unanimously finds the Accused **ALEX TAMBA BRIMA NOT GUILTY** on:

Count 11: Other inhumane acts, a Crime against Humanity, pursuant to Article 2(i) of the Statute.

2116. A **CONVICTION IS NOT ENTERED** against the Accused **ALEX TAMBA BRIMA** on:

Count 7: **Sexual slavery and any other form of sexual violence**, a Crime against Humanity, pursuant to Article 2(g) of the Statute; and

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

B. The Accused Kamara

2117. The Trial Chamber unanimously finds the Accused **IBRAHIM BAZZY KAMARA GUILTY** of the following crimes pursuant to Article 6(1) of the Statute:

Count 3: Extermination, a Crime against Humanity, punishable under Article 2(b) of the Statute;

Count 4: **Murder**, a Crime against Humanity, pursuant to Article 2(a) of the Statute;

Count 5: **Violence to life, health and physical or mental well-being of persons, in particular murder**, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(a) of the Statute;

Count 9: Outrages upon personal dignity, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(e) of the Statute;

Count 10: Violence to life, health and physical or mental well-being of persons, as mutilation, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute;

Count 12: Conscripting children under the age of 15 years into an armed group and/or using them to participate actively in hostilities, an other serious violation of international humanitarian law, pursuant to Article 4(c) of the Statute; and

Count 13: Enslavement, a Crime against Humanity, pursuant to Article 2(c) of the Statute.

2118. The Trial Chamber unanimously finds the Accused **IBRAHIM BAZZY KAMARA GUILTY** of the following crimes pursuant to Article 6(3) of the Statute:

Count 1: Acts of Terrorism, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(d) of the Statute;

Count 2: Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(b) of the Statute;

Count 6: Rape, a Crime against Humanity, pursuant to Article 2(g) of the Statute; and

Count 14: **Pillage**, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(f) of the Statute.

2119. The Trial Chamber unanimously finds the Accused **IBRAHIM BAZZY KAMARA NOT GUILTY** on:

Count 11: Other inhumane acts, a Crime against Humanity, pursuant to Article 2(i) of the Statute.

2120. A **CONVICTION IS NOT ENTERED** against the Accused **IBRAHIM BAZZY KAMARA** on:

Count 7: **Sexual slavery and any other form of sexual violence**, a Crime against Humanity, pursuant to Article 2(g) of the Statute; and

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

C. The Accused Kanu

2121. The Trial Chamber unanimously finds the Accused **SANTIGIE BORBOR KANU GUILTY** of the following crimes pursuant to Article 6(1) of the Statute:

Count 3: Extermination, a Crime against Humanity, punishable under Article 2(b) of the Statute;

Count 4: **Murder**, a Crime against Humanity, pursuant to Article 2(a) of the Statute;

Count 5: **Violence to life, health and physical or mental well-being of persons, in particular murder**, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(a) of the Statute;

Count 6: Rape, a Crime against Humanity, pursuant to Article 2(g) of the Statute;

Count 9: Outrages upon personal dignity, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(e) of the Statute;

Count 10: Violence to life, health and physical or mental well-being of persons, as mutilation, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute;

Count 12: Conscripting children under the age of 15 years into an armed group and/or using them to participate actively in hostilities, an other serious violation of international humanitarian law, pursuant to Article 4(c) of the Statute;

Count 13: Enslavement, a Crime against Humanity, pursuant to Article 2(c) of the Statute; and

Count 14: **Pillage**, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(f) of the Statute.

2122. The Trial Chamber unanimously finds the Accused **SANTIGIE BORBOR KANU GUILTY** of the following crimes pursuant to Article 6(3) of the Statute:

Count 1: Acts of Terrorism, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(d) of the Statute;

Count 2: Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Article 3(b) of the Statute; and

Count 6: Rape, a Crime against Humanity, pursuant to Article 2(g) of the Statute;

2123. A **CONVICTION IS NOT ENTERED** against the Accused **SANTIGIE BORBOR KANU** on:

Count 7: **Sexual slavery and any other form of sexual violence**, a Crime against Humanity, pursuant to Article 2(g) of the Statute; and

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

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

Justice Richard Lussick

Justice Julia Sebutinde
Presiding Judge

Justice Teresa Doherty

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

Justice Julia Sebutinde appends a separate concurring opinion to Judgement.

[Seal of the Special Court for Sierra Leone]

SEPARATE CONCURRING OPINION OF THE HON. JUSTICE JULIA SEBUTINDE APPENDED TO JUDGEMENT PURSUANT TO RULE 88 (C)

A. INTRODUCTION

1. Let me begin by stating that I agree fully and unreservedly with the findings and disposition of the Trial Chamber in the Judgement on all Counts in the Indictment. This opinion only examines the phenomenon of "forced marriage'" in the context of the Sierra Leone Conflict and its characterisation as a crime under international humanitarian law.

2. I do however, feel compelled to expound on one area in the Judgment, namely the phenomenon of "forced marriage" in the context of the Sierra Leone conflict. The Trial Chamber has, to some extent, dealt with this subject in the Chapter on Applicable Law. It is my considered view however, that given the fact that the subject of "forced marriage" as a crime committed in the context of an armed conflict is a relatively novel area that has hitherto not received much attention in the jurisprudence of the International Tribunals[3453], it merits a deeper analysis of the evidence adduced before the Trial Chamber during the trial in order to appreciate the Trial Chamber's characterisation of this crime as a form of Sexual Slavery as defined in Article 7(1)(g)2 of the Rome Statute. That is what I seek to do in this Separate opinion.

B. PROCEDURAL HISTORY

3. It will be recalled that in February 2004 the Prosecution in this case successfully applied for and was granted leave by Trial Chamber I to amend the Consolidated Indictment by adding a new Count 8 entitled *"the crime against humanity of other inhumane acts"* to cater for alleged acts of

[3453] Hitherto, International Criminal Tribunals have charged that acts associated with 'forced marriage' under such crimes against humanity as Sexual Slavery or rape. No International Criminal Tribunal has yet recognised "forced marriage" as separate or distinct crime under International Humanitarian Law. For example in the ICTR case of the *Prosecutor vs. Muhimana, ICTR-95-IB-T* the Trial Chamber found that a witness who had been abducted and 'forcibly married' had in fact suffered multiple rapes. In the *Prosecutor vs. Akayesu ICTR-96-4-T* the Trial Chamber called upon the Prosecution to initiate an investigation into allegations of' forced marriage' with a view to charging the crime against humanity of sexual violence, as the Prosecution had not it in the Indictment. In the ICTY case of Prosecutor vs. Kunarac, IT-96-23-T &IT-96-23/I-T, THE Trial Chamber dealt with a situation akin to forced marriage whereby the victims comprising a number of women had been detained in a private residence and repeatedly raped by the perpetrators. The perpetrators resided with the women and guarded them to the extent that the women had no means of escape. The women also did household chores such as cooking, cleaning. The Trial Chamber did not consider the possibility of recognising 'forced marriage' as a distinct crime against humanity, preferring instead to convict the accused of multiple rapes.

Forced Marriage[3454]. The Prosecution further sought to amend the Consolidated Indictment *inter alia*, by making "corrections and/or modifications to the other counts including the expansion of time periods, an additional location for all counts related to sexual violence crimes, and the change of spellings of certain place names."[3455] In granting its leave, Trial Chamber I observed

> "In the present motion, the Prosecution is seeking our leave to amend the already existing consolidated indictment on which the proceedings are now based, in order to add one more count, and one count only, based on Forced Marriage. The question to be addressed in these circumstances is whether this additional count or offence as the case is, is new in terms of its being a complete novelty in the arsenal of all the counts that constitute the entire consolidated indictment.
>
> Our immediate reflection on this issue that we have raised is that the count related to forced marriage which the Prosecution is seeking our leave to add to the consolidated indictment is as much sexual, indeed, a gender offence as those that were included in the initial individual indictments and that feature in the current consolidated indictment on which this application to amend is based.
>
> We would like to say here that Forced Marriage is in fact what we would like to classify as a 'kindred offence' to those that exist in the indictment in the view of the commonality of the ingredients needed to prove offences of this nature [...]"[3456] [emphasis added]

4. From the above quotation, it is clear that in their assessment, Trial Chamber I classified the phenomenon of "Forced Marriage" within the Sierra Leonean conflict as a sexual or gender crime akin to rape, sexual slavery or sexual violence. The Prosecution in fact went ahead and introduced the present Count 8 and related amendments in the Indictment.

5. In a subsequent decision in which the Prosecution sought leave to introduce new evidence of 'Forced Marriages' under the crime against humanity of "other inhumane acts" (rather than as evidence of a sexual or gender crime),[3457] Trial Chamber I considered and rejected the proposition that sexual offences including 'forced marriages', do fall in the broad category of "other inhumane acts".[3458] Trial Chamber I found *inter alia*, that

> "...the particulars embodied in the Consolidated Indictment in respect of Counts 3 and 4 cannot be validly interpreted to be of an inclusive nature and as not excluding the broad range of unlawful acts which can lead to serious physical and mental harm, especially having regard to the formula "*and any other form of sexual violence*" in Article 2.g. [of the Statute] creating a separate specific residual category of sexual violence, of the same kind as rape, sexual slavery, enforced prostitution and forced pregnancy.

[3454] *Prosecutor v. Alex Tamba Brima, et al.*, Case No. SCSL-04-16-PT, Trial Chamber Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004, para.58.
[3455] Ibid. para.8
[3456] Ibid. paras.50-51
[3457] In an earlier motion, Trial Chamber I had denied a Prosecution leave to amend the indictment to include sex crimes. In the absence of a count embodying crimes of a sexual nature, the Prosecution sought to lead evidence of "forced marriages" under "other inhumane acts".
[3458] *Prosecutor v. Sam Hinga Norman et. al*, Case No. SCSL-04-14-PT, Trial Chamber, Reasoned Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence, 24 May 2005

> In light of the separate and distinct residual category of sexual offences under Article 2.g., it is impermissible to allege acts of sexual violence (other than rape, sexual slavery, enforced prostitution and forced pregnancy) under Article 2.i. since "other inhumane acts", even if residual, must logically be restrictively interpreted as covering only those acts of a non-sexual nature amounting to an affront to human dignity.
>
> The clear legislative intent behind the statutory formula "*any other form of sexual violence*" in Article 2.g. is the creation of a category of offences of sexual violence of a character that do not amount to any of the earlier enumerated sexual crimes, and that to permit such other forms of sexual violence to be charged as "other inhumane acts" offends against the rule against multiplicity and uncertainty...."[3459]

6. In my Separate Concurring Opinion on the Trial Chamber's Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98[3460], I did observe that-

> "I am strongly persuaded by the above decisions of Trial Chamber I in holding that view that the acts of "forced marriage" that occurred within the context of the Sierra Leonean conflict, are in fact a form of sexual violence pursuant to Article 2.g. of the Statute and could equally qualify as a form of sexual slavery pursuant to Article 2.g. of the Statute. This is because the sexual element inherent in these acts tends to dominate the other elements therein such as forced labour and other forced conjugal duties. In an Indictment such as the present one, that charges specific sexual crimes including rape, sexual slavery and other forms of sexual violence pursuant to Article 2.g. of the Statute, I am not persuaded that acts of "forced marriage" which are clearly sexual in nature, can be properly charged under the general regime of "other inhumane acts" pursuant to Article 2.i. of the Statute. It is my considered opinion that given the evidence on record, all alleged sex-related acts covered by the Indictment can be properly accommodated under Counts 6, 7, and 9 of the Indictment. In my opinion, any acts or offences that are of a residual, non-sexual nature and that could arguably be contained under the general regime of "other inhumane acts" do not belong under the part of the Indictment entitled "COUNTS 6-9: SEXUAL VIOLENCE". They properly belong under Count 11. Accordingly, I find that Count 8 is redundant and would recommend that it be struck out in favour of retaining only one count of "other inhumane acts" under Count 11."

7. However, at that stage of the trial, I did not have the benefit of considering all the evidence adduced during this trial relating to "forced marriage" as only the Prosecution had closed its case and the Defence had not opened theirs. My opinion was therefore based on a cursory consideration of the Prosecution evidence as it then stood on the record. The Trial Chamber has since heard extensive evidence including that of Expert witnesses on the crime that commonly came to be known in Sierra Leone as "forced marriage" and its victims as "bush wives" or "rebel wives".

C. EXPERT OPINION ON "FORCED MARRIAGE"

1. Drawing a distinction between early or arranged marriages of minors in peacetime and 'forced marriage' during armed conflict:

8. Both the Prosecution and the Defence called expert witnesses who tendered in evidence reports that were intended to assist the Trial Chamber in its understanding and characterisation of

[3459] *Ibid.*, para 19 (iii).

the phenomenon of "forced marriage" in the context of the Sierra Leone conflict. Mrs. Zainab Hawa Bangura was the Prosecution Expert. Her Report was admitted in evidence as Prosecution Exhibit P 32[3461]. Dr. Dorte Thorsen was the Expert called jointly by the Brima Defence, Kamara Defence and Kanu Defence. Her Report was admitted as Defence Exhibit D 38.

9. I find Dr. Thorsen's report and evidence of little relevance to the issue at hand given the fact that she declined to write on the topic requested of her by the Defence, and instead chose to write on a topic unrelated to the phenomenon of "forced marriage" within the Sierra Leone Conflict. I do however find her reasons for declining to undertake the research in that form quite instructive.[3462] As an expert in the field of traditional customary or arranged marriages in a sociological context, she makes a clear distinction between the notion of customary or "forced marriages" as understood from a rights-based perspective on the one hand, and the coercion of women into being 'bush wives' during the civil war in Sierra Leone, on the other. She was not willing to make straightforward linkages or comparisons between the two because in her opinion it would be inappropriate and misleading to do so.

10. In this regard I fully agree with Dr. Thorsen that "forced marriages" or arranged or inheritance marriages, from a human rights perspective as applied in the framework of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), are not to be equated to or confused with a situation during armed conflict, where combatants routinely abduct women and force them to become 'wives', essentially obliging them to cook, clean, wash clothes and have sex against their will (and often as a consequence to bear children) all of which are stereotyped, gender-specific forms of labour. The latter relationships, whereby no marriage transactions have been made or ceremonies held, mimic peacetime situations in which forced marriage and expectation of free female labour are common practice. This stereotyped perception of women persists in war-time and puts such women at great risk of abduction and violence.

11. In contrast, I do find the Report and testimony of Mrs. Zainab Bangura, the Prosecution Expert relevant and very instructive on the subject of forced "marriage" within the Sierra Leone

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[3460] *Prosecutor v. Brima et al*, SCSL-04-16-T, Separate Concurring Opinion of the Hon. Justice Julia Sebutinde on the Trial Chamber's Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98, 31 March 2006, para 14

[3461] "Expert Report on the phenomenon of "Forced Marriage" in the context of the Sierra Leone Conflict, and more specially, in the context of the trials against the RUF and AFRC Accused only": May 2005, Prosecution Exhibit P 32.

[3462] Dr. Thorsen stated that she was requested to "carry out a research on the concept of forced marriage in the West African region, the purpose of which was to outline the history and practice of forced marriage in the region and possibly also the way in which this practice is embedded in local culture and practice". She explains in the introduction to her report that she declined to carry out the research in that form because she was "concerned with the long-term consequences of making straightforward links between complex social practices of arranging marriages between kin groups, international conceptualisations of 'forced marriages' and the coercion of women into being bush wives during the civil war in Sierra Leone."

