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SCSL-04-14-T
(13608 - 13651)

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Case No SCSL-04-14-T

SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER 1

Before: Judge Pierre Boutet, Presiding Judge
Judge Bankole Thompson
Judge Benjamin Mutanga Itoe
Registrar: Robin Vincent
Date: 4 August 2005

THE PROSECUTOR

Against

SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA

CASE NO. SCSL-2004-14-T

MOTION FOR JUDGMENT OF ACQUITTAL OF THE THIRD ACCUSED
ALLIEU KONDEWA

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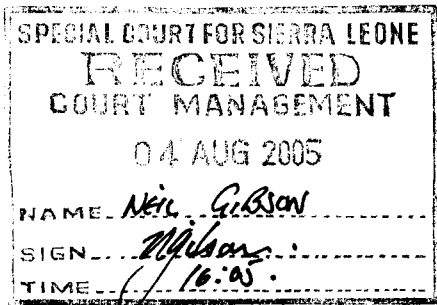


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Criminal Responsibility Pursuant to Article 6(1): Direct Participation - Committing

1. Committing refers to physically participating in a crime, directly or indirectly, or failing to act when such a duty exists, coupled with the requisite knowledge. Prosecution's Pre-Trial Brief, para. 146 quoting *Tadic* Appeal Judgment, 15 July 1999, 188.

Count 1: Murder, a Crime Against Humanity, punishable under Article 2(a) of the Statute of the Court**Factual allegation:**

"Unlawful killings included the following:

- a. between about 1 November 1997 and 30 April 1998, at or near Tongo Field, and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembahun, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
- b. on or about 15 February 1998, at or near the District Headquarters town of Kenema and at the nearby locations of SS Camp, and Blama, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
- c. on or about 15 February 1998, at or near Kenema, Kamajors unlawfully killed an unknown number of Sierra Leone Police Officers;
- d. in or about January and February 1998, in locations in Bo district including the District Headquarters town of Bo, Kebi Town, Koribondo, Kpeyama, Fengehun and Mongere, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
- e. between about October 1997 and December 1999 in locations in Moyamba District, including Sembahun, Taima, Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed an unknown number of civilians;
- f. between about October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town, Kamajors unlawfully killed an unknown number of civilians;
- g. Between about 1 November 1997 and 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants in road ambushes at Gumahun, Gerihun, Jembah and the Bo-Matotoka Highway. Indictment, para. 24.

Elements of Crime Against Humanity:

1. There is an attack against a civilian population;
2. The attack is widespread or systematic;
3. The act in question was committed as part of that attack; and
4. The accused or a subordinate knew of the broader context in which his or her act is committed.

Elements of specific charge:

1. The accused or a subordinate committed an act or omission with respect to the victim that precipitated the following results: i) the victim is dead and ii) the death resulted from an unlawful act or omission of the accused or a subordinate; and
2. At the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm or inflicted grievous bodily harm on the victim having known that such bodily harm is likely the cause the victim's death or is reckless as to whether or not death ensues."¹

Weaknesses in evidence which result in elements of Crime Against Humanity not being satisfied:*Directed against a civilian population*

3. The attack is directed against a civilian population only if the civilian population is the primary object of the attack, not if civilians are collaterally affected.² To make a determination it is necessary to consider: i) means and method of attack; ii) victims' status and number; iii) discriminatory nature of attack; iv) nature of crimes committed v) resistance of assailants; and vi) extent to which attacking force may have attempted to comply with the laws of war.³
4. A "sufficient number" must be subject to the attack in order for it to be directed against the civilian population. Sufficient number means not a limited or randomly selected number of individuals.⁴

¹ See, e.g. Prosecution's Pre-Trial Brief, para 97 quoting Akayesu Trial Judgment, 2 Sept. 1998, paras, 589 and 590; Krstic Trial Judgment, 2 Aug. 2001, para. 485.; Vasiljevic Trial Judgment 29 Nov. 2002, para. 205; Krnojelac Trial Judgment 15 March 2002, para. 324; Semanza Trial Judgment, 27 Jan. 2000, para. 215; Prosecution's Pre-Trial Brief, para. 112; Elements of Crimes of the ICC, Art. 7(1)(a).

² *Kunarac, Kovac and Vukovic* Appeal Chamber, 12 June 2002, para. 90.

³ *Kunarac, Kovac and Vukovic* Appeal Chamber, 12 June 2002, para. 90.

⁴ *Kunarac, Kovac and Vukovic*, Appeal Chamber, 12 June 2002, para.; See also *Naletilic and Martinovic*, 31 March 2000, para. 235.

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Collateral Damage

5. Combatants cannot shield legitimate military targets with the mere presence of civilians and they are themselves committing a war crime if they do so by, e.g. using human shields. Protocol I of the Geneva Convention defines a legitimate military target as “limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” Protocol I to the Geneva Convention, Article 52. This category comprises all objects directly used by the armed forces: weapons, equipment, transports, fortifications, depots, buildings occupied by armed forces, staff headquarters, communications centres, etc.⁵ Even civilian objects which take on a dual-use, such as bridges or factories are nevertheless legitimate military targets.⁶
6. Even attacks certain to cause the death of civilians are legal so long as the attack itself is against a legal military target and the civilians are not targeted as such. See TF2-005 (16.2.05) Witness agrees that military attacks on Tongo, Bo and Koribondo were all legitimate armed attacks. (67) It is also noteworthy that ECOMOG supported Kamajor attacks. See TF2-005 (16.2.05) (69)
7. In order to maintain legitimacy the attacks’ collateral damage cannot, however, be the product of indiscriminate attacks which are “of a nature to strike military objectives and civilians or civilian objects without distinction.” Protocol I to the Geneva Conventions, Article 4. It is clear from a review of the evidence, including the report and testimony of the Prosecution’s military expert that Kamajor attacks were not indiscriminate. See, e.g. analysis of Black December operation.
8. Another clear indication of the fact that the attacks were not indiscriminate and the fact that steps were taken to mitigate civilian casualties is the fact that the Kamajors gave repeated warnings to the civilian populations before launching the attacks. There is of course a requirement that steps be taken to mitigate civilian casualties. ICRC

⁵ ICRC Commentary on Protocol I of the Geneva Convention, para. 2020 (1987).

⁶ ICRC Commentary on Protocol I of the Geneva Convention, para. 2022-2023 (1987).

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Commentary on Protocol I of the Geneva Convention, paras. 2023-2024 (1987). See, e.g. TF2-047 (22.2.05) Kamajors sent warning to people of Tongo by messenger, that everyone should leave. (43)

9. The character of the attack must be proportionate to the military objective sought and not illegal because of “their indiscriminate effect on combatants and civilians or because of the unnecessary suffering caused to combatants, that is to say, a harm greater than that unavoidable to achieve legitimate military objectives.” Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ-94-95, para. 78 (1996). The Prosecution’s own evidence demonstrates such proportionality. See, e.g. the evidence and report of the military expert.
10. There is also ample evidence that civilians were not the targets of attacks. See, e.g. TF2-223 (28.9.04) Hinga Norman told Kamajors that there would be no civilians in the towns they attacked, that all civilians would have fled; TF2-190 (10.2.05) Insider Witness testified that rebels had resisted and civilians had been killed in the crossfire. (22-23) TF2-022 (11.2.05) Civilian witness observed that civilians were being hit by stray bullets as well as in the crossfire. (57)

Civilian, defined

11. Perhaps the central and most well established customary rule of warfare is the principle that civilians must not be attacked.⁷ This applies regardless of the nature of the conflict as internal or international. But answering the question of who is a civilian is not so clear. Since it is an element of the crimes charged, the Prosecution must prove beyond a reasonable doubt that the particular victims were civilians under the law.⁸
12. There is ample evidence that the groups were indeed a mixture of combatants and civilians See, e.g. TF2-027 (18.2.05) - Junta forces upon suspecting the entry of Ks called

⁷ *Prosecutor v. Tadic*, decision on Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, para. 105 (1995).

⁸ *Prosecutor v. Kayishema and Ruzendana* Trial Judgment, 1999, para. 84.

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civilians to join them at HQ. Some people died because of the stampede, their corpses had no bullet wounds. (87,88); TF2-047 (22.2.05) - By the way the corpses were dressed, they seemed to be a mixture of civilians and fighters. (61); TF2-047 (22.2.05) - Of victims of Tongo attack W says a majority of the twenty bodies he saw at the back of HQ were soldiers. (114); TF2-048 (23.2.05) Most civilians were killed in the stampede. (30); TF2-053 (Tongo and Kenema Bystander) (1.3.05) Many civilians died in the stampede while running to the HQ. (93)

Vigilantes

13. Article 4(a)(6) of the Third Geneva Convention extends the definition of combatants to include participants in the rare instance of *levee en masse*, where “[i]nhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.” There are three criteria for categorization as a combatant: (1) being in an area that is as of yet unoccupied; (2) resisting an invading force and (3) being without time to organize into a regular unit. A number of witnesses testified to the presence of such a group, who as a consequence must be counted as combatants for the purposes of analysing direction and proportionality. See, e.g. TF2-032 (9.9.04) “The town of Koribondo organized their children to fight so they wouldn’t have to depend only on the soldiers. The children called themselves vigilantes.” (41-43) TF2-156 (25.11.04) After the junta left town, some youths tried to organize themselves to defend the town. (36). Some of these youths were armed with cutlasses and were operating checkpoints in Bo. (89)
14. Any civilian caught in the act of threatening “an imminent and unlawful use of force” could also be targeted in an act of self-defence. See, e.g. Rome Statute, Article 31(1)(c) “The specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his status as a civilian.”⁹ It is a matter of evidence on a case-by-case basis to determine whether a victim has the status

⁹ *Musema*, Trial Judgment 27 Jan. 2000, para. 279.

