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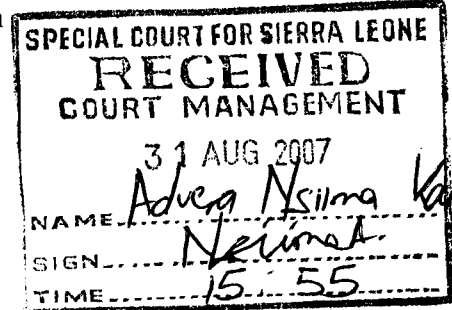
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SPECIAL COURT FOR SIERRA LEONE

Before: Hon. Justice Benjamin Mutanga Itoe, Presiding
Hon. Justice Bankole Thompson
Hon. Justice Pierre Boutet

Registrar: Mr. Herman von Hebel

Date: 31st August 2007



THE PROSECUTOR

Against

**MOININA FOFANA
ALLIEU KONDEWA**

CASE NO. SCSL-04-14-T

PUBLIC

**KONDEWA SENTENCING BRIEF
PURSUANT TO RULE 100(A) OF
THE RULES OF PROCEDURE AND EVIDENCE OF
THE SPECIAL COURT FOR SIERRA LEONE**

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I. INTRODUCTION

1. On 2nd August 2007, the Trial Chamber rendered its Judgement (hereinafter referred to as “Trial Chamber Judgement”), finding Mr. Allieu Kondewa (hereinafter referred to as “Mr. Kondewa”) guilty of the following counts:
 - Count 2: Violence to life, health and physical or mental well-being of persons, in particular murder, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II;
 - 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;
 - Count 5: Pillage, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II;
 - Count 7: Collective Punishments, a Violation of Article 3 common to the Geneva Conventions and of Additional Protocol II;
 - Count 8: Enlisting children under the age of 15 years into armed groups and/or using them to participate actively in hostilities, an other serious violation of international humanitarian law.
2. On the 24th August 2007, the Prosecution filed its “Public Prosecution Sentencing Submission Pursuant to Rule 100(A) of the Rules of Procedure and Evidence” (hereinafter referred to as “Prosecution Sentencing Brief”).
3. Through Counsel, Mr. Kondewa respectfully submits the “Kondewa Sentencing Brief Pursuant to Rule 100(A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone” (hereinafter referred to as “Sentencing Brief” and “Rules of Procedure and Evidence” respectively). The Sentencing Brief will set forth all factors to provide the Court with factors the Trial Chamber should assess when determining Mr. Kondewa’s sentencing.
4. Protecting the rights of the accused and maintaining a fair trial unbiased in nature have been crucial to this particular case not only to ensure justice is achieved in the present, but also to ensure justice is maintained in separate cases in the future. Similarly, a just sentence contributes towards the goals of national reconciliation, the restoration and

maintenance of peace, and to ensure that violations of international humanitarian law are effectively redressed.¹ “Punishment whether authorized by international or national law, requires justification; otherwise, it is simply cruelty.”²

5. Thus, the Defence for Mr. Kondewa respectfully submits this Sentencing Brief and respectfully requests that the Trial Chamber considers all factors when determining the length of Mr. Kondewa’s sentence. The Defence respectfully requests that the Trial Chamber issues a sentence that is as fair and lenient as possible.

II. APPLICABLE LAW AND LEGAL STANDARDS FOR SENTENCING

1. Applicable Law of Special Court for Sierra Leone

6. Rule 101 of the Rules of Procedure and Evidence sets forth a guideline for sentencing.

Rule 101 states:

- (A) A person convicted by the Special Court, other than a juvenile offender, may be sentenced to imprisonment for a specific number of years.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 19(2) of the Statute, as well as such factors as:
 - (i) Any aggravating circumstances;
 - (ii) Any mitigating circumstances including the substantial cooperation with the Prosecution by the convicted person before or after the conviction;
 - (iii) ...
- (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

¹ *Prosecutor v. Bisengimana*, ICTR-00-6-T, Judgement, 13 April 2006, para. 106 (“**Bisengimana Judgement**”).

² Robert D. Sloane, *The Expressive Capacity of International Punishment: The Limits of the National Law Analogy and the Potential of International Criminal Law*, 43 STAN. J. INT’L L. 39, 40 (2007).

- (D) Any period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.

7. Article 19 of the Statute of the Special Court provides:

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

2. Applicable International Law for Sentencing

2.1. Standard of Proof for Aggravating and Mitigating Circumstances

8. The burden of proof for aggravating circumstances is on the Prosecution. “[O]nly those matters which are proved beyond a reasonable doubt against an accused may be the subject of an accused’s sentence or take into account in aggravation of that sentence.”³ The Trial Chamber may consider such factors authoritative *only if* the Prosecution has proved such aggravating circumstances beyond a reasonable doubt.⁴ Any aggravating circumstances set forth by the Prosecution against Mr. Kondewa thus must be proven beyond a reasonable doubt. The Defence submits that the Prosecution has failed to successfully prove beyond a reasonable doubt any aggravating circumstances with the Prosecution Sentencing Brief as stated in paragraphs 160 through 167.