Conflict[3463]. Like Dr. Thorsen, Mrs Bangura also draws a clear distinction between the traditional or customary practice of early or arranged marriages where young girls or minors are forced by their parents or family into early marriages in times of peace, on the one hand; and the phenomenon of forced "marriage" during the Sierra Leone conflict, on the other. She observes that during the whole process of early or arranged marriage in times of peace, the consent and participation of both parents and families is paramount and the union is marked by religious or traditional ceremonies. She warns that this type of union is not to be equated to or confused with "forced marriage" during armed conflict. She writes in her Report:

> "The fundamental difference between an early or arranged marriage in times of peace and a forced 'marriage' during the war is that family members were not involved in the arrangement of the latter so-called 'marriage', no official ceremony of any form took place and nor was the consent of the parents sought. Instead, girls were forcefully abducted from their homes, schools or hiding places and taken to the bush where they were informed that they had become 'wives'. Moreover, rebel 'husbands' did not show their 'bush wives' respect. They were constantly flogged, physically and psychologically abused and their husbands always had the final say. Because it was a marriage without consent and no intermediaries were present, the 'wives' had no protection or family support they could count on. Some of these 'bush wives' actually lost their parents who were trying to prevent their abduction. Forced marriage during the conflict had no security. The 'husband' could abandon his 'wife' whenever he wanted to and get a new one whenever he felt like it. The 'wives' were led to believe that their 'husbands' had the right to kill them, without fear of any repercussions. There were no formal or informal institutions available to address the brutality of the 'husbands'. The 'bush wife' was at the mercy of her rebel husband and had no justice neither could she seek redress. Most of their children did not go to school."

12. From the opinion of both Experts, it is clear that in understanding and characterising the phenomenon of 'forced marriage' in the Sierra Leone conflict, a clear distinction should be drawn between traditional or religious marital unions involving minors (early or arranged marriages), during times of peace; and the forceful abduction and holding in captivity of women and girls ('bush wives') against their will, for purposes of sexual gratification of their 'bush husbands' and for gender-specific forms of labour including cooking, cleaning, washing clothes (conjugal duties). In my view, while the former is proscribed as a violation of human rights under international human rights instruments or treaties like CEDAW, it is not recognised as a crime in International Humanitarian law. The latter conduct on the other hand, is clearly criminal in nature and is liable to attract prosecution.

[3463] Bangura's primary sources of information included in-depth interviews of over 100 former victims of 'forced marriage' and commonly called 'bush wives' from locations mentioned in the Indictment as crime bases, including the Districts of Kailahun, Kenema Kono, and Freetown; and interviews of ex-combatants, parents of 'bush wives' as well as local traditional and religious leaders. See also Transcript, 3 October 2005, pp 35-37.

2. Characterisation of 'forced marriage' during armed conflict as a crime under International Humanitarian law:

13. In order to assist the Trial Chamber's understanding and characterisation of 'forced marriage' in the Sierra Leone conflict as a crime, Mrs. Bangura described the relationship between the abductor or 'bush husband' and the abductee or 'bush wife' and the expectations that flowed from that relationship in the following terms:

> "The conflict in Sierra Leone affected women directly in diverse ways. In addition to being displaced, raped or used as secondary combatants, women and girls were also used as spies, sex slaves, carriers of looted goods and smuggled weapons. Women suffered multiple traumas during the war. They were physically and psychologically abused. However, the most devastating effect on women of the war was the phenomenon called 'bush wife', rebel wife or jungle wife. This was a phenomenon adopted by rebels whereby young girls or women were captured or abducted and forcibly taken as wives [....]The use of the term 'wife' by the perpetrator was deliberate and strategic. The word 'wife' demonstrated a rebel's control over a woman. His psychological manipulations of her feelings rendered her unable to deny him his wishes. 'Wife' showed that the woman belonged to a man and could not be touched by another. By calling a woman 'wife', the man or 'husband' openly staked his claim and she was not allowed to have sex with any other person. If she did, she would be deemed unfaithful and the penalty was severe beating or death. Similarly if the 'wife' were raped by another rebel, his act was punishable by death."

14. Regarding the role expected of a 'bush wife' Mrs. Bangura writes:

> "'Bush wives' were expected to carry out all the functions of a wife and more. A 'bush wife' carried her 'husband's' possessions on her head and trekked across the countryside with him; she was expected to gratify her 'husband's' sexual wishes whenever he so desired without question; she cooked for him when food was available, did his laundry and generally protected his possessions in his absence; she was expected to show undying loyalty to her husband for his protection and reward him with 'love and affection'; she was not expected to attempt to escape as this was deemed disloyal. Punishment for disloyalty was always severe and so, women were led to believe, in most cases would be met with death."

15. On the underlying element of sexual abuse as an inherent component of forced 'marriage' Mrs. Bangura stated that all the victims or 'bush wives' interviewed, without exception, admitted to having been repeatedly raped or sexually abused or molested by their 'rebel husbands' while in captivity. She writes:

> "'Bush wives' were constantly sexually abused, physically battered during and after pregnancies, and psychologically terrorised by their husbands, who thereby demonstrated their control over their wives. Physically, most of these girls experienced miscarriages, and received no medical attention at the time. They bled excessively because they lived in some of the remotest parts of the country with little or no access to medical services. Some now experience diverse medical problems such as severe stomach pains which they are reluctant to discuss; some have had their uterus removed; menstrual cycles are irregular; some were infected with sexually transmitted diseases and others tested HIV positive."

D. CONCLUSION

16. From the above excerpts of the Report, as well as the oral evidence of numerous Prosecution witnesses that testified before the Trial Chamber, I am of the firm view that the phenomenon of forced 'marriage' during the Sierra Leone conflict bears all the hallmarks or characteristics of the crime against humanity of Sexual Slavery. The general and specific elements of the crime against humanity of Sexual Slavery are satisfied in that forced 'marriage' invariably occurred as part of a widespread or systematic attack on the civilian population in Sierra Leone. In addition-

(i) The 'bush husband' exercised any or all the powers attaching to the right of ownership over his 'bush wife' whereby not only was she was held under captivity and not at liberty to leave but, in addition, she was forced to render gender-specific forms of labour (conjugal duties) including cooking, cleaning, washing clothes and carrying loads for him, for no genuine reward.

(ii) Invariably, the 'bush husband' regularly subjected his 'bush wife' to sexual intercourse, often without her genuine consent and to the exclusion of all other persons;

(iii) The 'bush husband' abducted and forcibly kept his 'bush wife' in captivity and sexual servitude with the intention of holding her indefinitely in that state or in the reasonable knowledge that it was likely to occur.[3464]

17. Neither the Prosecution nor the Defence in their respective submissions draw the same conclusions from Mrs. Bangura's Report[3465]. Interestingly, the Prosecution who called Mrs Bangura as its Expert witness on the subject did not once, refer to her Report or testimony in support of its case, insisting instead, that the crime of 'forced marriage' is subsumed under the crime against humanity of "other inhumane act", a view the Trial Chamber has dismissed.

18. I would conclude this Separate Concurring Opinion by reiterating that I fully endorse the Trial Chamber's finding that the crime of "forced marriage" is completely subsumed in the crime against humanity of Sexual Slavery and that there is no lacuna in the law which would necessitate a separate crime of "forced marriage" as an "other inhumane act". I further endorse the Trial Chamber's decision, in the interests of justice, to consider the overwhelming body of evidence of sexual slavery under Count 9 (Outrages upon Personal Dignity). Although it would ideally have been more appropriate to consider the evidence of forced marriage under a count of Sexual Slavery,

[3464] See the elements of the crime of Sexual Slavery as stated by the Trial Chamber in the Applicable Law Chapter of the Judgement.
[3465] The Parties respective submissions on 'forced marriage' are outlined in the Applicable Law Chapter of the Judgement.

that option does not arise in this case as Count 7 of the Indictment was dismissed as bad for duplicity. To throw out the overwhelming body of evidence of 'forced marriage' as a consequence of the Prosecution's procedural error would, in my opinion, be doing a great injustice to the hundreds of victims of 'forced marriage' who look to this Court for redress.

Dated this 20th June 2007, at Freetown Sierra Leone

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

PARTLY DISSENTING OPINION OF JUSTICE DOHERTY ON COUNT 7 (SEXUAL SLAVERY) AND COUNT 8 ('FORCED MARRIAGES')

1. I agree with my learned colleagues on the findings of the Judgement on Counts 1 to 6 and 9 to 14. However, my concerns about their findings on Counts 7 and 8 compels me to write this dissenting opinion on those counts.

A. COUNT 7

2. The majority rejects Count 7 as bad for duplicity and my learned colleagues provide compelling arguments for such a conclusion. However, in my respectful opinion, their reasons are formalistic and disregard the fundamental issue, which is whether the right of the Accused to be informed promptly and in detail about the nature and the cause of the charges against them has been violated.[3466]

3. I share the majority's view that the second limb of Count 7 viz "other forms of sexual violence" was not particularised by the Prosecution. I do not, with respect, agree that if Count 7 as pleaded is duplicitous, the Trial Chamber must dismiss it in its entirety.

4. The history of the challenges to the Indictments is detailed in Chapter II of this Judgement and I do not need to repeat it here.[3467]

5. In their Final Briefs, the Accused Kamara and Brima submit, for the first time and in almost identical terms, that Count 7 offends the rule against duplicity. Counsel rely on the decision of the *Prosecutor v. Karemera* to support the general principle that the allegations within an indictment are defective if they are not sufficiently clear and precise to enable an accused to fully understand the nature and the cause of the charges against him.[3468] Counsel further cite the Separate Opinion of Honourable Justice Sebutinde in the Rule 98 Decision, arguing that Count 7 in its current state has made it difficult for the Accused Kamara and Brima to "fully understand the nature and the cause of the charges against him".[3469]

[3466] This right is found in Article 17 of the Statute of the Special Court.
[3467] *See* Alleged Defects in the Form of the Indictment, *supra*.
[3468] *Prosecutor v. Karemera* ICTR-98-44-T Decision on the Defence Motion, pursuant to Rule 72 of Rules of Procedure and Evidence, pertaining to, *inter alia*, lack of jurisdiction and defects in the form of the Indictment.
[3469] Brima Final Brief para. 149; Kamara Final Brief para. 96.

6. Despite this submission, neither Counsel made any applications relating to Count 7 before opening the Defence case. Instead the Defence presented evidence on all counts, including Count 7.

7. The Prosecution did not deal with the issue of duplicity in Count 7 of its Final Brief but orally addressed the Trial Chamber in Closing Arguments, stating "[...] we say, barring exceptional circumstances, and the Defence has not demonstrated any, and barring a showing of actual prejudice to the Defence, and, we would add, barring and showing that this has been raised at the earliest opportunity, we would submit that it is far too late to raise this at this stage of the proceedings [...] but as Judge Sebutinde pointed out in paragraph 9 of her Separate Opinion in the Rule 98 Decision, no prejudice to the Defence has been established arising out of this".[3470]

8. The rule against duplicity is one of elementary fairness. The accused must know the nature of the case against him. Hence the rule evolved that a count must allege one offence and a count alleging more than one offence should be quashed before arraignment. Objections on the ground of duplicity are normally made prior to the indictment being put but can be made in the course of the hearing. As stated in Blackstone's on Criminal Practice, "rejection of a Defence motion to quash a count bad for duplicity is a good ground of appeal, although it may be open to the Court of Appeal to apply the proviso and dismiss the appeal if there has been no miscarriage of justice" [3471]

9. The learned author further noted "that although the objection can be taken at a later stage, the Court of the Appeal has disapproved of the Defence postponing the application to quash for purely tactical reasons".[3472]

10. Whilst I do have no doubt of the fundamental nature of the accused's right to be informed of the nature and cause of the charge against him, the defence is under a corresponding duty to raise the issue prior to the commencement of trial or at the earliest opportunity thereafter. I do not consider it to be in the interests of justice to allow the accused to invoke this right to quash an indictment after the case has closed, without showing that he was materially prejudiced. This is particularly so in cases such as the present, when the Accused were not only silent on the issue throughout the trial, but proceeded to adduce evidence and defended themselves on the charge.

[3470] Transcript, 7 December 2006 p. 61.
[3471] Blackstone's Criminal Practice, 2002 Edition, para D10.16.
[3472] Blackstone's Criminal Practice, para D10.23.

11. I am accordingly obliged to disagree with my learned colleagues, who have held that justice in this case is met by dismissing Count 7 in its entirety. As stated by the Trial Chamber in *Prosecutor v. Kupreškić*, "[...] the efficient discharge of the Tribunal's functions in the interest of justice warrants the conclusion that any possible errors of the Prosecution should not stultify criminal proceedings whenever a case nevertheless appears to have been made by the Prosecution and its possible flaws in the formulation of the charge are not such as to impair or curtail the rights of the Defence".[3473]

12. On the facts and submissions before me, I do not consider that there has been a miscarriage of justice. I would not have dismissed the count but would have considered evidence relating to sexual slavery only.

13. I regret that the very short time available has precluded me from more fully addressing this issue.

B. Count 8

14. I dissent on the majority decision on Count 8, other inhumane acts, particularised as forced marriage. The majority, after considered deliberations, held that the evidence pleaded by the Prosecution is completely subsumed by the crime of sexual slavery and accordingly dismissed Count 8 for redundancy. Having considered the evidence, I respectfully disagree.

15. The majority, in adopting this approach, has consequently declined to determine whether 'forced marriage' is of sufficient gravity to meet the requirements of an 'other inhumane act' as per Article 2(i) of the Statute.

1. Submissions of the Parties

16. In its Final Brief, the Prosecution undertook a comprehensive review of the evidence which in its view proves that the phenomenon of forced marriage is an 'other inhumane act.' In particular, the Prosecution considers the factual elements of forced marriage to include sexual slavery in a marital type union; the imposition of conjugal status by coercion or threat; forced labour; reduction to a servile status; the practical impossibility of seeking familial assistance or attempting escape and the widespread discrimination against bush wives which fuels prejudice against them in the community.

[3473] *Kupreškić* Trial Judgement, para 741.

17. The Prosecution submits that the Trial Chamber "ought to look beyond the label and examine the substance of the relationships between the "wives" and their captors",[3474] namely the coercive environment in which these women were placed, which made genuine consent impossible and which exposed the women to severe mental suffering.[3475] The Prosecution submit that the crime of forced marriage as an other inhumane act "consists of words or other conduct intended to confer a status of marriage by 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".[3476]

18. The Kamara Defence submits that Count 8 is "redundant, defective and violates against [sic] the rule of multiplicity of counts [...]"[3477] or alternatively, on a review of the evidence, that "Count 8 lacks evidential merit and should not be sustained even from a factual notion".[3478]

19. The Brima Defence submits that no evidence was adduced to show that the Accused Brima was individually responsible for the crimes charged under Counts 6-9 or bears the greatest responsibility for those crimes. The Brima Defence also appear to suggest that the allegations relating to Count 8 should be dealt with under Count 11.[3479]

20. The Kanu Defence submit that forcing a woman to enter a marital type relationship is not of 'a gravity similar to any other act referred to in Article 2(a) to (h) of the Statute.' In support of this submission, the Kanu Defence refer to "the more nuanced and complicated relation" between 'husband' and 'wife' discussed by Defence Expert Dr. Thorsen.[3480] The Kanu Defence question the expertise of the Prosecution Expert and submit that her findings are flawed and should not be given any weight.[3481] The Kanu Defence, after reviewing some examples of witness testimony, submit that no conviction can be entered for Count 7 and 8.