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of civilian.¹⁰ The fact that an individual is armed is normally a strong indication that they are a combatant.¹¹

15. It is a war crime for combatants to feign civilian status or not clearly distinguish themselves from the civilian population by, at a minimum, openly carrying arms. See, e.g. Protocol (I) to the Geneva Conventions, Article 37(1), Protocol (I) to the Geneva Conventions, Article 44(3). There was ample evidence that the soldiers and rebels sought to disguise themselves by wearing the traditional clothing of the Kamajors as well as the clothing of civilians. See, e.g. TF2-162 (8.9.04) AFRC wore Kamajor clothes to attack Bo. (91); TF2-032 (9.9.04) Heard of soldiers dressing in ronkos and attacking Bo. (51); TF2-001 (15.2.05) When the junta took over Bo some were disguised as Kamajors. (5); TF2-222 (18.2.05) Rebels dressed in anything and everything (22). Sometimes similar to K dress. (24). Rebels mixed with civilian population when they attacked. (24) Apart from being a war crime, this fact should be considered in the broader context of analysing how many combatants are within a population for the purpose of analysing direction and proportionality.

Taking a direct part in hostilities

16. There is no clear authority on the question of what constitutes taking a direct part in hostilities. Even in the drafting of the additional Protocols to the Geneva Convention there was no consensus on the meaning of “direct” participation. “Several delegations considered that the term hostilities also covers preparations for combat and returning from combat.”¹² Classically, spies were presumed to be combatants and if engaging in espionage by any means of deception or without a military uniform, even lost the protections afforded to prisoners of war. Protocol (I) to the Geneva Conventions, Article 46. There is ample evidence of the persons classified as civilians in fact engaging in espionage.

¹⁰ *Rutaganda* Trial Judgment 6 Dec. 1999, para. 101.

¹¹ *Kayishema and Ruzindana*, Trial Judgment 21 May 1999, para. 181; *Ngeze*, Trial Judgment 2003, para. 404.

¹² ICRC Commentary on Additional Protocol (II) to the Geneva Convention, para. 4788 (1988).

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17. Equally, saboteurs who make an “attempt on the life or limb of members of the occupying forces administration” who pose “a grave collective danger” or who “seriously damage the property of the occupying forces or administration or the installations used by them” have been deemed combatants and no “caught in the act” requirement are also to be classified as combatants. IV Geneva Convention, Article 68(1). There is ample evidence of the persons classified as civilians being such saboteurs.
18. One who materially supports the military efforts of a party to a conflict would be hard pressed to claim civilian status unless they specifically surrendered or were placed in hors de combat. Therefore, given that crimes against humanity in particular require a criminal *mens rea*, a good faith attack on a suspected military target (even if that target lacks the traditional indicia of a military target) would be permissible, subject to the limitations of surrender and hors de combat.¹³ This applies to the targeting of the AFRC/RUF operation in Tongo Field which was instrumental to AFRC/RUF financing, as well as to AFRC/RUF spies and bureaucrats.

Police officers

19. The justification normally given for including police in the category of civilians stems from the traditional non-participation of police in international hostilities. In the context of a civil war, however, this rationale does not hold. The trial chamber in ICTR has concluded in dicta that police were combatants and therefore legitimate targets. The justification given was that police were armed and duty bound to pursue the government’s objectives.¹⁴
20. The Geneva Conventions and their additional Protocols are silent on the matter, wherein the police are neither expressly protected persons (such a medical personnel) nor specifically included in the definition of armed forces. Under a traditional reading of the Geneva Conventions, this would place police into the category of non-combatants *exclusion alteris*. Protocol II to the Geneva Convention, Article 50. Moreover, Article 43

¹³ *Tadic* Trial Judgment 14 July 1997, paras. 636-643.

¹⁴ *Kayishema and Ruzindana*, Trial Judgment 21 May 1999 para. 127.

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of Protocol I of the Geneva Convention specifically requires that parties to a conflict notify the counterpart when police or paramilitaries have been incorporated into the armed forces. Protocol I to the Geneva Convention, Article 43(3). The implication is that at least for the purposes of Protocol I (in an international conflict), police are considered civilian until they “take direct part in the hostilities” or officially incorporate into the armed forces, the rationale being the necessity of the police for the preservation of civil society and their presumed non-participation in international hostilities. This rationale breaks down, however, if applied to internal conflicts. Police are obligated to enforce the law and by definition rebel forces in a civil war are criminal, likely guilty of treason. By their nature, civil wars imply the breakdown of civil society and international humanitarian law’s role in internal conflicts is to avoid the impunity that would otherwise exist if only the victors were given justice. Police, as agents of the government, are duty bound and armed to prevent rebels from carrying out their aims. The ICTR has considered the issue, though only addressed it in dicta, finding that police were combatants because they had “the duty to maintain public order and have the legitimate means to exercise force.”¹⁵

21. There is ample evidence that the police cooperated with the junta. See, e.g. TF2-42 (17.9.04) Police continued work under the junta. (130) Police handed people over to the junta. (131) TF2-33 (20.9.04) Inspector of police, Bangura, was on the AFRC Council during the junta period. (80) TF2-001 (15.2.05) - Police in Bo supported the junta in the early days of the occupation. (17)
22. Given the absence of the substantive rationales of non-participation and civic preservation that would compel categorizing police as non-combatants (though it should be emphasised that they have never been expressly so categorised), police would be *per se* and *de facto* combatants. They were accountable to a command structure centralised within the government and armed to pursue the government’s aims, which in the context of civil war includes suppressing insurgents. In the context of Sierra Leone, the U.N Security Council demanded that the junta relinquish power to the democratically elected government. United Nations Security Council Resolution 1132, S/RES/1132 (1997) As

¹⁵ *Kayishema and Ruzindana*, Trial Judgment 21 May 1999 para. 127.

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a consequence, even if the police were “dutifully serving their nation” they were agents of an illegal government. The Prosecution concedes that the order that police be targeted only followed active and armed resistance from the police.¹⁶

23. Even if police were categorised as non-combatants for the purposes of the Protocol (which, it must be emphasised is applicable in international conflicts), it cannot be said that giving the police the same protections in a civil war reasonably falls within the application of the principle, the threshold set by the Trial Chamber in *Prosecutor v. Hadzihasanovic et al.*¹⁷

Mens rea

24. ICTR and ICTY have required knowledge as the *mens rea* element for any Crime Against Humanity. The perpetrator must knowingly participate in a widespread or systematic attack and be cognizant of the link between his misconduct and the attack, or he must know about the attack and have taken the risk that his acts were part of it. Such a demonstration has not been made through the evidence.
25. Since the constituent elements for a Crime Against Humanity are not satisfied, the Panel need not examine whether the elements of specific charge are satisfied. That fact notwithstanding, herein are the elements of the specific charges which the accused respectfully submits are applicable.

Elements:

1. The accused or a subordinate committed an act or omission with respect to the victim that precipitated the following results: i) the victim is dead and ii) the death resulted from an unlawful act or omission of the accused or a subordinate; and
2. At the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm or inflicted grievous bodily harm on the victim having known that such bodily harm is likely the cause the victim's death or is reckless as to whether or not death ensues.”¹⁸

¹⁶ Prosecution Supplemental Pre-Trial Brief, para. 285(f).

¹⁷ *Prosecutor v. Hadzihasanovic et al.*, IT-01-47-AR72, para. 12 (2003).

¹⁸ Prosecution's Pre-Trial Brief, para 97 quoting *Akayesu* Trial Judgment, 2 Sept. 1998, paras, 589 and 590. See also Elements of Crimes of the ICC, art. 7(1)(a), *Krstic* Trial Judgment, 2 Aug. 2001, para. 485.; *Vasiljevic* Trial

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Weaknesses in evidence which result in elements not being satisfied:

26. Relative to the death of civilians, there are other inferences possible from circumstantial evidence. See, e.g. TF2- 82 (17.9.04) - Witness heard that prior to Kamajor attack on Koribondo rebels and soldiers were killing civilians. Rebels and soldiers burned down houses when they attacked villages near Koribondo. (130); TF2-152 (27.9.04) Witness saw corpses on the street before Kamajors came to town. (126) Given the fact that these inferences are rationally and reasonably drawn, it is respectfully submitted that the Panel should find that there is insufficient evidence for a finding of guilt.
27. Relative to the death of Kamajors taking part in initiation ceremonies. Assuming for the sake of argument that the elements of murder are satisfied, it cannot reasonably be argued that such acts were “committed as part of” an attack as is required to prove a Crime Against Humanity. See, e.g. TF2-017 (19.11.04) Kondewa shot three initiates dead during an initiation and seriously wounded six who later died. (33).

Count 2: Violence to life, health and physical or mental well being of persons, in particular murder, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol, punishable under Article 3(a) of the Statute.

Factual allegation:

“Unlawful killings included the following:

- a. between about 1 November 1997 and 30 April 1998, at or near Tongo Field, and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
- b. on or about 15 February 1998, at or near the District Headquarters town of Kenema and at the nearby locations of SS Camp, and Blama, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
- c. on or about 15 February 1998, at or near Kenema, Kamajors unlawfully killed an unknown number of Sierra Leone Police Officers;
- d. in or about January and February 1998, in locations in Bo district including the District Headquarters town of Bo, Kebi Town, Koribondo, Kpeyama, Fengehun and Mongere,

Judgment 29 Nov. 2002, para. 205; *Krnjelac* Trial Judgment 15 March 2002, para. 324; *Semanza* Trial Judgment, 27 Jan. 2000, para. 215.

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Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;

e. between about October 1997 and December 1999 in locations in Moyamba District, including Sembahun, Taima, Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed an unknown number of civilians;

f. between about October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town, Kamajors unlawfully killed an unknown number of civilians;

g. Between about 1 November 1997 and 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants in road ambushes at Gumahun, gerihun, Jembeh and the Bo-Matotoka Highway.¹⁹

Elements of Violation of Geneva Conventions and of Additional Protocol:

1. Person or persons were civilians taking no active part in the hostilities;
2. The accused or a subordinate was aware of the factual circumstances that established this status;
3. Conduct took place in the context of and was associated with an armed conflict (not of an international character);
4. The accused or a subordinate was aware of the factual circumstances that established the existence of an armed conflict.

28. See above discussion relative to the question of whether the persons are rightly classified as civilians. Since they are not, and the constituent elements for a violation of the Geneva Conventions and of the Additional Protocol are not satisfied, the Panel does not need to consider whether the elements of the specific charges are satisfied. That fact notwithstanding, herein are the elements of the specific charges which the accused respectfully submits are applicable.

29. In addition, relative to the death of Kamajors taking part in initiation ceremonies. Assuming for the sake of argument that the elements of murder are satisfied, it cannot reasonably be argued that such acts were “in the context of an associated with an armed conflict” as is required to prove a Violation of the Geneva Convention and of Additional Protocol. See, e.g. TF2-017 (19.11.04) Kondewa shot three initiates dead during an initiation and seriously wounded six who later died. (33).

¹⁹ Indictment, para. 24.

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Count 3: Inhumane Acts, a Crime Against Humanity, punishable under Article 2(i) of the Statute**Factual allegation:**

“Acts of physical violence and infliction of mental harm or suffering included the following:

a. between about 1 November 1997 and 30 April 1998, at various locations, including Tongo Field, Kenema Town, Blama, Kamboma and the surrounding areas, the CDF, largely Kamajors, intentionally inflicted serious bodily harm and serious physical suffering on an unknown number of civilians;²⁰

b. between November 1997 and December 1999, in the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas, and the Districts of Moyamba and Bonthe, the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by the actions of the CDF, largely Kamajors, including screening for “Collaborators,” unlawfully killing of suspected Collaborators, often in plain view of friends and relatives, illegal arrest and unlawful imprisonment of “Collaborators” the destruction of home and other buildings, looting and threats to unlawfully kill, destroy or loot.”²¹

Elements of Crime Against Humanity:

1. There is an attack against a civilian population;
2. The attack is widespread or systematic;
3. The act in question was committed as part of that attack; and
4. The accused or a subordinate new of the broader context in which his or her act is committed.

Elements of specific charge:

1. The accused or a subordinate inflicted great suffering or serious injury to body or to mental or physical health, by means of an inhumane act.
2. Such an act was of a character (in terms of gravity and nature) similar to any other act referred to in Article 2 of the Statute of the Special Court.
3. The accused or a subordinate was aware of the factual circumstances that established the character of the act.²²

30. Relative to the element regarding serious injury to body or to mental or physical health, there is not specific analysis for this term, but it can be compared to ICTY elements of “serious bodily or mental harm.”²³ i) Victim must have suffered serious bodily or mental

²⁰ Indictment, para. 26(a).

²¹ Indictment, para. 26(b).

²² See, e.g. Prosecution’s Pre-Trial Brief, para. 101; Elements of Crimes of the ICC, Art. 7(1)(i).

Elements of specific charge:

²³ *Kordic and Cerkez*, Trial Judgment, 26 Feb. 2001, paras. 271-272.

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harm; ii) the degree of severity must be assessed on case by case basis, considering the individual circumstances; iii) suffering must be the result of an act of accused or his subordinate; iv) the accused or his subordinate must have been motivated by intent to inflict serious bodily or mental harm upon victim when the act was committed.

31. The following are also to be considered to determine the seriousness/severity of the act: all the factual circumstances including the nature of act or omission; the context in which it occurred; the personal circumstances of the victim including age, sex and health; the physical, mental and moral effects of the act upon the victim; and whether an act had long term effects.²⁴

Intent

32. Inhumane acts must deliberately cause suffering *mens rea* wither intent to inflict suffering on the third party or knowledge that likely to cause suffering and acted recklessly.

Count 4: Violence to life, health and physical or mental well being of persons, in particular cruel treatment, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II. Article 3(a) of the Statute

Factual allegation:

“Acts of physical violence and infliction of mental harm or suffering included the following:

a. between about 1 November 1997 and 30 April 1998, at various locations, including Tongo Field, Kenema Town, Blama, Kamboma and the surrounding areas, the CDF, largely Kamajors, intentionally inflicted serious bodily harm and serious physical suffering on an unknown number of civilians;²⁵

b. between November 1997 and December 1999, in the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas, and the Districts of Moyamba and Bonthe, the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by the actions of the CDF, largely Kamajors, including screening for “Collaborators,” unlawfully killing of suspected Collaborators, often in plain view of friends and relatives, illegal arrest and unlawful imprisonment of “Collaborators” the destruction of home and other buildings, looting and threats to unlawfully kill, destroy or loot.”²⁶

²⁴ *Vasiljevic* Trial Judgment, 29 Nov. 2002, para. 235; *Krnjelac*, Trial Judgment 15 March 1992, para. 131.

²⁵ Indictment, para. 26(a).

²⁶ Indictment, para. 26(b).

Elements of Violation of Geneva Conventions and of Additional Protocol:

1. Person or persons were civilians taking no active part in the hostilities;
2. The accused or a subordinate was aware of the factual circumstances that established this status;
3. Conduct took place in the context of and was associated with an armed conflict (not of an international character);
4. The accused or a subordinate was aware of the factual circumstances that established the existence of an armed conflict.

Elements of specific charge:

1. The accused or a subordinate, by act or omission, caused serious mental or physical suffering or injury or constitutes a serious attack on the victim's human dignity;
2. The condition was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person or person's interest; and
3. The act or omission was intentional.²⁷

33. Relative to elements governing the degree of suffering that is required, although it is lower than the required for torture, it must be wilful.²⁸

Count 5: Looting and Burning, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol, punishable under Article 3(f) of the Statute.

Factual allegation:

“Looting and burning included, between 1 November 1997 and about 1 April 1998 at various locations including in Kenema District, the towns of Kenema, Tongo Field and surrounding areas, in Bo District, the towns of Bo, Koribondo, and the surrounding areas, in Moyamba district, the towns of Sembehun, Gbangbatike and surrounding areas, and in Bonthe District, the towns of Talia (Base Zero), Bonthe Town, Mobayeh, and surrounding areas, the unlawful taking and destruction by burning of civilian owned property.”²⁹

Elements of Violation of Geneva Conventions and of Additional Protocol:

1. Person or persons were civilians taking no active part in the hostilities;
2. The accused or a subordinate was aware of the factual circumstances that established this status;
3. Conduct took place in the context of and was associated with an armed conflict (not of an international character);
4. The accused or a subordinate was aware of the factual circumstances that established the existence of an armed conflict.

²⁷ See, e.g. Prosecution's Pre-Trial Brief, para. 113; ICC Elements of Crimes, Art. 8(2)(c)(iii)

²⁸ Kvočka et al. Trial Judgment, 2 Nov. 2001, para. 161

²⁹ Indictment, para. 27.

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Elements of specific charge:

1. The Accused or a subordinate by act or omission unlawfully destroyed, took or obtained any public or private property;
2. The destruction, taking or obtaining by the accused or his subordinate of such property was committed with the intent to deprive the owner or any other person of the use or benefit of the property, or to appropriate the property for the use of any person other than the owner;
3. The destruction, taking, or obtaining was without the consent of the owner;
4. The act or omission was intentional; and
5. The property is of sufficient monetary value that the pillage of the property would involve grave consequences for the victim.³⁰

Count 6: Terrorizing the Civilian Population, Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(d) of the Statute

Factual allegation:

“At all times relevant to this Indictment, the CDF, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDF, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.”³¹

Elements of Violation of Geneva Conventions and of Additional Protocol:

1. Person or persons were civilians taking no active part in the hostilities;
2. The accused or a subordinate was aware of the factual circumstances that established this status;
3. Conduct took place in the context of and was associated with an armed conflict (not of an international character);
4. The accused or a subordinate was aware of the factual circumstances that established the existence of an armed conflict.