21. The Trial Chamber adopted the following elements of the crime against humanity of "other inhumane acts" as charged under Count 11, namely that:

[3474] Prosecution Final Brief, para. 1876.
[3475] Prosecution Final Brief, paras 1876-1888.
[3476] Prosecution Final Brief, paras 1009-1012.
[3477] Kamara Final Brief, para. 241.
[3478] Kamara Final Brief para. 244.
[3479] Brima Final Brief, paras 150-152.
[3480] Exhibit D-38, Dr. Dorte Thorsen, "Expert Report on Forced Marriages" [hereinafter "Thorsen Report"].
[3481] Kanu Final Brief, paras 48, 50.

(a) The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;

(b) The act was of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute;

(c) The perpetrator was aware of the factual circumstances that established the character or gravity of the act;

(d) The act was committed as part of a widespread or systematic attack directed against a civilian population; and

(e) The perpetrator knew or had reason to know that his acts or omissions constituted part of a widespread or systematic attack directed against a civilian population.[3482]

2. Expert Evidence

22. Both the Prosecution and Defence called expert evidence, tendering reports by Mrs. Zainab Bangura and Ms Dorte Thorsen respectively.[3483]

23. Mrs. Bangura in her report examined the traditional patterns of marriage in Sierra Leone, concluding that "traditionally in Sierra Leone, young ladies have been forced into early marriages by their parents. They have had no say in accepting or rejecting such marriages which were mostly arranged. Various reasons have underlain this practice".[3484]

24. She notes that such early or arranged marriages are no longer common as girls have become more aware of their options and Islam, the dominant religion amongst the majority of the illiterate population, preaches against forced marriages. Increasingly, young men and women marry a person of their choice, particularly in urban areas.

25. Dr. Thorsen declined to undertake research on the concept of forced marriage in the West African region. The Defence expert did not interview any women who had been subject to a forced marriage during the period of the Indictment or any person who had undergone a traditional arranged marriage in Sierra Leone, but reviewed other research and writings about both traditional and forced marriages in Sierra Leone. Her report shows that girls and young women are commonly

[3482] Rule 98 Decision, paras 112, 174.
[3483] Exhibit P-32, Mrs. Zainab Bangura, "Expert Report on the Phenomenon of "Forced Marriage" in the context of the Conflict in Sierra Leone and, more specifically, in the context of the Trials against the RUF and AFRC Accused only" [hereinafter "Bangura Report"]; exhibit D-38, Thorsen Report.
[3484] Exhibit P-32, CMS p. 15266.

coerced into arranged marriage by the bride and groom's kin and "seniors".[3485] The practice is not universal and many men and women marry a person of their own choice.

26. The experts, in both their written and oral evidence, stressed that arranged marriages entail the involvement and agreement of the families and seniors of the prospective bride and groom, and in particular the approval of the family of the female spouse, as well as the fulfilment of certain ceremonies and rituals relating to the marriage.

27. The Prosecution Expert had interviewed women and girls who had been "married" to combatants in the course of the conflict. The Prosecution Expert found that all the girls and women interviewed for the report had been abducted and informed by their abductors that they had become 'wives'. Unsurprisingly, in such circumstances, the woman or girl's family was not involved in the arrangement and the consent of her parents or guardians was not sought.

28. No official ceremony of any kind took place.

29. Women and girls who were parties to these marriages became know as "bush wives" or "rebel wives". The status of bush wife or rebel wife meant that the girl 'belonged' to one person and was not required to have sex with different rebels. Forced marriage became a means of survival for most girls in the bush. 'Bush wives' were spared gang rapes, were ensured regular meals and were protected by their 'husbands'. However, their situation was precarious. When the 'husband' decided to take a second 'bush wife', the first one was rejected and she no longer enjoyed his protection.[3486]

30. The Prosecution Expert Report states that many 'bush wives' became pregnant and were forced to give birth and rear children to the men that had taken them by force.[3487] Miscarriages were common and medical attention limited or unavailable. Some women were infected by sexually transmitted diseases or became HIV positive.

31. A 'bush wife' was obliged to work for her 'husband', carrying his possessions on her head for long distances across the countryside, cooking and doing his laundry and generally minding his

[3485] The expert declined "founded on a deep concern with the longer-term consequences of making straightforward links between complex social practices of arranging marriages between kin groups, international conceptualisations of "forced marriages" , and the coercion of women into being "bush wives" during the civil war in Sierra Leone" and because "I am worried that the requested research with its focus on "forced marriage" in West Africa a general view on rural population as backwards [...] this is not a view I would want to support": Exhibit D. 38, CMS p.18861.
[3486] Exhibit P-32, CMS p. 15271. This is also recorded in exhibit P-53, Human Rights Watch Report, "We'll Kill you if you Cry, Sexual Violence in the Sierra Leone Conflict" [hereinafter "HRW Report"].
[3487] Exhibit P-53, HRW Report, CMS p. 15753.

possessions in his absence. The 'wife' was expected to gratify his sexual wishes whenever he so desired without question.

32. In return for his protection, a 'bush wife' was expected to show undying loyalty to her 'husband' and reward him with 'love' and affection. Any attempt to escape was deemed disloyal. Punishment for disloyalty was always severe and in most cases would be met by death, or so women were led to believe.[3488]

33. Most of the "bush wives" interviewed by the Prosecution expert experienced long-term stigmatisation and were rejected by their families and/or communities. They were often unable to return to their school or community for fear of reprisals, due to a widespread belief that any person who lives with a rebel leader for more than a day becomes tainted and acquires 'rebel behaviour'.

34. I note the expert opinion and the evidence that the phenomenon of forced marriage was widespread throughout Sierra Leone in the period between 14 February 1998 and 28 February 1999.

35. The Defence expert comprehensively reviewed the rights and duties arising out of traditional arranged marriages and the rights, duties and status involved in such marriage.

36. Having considered the description of traditional marriage in parts of West Africa given by the Defence expert and the evidence of both the Prosecution expert and the witnesses, I am of the view that the abduction of girls and their coercion into marital unions, as described by the Prosecution expert and by witnesses, is not the same nor comparable to arranged or traditional marriages. In particular the consent of the girl and/or her parents are not sought, there is no involvement of the family of either "spouse" and there is no ceremony or ritual fulfilled. Hence I do not agree with the Kanu Defence submission that the phenomenon of "bush wives" is a replication of customary marriage[3489] On the evidence of traditional marriages described by both experts, I find the phenomenon of forced marriage has little or no similarity to traditional marriage.

3. Witness Evidence

37. Witnesses were called by both the Prosecution and Defence, who gave evidence of being abducted and forced into marriage. Given the detailed recount of their testimony in the majority Judgement,[3490] I will give only a brief synopsis of particular witnesses.

[3488] Exhibit P-53, HRW Report, CMS p. 14492.
[3489] Kanu Final Brief, para 55.
[3490] *See* Factual Findings, Outrages on Personal Dignity, *supra*.

38. Witness TF1-209 was repeatedly raped in Koinadugu Town over a period of three months by a member of the AFRC named 'Jabie'. 'Jabie' forced her to work for him, namely cooking and laundering; and made her into his "wife."[3491]

39. Witnesses TF1-334, and TF1-033, gave evidence that women captured in Bombali District were brought to Camp Rosos and subjected to sexual slavery by members of the AFRC. The captured women were distributed to the members of the AFRC to be their "wives" and were detained with the troops until the AFRC invaded Freetown. The evidence of the witnesses show that the members of the AFRC made the captured women into their "wives".

40. Witness TF1-023 gave evidence of being abducted at gun-point during the AFRC invasion of Freetown in 1999. The witness was forcibly abducted, given against her will to a Colonel as his "wife", she was raped by him and was detained and forced to move with the troops.

41. I note that in evidence in chief, witness TF1-023 stated that she was not forced to do "anything". She clarified on cross-examination that she was not forced to do any work; she was not forced to cook or clean, for example;[3492] and other people respected her because of her position of "wife" to a commander. The witness testified that "people of lower ranks" deferentially called her "De Mammy" because of the status of Colonel.[3493] Whilst the status of "wife" conferred upon the Witness is a relative benefit as compared to other women who may have been forcibly married to persons of lower ranks, in my opinion this in no way diminishes the seriousness of the acts committed against the witness.

42. Witness TF1- 094 gave evidence that she was abducted from her village by 'Andrew' who detained her and forced her to be his 'wife.' The witness stated that when she became pregnant, 'Andrew' told her not to abort the pregnancy and offered to marry her. I agree with the Prosecution that this indicates that they were not legally married, and I would have found that this has no impact on the proof of the crime of forced marriage which is concerned with the mental and physical trauma of being forced unwillingly into a marital arrangement, the stigma associated with being labelled a rebel 'wife' and the corresponding rejection by the community.

43. Prosecution witness TF1-085 was forcibly abducted and taken as the 'wife' of 'Colonel Z' in Port Loko District in the early months of 1999. The witness became pregnant and miscarried twice as a result of the rapes. In Masiaka, 'Colonel Z' "married" the witness in a ceremony,

[3491] TF1-209, Transcript 7 July 2006, p. 38.
[3492] TF1-023, Transcript 9 March 2005, p. 57; Transcript 11 November 2005, p. 13.
[3493] TF1-023, Transcript 9 March 2005, pp. 57-58.

although I consider that given the environment of coercion, there could be no valid consent on the part of the witness and therefore, this "marriage" could not have been legal. The witness was not forced to do any work for 'Colonel Z', but she was detained against her will for several months and punished and threatened with death by him when she tried to escape.

44. Prosecution witness TF1-282 gave evidence that she was captured and brought to the troops then forced into marriage by a rebel whose name was given in closed session [hereinafter "the named rebel"] in early 1999 in Port Loko District. The named rebel made the witness into his "wife". In Masiaka, the named rebel "married" the witness in a ceremony, although I consider that given the environment of coercion, there could be no valid consent on the part of the Witness and therefore, this "marriage" could not have been legal. The witness was not forced to do any work for the named rebel, but she was detained against her will for several months and punished and threatened with death by the named rebel when she tried to escape.

45. I have also taken into account the experts' testimonies that some of the victims may remain in the forced marriage after the war for various reasons including inability to find an alternative life style, an obligation to rear the children born of the forced marriage, rejection by their family or community or acceptance of their lot. However, I am of the opinion that a decision to remain in the forced marriage or its transformation into a consensual situation does not retroactively negate the original criminality of the act.

46. The evidence shows 'forced marriage' in the context of the armed conflict of Sierra Leone involved the forceful abduction of girls and women from their homes or other places of refuge and their detention with the AFRC troops as they moved through the various Districts. The girls and women, without their consent, were taken as 'wives' by individual rebels.[3494] Some girls and women forced into marriage benefited from their 'marriage' insofar as their ownership by a particular rebel may have offered them some protection from rape and other forms of abuse by the other rebels. However, given the overwhelming environment of coercion, I consider this to be a relative benefit or a means of survival, which cannot be understood as indicative of consent or the exercise of autonomous power within the relationship by the victims and which in no way diminishes the severity of the acts.[3495]

[3494] *See* Exhibit P-32, Bangura Report, pp. 13,15.
[3495] Exhibit D-38, Thorsen Report, pp. 16- 17.

47. Women and girls subjected to 'forced marriage' are often very young, and thus particularly vulnerable. Their vulnerability is heightened by their removal from their families and placement in a context of physical and sexual violence.[3496]

48. Serious psychological and moral injury follows 'forced marriage'. Women and girls are forced to associate with and in some cases live together with men whom they may fear or despise. Further, the label 'wife' may stigmatise the victims and lead to their rejection by their families and community, negatively impacting their ability to reintegrate into society and thereby prolonging their mental trauma.

49. On the evidence I find that the intention of the "husband" was to oblige the victim to work and care for him and his property, to fulfil his sexual needs, remain faithful and loyal to him and to bear children if the "wife" became pregnant. In return, he would protect the "wife" from rape by other men, give her food when food was available and, depending on his status, confer a corresponding status upon the wife. In effect, these are rights and obligations of the type referred to by the Defence expert as being involved in traditional marriages but in there is no agreement of the family or kin of the "wife" and the status is forced by violence or coercion upon the female partner.

50. I would therefore distinguish the phenomenon from sexual slavery. The evidence of witnesses shows that victims had no protection from rape and were available to any rebel but were not stigmatised as "rebel wives" or "bush wives".

51. Additionally, I am satisfied on the basis of the testimony of the Prosecution expert witness that the use of the term 'wife' is indicative of forced marital status which had lasting and serious impacts on the victims. I find the label of 'wife' to a rebel caused mental trauma, stigmatised the victims and negatively impacted their ability to reintegrate into their communities.[3497] I would therefore have found that the *actus reus* and *mens rea* of an Other Inhumane Act, Forced Marriage, are satisfied with regards to the foregoing evidence.

52. I reiterate that the conduct contemplated as "forced marriage" does not necessarily involve elements of physical violence such as abduction, enslavement or rape, although the presence of these elements may go to proof of the lack of consent of the victim. The crime is concerned

[3496] Exhibit P-32, Bangura Report, p. 13.
[3497] Exhibit P-32, Bangura Report, pp. 13, 16-20.

primarily with the mental and moral suffering of the victim. As stated by the Trial Chamber in *Akayesu*:

> An attack may also be non violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.[3498]

53. The crucial element of 'forced marriage' is the imposition, by threat or physical force arising from the perpetrator's words or other conduct, of a forced conjugal association by the perpetrator over the victim.

54. As set out in the majority Judgement, the crime of 'other inhumane acts' exists as a residual category so that the Statute's application is not unduly limited with regard to crimes against humanity.[3499] When presented with pleadings which suggest that certain conduct falls within this category, the fundamental question which falls to the Trial Chamber is whether such conduct inflicts great suffering, or serious injury to body or to mental or physical health, and is of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute.

55. In assessing the seriousness of an act or omission the factual circumstances must be taken into account. The assessment includes the nature of the act or omission which forms the factual basis of the charges, the context in which it occurred, the personal circumstances of the victim including sex, age, and health as well as the mental, physical and moral effect upon the victim.[3500]

56. As the suffering of the alleged victim is inherently subjective, the personal circumstances of the victim must include the cultural environment in which the act or omission took place and in which the effects of the act are felt.

57. I am satisfied on the evidence that the conduct considered as 'forced marriage' results in serious harm to the mental and physical health of the victim and meets this threshold.

4. Forced Marriages as a Crime against Humanity

58. Forced marriage as a crime against humanity has not been specified in any treaty provision nor recognised as a separate crime by the other International Tribunals. Rule 72*bis* of the Rules of

[3498] *Akayesu* Trial Judgement, para. 581.
[3499] *See, for example, Stakić* Appeals Judgement, paras 313-316.
[3500] *Kunarac* Trial Judgement, para. 501.