Elements of specific charge:

1. The accused or a subordinate wilfully directed acts or threats of violence against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population;
2. The accused or a subordinate engaged in violent conduct of a dimension involving intense fear or anxiety and extreme danger to human life.

³⁰ See, e.g. Prosecution's Pre-Trial Brief, para. 121; *Kordic and Cerkez* Trial Judgment, 26 Feb. 2001, para. 352 (relative to element 5); *Jelisić* Trial Judgment, 14 Dec. 1999, paras. 48-49; ICC Elements of Crimes, Art. 8(2)(e)(v).

³¹ Indictment, para. 27.

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3. The acts were committed with the primary purpose of spreading terror among the civilian population.
4. The conduct of the accused or a subordinate was premeditated and motivated by a political, ethnic, religious or ideological goal.³²

Weaknesses in evidence which result in elements not being satisfied:

34. Relative to burning and looting, there are other inferences possible from circumstantial evidence. See, e.g. TF2- 82 (17.9.04) Rebels and soldiers burned down houses when they attacked villages near Koribondo. (130); TF2-201 (4.11.04) Witness was told by civilians that when the junta forces pulled out, they burned houses. (126).
35. Given the fact that these inferences are rationally and reasonably drawn, it is respectfully submitted that the Panel should find that there is insufficient evidence for a finding of guilt.

Count 7: Collective Punishment, Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(b) of the Statute**Factual allegation:**

“At all times relevant to this Indictment, the CDF, largely Kamajors, committed the crimes set forth in paragraphs 22 through 27 and charged in counts 1 through 5, including threats to kill, destroy and loot, as part of a campaign to terrorize the civilian populations of those areas and did terrorize those populations. The CDF, largely Kamajors, also committed the crimes to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.”³³

Elements of Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II:

1. Person or persons were civilians taking no active part in the hostilities;
2. The accused or a subordinate was aware of the factual circumstances that established this status;
3. Conduct took place in the context of and was associated with an armed conflict (not of an international character);
4. The accused or a subordinate was aware of the factual circumstances that established the existence of an armed conflict.

³² See, e.g. Prosecution’s Pre-Trial Brief, para. 115, quoting *Galic* Trial Judgment, 5 Dec. 2003, para. 133; “A Semiotic Approach to a Legal Definition of Terrorism.” *ILSA Journal of International and Comparative Law*, Vol. 9, p. 357.

³³ Indictment, para. 27.

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Elements of specific charge:

1. The accused or a subordinate inflicts punishment on a group of persons in the form of severe physical or mental pain or suffering or destroys property as a reprisal or deterrent; and
2. The act was intentional.³⁴

Count 8: Use of Child Soldiers, A Serious Violation of International Humanitarian Law, punishable under Article 4(c) of the Statute

Factual allegation:

“At all times relevant to this Indictment, the Civil Defence Forces did, throughout the Republic of Sierra Leone, initiate or enlist children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, use them to participate actively in hostilities.”³⁵

Elements of Serious Violation of International Humanitarian Law:

The four factors for determining whether it is a “serious violation of international humanitarian law are set out in the *Tadic* decision on Defence Motion for Interlocutory Appeal on Jurisdiction.³⁶

Elements of specific charge:

1. The accused conscripted or enlisted one or more person into an armed force or group or used one or more persons to participate actively in hostilities (i.e. the actual state of fighting); and
2. Such person or persons were under the age of 15 years;
3. The accused knew or should have known that such persons were under the age of 15 years;
4. The conduct took place in the context of and was associated with an armed conflict not of an international character;
5. The accused was aware of the factual circumstances that established the existence of an armed conflict;
6. The child’s participation must be active. This entails actually arming a child and sending him or her into battle, or sending the child to transport munitions, gather information or guard bases.³⁷

Weaknesses in evidence which result in elements not being satisfied:

³⁴ See Prosecution’s Pre-Trial Brief, para. 114

³⁵ Indictment, para. 29.

³⁶ *Tadic* Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1 (para 92-4)

³⁷ See, e .g. Prosecution’s Pre-Trial Brief, paras. 126, 131 and 132; Elements of Crimes of the ICC, Art. 8(2)(e)(vii).

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36. As described above, the Prosecution has failed to distinguish among the very different activities engaged in by initiators, namely that some ceremonies were meant to initiate those who would engage in fighting whereas others were meant only to immunise or protect them. It is a poignant and obvious truth that one need not be participating in the armed conflict in order to be in harm's way. This was most true of the population of children, many of whom were brought for immunization by their families.
37. It is also clear that some of the witnesses who were the subject of evidence of child soldier recruitment were in fact trained by the rebels and given protection, food and shelter by the Kamajors. See, e.g. report of the child soldier expert who highlights the case of orphaned children provided for by, as she puts it, CDF; TF2-140 (14.9.04) W had been fighting with RUF where he was trained to use weapons. (121)

Ransom evidence

38. Though it is not clear what inference should be drawn from this and which crime under the indictment is alleged, the Prosecution presented evidence of Kondewa taking part in a number of schemes to extort money from family members of persons in his custody.³⁸ If it is alleged that this crime falls under the indictment, the accused respectfully seeks clarification of which count applies.

³⁸ See, e.g. TF2-096 (8.11.04) Woman accused of being a rebel taken to Byandehun and placed in a cage. Witness's husband paid AK a ransom for her release.

Criminal Responsibility Pursuant to Article 6(1): Direct Participation - Planning, Instigating, Ordering, Aiding and abetting, Joint Criminal Enterprise

39. “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.”³⁹

Prosecution’s Theory:

40. “The plan, purpose or design of Samuel Hinga Norman, Moinina Fofana, Allieu Kondewa and subordinate members of the CDF was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone...Each accused acted individually and in concert with subordinates to carry out the said plan, purpose or design.”⁴⁰

41. “Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa by their acts or omissions are individually responsible pursuant to Article 6.1 of the Statute for the crimes referred to in Articles 2,3 and 4 of the Statute as alleged in this indictment, which crimes each of them planned, instigated, ordered, committed, or in whose planning, preparation or execution each Accused otherwise aided and abetted, or which crimes were within a common purpose, plan or design in which each Accused participated or were a reasonably foreseeable consequence of the common purpose, plan or design in which each Accused participated.”⁴¹

42. Although the *actus reus* may take place geographically and temporally removed from the crime, the accused must make a substantial contribution toward the completion of the crime in order to be found individually liable.⁴² This may be accomplished through an

³⁹ Statute of the Special Court for Sierra Leone, Article 6(1).

⁴⁰ Indictment, para. 19.

⁴¹ Indictment, para. 20.

⁴² *Kayishema* Trial Judgment, 21 May 1999, para. 199.

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omission which “had a decisive effect on the commission of the crime and...was coupled with the requisite *mens rea*.”⁴³

43. “To establish that the accused planned, instigated or ordered a crime, it must be proved that: (i) the crime was physically performed by a person other than the accused (ii) the conduct of that persons was in furtherance of the plan, instigation or order of the accused; (iii) the accused was aware that the crime could materialize consequent to his acts.”⁴⁴

Planning

44. “Planning is the contemplation of a crime and the undertaking of steps to prepare and arrange for its execution.”⁴⁵ It envisions one or more persons formulating a method of design or action, procedure, or arrangement for the accomplishment of a particular crime. The level of participation in the planning must be substantial such as actually formulating the criminal plan or endorsing a plan proposed by another.⁴⁶

45. Because there was evidence indicating both that Kondewa was and was not a member of the War Council, let us assume for the sake of argument that he did participate in the War Council. While at first blush the Council would seem to serve a planning function, the evidence did not establish this. See, e.g. TF2-008 (17.11.04) War Council not responsible for deployment of fighting forces. (11); TF2-068 (17.11.04) War Council did not engage in military planning for the war, establishing a command structure or appointing positions for the execution of the war. (115); TF2-005 (16.2.05) War Council did not give direct orders to any commander. (17); War Council only presented recommendations to Hinga Norman. (17); Moinina Fofana gave orders as to the choice of commanders. (17); TF2-222 (17.2.05) War Council’s proposals were thwarted because Hinga Norman disregarded them and the old system in effect remained in place. It was a War Council in name only. It was just a nominal council I will say, but we have no way to do anything.” (99); TF2-079 (26.5.05) War Council played an advisory role only. (19)

⁴³ Prosecution’s Pre-Trial Brief, para. 149.

⁴⁴ Prosecution’s Pre-Trial Brief, para. 140 quoting *Blaskic* Trial Judgment, 3 March 2000, para. 278.

⁴⁵ Prosecution’s Pre-Trial Brief, para. 139 quoting *Akayesu* Trial Judgment, 2 Sept. 1988, para. 480.

⁴⁶ *Semanza* Trial Judgment, 27 Jan. 2000 para. 380.