Procedure and Evidence permits the Court to consider, 'where appropriate, applicable treaties and principles and rules of international law customary law,' as well as 'general principles of law derived from national laws of legal systems of the world [...] provided those principles are not inconsistent with the Statute, and the Agreement, and with the international customary law and internationally recognised norms and standards.'

59. Professor Werle considered that

> As part of the international order, international criminal law originates from the same legal sources as international law. These include international treaties, customary international law, and general principles of law recognized by the world's major legal systems. Decisions of international courts and international legal doctrine can be used not as sources of law, but subsidiary means for determining the law. Decisions of national courts apply international law can also be referred to here.[3501]

60. Cassese, when reviewing the general principles of international law and in particular international criminal law, found:

> General principles of international law consist of principles inherent in the international legal system. Hence, their identification does not require an in-depth comparative survey of all major systems of the world, but can be carried out by way of generalization and induction from the main features of the international legal order.[3502]

He further stated that

> clearly, a principle of criminal law may belong to this class only if a court finds that it is shared by common law and civil law systems as well as other legal systems such as those of the Islamic world, some Asian countries such as China and Japan, and the African continent.[3503]

61. Domestic law in many common and civil law jurisdictions criminalises the abduction of any person or any female person with intent to have that person marry. For example, the Penal Code of Nigeria provides:

> Any person who, with the intent to marry or carnally know a female of any age, or to cause her to be married, or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony, and is liable to imprisonment for seven years.

62. Similar penal laws have been enacted in Bulgaria,[3504] Papua New Guinea,[3505] India,[3506] Singapore,[3507] Indonesia,[3508] Venezuela,[3509] and Brazil.[3510]

[3501] Gerhard Werle, Principles of International Criminal Law, TMC Asser Press (2005), para. 123.
[3502] Antonio Cassese, *International Criminal Law*, Oxford University Press (2003), p. 31.
[3503] Antonio Cassese, *International Criminal Law*, Oxford University Press (2003), p. 32.
[3504] Article 177(2), Bulgarian Penal Code.
[3505] S. 238, Criminal Code of Papau Guinea.
[3506] Article 366, Penal Code of India.
[3507] Article 366, Penal Code of Singapore.
[3508] Article 332, Penal Code of Indonesia.

5. Non-Criminal International Treaties

63. International treaties and conventions prohibit marriage without the consent of the parties. Article 16(2) of the *Universal Declaration of Human Rights* declares, "[m]arriage shall be entered into only with the free and full consent of the intending spouses."[3511] The *Declaration* is not a binding treaty but member states of the United Nations are called upon to publicise and disseminate it. Sierra Leone became a member State of the United Nations on 27 September 1961.

64. The *International Covenant of Civil and Political Rights* echoes this language at Article 23(2).[3512] Likewise, Article 5.1, 6(a) and 7 of the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) require State Parties to recognize the rights of women to choose a spouse and to enter into a marriage only with their free and full consent. Sierra Leone signed this convention on 21 September 1988 and ratified it on 11 November 1988.

65. In addition, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage Article 1(1) provides:

> No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

66. Regional treaties prohibit discrimination against women. Article 18(3) of the *African (Banjul) Charter on Human and Peoples' Rights*, ratified by Sierra Leone on 21 September 1983, provides that "[t]he State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international conventions and declarations."

67. The Protocol to the *African Charter on the Rights of Women on Africa* (signed but not ratified by Sierra Leone) provides in Article 11(3):

> State Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide, and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

[3509] Article 384 Codigo Penal de Venezuela.
[3510] Article 219-221 Codigo Penal, Brazil.
[3511] *Universal Declaration of Human Rights,* GA Res, 217(III), UN GAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [UDHR]
[3512] *International Covenant on Civil and Political Rights,* 19 December 1966, 999, U.N.T.S. 171, arts. 9-14, entered into force 23 March 1976, accession by Sierra Leone 23 August 1996 [ICCPR].

6. Decisions of Other Tribunals

68. In *Prosecutor v. Kvočka et. al*, the ICTY ruled "[...] sexual violence is broader than rape and includes such crimes as sexual slavery or molestation",[3513] giving as examples:

> such crimes as sexual mutilation, forced marriage, and forced abortion as well as the gender related crimes explicitly listed in the ICC Statute as war crimes and crimes against humanity, namely "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization" and other similar forms of violence.[3514]

7. Deliberations

69. I consider that international treaties and domestic law provide that marriage is a relationship founded on the mutual consent of both spouses. In 'forced marriage' the consent of the victim is absent. In the absence of such consent, the victim is forced into a relationship of a conjugal nature with the perpetrator thereby subsuming the victim's will and undermining the victim's exercise of their right to self-determination.

70. I reiterate that the conduct contemplated as 'forced marriage' does not necessarily involve elements of physical violence such as abduction, enslavement or rape, although the presence of these elements may go to prove the lack of consent of the victim. The crime is concerned primarily with the mental and moral suffering of the victim.

7. Conclusion

71. By vitiating the will of one party and forcing him or her to enter into and remain in a marital union the victim is subject to physical and mental suffering the phenomenon of forced marriage transgresses the internationally accepted conventions that both parties must consent to a marriage. It is contrary to principles of criminal law shared by common law and civil law systems alike, as well as Islamic law and the legal systems of some Asian and African states. I consider, on the evidence before me, that the act of forced marriage is of similar gravity and nature to the other enumerated crimes against humanity and that the act causes serious bodily or mental harm. Accordingly, I consider and hold that forced marriage constitutes a crime against humanity.

[3513] *Kvočka* Trial Judgment, para. 180.
[3514] *Kvočka* Trial Judgement, para. 180, citing the Rome Statute of the International Criminal Court, UN Doc A/CONF.183/9, 17 July 1998, at Art. 7(1)(g), Art. 8(2)(b)(xxii), and Art. 8(2)(e)(vi).

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

Doherty J

Justice Teresa Doherty



[Seal of the Special Court for Sierra Leone]

ANNEX A: PROCEDURAL HISTORY

A. Indictment, Arrest, Transfer and Initial Appearance

1. Alex Tamba Brima

1. On 7 March 2003, Justice Thompson approved the Indictment against the Accused Brima and ordered its non-disclosure to the public.[3515] On the same day, Justice Thompson issued a warrant of arrest and an Order for the Accused Brima's transfer and detention.[3516] The Accused Brima was arrested on 10 March 2003 and transferred to the Special Court's temporary detention facility in Bonthe on Sherbro Island. On 14 March 2003, Justice Itoe authorised the disclosure of the Indictment.[3517] On 15, 17 and 21 March 2003, the Accused Brima made his initial appearance before Justice Itoe. He pleaded "not guilty" to all charges against him and was ordered to be detained on remand.[3518]

2. Brima Bazzy Kamara

2. On 28 May 2003, Justice Boutet approved the Indictment against the Accused Kamara and ordered its non-disclosure to the public. On the same day, Justice Boutet issued a warrant of arrest and an Order for the Accused Kamara's transfer and detention.[3519] The Accused Kamara was arrested on 29 May 2003 and transferred to the Special Court's temporary detention facility in Bonthe on Sherbro Island. On 3 June 2003, Justice Boutet authorised the disclosure of the Indictment.[3520]On 4 June 2003, the Accused Kamara made his initial appearance before Justice Boutet. He pleaded "not guilty" to all charges against him and was ordered to be detained on remand.

3. Santigie Kanu

3. On 16 September 2003, Justice Boutet approved the Indictment against the Accused Kanu and ordered its non-disclosure to the public. On the same day, Judge Boutet also issued a warrant of

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[3515] *Prosecutor v. Brima*, SCSL-03-06-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003.
[3516] *Prosecutor v. Brima,* SCSL-03-06-PT, Warrant of Arrest and Order for Transfer and Detention, 7 March 2003.
[3517] *Prosecutor v. Brima*, SCSL-03-06-I, Order for the Disclosure of the Indictment and the Warrant of Arrest and Order for Transfer and Detention, 14 March 2003.
[3518] *Prosecutor v. Brima*, SCSL-2003-06-PT, Adjournment of the Initial Appearance and Detention on Remand, 15 March 2003.
[3519] *Prosecutor v. Kamara,* SCSL-2003-10-PT, Decision Approving the Indictment, the Warrant of Arrest, and Order for Non-Disclosure, 28 May 2003; *id.*, Warrant of Arrest and Order for Transfer and Detention, 28 May 2003.
[3520] *Prosecutor v. Kamara*, SCSL-2003-10-I, Order for the Disclosure of the Indictment and the Warrant of Arrest and Order for Transfer and Detention, 3 June 2003.

arrest and an Order for the Accused Kanu's transfer and detention.[3521] On 17 September 2003, the Accused Kanu was arrested and transferred to the Special Court's temporary detention facility in Bonthe on Sherbro Island. On 19 September 2003, Justice Boutet authorised the disclosure of the Indictment.[3522] On 23 September 2003, the Accused Kanu made his initial appearance before Justice Boutet. He pleaded "not guilty" to all charges against him and was ordered to be detained on remand.

B. Pre-Trial Proceedings

1. Joinder

4. On 9 October 2003, the Prosecution brought a motion pursuant to Rule 48(B) of the Rules,[3523] seeking a joint trial of the Accused Sesay, Kallon and Gbao of the Revolutionary United Front (RUF), and the Accused Brima, Kamara and Kanu of the Armed Forces Ruling Council (AFRC) ("Prosecution Motion for Joinder"), who had all been indicted individually. The Prosecution submitted that the alleged crimes against all of these Accused formed part of one common scheme, strategy or plan.[3524]

5. On 27 January 2004, Trial Chamber I partially granted the Prosecution motion for joinder of the six Accused and ordered that the Accused Sesay, Kallon, and Gbao be tried jointly ('RUF Case'), but separate from the Accused Brima, Kamara and Kanu, who were to be tried jointly as well ('AFRC Case').[3525]

6. On 3 February 2004, the Prosecution applied for leave to file an interlocutory appeal against the Decision of Trial Chamber I on the Prosecution Motion for Joinder. On 13 February 2004, Trial

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[3521] *Prosecutor v. Kanu*, SCSL-2003-13-I, Decision Approving the Indictment, the Warrant of Arrest and Order for Transfer and Detention and Order for Non-Public Disclosure, 16 September 2003; *id.*, Warrant of Arrest and Order for Transfer and Detention, 16 September 2003.

[3522] *Prosecutor v. Kanu*, SCSL-2003-13-I, Order for Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention, 19 September 2003.

[3523] Rule 48(B) of the Rules provides: "Persons who are separately indicted, accused of the same or different crimes committed in the course of the same transaction, may be tried together, with leave granted by the Trial Chamber pursuant to Rule 73".

[3524] Prosecutor v. Issa Hassan Sesay (SCSL-2003-05-PT), Prosecutor v. Alex Tamba Brima (SCSL-2003-06-PT), Prosecutor v. Morris Kallon (SCSL-2003-07-PT), Prosecutor v. Augustine Gbao (SCSL-2003-09-PT), Prosecutor v. Brima Bazzy Kamara (SCSL-2003-10-PT) and Prosecutor v. Santigie Borbor Kanu, (SCSL-2003-13-PT).[3524]

[3525] *Prosecutor v. Brima,* SCSL-2003-06-PT, *Prosecutor v. Kamara,* SCSL-2003-10 PT, *Prosecutor v. Kanu,* SCSL-2003-13-PT, *Prosecutor v. Sesay,* SCSL-2003-05-PT, *Prosecutor v. Kallon,* SCSL-2003-07-PT, *Prosecutor v. Gbao,* SCSL-2003-09-PT, Decision and Order on Prosecution Motions for Joinder, 28 January 2004, para 39.

Chamber I dismissed the application on the ground that no showing of 'exceptional circumstances' pursuant to Rule 73(B) of the Rules[3526] had been made.[3527]

7. On 30 April 2004, the Prosecution filed a motion pursuant to Rule 48(C) of the Rules[3528] for the concurrent presentation of the evidence common to both the RUF Case and the AFRC Case[3529] on the grounds that the testimonies of several witnesses were common to both cases and therefore, a concurrent hearing of the evidence was in the interests of justice and of judicial economy. On 11 May 2004, Trial Chamber I dismissed the motion and ruled that a concurrent presentation of evidence, particularly in light of the amount of evidence and in the context of the Decision on the Prosecution Motion for Joinder, was conceptually irreconcilable with the notion of 'joint separate trials'.[3530] On 1 June 2004, Trial Chamber I dismissed an application by the Prosecution seeking leave to appeal the Decision of 11 May 2004 refusing a concurrent presentation of the evidence.[3531]

2. Trial Chamber Composition

8. The case was initially assigned to Trial Chamber I composed of Justices Thompson, Itoe and Boutet. On 17 January 2005, the President of the Special Court assigned the case to the newly formed Trial Chamber II, composed of Justices Doherty, Lussick and Sebutinde.[3532]

3. History of Indictments

9. The initial indictments against the Accused Brima, Kamara and Kanu each contained 17 counts of crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law.[3533]

[3526] Rule 73(B) of the Rules provides: "Decisions rendered on such motions are without interlocutory appeal. However in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders."

[3527] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Decision on Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motions for Joinder, 13 February 2004.

[3528] Rule 48(C) of the Rules provides: "A Trial Chamber may order the concurrent hearing of evidence common to the trials of persons separately indicted or joined in separate trials and who are accused of the same or different crimes committed in the course of the same transaction. Such a hearing may be granted with leave of a Trial Chamber pursuant to Rule 73."

[3529] *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-PT, Prosecution's Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-PT and SCSL-2004-16-PT, 30 April 2004.

[3530] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT, 11 May 2004.

[3531] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Prosecution Application for Leave to File an Interlocutory Appeal Against Decision on Motion for Concurrent Hearing of Evidence Common to Cases SCSL-2004-15-PT and SCSL-2004-16-PT, 4 June 2004.

[3532] *Prosecution v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Order Assigning a Case to a Trial Chamber, 17 January 2005.

10. On 7 January 2004, counsel for the Accused Kamara filed a preliminary motion with regard to several alleged defects in the form of the initial indictment.[3534] On 1 April 2004, Trial Chamber I rendered a Decision in which it ordered the Prosecution to serve on the Defence a certified true copy of the case summary accompanying the initial indictment.[3535]

11. On 16 October 2003, counsel for the Accused Kanu filed a preliminary motion with regard to several alleged defects in the form of the initial indictment.[3536] On 19 November 2003, Trial Chamber I rendered a Decision in which it ordered the Prosecution to correct certain language in the initial indictment which was found to be ambiguous. Trial Chamber I also found that the dates, locations and offences in the initial indictment were pleaded with sufficient clarity.[3537] On 25 November 2003, the Prosecution filed a Bill of Particulars containing additional events in support of the charges against the Accused Kanu.[3538]

12. On 27 January 2004, having ordered a joint trial of the Accused Brima, Kamara and Kanu, Trial Chamber I ordered the Prosecution to file two consolidated indictments and that new case numbers be assigned to the two joint cases.[3539] On 5 February 2004, the Prosecution filed a new indictment ("Consolidated Indictment") in compliance with the Order of Trial Chamber I.[3540]

13. On 9 February 2004, the Prosecution applied for leave to amend the Consolidated Indictment and add a count of "other inhumane acts" pursuant to Article 2(g) of the Statute for acts of "forced marriage". Moreover, the Prosecution moved for other modifications of the Consolidated Indictment.[3541] On 1 March 2004, following an Order of Trial Chamber I,[3542] the Prosecution filed a document setting out in detail its proposed amendments to the Consolidated Indictment.[3543]

[3533] *Prosecutor v. Brima*, SCSL-03-06-I, Indictment (Annexes: Prosecutor's Memo to Accompany Indictment, Investigator's Statement, Draft Order Confirming Indictment), 7 March 2003; *Prosecutor v. Kamara,* SCSL-03-10-PT, Prosecutor's Memorandum to Accompany the Indictment, 26 May 2003; *Prosecutor v. Kanu,* SCSL-03-13-PT, Indictment, 15 September 2003.