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Instigating

46. “Instigating is prompting another to commit an offence.”⁴⁷ Although the instigation need not be direct and public, proof is required of a causal connection between the instigation and the commission of the crime.”⁴⁸ There is no evidence that Kondewa encouraged or prompted any Kamajor to commit an offence. To the contrary there is ample evidence that he gave warnings against offences prohibited by all those who were immunised and initiated. But he was in no position to control their actions. TF2-82 (17.9.04) – After Kondewa immunized people they were at liberty to return to their villages. (10)
47. An instigation need not be express or implied and can achieved through omission.⁴⁹ There is ample evidence that Kondewa repeatedly recounted the rules for those being immunised and initiated, and gave repeated warnings about the immunization not working if the rules were not followed, it is impossible to argue that he instigated acts through any omission. See, e.g. TF2-140 (14.9.04) “In order to give Witness more protection he was initiated into the Kamajor society . Witness was given charms which he believed gave him protection in war. (71); Not everyone who sought such (initiation) protection was necessarily a combatant. (157) TF2-82 (16.9.04) Being a Kamajor does not always involve fighting. (35); TF2-82 (16.9.04) – Witness was a Kamajor and not initiated. (72) It was a personal choice whether to be initiated or immunized. (74); TF2-82 (17.9.04) – Immunization was different than recruitment for military (12). The principle reason people came to Kondewa was for immunization. (12)
48. Although the Prosecution has introduced evidence that the Accused’s name has appeared on documents (which, given that he is illiterate he could neither have written nor read) the fact that a defendant’s name appears on an official document does not

⁴⁷ Prosecution’s Pre-Trial Brief, para. 139 quoting *Akayesu* Trial Judgment, 2 Sept. 1988, para. 482.

⁴⁸ *Semanza* Trial Judgment, 27 Jan. 2000, para. 381.

⁴⁹ Prosecution’s Pre-Trial Brief, para. 142 quoting *Blaskic* Trial Judgment, 3 March 2000, para. 280.

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mean that he has “responsibility for or power and right of decision with respect to the subject matter of such document.”⁵⁰

Ordering

49. “Ordering a crime entails responsibility as long as the accused has authority to order, even absent a formal superior-subordinate relationship.⁵¹ Ordering requires a situation where an individual has a position of authority and uses that authority to order - and thus compel - another individual who is subject to that authority, to commit a crime. Criminal responsibility for ordering the commission of a crime under the Statute implies the existence of a superior-subordinate relationship between the individual who gives the order and the one who executes it.”⁵²

50. See “Superior Responsibility” section of this Motion for analysis of issue and conclusion that there is no superior-subordinate relationship between Kondewa and other Kamajors. In addition to the fact that Kondewa lacked this relationship, there is no evidence that he ever ordered a Kamajor to commit any crime. Nor is there any evidence that he had the authority to compel such behaviour.

Mens rea of Planning, Instigating, Ordering

51. “If an order is general (e.g. to abuse civilians) the *mens rea* of recklessness or gross negligence is sufficient.⁵³ The required *mens rea* is knowledge that the acts of the accused assist in perpetrating the crime, coupled with his intention to assist or at least his awareness that assistance may be a foreseeable consequence of his acts. The accused must also be aware of the basic characteristics of the crime, including its requisite *mens*

50 *Delalic* Trial Judgment, 20 Feb. 2001.

51 Prosecution’s Pre-Trial Brief, para. 139 quoting *Kordic and Cerkez* Trial Judgment, 26 Feb. 2001, para. 388.

52 *Semanza* Trial Judgment, 27 Jan. 2000, para. 382.

53 Prosecution’s Pre-Trial Brief para. 140 quoting A. Cassese, *International Criminal Law* (N.Y., Oxford University Press, 2003, p. 194).

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*rea.*⁵⁴ Although the Prosecution posits that Kondewa's participation in the immunisation and initiation of individuals perpetrated their crimes, the evidence suggests the opposite. Given that those who were immunised and initiated were told repeatedly that the protections would be lost if they failed to follow the rules given to them, Kondewa had every reason to believe that they would strictly follow those rules. There is no evidence to support the contention that the immunization and initiation protected those who failed to follow the rules. Indeed there was evidence to the contrary, that the Kamajors widely believed that those who were killed in battle had violated the rules and those who survived had followed them.

Aiding and abetting

52. Aiding and abetting requires the following:

(a) Common Plan Requirement - the existence of a common plan between the accused and the actual perpetrator of the crime is not required in the case of aiding and abetting, as opposed to cases of joint criminal enterprises.

53. The Prosecution's evidence has established that rather than sharing some nefarious plan to commit crimes, the Kamajors to which Kondewa belonged, were fighting to protect democracy, restore the democratically elected government and to protect the lives and property of civilians. See, e.g. TF2-190 (10.2.05) Kamajors fought to restore the legitimate government and not to enrich themselves. There were rules of engagement, code of conduct, laws, etc. One such rule was to avoid harming civilians. The purpose of the checkpoints around Talia was to protect Base Zero. (87-9);

(b) Effects of Acts on Perpetration of Crime - While the acts of an aider and abettor must have a substantial effect upon the crime's perpetration, acts of members in a joint criminal enterprise must simply further the common plan or purpose. The aiding and abetting doctrine also necessitates a substantial contribution to the commission of the crime, though it need not be an indispensable element of the crime.⁵⁵

54. To the extent that the common plan was to protect democracy, there is ample evidence that Kondewa's actions in immunising individuals who shared that goal did in fact

⁵⁴ Prosecution's Pre-Trial Brief, para. 150.

⁵⁵ Bagilishema Trial Judgment, 7 June 2001, para. 33

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further it. Since no plan or purpose to commit crimes was shared, it is respectfully submitted that the Panel need not consider the extent to which Kondewa's acts furthered any plan.

(c) State of Mind - It is contended that an aider and abettor need only be aware of the crime's requisite *mens rea*.⁵⁶ However, for whichever crime is committed, the accused must have had knowledge of the specific intent of the perpetrator in order to be accused of aiding and abetting.⁵⁷ The accused must possess knowledge that his or her actions will aid or abet the perpetrator's crime.⁵⁸

55. For reasons described herein, the accused had no reason to know that those who he immunised or initiated had any such intent, nor does he concede that such intent has been established. To the contrary, he had every reason to believe that the rules given by him would be followed.

56. The relationship between the accused and the perpetrator should be considered in determining whether the conduct of the former assisted or facilitated the crime.⁵⁹ Given that the role played by Kondewa was one of immuniser and initiator who lacked any control over individuals once the ceremonies were complete, this consideration does not buttress the contention of the Prosecution he aided and abetted crimes.

Joint Criminal Enterprise

57. International crimes are often committed by a multitude of persons who all participate in the furtherance of a large-scale criminal scheme, or a "joint criminal enterprise." Under international law, a member of such a criminal enterprise is regarded as having committed the crimes resulting from it, as long as he contributed to their perpetration and intended either that they be committed or that the criminal enterprise be furthered while foreseeing that these crimes were likely to be committed. Accordingly, membership in a joint criminal enterprise is regarded as implicitly included in Article 6(1). Accountability in these cases is not for mere membership in the joint criminal enterprise, but rather for participation in the crime resulting from the enterprise.

⁵⁶ See Prosecution's Pre-Trial Brief, para. 152.

⁵⁷ *Aleksowski* Appeal Judgment, 14 March 2000.

⁵⁸ *Furundzija* Trial Judgment, 14 Dec. 1999, para. 245.

⁵⁹ Prosecution's Pre-Trial Brief, para. 148.

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There are three categories of Joint Criminal Enterprises:

(a) Same criminal intention - cases where each enterprise member voluntarily participates in one aspect of the common design and intends the resulting crimes.⁶⁰

58. Given that Kondewa did not share any criminal intention with the individuals who he immunised and initiated, this clearly does not apply.

(b) Acting pursuant to concerted plan - cases where there exists an organised system to commit the alleged crimes and where the accused actively participates in its enforcement is aware of its nature and intends to further its purpose.⁶¹ This *mens rea* may be inferred from the position of authority of the accused within the system.⁶² Existence of a formal or informal agreement between members is not required, nor is their presence at the time or the place of the crime.⁶³

59. For reasons described herein, it is explicitly denied that there was any such plan to commit crimes. Rather it is contended that the organised system through which the Kamajors came to function existed to further the legal and legitimate goal of restoring democracy and protecting the lives and property of civilians during a devastating time in the country's history.

(c) Foreseeable conduct outside the common design - cases involving a common criminal plan where one of the participants commits a crime which is outside the common plan, but nevertheless a natural and foreseeable consequence of its execution.⁶⁴ Such a non-envisaged crime is considered foreseeable when participants, although not intending this result, were "able to predict" it and regardless continued to participate in the plan.⁶⁵

60. For reasons described herein, it is explicitly denied that there is sufficient evidence to prove that such crimes were committed by the accused or a subordinate. The common design was legal and legitimate. But to the extent that the Panel find that such evidence exists, it is respectfully submitted that there is no evidence to support the contention that those crimes were part of any common plan known to the accused. Nor could the accused have foreseen any such crimes on the basis of his involvement as immuniser and

⁶⁰ See, e.g. *Simic* Trial Judgment, 17 Oct. 2003, para. 157; *Tadic* Appeal Judgment, 15 July 1999, paras. 196 and 200.