[3534] *Prosecutor v. Kamara*, SCSL-2003-10-PT, Brief in Support of Preliminary Motion on Defects in the Form of the Indictment, 7 January 2004; Prosecutor v. Kamara, SCSL-2003-10-PT, Relief for the Motion on Defects in the Form of the Indictment, 7 January 2004

[3535] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision and Order on Defense Preliminary Motion on Defects in the Form of the Indictment, 1 April 2004.

[3536] *Prosecutor v. Kanu,* SCSL-2003-13-PT, Motion on Defects in the Form of the Indictment and for Particularization of the Indictment, 16 October 2003.

[3537] *Prosecutor v. Kanu*, SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003.

[3538] *Prosecutor v. Kanu,* SCSL-2004-13-PT, Bill of Particulars, 25 November 2003.

[3539] *id.*, Corrigendum – Decision and Order on Prosecution Motion for Joinder, 28 January 2004. See also *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Decision for the Assignment of a New Case Number, 3 February 2004.

[3540] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Indictment, 5 February 2004.

[3541] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Request for Leave to Amend the Indictment, 9 February 2004.

14. On 6 May 2004, Trial Chamber I granted the proposed amendments to the Consolidated Indictment, which included a new Count 8 of "other inhumane acts", along with other amendments ("Amended Consolidated Indictment").[3544] On 17 May 2004, the three Accused made a further appearance pursuant to Rule 50(B)(i) of the Rules before Justice Boutet to enter a plea on the new Count 8.[3545] As the three Accused refused to enter a plea, Justice Boutet entered a plea of "not guilty" on their behalf in relation to Count 8 pursuant to Rule 61(iii) of the Rules.

15. On 7 February 2005, the Prosecution requested leave to withdraw Counts 15-18 from the Amended Consolidated Indictment. On 15 February 2005, the Trial Chamber granted the Prosecution's request.[3546]

16. On 20 January 2005, the Kanu Defence filed a motion requesting the dismissal of counts 15-18 of the indictment on the grounds of an alibi defence and lack of a prima facie case, and requested for the extension of time for the hearing of the defence motion.[3547] The Trial Chamber dismissed the motion and stated that there should be o further no argument on the motion.

17. The operative indictment in this case, the Further Amended Consolidated Indictment, was filed on 18 February 2005.

4. Assignment of Counsel

(a) The Accused Brima and Kamara

18. On 14 April 2003, the Registrar assigned Terence Michael Terry on a temporary basis to the Accused Brima ("Provisional Counsel").[3548] On 20 June 2004, Provisional Counsel passed away.

[3542] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Order to Submit Indication of Specific Changes to Indictments, 26 February 2004.
[3543] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Indication of Specific Changes to Indictments, 1 March 2004.
[3544] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004; see also *id.*, Consequential Order and Corrigendum to the Decision on the Prosecution Request for Leave to Amend the Indictment, 12 May 2004.
[3545] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Scheduling Order for the Further Appearance of the Accused on the Amended Consolidated Indictment, 12 May 2004. *See* Transcript 17 May 2004, pp. 1-25.
[3546] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005 and Corrigendum to Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005.
[3547]
[3548] *Prosecutor v. Brima,* SCSL-2003-06-I, Decision Appointing Counsel for the Accused, 14 April 2003.

Effective as of 26 October 2004, Kevin A. Metzger was assigned as new counsel for the Accused Brima.[3549]

19. On 18 June 2003, Kenneth Fleming was assigned as counsel for the Accused Kamara on a temporary basis.[3550] On 15 February 2005, Wilbert Harris was assigned as counsel for the Accused Kamara.[3551]

20. On 12 May 2005, the Trial Chamber granted a request by counsel for the Accused Brima and Kamara to withdraw and instructed the Principal Defender to assign new counsel to them.[3552] However, on 24 May 2005, a motion was filed seeking the re-appointment of Kevin Metzger and Wilbert Harris as counsel for the Accused Brima and Kamara. On 9 June 2005, the majority of the Trial Chamber dismissed the motion, finding that it did not have jurisdiction to revisit its 12 May 2005 decision nor any grounds to re-appoint previous counsel.[3553] On 8 December 2005, the Appeals Chamber partially overruled the Trial Chamber's decision of 9 June 2005, finding that the Trial Chamber had erred both in fact and in law.[3554]

(b) The Accused Kanu

21. On 1 October 2003, the Acting Principal Defence provisionally assigned Mr. Geert-Jan Knoops as Counsel to the Accused.[3555] On 23 February 2004, the Acting Principal Defender named Mr. Knoops as Assigned Counsel to Kanu for the provision of legal services for the duration of the trial.[3556]

[3549] *Prosecutor v. Brima*, SCSL-04-16, Decision, 25 October 2004.
[3550] *Prosecutor v. Kamara,* SCSL-2003-10-PT, Decision, 18 June 2003.
[3551] *Prosecutor v. Kamara*, SCSL-2004-16-PT, Decision, 15 February 2005 and Prosecutor v. Kamara, SCSL-2004-16-PT Decision, 15 February 2005.
[3552] Oral Decision on the Application of Lead Counsel to withdrawn from the Case, Transcript 12 May 2005, pp 2-3; *see also Prosecutor v. Brima, Kamara, Kanu,* SCSL-2004-16-T, Decision on the Confidential Joint Defence Application by Counsel for Brima and Kamara and on the Request on Further Representation by Counsel for Kanu, 20 May 2005.
[3553] Prosecution v. Brima and Kamara, Decision on the Extremely Urgent Confidential Joint Motion for the Re-appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara and Decision on Cross Motion by Deputy Principal Defender to Trial Chamber II for Clarification of its Oral Order of 12 May 2005, 9 June 2005.
[3554] Case No. SCSL-2004016-AR73, Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, 8 December 2005.
[3555] *Prosecutor v. Kanu,* SCSL-2003-13-PT, Decision, 2 October 2003.
[3556] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Decision, 25 February 2004.

5. Bail

22. On 28 May 2003, Defence Counsel for Brima submitted a motion for bail pursuant to Rule 65 of the Rules.3557 According to Rule 65(B) of the Rules the Attorney-General and Minister of Justice of Sierra Leone was heard, who recommended that the motion be rejected.[3558] On 22 July 2003, Judge Itoe dismissed Brima's application for bail, based on the likely possibility of the escape of the Accused, the probable impossibility of locating or recapturing him if released, the likelihood of public disorder and the possibility of recriminations.[3559]

23. On 23 June 2004 the Accused Kanu filed a confidential motion for temporary bail in order to visit his mother who was unable to visit him at the Detention Facility due to her physical condition.[3560] However, following the successful efforts of the Registrar to organize the transport of the Accused's mother to the Detention Facility, the motion was shortly thereafter withdrawn by means of a letter.[3561]

24. The Kanu Defence filed another motion on 07 September 2005 requesting permission to visit his mother's grave to visit his mother's grave. The Trial Chamber dismissed the motion on the grounds that it would not interfere with the decision of the Office of the Registry.

6. Habeas Corpus

25. On 28 May 2003, Counsel for Brima filed a motion for leave to issue a writ of *habeas corpus* as well as for an Order for a writ of *habeas corpus ad subjiciendum*, on the basis that the Indictment approved by Judge Thompson on 7 March 2003 was fundamentally flawed, invalid and

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[3557] *Prosecutor v. Brima*, SCSL-2003-06-PT, Defence Motion for Bail or for Provisional Release Pursuant to Rule 65 of the Rules of Procedure and Evidence of the SCSL, 28 May 2003. The motion for bail was filed on the grounds that the Accused was suffering from serious medical problems requiring intensive daily care, that his general health and sight were deteriorating, that the Accused was the sole breadwinner for his wife and son, that his continued detention was highly prejudicial and impaired access to his Counsel and Solicitor regarding his Defence for trial and that the Accused would pose no danger to any victim, witness or other person and would appear at trial. Previously, on 8 March 2004 and 14 March 2004 Counsel for the Accused filed, respectively, a notice and a brief argument for the bail application. Acting as Designated Judge pursuant to Rule 28, Judge Thompson subsequently ordered the consolidation of these document and the filing of a proper application in conformity with the formal requirement provided for by the Court. See *id.*, Order on Filing, 16 May 2004.

[3558] *Prosecutor v. Brima,* SCSL-2003-06-PT, Submission of the Government of the Republic of Sierra Leone in Response to Motion for Bail or for Provisional Release, 7 July 2003.

[3559] *Prosecutor v. Brima*, SCSL-2003-06-PT, Ruling on a Motion Applying for Bail or for Provisional Release Filed by the Applicant, 22 July 2003.

[3560] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Kanu-Motion for a Temporary Visit of the Accused to His Mother, 23 June 2004.

[3561] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Withdrawal of Motion, 28 June 2004.

tantamount to a miscarriage of justice.[3562] On 18 June 2003, Judge Itoe, acting as Designated Judge, granted leave to the Defence Counsel for Brima to file an application to obtain a writ of *habeas corpus* and ordered that the writ be served on the Attorney General and Minister of Justice of the Republic of Sierra Leone.[3563] The Attorney-General and Minister of Justice recommended that the motion be rejected.[3564] On 22 July 2003, Judge Itoe dismissed the application for the leave to issue of the writ of *habeas corpus* on the basis that the Prosecution justified the legality of the Accused Brima's detention.[3565]

7. Preliminary Motions

(a) Constitutionality

26. On 26 June 2003 a preliminary motion challenging the lawfulness of the Special Court's establishment was filed by Counsel for Norman.[3566] On 18 September 2003 the motion was referred to the Appeals Chamber pursuant to Rule 72(E), since the Trial Chamber found that this motion raised "a serious issue relating to jurisdiction."[3567] Counsel for Kallon[3568] and Kamara[3569] filed similar motions, which were referred to the Appeals Chamber by the Trial Chamber.[3570] Of 13 March 2004 the Appeals Chamber decided on all these issues in its 'Decision on Constitutionality and Lack of Jurisdiction'.[3571]

[3562] *Prosecutor v. Brima*, SCSL-2003-06-PT, Defence Motion for Leave to Issue a Writ of Habeas Corpus, 28 May 2003. Previously, on 8 March 2004 and 14 March 2004 Counsel for the Accused filed, respectively, a notice and a brief argument for the habeas corpus application. Acting as Designated Judge pursuant to Rule 28, Judge Thompson subsequently ordered the consolidation of these document and the filing of a proper application in conformity with the formal requirement provided for by the Court. See *id.*, Order on Filing, 16 May 2004.

[3563] *Prosecutor v. Brima,* SCSL-2003-06-PT, Order for Oral Hearing in the Motion Filed by the Defense for Leave to File a Writ of habeas corpus ad subjiciendum, 18 June 2003.

[3564] *Prosecutor v. Brima,* SCSL-2003-06-PT, Submission of the Government of the Republic of Sierra Leone in Response to Defence Motion for Leave to Issue a Writ of habeas corpus ad subjiciendum and for an Order for the Writ of habeas corpus ad subjiciendum, 7 July 2003.

[3565] *Prosecutor v. Brima,* SCSL-2003-06-PT, Ruling on the Application for the Issue of a Writ of habeas corpus Filed by the Applicant, 22 July 2003.

[3566] *Prosecutor v. Norman*, SCSL-2003-08-PT, Preliminary Motion based on Lack of Jurisdiction: Lawfulness of the Court's Establishment, 26 June 2003.

[3567] *Prosecutor v. Norman*, SCSL-2003-08-PT, Order pursuant to Rule 72(E) – Defence Preliminary Motion in Lack of Jurisdiction: Lawfulness of the Court's Establishment, 18 September 2003.

[3568] *Prosecutor v. Kallon*, SCSL-2003-07-PT, Preliminary Motion based on lack of Jurisdiction: Establishment of Special Court violates Constitution of Sierra Leone, 16 June 2003.

[3569] *Prosecutor v. Kamara*, SCSL-2003-10-PT, Application by Brima Bazzy Kamara in Respect of Jurisdiction and Defects in Indictment, 22 September 2003.

[3570] *Prosecutor v. Kallon*, SCSL-2003-07-PT, Order pursuant to Rule 72(E) – Defence Preliminary Motion based on lack of Jurisdiction: Establishment of Special Court violates Constitution of Sierra Leone, 17 September 2003; *Prosecutor v. Kamara*, SCSL-2003-10-PT, Order pursuant to Rule 72(E) – Application by Brima Bazzy Kamara in Respect of Jurisdiction and Defects in Indictment, 9 October 2003.

[3571] *Prosecutor v. Kallon*, SCSL-2004-15-AR72(E); *Prosecutor v. Norman*, SCSL-2003-14-AR72(E), *Prosecutor v Kamara*, SCSL-2004-16-AR72(E); Decision on Constitutionality and Lack of Jurisdiction, 13 March 2004.

27. Counsel for Norman argued that the agreement between the Government of Sierra Leone and the United Nations establishing the Special Court was void, as the Government of Sierra Leone had effectively made amendments to the Constitution without calling a referendum of the people of Sierra Leone, as required by the Constitution. Counsel for Norman further argued that when the Special Court Agreement was concluded, the Government of Sierra Leone controlled only one-third of the country's territory and therefore lacked "effective control" of the majority of the population and was not in a position to negotiate an agreement. Counsel for Kamara argued that the Special Court is not an international court, but a domestic court. Since the Statute of the Court creates crimes which were unknown under Sierra Leone law at the time of the alleged offences, those laws violate the principle in the Constitution of *nullum crimen sine lege*.

28. In its Decision, the Appeals Chamber first held that the Special Court was competent to determine the legality of its own creation, since its Rules provide for a determination of these issues in Rule 72(E).

29. Regarding the merits of the motion, the Chamber confirmed that the Special Court is established by the Agreement between the UN and the Government of Sierra Leone, and that it is a 'treaty-based *sui generis* court of mixed jurisdiction and composition'. The Chamber found that the Special Court does not form part of the Judiciary of Sierra Leone as stated in section 11(2) of the Special Court Agreement Ratification Act of March 2002 and thus cannot violate the Constitution. The Chamber held that the relevant constitutional requirements had been fulfilled and confirmed that the Special Court acts only in an international sphere and is outside the structure of national courts.

30. On the issue of 'effective control', the Chamber observed that it is a fundamental principle of International Law that the occupation and acquisition of territory through the use of force is illegal and territory gained in this manner does not belong to the conqueror. So long as the democratically elected Government exists and is capable of controlling the affairs of the State in the international community, it shall do so. Accordingly, the Government of Sierra Leone had authority to enter the Agreement.

31. In relation to the *nullum crimen* principle, the Appeals Chamber found that, since the Special Court acts only in an international sphere, it is sufficient that the crimes existed under international law at the time of their alleged commission and the fact that crimes were unknown to the national Sierra Leonean law at the time of the alleged offences has no effect on the jurisdiction of the Special Court.

32. With this reasoning, the Chamber dismissed all motions in their entirety.

(b) Kamara challenge to jurisdiction: Lomé Accord Amnesty

33. On 16 June 2003, Counsel for Kallon (Accused in the RUF case) filed a preliminary motion based on lack of jurisdiction/abuse of process: amnesty provided by the Lomé Accord. On 22 September 2003, Counsel for Kamara requested that the Indictment be discharged and that the Accused be released on the grounds that the Indictment was not an Indictment known to Sierra Leonean law. In the alternative, Counsel requested that all charges other than those pursuant to Sierra Leonean law be struck out on the grounds that Judge Boutet, who approved the Indictment, was not appointed pursuant to the Constitution of Sierra Leone and therefore his exercise of judicial power is invalid in Sierra Leone. In the alternative, Defence Counsel requested that all charges predating 7 July 1999 be struck out pursuant to the Lomé Peace Agreement.[3572] Counsel for Kallon and Kamara argued that the Government of Sierra Leone was bound to observe the amnesty by the Lomé Agreement between the Government of Sierra Leone and the RUF. They submitted that the Special Court should not assert jurisdiction over crimes committed prior to July 1999 when the amnesty was granted and it would be an abuse of process to allow the prosecution of any of the alleged crimes pre-dating the Lomé Agreement.

34. On 30 September 2003 the Kallon Preliminary Motion was referred to the Appeals Chamber pursuant to Rules 72(E) and (F). On 9 October 2003, the Kamara Preliminary Motion was referred to the Appeals Chamber under Rule 72(E).[3573]

35. On 13 March 2004, the Appeals Chamber rendered its decision finding that the Lomé Agreement created rights and obligations that are to be regulated by the domestic laws of Sierra Leone. Whether or not it is binding on the Government of Sierra Leone does not affect the liability of the Accused to be prosecuted in an international tribunal for international crimes. Moreover, the Appeals Chamber concluded that an international tribunal, such as the Special Court, cannot be

[3572] *Prosecutor v. Kamara,* SCSL-2003-10-PT, Application by Brima Bazzy Kamara in Respect of Jurisdiction and Defects in Indictment, 22 September 2003. Different issues raised in this motion pertaining to constitutional challenges have been disposed of by the Appeals Chamber in a separate decision rendered on 13 March 2004. See *Prosecutor v. Kallon*, SCSL-2004-15-AR72(E); *Prosecutor v. Norman*, SCSL-2003-14-AR72(E), *Prosecutor v Kamara*, SCSL-2004-16-AR72(E); Decision on Constitutionality and Lack of Jurisdiction, 13 March 2004.

[3573] *Prosecutor v. Kamara,* SCSL-2003-10-PT, Order Pursuant to Rule 72(E): Application by Brima Bazzy Kamara in Respect of Jurisdiction and Defects in the Indictment, 9 October 2003.

deprived of its jurisdiction to prosecute an offender by the grant of an amnesty. The Appeals Chamber dismissed the challenge to jurisdiction.[3574]

(c) Kanu motion challenging jurisdiction and alleging abuse of process

36. On 20 October 2003, Defence Counsel for Kanu filed a preliminary motion concerning the lack of jurisdiction of the Special Court, namely with regards to defects as to the international legal foundations of the Court, the lack of jurisdiction due to the amnesty clause in the Lomé Peace Agreement and the lack of jurisdiction with regards to superior responsibility prior to assuming command.[3575]

37. On 22 January 2004, the Preliminary Motion was referred to the Appeals Chamber under Rule 72(E). The reference of the motion to the Appeals Chamber did not operate as a stay of the trial of the Accused.[3576]

38. On 25 May 2004 the Appeals Chamber, noting that it had already dealt with the issue of the Lomé Amnesty in its decision of 13 March 2004, dismissed the Preliminary Motion as being without merit on the grounds that the Special Court is vested with its own specific jurisdiction and competence by the constitutive documents establishing it and that, as a treaty based institution, it operates outside the legal system of Sierra Leone and does not derive its jurisdiction from within the national system.[3577]

39. On 20 October 2003, the Defence for Kanu also filed a preliminary motion contending a potential abuse of process and requesting that the charges against him as envisioned in Counts 3, 4, 6, 7, 10, 12 and 15 in so far as they entail the concept of crimes against humanity, be dismissed by virtue of the principle of non-retroactivity and *nullum crimen sine lege,* and alternatively, by virtue of Article 23 (7) and Article 171 (15) of the Constitution of Sierra Leone. The Defence further requested that Counts 1, 2, 5, 8, 9, 11, 13, 14, 16 and 17 be dismissed insofar as, at the time the alleged crimes were committed, the above mentioned laws and customs of war as envisioned by Article 3 Common to the Geneva Conventions and/or Additional Protocol II and other serious

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[3574] *Prosecutor v. Kallon*, SCSL-2004-15-AR72(E); *Prosecutor v. Kanu*, SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 15 March 2004.
[3575] *Prosecutor v. Kanu*, SCSL-2003-13-PT, Motion Challenging the Jurisdiction of the Special Court, Raising Serious Issues Relating to Jurisdiction on Various Grounds and Objections Based on Abuse of Process, 20 October 2003.
[3576] *Prosecutor v. Kanu*, SCSL-2003-13-PT, Order Pursuant to Rule 72 (E)-Defence Motion Challenging the Jurisdiction of the Special Court Raising Serious Issues Relating to Jurisdiction on Various Grounds and Objections Based on Abuse of Process, 22 January 2004.
[3577] *Prosecutor v. Kanu,* SCSL-2004-16-AR72(E), Decision on Motion Challenging Jurisdiction and Raising Objections Based on Abuse of Process, 26 May 2004.

violations of international humanitarian law, were not implemented in the national legislation of the Republic of Sierra Leone.[3578]

40. On 8 March 2004 the Trial Chamber dismissed orally this motion during a Status Conference. In its written Decision following thereto on 31 March 2004, the Trial Chamber found that the preliminary motion did not meet the test required that proceeding with the trial of the Accused would contravene the Court's sense of justice, due to pre-trial impropriety or misconduct.[3579]

8. Disclosure Matters

41. On 10 April 2003, Judge Thompson ordered the Prosecution to disclose to the Defence Counsel for Brima copies of the statements of all witnesses whom the Prosecutor intended to call to testify pursuant to Rule 66 (A)(i), as well as all the evidence to be presented at trial pursuant to Rule 92*bis* of the Rules. Judge Thompson further ordered the Prosecution to disclose the existence of known evidence as well as any evidence that suggested the innocence or mitigated the guilt of the Accused or which affected the credibility of the Prosecution's evidence pursuant to Rule 68 (B) of the Rules.[3580] Judge Thompson also ordered the Prosecution to transmit the materials to the Registrar pursuant to Rule 66 until a final decision on protective measures was rendered.[3581]

42. Similarly, on 2 July 2003, pursuant to Rule 66A(i) and Rule 68 (B), Judge Boutet ordered the Prosecution to transmit to the Registrar all the disclosure materials with regards to Kamara one month after the initial appearance of the Accused. The Registry was also ordered to seal and date the disclosure materials until orders for appropriate measures for witnesses, victims and non-public materials were rendered.[3582]

43. On 16 October 2003, Judge Boutet, acting as Designated Judge also ordered the Prosecution to transmit the disclosure materials in the case of Kanu to the Registrar who was to make disclosure materials available to the Defence Counsel. Disclosure was to take effect when a decision was

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[3578] *Prosecutor v. Kanu*, SCSL-2003-13-PT, Motion on Abuse of Process Due to Infringement of Principles of *Nullum Crimen Sine Lege* and Non-retroactivity as to Several Counts, 20 October 2003.
[3579] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Written Reasons for the Trial Chamber's Oral Decision on the Defence Motion on Abuse of Process Due to Infringement of Principles of *Nullum Crimen Sine Lege* and Non-retroactivity as to Several Counts, 31 March 2004.
[3580] *Prosecutor v. Brima,* SCSL-2003-06-PT, Scheduling Order, 10 April 2003
[3581] *Prosecutor v. Brima*, SCSL-2003-06-PT, Order on Disclosure to the Registry, 17 April 2003.
[3582] *Prosecutor v. Kamara,* SCSL-2003-10 PT, Interim Order for the Transmission of the Disclosure Materials to the Registrar, 3 July 2003.

rendered on the Prosecution Motion for immediate protective measures for witnesses and victims and for non-public disclosure.[3583]

44. Following the issuing of each decision on protective measures[3584] and the assignment of Defence Counsels for all the Accused, the Registrar accordingly made available to each Defence Counsel the relevant disclosure materials.[3585]

45. On 18 March 2004, Defence Counsel for Kanu submitted that the Prosecution had breached its disclosure obligations by failing to comply with Rule 66 (A)(i) and requested that witnesses who gave their statements after 23 October 2003 should not testify for the Prosecution at trial.[3586] On 23 March 2004 Defence Counsel for Brima filed another motion seeking similar relief.[3587] On 30 July 2004 Judge Boutet dismissed the motion filed by Kanu,[3588] and on 2 August 2004 he dismissed the motion filed by Brima.[3589] Judge Boutet found that the Defence would not be prejudiced in any way as a consequence of the disclosure practice adopted by the Prosecution, that they had been provided with adequate notice of the case against the Accused and that they had sufficient time to adequately prepare for trial.

46. On 4 August 2004, Defence Counsel for Kanu filed an application for leave to appeal this decision on the basis that it constituted exceptional circumstances that may lead to irreparable prejudice to the Accused pursuant to Rule 73(B) of the Rules.[3590] On 4 February 2005 Trial

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[3583] *Prosecutor v. Kanu*, SCSL-2003-13-PT, Decision on the Urgent Request for Interim Measures until Appropriate Protective Measures are in Place, 16 October 2003.
[3584] *Prosecutor v. Brima,* SCSL-2003-06-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 May 2003, *Prosecutor v. Kamara,* SCSL-2003-10-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 October 2003, *Prosecutor v. Kanu,* SCSL-2004-13-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims, 24 November 2003.
[3585] The Registrar subsequently adopted a Practice Direction pursuant to Rule 33 in order to regulate this procedure: Practice Direction on Disclosure by the Prosecutor pursuant to Rule 66 of the Rules of Procedure and Evidence of the Special Court, 23 February 2004.
[3586] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Kanu-Motion for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Witness Statement Pursuant to Rule 5 and 66 (A)(i), 18 March 2004. See also *id.*, Kanu-Additional Motion for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Witness Statement Pursuant to Rule 5 and 66 (A)(i), 19 March 2004.
[3587] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Motion for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Witness Statement Pursuant to Rule 5 and 66 (A)(i), 23 March 2004.
[3588] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Kanu-Decision on Motions for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Statements, 30 July 2004.
[3589] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Brima-Decision on Motions for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Statements, 2August 2004.
[3590] *Prosecutor v. Brima, Kamara and Kanu*, Kanu- SCSL-2004-16-PT, Application for Leave to File an Interlocutory Appeal Against the "Decision on Motion for Exclusion of Prosecution Witness Statements and Stay of Filing of Prosecution Statements" of 30 July 2004, 4 August 2004.

Chamber II dismissed the application, holding that neither exceptional circumstances nor irreparable prejudice has been shown to the satisfaction of the court.[3591]

47. Following the discussions held during the first Status Conference on 8 March 2004, the Trial Chamber issued on 1 April 2004 an order requesting the Prosecution to produce by not later than 26 April 2004, several materials in preparation for the commencement of the trial, including: a list of witnesses it intended to call at trial, and all witness statement in full (that had not yet been disclosed to the Defence).[3592] The Prosecution accordingly disclosed all the requested materials.[3593]

48. On 8 March 2005, the Trial Chamber dismissed a request by Brima Defence which sought to disclose the identity of a protected witness.

49. On 4 March 2005, Kanu and Brima filed Motions requesting the Trial Chamber to order the Prosecution to disclose to the Defence all material and/or information relating to rewards given to Prosecution Trial witnesses prior to giving testimony in court. In its Response[3594] the Prosecution acceded to the request by the Defence. On 16 March 2005, Trial Chamber II accordingly dismissed the two Motions.[3595]

50. On 10 March 2005, Brima, Kamara and Kanu filed a Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators' Notes Pursuant to Rules 66 and/or 68. On 4 May 2005 the Trial Chamber dismissed the motion finding that the Defence had

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[3591] *Prosecutor v. Brima, Kamara and Kanu*, Kanu- SCSL-2004-16-PT, Kanu – Decision on Application for Leave to File an Interlocutory Appeal against Decision on Motions for Exclusion of Prosecution Witness Statements and Stay on Filing of Prosecution Statements, 4 February 2005.

[3592] *Prosecutor v. Brima, Kamara and Kanu*, Kanu- SCSL-2004-16-PT, Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial, 1 April 2004.

[3593] Prosecutor *v. Brima, Kamara and Kanu*, Kanu- SCSL-2004-16-PT, Materials Filed pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of the Trial of 1 April 2004, 26 April 2004. See also *id.*, Prosecution Chart Indicating the Documentary and Testimonial Evidence by Paragraph of Consolidated Indictment pursuant to Trial Chamber Order dated 1 April 2004, 3 May 2004. See also id., Updated Compliance Report Filed pursuant to Undertaking by the Prosecution in Pre-Trial Conference Held 30 April 2004, 11 May 2004. See also id., Outstanding Exhibit Copies Filed pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of the Trial of 1 April 2004, 11 June 2004. See also id., Supplementary Materials Materials Filed pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of the Trial of 1 April 2004, 30 July 2004.

[3594] Combined Prosecution Response to Kanu and Brima – Motion to Disclose Prosecution Materials and/or information pertaining to Rewards provided to Prosecution Trial Witnesses, filed on 7 March 2005.

[3595] *Prosecutor v. Brima, Kamara and Kanu*, Kanu- SCSL-2004-16-PT, Decision on Kanu Motion to Disclose Prosecution Material and/or Other Information Pertaining to Rewards to Prosecution Trial Witnesses and Brima's Motion in Response, 16 March 2005.

failed to demonstrate or substantiate the allegation of breach by the Prosecution of Rules 66 and 68.[3596]

51. On 19 March 2004, the Defence for Kanu submitted a motion to request an order requiring the governmental authorities of Cockerill Army Headquarters to release exculpatory, information and evidence to the Defence on the Accused's incarceration with respect to a shooting incident.[3597] The Trial Chamber granted the motion on 1 June 2004.[3598]

9. Protective Measures for Witnesses

52. On 23 May 2003 in the case of Brima, 23 October 2004 in the case of Kamara and 24 November 2003 in the case of Kanu, Judge Thompson, for Brima and Kamara, and Judge Itoe, for Kanu, an Order for immediate protective measures for and non-public disclosure of witnesses and victims. The Prosecution was allowed to withhold identifying data of persons whom it was seeking to protect until twenty-one days before the witness was to testify at trial in the case of Brima and Kamara and forty-two days in the case of Kanu. The Order also required that the names and other identifying information concerning all witnesses be sealed by the Registry and not be included in any existing or future records of the Court.[3599]

53. On 2 April 2004, the Trial Chamber ordered the Prosecution to file a renewed motion for protective measures pursuant to Rules 69 and 75 of the Rules, for each witness who appeared on the Prosecution Witness List.[3600] On 4 May 2004, the Prosecution filed a renewed motion for protective measures.[3601] On 20 January 2005 Trial Chamber II issued an interim Order on the modification of protective measures instructing the prosecutor to modify the "rolling disclosure period" of unredacted witness statements to the Defence in the case of the Accused Kanu to 42 days and, in

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[3596] *Prosecutor v. Brima, Kamara and Kanu*, Kanu- SCSL-2004-16-PT, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigator's Notes Pursuant to Rules 66 and/or 68.