⁶¹ See *Tadic* Appeal Judgment, 15 July 1999, paras. 202 and 203.

⁶² *Tadic* Appeal Judgment, 15 July 1999, para. 203

⁶³ *Krnjelac* Appeal Judgment, 17 Sept. 2003, paras. 81 and 96.

⁶⁴ *Tadic* Appeal Judgment, 15 July 1999, para. 206.

⁶⁵ *Tadic* Appeal Judgment, paras. 220 and 228.

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initiator. See, e.g. TF2-140 (14.9.04) initiation rules were important for magic to work. (127); TF2-82 (17.9.04) – Kondewa was immunizing people before the war. (2) Witness and three others got immunized by Kondewa. (6). Kondewa told them the laws (6-7) Consequences of breaking laws was that you would die if shot at. (8); TF2-140 (14.9.04) If you did not obey K laws you would die in battle – this was your punishment. Kamajors themselves did not need to punish; TF2-190 (19.2.05) Kondewa said “...all these powers that he has in him has been transferred to us so that nothing will be wrong with us, no cutlass will strikes us. (45-6); TF2-013 (24.2.05) Kamajors were instructed not to kill civilians. Told not to loot property. “if you follow the laws you will not be caught by a bullet.” Witness says that when he followed the laws he was shot and nothing happened. (31); TF2-013 (24.2.05) Kamajors were strictly adhering to those rules because “if you could adhere to the rules God will help you.”(37)

61. Nor was Kondewa a part of the military operations. See, e.g. TF2-014 (15.3.05) Kondewa was not a fighter. (42) Did not command any troops. (43)

62. Elements of Joint Criminal Enterprise:

(a) Plurality of persons (not necessarily organised in a military manner).⁶⁶

63. It is conceded that this element is met.

(b) The existence of a common plan, design or purpose which involves the commission of a crime provided for in the Statute. It is not necessary for this plan, design or purpose to have been prearranged, and it may materialize extemporaneously and be inferred from that fact that a plurality of persons acts in unison to put in effect a joint criminal enterprise, or from other circumstances.”⁶⁷

64. For reasons described herein, it is explicitly denied that any such plan existed. The accused respectfully submits that there has been no evidence which establishes such a plan, aside from the comments and threats of individuals over whom the accused had no control and with whom the accused had no joint undertakings. To the extent that the Panel finds that there was such a plan, the accused respectfully submits that there is no evidence that any such plan was common to him.

⁶⁶ *Celebici* Appeal Judgment, 20 Feb. 2001, para. 366

⁶⁷ Prosecution’s Pre-Trial Brief, para. 155(b) quoting *Tadic* Appeal Judgment, 15 July 1999, para. 227; *Simic* Trial Judgment, 17 Oct. 2003, para. 158

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(c) Participation of the accused in the common plan, design or purpose which amounts to taking actions in its furtherance. The accused does not have to commit the specific crime, but rather may act to assist in, or contribute to, the execution of the joint criminal enterprise. The degree of participation required must be significant as to render the enterprise efficient or effective.⁶⁸

65. It is contended that Kondewa's actions in immunising and initiating individuals rendered the Kamajor enterprise efficient or effective. To the extent that the enterprise is, as described above, restoring democracy and protecting the lives and property of civilians, it may be conceded that his actions did so. But they rendered no assistance to any criminal enterprise, nor to the criminal acts committed by individuals. Rather it is contended that the immunisation and initiation had no effect on those who failed to follow the rules given them by the accused.

(d) Shared intent of the participants to further the common plan, design or purpose.⁶⁹

66. For reasons described herein, it is specifically denied that any such intent was shared. Nor has there been any evidence which establishes such intent.

(e) The accused intended the resulting crime or was at least aware of its likelihood and continued to participate.

67. For the reasons described herein it is explicitly denied that the accused intended or considered likely that his role as immuniser and initiator would result in crimes committed by those who were given specific rules and warnings about the failure to adhere to them.

68. Moving forward on a theory of participation in a Joint Criminal Enterprise, the Prosecution does not need to prove that the accused intended to commit a specific crime, he need only prove that the crime was a foreseeable consequence of the joint criminal enterprise. The Prosecution does however need to prove intent with regard to the criminal enterprise itself. It has failed to do so and responsibility ought not attach.

⁶⁸ Prosecution's Pre-Trial Brief, para. 155(c)

⁶⁹ *Krnjelac* Appeal Judgment, 17 Sept. 2003, para. 100 (holding that participants need not even be enthusiastic about furthering the plan); *Simic* Trial Judgment, 17 Oct. 2003, para. 157.

Criminal Responsibility Pursuant to Article 6(3) - Superior Responsibility

69. It is argued that as a consequence of holding a position of superior responsibility and exercising command and control over his subordinates, Allieu Kondewa is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. He is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinates were about to commit such acts or had done so and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

70. As the Prosecution notes, “[t]o establish superior responsibility under Article 6(3) of the Statute the following must be proved:

- (a) the existence of a superior-subordinate relationship between perpetrator and accused;
- (b) that the superior knew or had reason to know that the crime was committed or about to be committed by the subordinate;
- (c) the superior failed to take the necessary and reasonable measures to prevent the crime or to punish the perpetrator thereof.⁷⁰

71. Superior responsibility amounts to “responsibility for the superior’s own acts or omissions in failing to prevent or punish the crimes of his subordinates whom he knew or had reason to know were about to commit serious crimes or had already done so.⁷¹ This theory has a significant jurisprudential history which testifies to the complexity of applying what seem to be straightforward elements. An examination of their application is thus warranted.

Existence of a superior-subordinate relationship between perpetrator and accused

72. The existence of a superior-subordinate relationship demands a hierarchical relationship, direct or indirect, between the superior and the subordinate who is alleged to have to

⁷⁰ See Prosecution’s Pre-Trial Brief, para. 158 quoting *Aleksowski* Appeal Judgment, 24 March 2000, para. 76 and *Celebici* Trial Judgment, 16 Nov. 1998, para. 346.

⁷¹ *Kordic and Cerkez* Trial Judgment, 26 Feb. 2001, para. 447; *Celebici* Appeal Judgment, 20 Feb. 2001, para. 239.

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committed the crime within the court's jurisdiction.⁷² "A hierarchical relationship may exist by virtue of the accused's *de facto* authority over this subordinate or by virtue of his *de jure* position of superiority."⁷³

73. The subordinate need not be directly under the command of the superior.⁷⁴ As the ICTR noted, "the influence at issue in a superior-subordinate command relationship often appears in the form of psychological pressure."⁷⁵ But social or even political prominence is not sufficient.

74. The ICTR applied superior responsibility in the *Musema* case where the accused had the power to issue orders to employees, enforce those orders by termination or discipline, and order the use of force supplied in the massacres. Even there, the reasoning only extended to employees of the accused. The tribunal was unpersuaded by the undisputed fact that the accused was highly influential in the region.⁷⁶

75. Following the same reasoning, the ICTR also declined to hold a powerful local figure liable for the acts of others pursuant to a theory of command responsibility.⁷⁷ The accused was a journalist and news presenter on Radio Rwanda before assuming a position as Minister of Information in the Interim Government.⁷⁸ Although he possessed no *de jure* authority over military or police operations, the accused led several attacks, assumed a leadership role in planning meetings and routinely issued orders which various individuals followed.⁷⁹ Because, however, there was no evidence that

⁷² See *Celebici* Appeal Judgment, 20 Feb. 2001, paras. 251-252; *Kajelijeli* Trial Judgment, 1 Dec. 2003 para. 771; *Semanza* Trial Judgment, 27 Jan. 2000, para. 400.

⁷³ "International Crimes and the ad hoc Tribunals," Guenael Mettraux, Oxford University Press (2005), p. 298 quoting *Celebici* Appeal Judgment, paras. 192-195, 266.

⁷⁴ See *Celebici* Appeal Judgment, 20 Feb. 2001, para. 252; *Stakic* Trial Judgment, 31 July 2003, para. 421.

⁷⁵ *Musema* Trial Judgment, 27 Jan. 2000, para. 140.

⁷⁶ *Musema* Trial Judgment, 27 Jan. 2000, paras. 880-881

⁷⁷ *Niyitegeka* Trial Judgment, 16 May 2003, para. 478.

⁷⁸ *Niyitegeka* Trial Judgment, 16 May 2003, para. 5.

⁷⁹ *Niyitegeka* Trial Judgment, 16 May 2003, paras. 475-477.

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those who complied with the accused's orders did so with the expectation that non-compliance might be punished.⁸⁰

76. Let us examine the evidence which established Allieu Kondewa's role with the Kamajor movement.
77. Chief Priest and Holy Ghost of the Kamajor Trinity - this post gives him power and responsibility relative to the initiation and immunization ceremonies conducted. But it does not establish a hierarchy and certainly does not place him at the head of it. Evidence demonstrated that Kondewa did not select the candidates, nor did he have any control over them once the initiation or immunization ceremony was complete.
78. Top leader - though the Prosecution alleged that Kondewa was a top leader within the Kamajors, the evidence amounted to only vague reference to his being a big Kamajor, with no examples to support such a conclusion. Although it is alleged that he took direction from the First Accused this does not establish a hierarchical relationship with any subordinates.
79. Though it was contended that Kondewa led the Death Squad, the Prosecution's own witness contradicts this. See TF2-190 (10.2.05) Witness testified that he was the leader of the Death Squad, the group that was responsible for the security around Base Zero.
- (33)

Effective Control

80. In order for responsibility to attach, the accused must also be shown to have exercised "effective control" over his subordinates, regardless of whether the accused enjoyed military or civilian power, *de facto* or *de jure*.⁸¹ The fact that an accused may function as a *de jure* superior to the perpetrator does not on its own resolve the issue of whether he has

⁸⁰ *Nyitegeka* Trial Judgment, 16 May 2003, para. 477.