[3597] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Kanu-Motion to Request an Order under Rule 54 with Respect to Exculpatory Evidence, 19 March 2004.

[3598] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Kanu-Decision on Defence Motion in Respect of Santigie Borbor Kanu for an Order Under Rule 54 with Respect to Release of Exculpatory Evidence, 9 June 2004.

[3599] *Prosecutor v. Brima*, SCSL-2003-06-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 May 2003, *Prosecutor v. Kamara*, SCSL-2003-10-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 October 2003, *Prosecutor v. Kanu*, SCSL-2004-13-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims, 24 November 2003.

[3600] *Prosecution v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Order to the Prosecution for Renewed Motion for Protective Measures, 2 April 2004.

[3601] *Prosecution v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004, 4 May 2004.

addition, ordered that the Prosecutor shall commence with such disclosure on 24 January 2005.[3602] In the same Order the Trial Chamber allowed the Parties to file additional submissions.[3603] The submissions were heard by Judge Doherty, in open court following a scheduling order on 28 January 2005, which moreover ordered the Prosecution to file a list that indicated which witnesses already protected by an order of another Trial Chamber of the Special Court would be appearing in this case before them.[3604] The Prosecutor filed such a list on 1 February 2005.[3605] Due to the list it became apparent that all witnesses had already been granted protective measures due to an order of Trial Chamber I.[3606] After declaring the motion redundant the Prosecutor withdrew its motion. Judge Doherty ordered the Prosecution to inform the Defence Teams of all variations of protective measures in regard to the witnesses appearing in this case.[3607]

10. Pre-trial Briefs and Agreed Facts

54. On 2 April 2004 the Prosecution requested that the Trial Chamber take judicial notice of certain facts as 'facts of common knowledge', including those from official and internationally recognised United Nations documents and various humanitarian reports and admit them in evidence.[3608] Pursuant to Rule 94(A) the Trial Chamber must take judicial notice of facts of common knowledge. On 25 October 2005 the Trial Chamber issued its decision in which it fount that eleven facts qualified for judicial notice.[3609]

55. Following an Order issued on 13 February 2004[3610] for the filing of Pre-Trial briefs, the Prosecution submitted its Pre-Trial brief on 5 March 2004. On 1 April 2004, the Trial Chamber

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[3602] *Prosecution v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Interim Order on Modification of Protective Measures for Witnesses, 20 January 2005.
[3603] *Prosecution v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Interim Order on Modification of Protective Measures for Witnesses, 20 January 2005.
[3604] *Prosecutor v. Brima, Kamara and Kanu*, Kanu- SCSL-2004-16-PT, Scheduling Order, 28 February 2005.
[3605] List of Protective Measures received from Trial Chamber I and other Information Filed pursuant to Scheduling Order of 28 January 2005, 1 February 2005.
[3606] Prosecutor v. Sesay, Kallon and Gboa, SCSL-2004-15-PT, Decision on Prosecutions Motion for Modification of Protective Measures for Witnesses, 5 July 2004.
[3607] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Oral Decision on Prosecution's Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Protective Measures Dated 2 April 2004, 3 February 2005.
[3608] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Prosecution's Motion for Judicial Notice and Admission of Evidence, 2 April 2004. See also *id.*, Order to File Outstanding Documents in Support of the Judicial Notice Motion, 4 May 2004.
[3609] Prosecutor v. Brima, Kamara and Kanu, SCSL-2004-16-PT, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005.
[3610] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis), 13 February 2004.

ordered the Prosecution to file no later than 22 April 2004, a Supplemental Pre-Trial Brief.[3611] On 22 April 2004, the Prosecution accordingly submitted its Supplemental Pre-Trial Brief.[3612]

56. On 22 March 2004 Defence Counsel for Kanu also submitted its Pre-Trial brief. [3613] With the same order by which it requested the Prosecution to supplement its Brief, the Trial Chamber also modified the deadline for the filing of the Defence Pre-Trial Briefs, originally set for 26 March 2004, setting for two weeks prior to the date for the commencement of the trial. Contextually, Defence Counsel for Kanu was given the possibility to file any supplement to its brief with the same deadline.[3614]

11. Pre-Trial Case Management

57. A Status Conference was held on 8 March 2004 pursuant to Rule 54 and Rule 65*bis* of the Rules.[3615] A Pre-Trial Conference took place on 30 April 2004 pursuant to Rule 73*bis* of the Rules.[3616]

C. Trial Proceedings

1. Overview

58. The Prosecution case-in-chief commenced on 7 March 2005 and closed on 21 November 2005. The Prosecution called 59 witnesses. The reports of the three Prosecution expert witnesses were admitted under Rule 94*bis*. A total of 80 Prosecution exhibits were admitted.

59. The Defence case-in-chief started on 5 June 2006 and finished on 26 October 2006. In total, the Defence called 87 witnesses, including the first Accused Alex Tamba Brima who testified pursuant to Rule 85 (C) of the Rules. The reports of the three Defence expert witnesses were admitted under Rule 94*bis*. A total of 39 Defence exhibits were admitted.

[3611] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Order to the Prosecution to File a Supplemental Pre-Trial Brief and Revised Order for Filing of Defence Pre-Trial Briefs, 1 April 2004.
[3612] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004, 22 April 2004.
[3613] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Kanu-Defence Pre-Trial Brief and Notification of Defenses Pursuant to Rule 67(A)(ii)(a) and (b), 22 March 2004.
[3614] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Order to the Prosecution to File a Supplemental Pre-Trial Brief and Revised Order for Filing of Defence Pre-Trial Briefs, 1 April 2004.
[3615] *Prosecutor v. Brima, Kamara and Kanu,* SCSL-2004-16-PT, Scheduling Order for Status Conference (Under Rule 65*bis*) 13 February 2004.
[3616] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Scheduling Order Setting a New Date for the Pre-Trail Conference, 28 April 2004. See also *id.*, Order for a Pre-Trial Conference (Under Rule 73*bis*), 2 April 2004.

60. The Trial Chamber called one witness in order to gather information as to the whether the reliability of one document was susceptible of confirmation under Rule 92*bis* (B).

61. Rebuttal was requested by the Prosecution but denied.[3617]

62. Final briefs were filed on 1 December 2006. Closing Arguments were heard on 7 and 8 December 2006.

63. The Trial Chamber sat 176 trial days.

2. Evidentiary Issues

64. The admission of evidence at trial was regulated on the basis of the Rules and case-law of this Tribunal.

(a) Disclosure

65. On 4 April 2005 the Defence filed a motion for disclosure of independent investigator's report on contempt of court proceedings and stay of proceedings. On 30 June 2005, the Trial Chamber dismissed the motion on the grounds that the Defence Counsel were not representing the Accused, nor did they show that non-disclosure would in any way prejudice their case.

66. On 10 March 2005, the Defence filed a joint motion against the Prosecution for disclosure of original witness statements, interview and investigator notes, pursuant to Rule 66 and 68. On 4 May 2005, the Trial Chamber dismissed the motion[3618] The Trial Chamber in its decision stated that the Defence did not prove that the Prosecution did not act in good faith, and that the Prosecution acted in a manner which was reasonable for the circumstances.

67. The Defence filed separate motions on separate dates, but for the common purpose of requesting that photographs and/or videos taken of the Trials should not be disclosed to the public. On 28 February 2005 the Trial Chamber dismissed the motion.[3619]

68. On 4 March 2006, the Defence for Kanu and Brima filed motions for disclosure of payments made by Prosecution to its witnesses before evidence in chief. The Prosecution agreed to disclose

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[3617] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on confidential motion to call evidence in rebuttal, 14 November 2006

[3618] Prosecution v. Brima, Kamara, and Kanu, SCSL-04-16-PT, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interviews Notes and Investigator Notes Pursuant to Rule 66 and/or 68, 4 May 2005.

[3619] Prosecution v. Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Defence Application not to Disclose Photography, Video and Audio Recordings of the Trial to the Public and/or Third Parties, 28 February 2005.

the material required. But the Defence later stated that it did not desire a ruling on this motion anymore, as it did not think there was any contention between the parties any more, the Trial Chamber dismissed the motion on 16 March 2005.[3620]

69. On 27 July 2006, the Prosecution filed a motion for restriction of contact between the Accused and Defence witnesses and for disclosure of all such contacts. The Prosecution argued based on foreign laws and customs and also that it could affect the evidence that each witness could give. On 10 October 2006, the Trial Chamber dismissed the motion.[3621]

70. On 7 July 2006, the Prosecution seized the Trial Chamber for relief for Defence failure of disclosure of intent to enter the defence of alibi pursuant to Rule 67. On 26 July 2006, the Trial Chamber granted the motion in part and ordered the Defence for the first Accused Brima to make the necessary disclosures in accordance with Rule 67(A)(ii). The order sought against the second and third accused (Kamara and Kanu) was denied.[3622]

(b) Judicial Notice

71. On 2 April 2004, the Prosecution seized the Trial Chamber with a motion for judicial notice and admission of evidence, stating a list of facts it wanted the Court to take judicial notice of. In its decision on 25 October 2005 the Trial Chamber took judicial notice of nine facts, modified two and dismissed seven of the facts stated in the Prosecutions motion.

(c) Admission of Documentary Evidence

72. On 18 November 2005, the Trial Chamber made a decision on the Prosecution's notice for admission of information into evidence pursuant to Rule 92*bis*. The Trial Chamber admitted thirty-eight of the documents which the Prosecution stated in its notice; for two other documents, the Trial Chamber stated that they would be admitted as evidence on the condition that the complete

[3620] Prosecution v Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Kanu Motion to Disclose Prosecution Material And/Or Other Information Pertaining to Rewards To Prosecution Trial Witnesses and Brima's Motion in Support, 16 March 2005.
[3621] Prosecution v. Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Urgent Prosecution Motion for an Order Restricting Contacts Between the Accused and Defence Witnesses and Requiring Disclosure of Such Contacts, 10 October 2006
[3622] Prosecutor v. Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006

documents are tendered, and for one of the documents the Trial chamber stated that the copied tendered must be legible.[3623]

73. On 7 March 2005, the Defence filed a motion on Admissibility of Expert Witnesses/ Expert Evidence and filing of notice pursuant to Rule 94*bis*. The Defence alleged that some particular witnesses for the Prosecution were a hybrid of the two international recognized type of witnesses (witness of facts and expert witnesses) and that this would cause them prejudice, as they would not be able to cross-examine them. On 16 June 2005, the Trial Chamber dismissed the motion on the basis that it was premature, as the witnesses had not yet been called.[3624]

(d) Protective Measures and Matters not Subject to Disclosure

74. On 25 April 2006 the Defence filed a jointed application for Protective Measures for Defence witnesses. On 9 May 2006, the Trial Chambers granted the motion, having been satisfied that there was reasonable risk of danger to the witnesses.

75. On 9 May 2006, the Defence filed a joint motion, for leave to extend the deadline for presentation of final witness list and on its inability to provide details on certain witnesses. On 17 May 2006, despite the fact the Prosecution contended the motion, the Trial Chamber granted the motion and extended the deadline and ordered that the motion remain confidential.[3625]

76. On 13 September 2006, the Trial Chamber granted a motion for the Defence and ordered that the Protective Measures ordered in the Decision dated 9 May 2006 be extended to witnesses stated in Defence documents "Kanu- Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006"[3626]

77. The Defence on the behalf of Brima Bazzy Kamara on 12 May 2005 filed an evidentiary submission to the effect that the Registrar was disseminating confidential documents to the Press and Public Affairs Office. On 17 October 2005, the Trial Chamber ordered that documents filed

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[3623] Prosecution v. Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule92*bis*, 18 November 2005

[3624] Prosecution v. Brima, Kamare and Kanu, SCSL-04-16-PT, Decision on Joint Defence Motion on Admission of Expert Witness/ Expert Evidence and Filing of Notice Pursuant to Rule94*bis* (B)i and ii, on Re-filed Defence Request for Dislosure and the Joint Defence Motion for Exclusion of Medical Information, Statistics and Abstracts Pertaining to Witnesses TF1-081 and TF1-188, 16 June 2005

[3625] Prosecution v. Brima, Kamara and Kanu, SCSL-2004-16-PT, Decision on Confidential Joint Motion of the Defence as to Inability to Provide Details on Certain Witnessses on 10 May 2006 and Anticipation of *subpoenas ad testificandum*, 17 May 2006

[3626] Prosecution v. Brima, Kamara and Kanu, SCSL-2004-16-PT, Decision on Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards, 13 September 2006

confidentially shall only be served to those for whom it was intended and shall not be disseminated to others without the leave of the Court.[3627]

78. On 18 October 2006 the Prosecution filed a motion for varying the Protective Measures for witnesses. The Prosecution claimed that the Protective measures applicable to the witnesses of the first trial (AFRC case) should be modified for the second trial (Taylor Case), given the fact that the witnesses would have to be moved and this would involve releasing their identity to outsiders. On 15 November 2006, the Trial Chamber dismissed the motion on the grounds that the Protective Measures in the first proceedings shall apply *mutatis mutandis* to the second trial and that the Trial Chamber had already issued decisions to vary the protective measures of the witnesses in the second proceedings.[3628]

(e) Counsel Issues

79. On 13 May 2005, the Trial Chamber issued an order on the role of Court- appointed counsel. The Chamber in its decision stated what the duties of the Counsel for Alex Tamba Brima and Brima Bazzy Kamara should be until lead Counsel was appointed for them; however, this decision could be modified when deemed necessary.[3629]

80. On 5 May 2005, the Trial Chamber was seized by a "Confidential Joint Defence Submission on the Withdrawal of Counsel in the AFRC Case" by lead Counsel for Brima and Kamara. On 20 May 2005 the Trial Chamber granted the motion for the withdrawal of Lead Counsel Kevin Metzger and Wilbert Harris as Counsel for Brima and Kamara respectively.[3630] However, on 24 May 2005 an extremely urgent and confidential motion was filed for the re-appointment of Kevin Metzger and Wilbert Harris for Alex Tamba Brima and Brima Bazzy Kamara. On 9 June 2005, the Trial Chamber, granted the motion on behalf of Accused Brima and Kamara for the re-appointment of Counsel for them.[3631]

[3627] Prosecutor v. Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Defence Submission Providing Evidentiary Proof of Registry's Repeated Dissemination of Confidential Documents to the Press and Public Affairs Office, 17 October 2005.

[3628] Prosecution v. Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Confidential Motion to Vary Protective Measures, 15 November 2006.

[3629] Prosecution v. Brima, Kamara and Kanu, SCSL-04-16-T,Consequential Order on the Role of Court Appointed Counsel, 13 May 2005

[3630] Prosecution v. Brima, Kamara and Kanu, SCSL-04-16-PT,Decision on the Confidential Joint Defence Application for Withdrawal of Counsel for Brima and Kamara on the Request for further Representation by Counsel for Kanu, 20 May 2005.

[3631] Prosecution v. Brima, Kamara and Kanu, SCSL-04-16-PT, Decision on Extremely Urgent Confidential Joint Motion for Re-appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima

90. On 5 August 2005, the Trial Chamber granted to the Defence leave for and interlocutory appeal on its decision for re-appointment of lead counsel for Alex Tamba Brima.[3632] The Trial Chamber justified its decision by stating Rule 73(B) and an earlier decision of the Appeals Chamber to the effect that interlocutory appeals shall not delay the conclusion of trial.[3633]

3. Rule 98 Decision

The Defence filed Motions for Judgement of Acquittal Under Rule 98 on 12 and 13 December 2005. On 31 March 2006 the Trial Chamber rendered its decision dismissing the defence motions in their entirety.[3634]

Bazzy Kamara, and Decision on Cross Motion by Deputy Principal Defender to Trial Chamber II for Clarification of its Orders of 12 May 2005, 9 June 2005

[3632] Prosecutor v. Brima, Kamara and Kanu, Decision on Brima-Kamara Application for Leave to Appeal from the Decision on the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel, 5 August 2005.

[3633] Prosecutor v. Hinga Norman, SCSL-2004-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para. 43.

[3634] *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-PT, Decision on Defence Motions for Judgement of Acquittal Under Rule 98, 31 March 2006

ANNEX B: GLOSSARY

D. List of Abbreviations, Acronyms and Short References

Accused	Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu
Additional Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 12 December 1977
Additional Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 12 December 1977
a.k.a.	Also known as
Art.	Article
AFRC	Armed Forces Revolutionary Council
CDF	
Common Article 3	Article 3 common to the four Geneva Conventions of 1949
Count	
Charge	
Defence	Counsel for Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu.
Defence Final Brief	*Prosecutor v. Alex Tamba Brima*, Case No. SCSL-2004-16-PT, Confidential Brima Defence Final Brief, filed on 1 December 2007; *Prosecutor v. Brima Bazzy Kamara*, Case No. SCSL-2004-16-PT, Confidential Kamara Defence Final Brief, filed on 1 December 2006; *Prosecutor v. Santigie Borbor Kanu*, Case No. SCSL-2004-16-PT, Confidential Kanu Defence Trial Brief, filed on 1 December 2006.

Defence Pre-Trial Brief	Prosecutor v, Alex Tamba Brima, Brima Bazzy Kamara, Santigie, Case No. SCSL-2000-16-PT, Defence Pre-Trial Brief for Tamba Alex Brima, filed on 17 February 2005; Kamara Defence Pre-Trial Brief, filed on 21 February 2005; Kanu Defence Pre-Trial Brief and Notification of Defences Pursuant to Rule 67(A)(ii) AND (b).
ECOWAS	Economic Community of West African States
ECOMOG	Economic Community of West African States Monitoring Group
exhibit D-	Defence Exhibit
exhibit P-	Prosecution Exhibit
fn.	Footnote
1949 Geneva Convention I	Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces in the Field, 12 August 1949, 75 UNTS 31
1949 Geneva Convention II	Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85
1949 Geneva Convention III	Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135
1949 Geneva Convention IV	Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 2
Hors de combat	Not taking active part in the hostilities
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

ICTR Statute	Statute of the ICTR, established pursuant to Security Council Resolution 955 (1994) (S/RES/955)
ICTY	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, established by Security Council Resolution 827 (1993)
ICTY Statute	Statute of the International Criminal Tribunal for the former Yugoslavia
Indictment	Prosecutor Against Alex Tamba Brima, Brima Bazzy Kamara AND Santigie Kanu, Further Amended Consolidated Indictment
inter alia	Amongst others
JCE	Joint Criminal enterprise
Kamajors	
Mens Rea	Mental Element of a crime
p.	Page
pp.	Pages
para.	Paragraph
Paras	Paragraphs
Parties	Prosecution v. Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu, SCSL-2004-16-PT
PLO	Public Liaison Officer
Prosecution	Office of the Prosecutor
Prosecution Final Brief	Confidential Prosecution Final Trial Brief
Prosecution Pre-Trial Brief	Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73*bis*) of 13 February 2004
Rome Statute	Statute of the International Criminal Court, Rome, 17 July 1998
Res judicata,	
RUF	Revolutionary United Front

Rules	Rules of Procedure and Evidence of the Special Court for Sierra Leone
Special Court	Special Court for Sierra Leone, established on 16 January 2002
Statute	Statute of the Special Court for Sierra Leone, 16 January 2002.
STF	Special Task Force
Supplemental Pre-Trial Brief	Prosecution Supplemental Pre-Trial Brief Pursuant to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004, filed on 21 April 2004

E. List of Cases

1. Special Court

BRIMA, KAMARA, KANU – "AFRC"

Prosecutor v. Brima, SCSL-03-06-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003.

Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, 1 April 2000.

Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-PT, Decision and Order on Defence Preliminary Motion on Defects in the Form of the Indictment, 1 April 2004.

Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-T, Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*, 18 November 2005.

Prosecutor v. Brima, Kamara, Kanu, Case No. SCSL-04-16-T, Decision on Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005.

Prosecutor v. Santigie Borbor Kanu, Case No. SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003.

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006.

NORMAN, FOFANA, KONDEWA – "CDF"

Prosecutor v. Norman, Kondewa, Fofana, Case No. SCSL-04-14-AR73, Fofana – Decision on Appeal against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005.

Prosecutor v. Sam Hinga Norman, Moinina Fofana and Allieu Kondewa, Case No. SCSL-04-14-PT, Decision on the Preliminary Motion on the Lack of Personal Jurisdiction Filed on Behalf of the Accused Fofana, 3 March 2004.

Prosecutor v. Morris Kallon, Sam Hinga Norman and Brima Bazzy Kamara, SCSL-2004-15-AR72(E)/SCSL-2004-14-AR72(E)/SCSL-2004-16-AR72(E), Decision on Constitutionality and Lack of Jurisdiction, 13 March 2004.

Prosecutor v. Sam Hinga Norman, Moinina Fofana, Allieu Kondewa, Case No. SCSL-04-14-T, Decision on Motions for Judgement of Acquittal Pursuant to Rule 98.

Prosecutor v. Sesay, Kallon, Gbao, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript 25 October 2006.

Prosecutor v. Allieu Kondewa, Case No. SCSL-03-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003.

Prosecutor v. Moinina Fofana, Case No. SCSL-04-14-AR65, Fofana – Appeal Against Decision Refusing Bail, 11 March 2005.

Prosecutor v. Sam Hinga Norman, Case No. SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004.

Prosecutor v. Fofana, Case No. SCSL-04-14-PT, Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Nature of the Armed Conflict, 26 May 2004.

Prosecutor v. Allieu Kondewa, Case No. SCSL-03-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003.

SESAY, KALLON, GBOA – "RUF"

Prosecutor v. Sesay, Case No. SCSL-2003- 05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 13 October 2003.

2. ICTY

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Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-T, Judgement, 25 June 1999 ("*Aleksovski* Trial Judgement").

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BLAGEJOVIC

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BLAŠKIĆ

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

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Appeal Judgment, 29 July 2004 ("*Blaškić* Appeals Judgment")

BRDANIN

Prosecutor v. Brđanin and Talić, Case No. IT-99-36-PT, Decisions on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001.

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FURUNDŽIJA

Prosecutor v. Anto Furundžija, Case No. IT-95-17/1-A, Judgement, 21 July 2000 ("*Furundžija* Appeal Judgment")

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HADŽIHASANOVIĆ ET AL.

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Judge Shahabuddeen's partly dissenting opinion in the *Hadžihasanović* Appeal Decision on Jurisdiction.

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JELISIĆ

Prosecutor v. Goran Jelisić, Case No. IT-95-10-T, Judgment, 14 December 1999 ("*Jelisić* Trial Judgment")

KORDIĆ AND ČERKEZ

Prosecutor v. Dario Kordić & Mario Cerkez Case No. IT-95-14/2-A, Appeals Judgment, 17 December 2004 ("*Kordić* Trial Judgement")

KUNARAC, KOVAČ AND VUKOVIĆ

Prosecutor v. Dragoljub Kunarac, Radomir Kovac & Zoran Vukovic Case No. IT-96-23 & IT-96-23/1-A, Appeal Judgment, 12 June 2002 ("*Kunarac* Appeal Judgment")

KVOČKA, KOS, RADIĆ, ŽIGIĆ AND PRCAĆ

Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlađo Radić, Zoran Žigić and Dragoljub Prać, Case No. IT-98-30/1-T, Judgement, 2 November 2001 ("*Kvočka* Trial Judgement")

KRAJISNIK

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Prosecutor v. Juvenal Kajelijeli, Judgement, Case No. ICTR-98-44A-T, 1 December 2003 ("*Krajišnik* Appeal Judgement")

KRSTIC

Prosecutor v. Radislave Krstić Case No. IT-98-33-T, Judgment 02 August 2001("Krstić Trial Judgement")

KUPRESKIC

Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić aka "Vlado", Case No. IT-95-16-T, Judgement, 14 January 2000 ("*Kupreškić* Trial Judgement")

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ORIĆ

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OJDANIĆ

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STRUGAR

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Prosecutor v. Krnojelac, Case No.IT-97-25-PT, Decision on Defence Preliminary Motion on the Form of Indictment, 24 February 1999

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement")

VASILJEVIC

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Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Appeal Judgment, 25 February 2004 ("*Vasiljević* Appeal Judgement")

3. ICTR

AKAYESU

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BAGILSHEMA

Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement, 7 June 2001 ("*Bagilishema* Trial Judgement")

GACUMBITSI

Sylvestre Gacumbitsi v. The Prosecutor,Case No. ICTR-2001-64-A, Judgement, 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

KAJELIJELI

Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-98-44A-T, Judgement and Sentence, 1 December 2003 ("*Kajelijeli* Trial Judgement"),

KAMUHANDA

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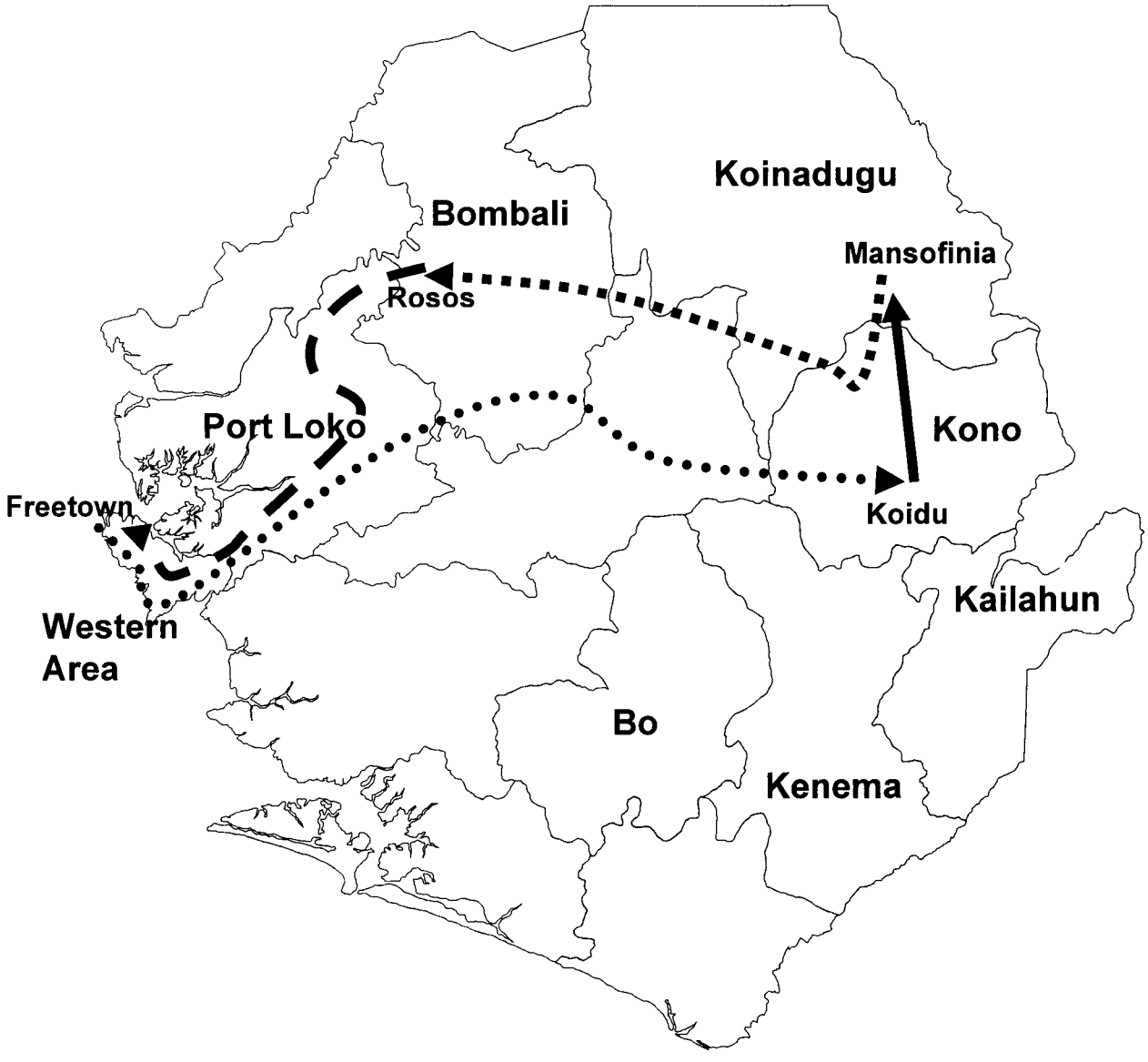
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F. Main Actors in the Conflict

REAL NAME	ALIAS	ORGANISATION
Denis Mingo	Superman	High ranking RUF Commander
FAT Sesay	FAT, Colonel FAT	Brigade Administrator. AFRC fighting forces.
Foday Sankoh.		Leader of the RUF.
George Johnson	Junior Lion	Chief Security Officer to the Accused Kamara; AFRC Commander
Hassan Papa Bangura	Bombblast	AFRC Commander
Issa Sesay	'Issa'	High ranking RUF Commander
Johnny Paul Koroma	JPK	Chairman of the AFRC government.
Sam Bockarie	'Mosquito'	Leader of the RUF in Sankoh's absence.
Solomon Anthony James Musa	SAJ Musa	AFRC, Superior of Alex Tamba Brima
Mohamed Savage, aka, Mr. Die, Changabulanga.	'Savage'	AFRC Commander in Tombodu
Morris Kallon		High ranking RUF Commander.
Real name unknown	Staff Alhaji	AFRC Commander, Deputy to 'Savage' in Tombodu
Real name unknown.	"O-Five."	AFRC fighting forces commander

ANNEX C: MAP OF SIERRA LEONE



Legend:

- 1998 Freetown retreat – February through March 1998
- Kono retreat – April/ May 1998
- Mansofinia – Rosos route – May/ April 1998 through November 1998
- Freetown advance – November/December 1998 through February 1999