⁸¹ See, e.g. *Bagilishema* Appeal Judgment, 13 Dec. 2002, paras. 50 and 56.

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“effective control.”⁸² Nor does the accused need to have a formal position in relation to the perpetrator. The issue is whether he has the “material ability” to punish the perpetrator or to prevent the crime.⁸³

81. “What may be said to constitute “effective control for the purpose of Article 6(3) must be distinguished from lower forms of influence or authority which will not suffice to attract criminal liability. This is the case, for instance, where a certain individual, charismatic enough respected or otherwise persuasive enough to be followed, may be able to exercise some degree of influence over other individuals without their relationship being one of superior to subordinate and without this relationship reaching the threshold of “effective control” required by Article 6(3). Therefore, there may be cases where an individual had some authority and power over other individuals which allowed him to exercise even considerable influence over them but which fell short of effective control and therefore of imposing command responsibility.”⁸⁴

82. Substantial influence as a means of control in any sense which falls short of the possession of effective control over subordinates, which requires the possession of material abilities to prevent subordinate offences or to punish subordinate offenders, lacks sufficient support in State practice and judicial decisions.⁸⁵

81. To have effective control, the accused must have the material (actual) ability to prevent and punish crimes committed by those individuals.⁸⁶ Such control may be acquired *de jure* or *de facto* and the court may find evidence that a particular individual derived authority from both sources. As a result, the existence of a command position cannot be determined by reference to formal status alone.⁸⁷ The Court must reach a

⁸² *Kordić and Cerkez* Trial Judgment, 26 Feb. 2001, paras. 416, 419-424.

⁸³ *Celebici*, Appeal Judgment, 20 Feb. 2001, paras. 197, 255, 256, and 303.

⁸⁴ “International Crimes and the ad hoc Tribunals,” Guenaël Mettraux, Oxford University Press (2005), p. 300 quoting *Celebici* Appeal Judgment, 20 Feb. 2001, paras. 263, 266 and 658.

⁸⁵ *Celebici* Appeal Judgment, 20 Feb. 2001, para. 266.

⁸⁶ *Celebici* Trial Judgment, 16 Nov. 1998, para. 378.

⁸⁷ *Celebici* Trial Judgment, 16 Nov. 1998, para. 370

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factual determination of whether and to what extent the accused possessed the authority necessary to demand compliance with his or her orders and enforce such compliance if it was not forthcoming.

83. Although the Court may find effective control where an accused possessed only *de facto* authority over alleged subordinates, a superior who enjoys *de jure* authority must also exercise some degree of *de facto* authority for the court to deem his control effective and impose command responsibility.⁸⁸ “Although a person’s *de jure* position as a commander in certain circumstances may be sufficient to invoke responsibility under Article 6(3), ultimately it is the actual relationship of command that is required for command responsibility.”⁸⁹
84. The ICTY Appeals Chamber defined “effective control” as the “material ability to prevent or punish criminal conduct, however that control is exercised.”⁹⁰ The Chamber explained that “customary law has specified a standard of effective control” but “it does not define precisely the means by which the control must be exercised.”⁹¹ They also highlighted the case-by-case nature of the command responsibility inquiry, noting that “the indicators of effective control are more a matter of evidence than of substantive law.”⁹²

Superior knew or had reason to know that the crime was committed or about to be committed by the subordinate

Superior knew that the crime was committed or about to be committed

⁸⁸ See *Celebici* Appeal Judgment, 20 Feb. 2001, paras. 268-270 (declining to find superior status where the Accused possessed substantial administrative authority, including the ability to sign orders, but lacked the authority to directly issue commands to alleged perpetrators).

⁸⁹ *Bagilishema* Trial Judgment 7 June 2001, para. 39.

⁹⁰ *Delalic et al.* Trial Judgment, 16 Nov.1998, para. 256.

⁹¹ *Delalic et al.* Trial Judgment, 16 Nov.1998, para. 266.

⁹² *Blaskic* Appeals Judgment 29 July 2004, para. 69.

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85. In the absence of direct evidence, circumstantial evidence may be used to establish the superior's actual knowledge of the offences committed, or about to be committed, by his subordinates. The fact that the crimes were committed frequently and notoriously by subordinates of the accused can be an indicator that the superior had knowledge. And an individual's superior position per se is a significant indicium that he had knowledge of the crimes committed by his subordinates.⁹³
86. Such evidence may include such details as the number and type of illegal acts as well as their scope and wide spread occurrence, the time during which the illegal acts occurred and their geographical location; the modus operandi of similar illegal acts; the logistics and tactical tempo of operations involved; the number and type of troops, officers and staff; the location of the commander at the time.⁹⁴
87. Assuming that the accused was even positioned to received information within the organisation, which was not proven, there is ample evidence that the communication system was extremely rudimentary, very slow and often inaccurate. See, e.g. TF2-(26.5.05) Incidents didn't come to the attention of those at Base Zero because of the lack of formal communications systems. (35); See also Report and testimony of Prosecution's military expert. There is also evidence that the accused was unable to read and was reliant on those who could translate for him. Despite Kondewa's purported participation or membership in War Council meetings, it is clear from the Prosecution's own witnesses that shortly after the War Council was created it ceased to have information given to it.

Superior had reason to know that the crime was committed or about to be committed

88. "The ICTY Appeals Chamber in *Celebici* held that the standard "had reason to know" is met when general information regarding the crime was available to the superior, i.e. the superior need not have possessed knowledge of the specific details of the crime."⁹⁵

⁹³ Prosecution's Pre-Trial Brief, para. 165.

⁹⁴ Prosecution's Pre-Trial Brief, para. 166.

⁹⁵ Prosecution's Pre-Trial Brief, para. 167 quoting *Celebici* Appeals Judgment, 20 Feb. 2001, para. 238.

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Knowledge may be presumed...if [the superior] had the means to obtain the knowledge but deliberately refrained from doing so.⁹⁶ The *Krnjelac* decision clarified that this general knowledge must pertain to the specific crime committed (or intended to be committed).⁹⁷

89. In *Bagilishema*, the ICTR held that in cases where the accused had no actual knowledge of the crime, the required *mens rea* is still fulfilled if: the superior had information which put him or her on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such offences were about to be committed, were being committed, or had been committed by subordinates...or when the absence of knowledge [of the accused] is the result of the negligence in the discharge of the superior's duties, that is the superior failed to exercise the means available to him or her to learn of the offences and under the circumstances he or she should have known."⁹⁸

90. As will be discussed in detail hereafter, localised control is also relevant to the question of whether an accused had actual knowledge that subordinates were committing abuses or should have known that such violations were occurring. Because a superior must not remain wilfully blind to the acts of his subordinates, the court will necessarily consider what exposure or contact an accused had to the operations carried out by his subordinates. The greater degree of localised operational control, the more likely it is that the court will impose command responsibility.

91. Considering geographical and temporal circumstances, this means that the more physically distant the superior was from the commission of the crimes, the more additional indicia are necessary to prove that he knew of the crimes.⁹⁹

Superior failed to take the necessary and reasonable measures to prevent the crime or to punish the perpetrator thereof

⁹⁶ See, e.g. *Celebici* Appeal Judgment, 20 Feb. 2001, para. 226; *Stakic* Trial Judgment, 31 July 2003, para. 422.

⁹⁷ *Krnjelac* Appeal Judgment, 17 Sept. 2003, para. 155.

⁹⁸ *Bagilishema* Trial Judgment, 7 June 2001, para. 46

⁹⁹ *Naletilic and Martinovic*, 31 March 2003, para. 72

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Localised Operational Control

92. Failure to punish or prevent also requires an inquiry into the degree of the accused's localised operational control. Any evaluation of the action taken by a superior to determine whether the duty has been met is...inextricably linked to the facts of each particular situation.¹⁰⁰
93. Analysis of the question of localised control begins with classifying the category of position held by the accused.
- (1) High-level military and government superiors
 - (2) Military field commanders
 - (3) Civilian superiors
94. Where an accused occupies a high-level position in the government or military - and thus possesses a greater degree of *de jure* authority, a lesser showing of localised control will be necessary because the chain of command will provide a sufficient basis for finding that the accused's control was effective.¹⁰¹ The greater the degree of localised operational control an accused exercised, the more likely it is that he possessed such power. Significant localised operational leadership is, however, insufficient to warrant a finding of command responsibility.¹⁰²
95. The Prosecution offers no evidence to support the contention that Kondewa held any position of high level military or government superior. The evidence established, on the contrary, that his responsibilities for initiation and immunization flowed from his post as High Priest.

¹⁰⁰ *Celebici* Trial Judgment, 16 Nov. 1998, para. 394. See also *Bagilishema* Trial Judgment, 13 Dec. 2002, para. 48 (stating that an accused's ability to take certain measures must be evaluated on a case by case basis).

¹⁰¹ *Bagilishema* Trial Judgment, 13 Dec. 2002, para. 39.

¹⁰² *Niyitegeka* Trial Judgment 16 May 2003, paras. 475-478.

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96. This places Kondewa squarely within the realm of a civilian. Tribunals have required the most extensive showing of localised operational control where the accused is alleged to have acted as a civilian superior. The ICTY has cautioned that “great care must be taken in assessing the evidence to determine command responsibility in respect of civilians, lest an injustice be done.”¹⁰³ Some of these concerns are addressed in Article 28 of the Rome Statute which distinguishes between the two types of superior responsibility. The ICTY Chamber acknowledged that while “arguably effective control may be achieved through substantial influence,” substantial influence is insufficient without a showing of “effective control.”¹⁰⁴ Kordic, a politician had “tremendous influence and power in Central Bosnia,” and even had an important role in the military.¹⁰⁵ Nonetheless Kordic was “not in the top echelon, and remained a civilian who was not part of the formal command structure of the HVO. For command responsibility to attach, the prosecution must show that a civilian superior had the power to prevent and punish offences by subordinates and that the accused’s *de facto* authority was “accomplished by the trappings of the exercise of *de jure* authority.”¹⁰⁶ These so-called trappings include, inter alia, “awareness of a chain of command, the practice of issuing and obeying orders and the expectation that insubordination may lead to disciplinary action.”¹⁰⁷
97. As discussed above, even if Kondewa were part of the War Council, it is clear that this body lacked the power to implement any decisions relative to punishment. See, e.g. TF2-008 (17.11.04) War Council held hearings on Kamajor violations. (34) War Council would investigate and make recommendations. (47); TF2-068 (10.2.05) War Council recommendations required Hinga Norman’s approval for implementation. (91)
98. There is not one example of Kondewa punishing or even reprimanding any individual. It is true that he gave individuals the list of rules during the ceremonies of immunization and initiation, but he had no control at the end of the initiation, and these rules were

¹⁰³ *Kordic and Cerkez* Trial Judgment, 26 Feb. 2001, para. 840.

¹⁰⁴ *Kordic and Cerkez* Trial Judgment, 26 Feb. 2001, para. 415

¹⁰⁵ *Kordic and Cerkez* Trial Judgment, 26 Feb. 2001, para 838-839.

¹⁰⁶ See, *Celebici* Trial Judgment, 16 Nov. 1998, para. 646; *Bagilishema* Trial Judgment, 13 Dec. 2002, para. 43.

¹⁰⁷ *Bagilishema* Trial Judgment, 13 Dec. 2002, para. 43.

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impossible for him to enforce. There were, on the contrary, numerous examples of individuals who defied the rules given them. See, e.g. TF2-073 (3.3.05) - Witness heard Kondewa address recruits and tell them that the Kamajor movement was not meant to harass, torment, loot or disadvantage civilians. It was meant to protect them. Kondewa gave warning to recruits – no harassment, no tormenting, no looting, warned against raping. (38)

99. Warnings given to recruits and guarantees given to the public that there would be no looting, but examples of defiance. And yet, See, e.g. TF2-073 (2.3.05) - Kamajors came to Witness's home and announced that they were there on orders of Kondewa to loot. Witness expressed his surprise, having himself heard Kondewa's public warnings against looting. (34-37)
100. One civilian witness testified that after one attack which had numerous examples of misconduct, Kondewa even made a public apology for the behaviour of Kamajors. See TF2-116 (9.11.04) - Witness was at a meeting where Kondewa told the people of Bonthe that he did not order the Kamajors to enter Bonthe and apologised for what happened.(30)

Requisite Intent

101. It is necessary for the trial panel to "...ensure that there has been malicious intent, or, at least, ensure that negligence was so serious as to be tantamount to acquiescence or even malicious intent."¹⁰⁸
102. For a non-military superior to incur command responsibility, the Prosecution must demonstrate a considerable degree of localised operational control since such superiors lack *de jure* authority altogether. Their control derives exclusively from the exercise of *de facto* authority, which must amount to more than mere influence, participation or leadership. Rather a civilian superior must be regarded by others as a commander, act as

¹⁰⁸ *Akayesu* Trial Judgment, 2 Sept. 1999, para 489.

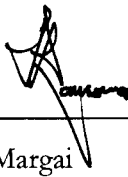
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a commander, be a major player in local operations and most important possess the authority to issue and demand compliance with orders.

103. As a consequence of the foregoing, Allieu Kondewa respectfully submits that the evidence presented by the Prosecution does not support the charges against him and prays this honourable panel to enter a Motion for Judgment of Acquittal in his favour.

COUNSEL FOR ALLIEU KONDEWA

Done in Freetown this 4th day of August

B.P. 

Charles Margai

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Table of Authorities

Cases

- Prosecutor v. Akayesu* Trial Judgment, 2 Sept. 1998
- Prosecutor v. Aleksovski* Appeal Judgment, 24 March 2000
- Prosecutor v. Bagilishema* Trial Judgment, 7 June 2001
- Prosecutor v. Bagilishema* Appeal Judgment, 13 Dec. 2002
- Prosecutor v. Blaskic* Trial Judgment, 3 March 2000
- Prosecutor v. Blaskic* Appeals Judgment, 29 July 2004
- Prosecutor v. Celebici* Trial Judgment, 16 Nov. 1998
- Prosecutor v. Celebici* Appeal Judgment, 20 Feb. 2001
- Prosecutor v. Delalic et al.* Trial Judgment, 16 Nov. 1998
- Prosecutor v. Delalic et al.* Appeal Judgment, 20 Feb. 2001
- Prosecutor v. Furundzija* Trial Judgment, 14 Dec. 1999
- Prosecutor v. Galic* Trial Judgment, 5 Dec. 2003
- Prosecutor v. Hadzhasanovic et al.* IT-01-47-AR72, para. 12 (2003).
- Prosecutor v. Jelacic* Trial Judgment, 14 Dec. 1999
- Prosecutor v. Kajelijeli* Trial Judgment, 1 Dec. 2003
- Prosecutor v. Kayishema and Ruzindana* Trial Judgment, 21 May 1999
- Prosecutor v. Kordic and Cerkez* Trial Judgment, 26 Feb. 2001
- Prosecutor v. Krstic* Trial Judgment, 2 Aug. 2001
- Prosecutor v. Kvocka et al.* Trial Judgment, 2 Nov. 2001
- Prosecutor v. Krnojelac* Appeal Judgment, 17 Sept. 2003
- Prosecutor v. Krnojelac* Trial Judgment, 15 March 1992
- Prosecutor v. Kunarac, Kovac and Vukovic* Appeal Chamber, 12 June 2002

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Prosecutor v. Musema Trial Judgment, 27 Jan. 2000

Prosecutor v. Naletilic and Martinovic, 31 March 2003

Prosecutor v. Ngeze, Trial Judgment, May 9 2002

Prosecutor v. Niyitegeka Trial Judgement, 16 May 2003

Prosecutor v. Rutaganda Trial Judgment, 6 Dec. 1999

Prosecutor v. Semanza Trial Judgment, 27 Jan. 2000

Prosecutor v. Simic Trial Judgement, 17 Oct. 2003

Prosecutor v. Stakic Trial Judgment, 31 July 2003

Prosecutor v. Tadic, decision on Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, para. 105 (1995)

Prosecutor v. Tadic Trial Judgment, 14 July 1997

Prosecutor v. Tadic Appeal Judgment, 15 July 1999

Prosecutor v. Vasiljevic Trial Judgment, 29 Nov. 2002

Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ-94-95, para. 78 (1996).

Statues and Laws

Elements of Crimes of the ICC, Art. 7(1)(i)

Elements of Crimes of the ICC, Art. 8(2)(e)(v)

Elements of Crimes of the ICC, Art. 8(2)(e)(vii)

Geneva Conventions:

Fourth Geneva Convention, Article 68(1)

Protocol I to the Geneva Conventions, Article 4

Protocol I to the Geneva Conventions, Article 37(1)

Protocol I to the Geneva Conventions, Article 43

Protocol I to the Geneva Conventions, Article 44(3)

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Protocol I to the Geneva Conventions, Article 46

Protocol I to the Geneva Conventions, Article 52

Protocol II to the Geneva Convention, Article 50

Third Geneva Convention, Article 4

Rome Statute, Article 31(1)(c)

Statute of the Special Court for Sierra Leone, Article 6

United Nations Security Council Resolution 1132, S/RES/1132 (1997)

Books and Articles

ICRC Commentary on Additional Protocol (II) to the Geneva Convention (1988).

“A Semiotic Approach to a Legal Definition of Terrorism.” ILSA Journal of International and Comparative Law, Vol. 9, p. 357.

A. Cassese, International Criminal Law (N.Y., Oxford University Press, 2003)

G. Mettraux, International Crimes and the ad hoc Tribunals, (N.Y., Oxford University Press, 2005)