³ *Prosecutor v. Mucič et al.*, IT-96-21-A, 20 February 2001, para. 763 (“**Čelebići Case**”).

⁴ *Bisengimana Judgement*, para. 111; *Prosecutor v. Nikolič*, IT-94-2-S, Judgement, 18 December 2003, para. 145 (“**Nikolič Judgement**”); *Kajelijeli v. Prosecutor*, ICTR-98-44A-A, Judgement, 23 May 2005, para. 294; *Čelebići Case*, para 763; *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement, 15 March 2002, para. 507 (“**Krnojelac Judgement**”).

9. The Trial Chamber shall consider any mitigating circumstances in determining the sentence as stated prior in Rule 101(B)(ii) of the Rules of Procedure and Evidence. Any mitigating circumstances may include those factors which are not directly related to the offence.⁵ The burden of proof for mitigating circumstances is on the Defence, and the standard of proof must be proven on a balance of probabilities.⁶ This means “that more probably than not such a condition existed at the relevant time.”⁷ Thus, the standard is lower than that required to prove any aggravating circumstances.
10. Thus, the Defence submits that the Prosecution has failed to prove any of the alleged aggravating circumstances in its Prosecution Sentencing Brief beyond a reasonable doubt and that the mitigating circumstances should prevail in lessening and moderating the length of Mr. Kondewa’s sentence.

2.2. *International Sentencing Practices*

11. Article 19(1) of the Statute states that “[i]n determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.” Thus, it is left to the discretion of the Trial Chamber as deemed appropriate to apply either or both the sentencing practices of the International Criminal Tribunal for Rwanda (hereinafter referred to as “ICTR”) and national courts of Sierra Leone.
12. Crimes against humanity and war crimes are international in nature, and thus the sentencing practices within Sierra Leone should not be followed. In Sierra Leone, maximum sentences have been issued for crimes such as murder, attempted murder, manslaughter, rape, and robbery. Sentencing practices in Sierra Leone have followed the sentencing guidelines that have been established in sources such as *Archbold*.⁸
13. However, these sentencing guidelines cannot take into account the international element or overall perspective upon humanity comprising crimes against humanity or war crimes. As Article 19 of the Statute of the Special Court establishes, “In imposing the

⁵ Nikolić Judgement, para. 145.

⁶ Krnojelac Judgement, para. 847; *Prosecutor v. Gérard and Elizaphan Ntakirumana*, Case No. ICTR-96-10&10A-T, Judgement and Sentence, 21 February 2003, para. 893 (“**Ntakirumana Judgement and Sentence**”); Bisengimana Judgement, para. 111; *Kajelijeli* Judgement (AC), para. 294; Nikolić Judgement, para. 145.

⁷ Čelebići Case, para. 590; *Kajelijeli v. Prosecutor*, ICTR-98-44A-A, Judgement, 23 May 2005, para. 294.

⁸ Archbold, “Criminal Pleading Evidence and Practice,” (Sweet and Maxwell 35th edn 1962), at pp. 4301-32.

sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.” Given that the gravity of the offence should be taken into account, and given that the offences for which Mr. Kondewa was convicted were international in nature, international law should guide. International criminal courts and tribunals have taken into account the international nature and elements of different crimes against humanity and war crimes.⁹

14. The Defence requests the Trial Chamber not to apply the domestic sentencing practices of Sierra Leone to these proceedings. As Trial Chamber II recently stated in its Sentencing Judgement, Article 19(1) “does not oblige the Trial Chamber to conform to [the practice regarding prison sentences in the national courts of Sierra Leone], but rather to take into account that practice as and when appropriate.”¹⁰ It ultimately held that it was “not appropriate to adopt the [domestic practice of the national courts of Sierra Leone] in the present case since none of the Accused was indicted for, nor convicted of, offenses under Article 5 of the Statute.”¹¹
15. All of the crimes for which Mr. Kondewa has been convicted of do not fall under Article 5 of the Statute. Thus, the Defence submits that a similar rationale be applied and that the domestic practices regarding prison sentences in the national courts of Sierra Leone not be adopted in this case.
16. Moreover, the Defence submits that the Trial Chamber should also apply the sentencing practices of the International Criminal Tribunal for the former Yugoslavia (hereinafter referred to as “ICTY”). Both the ICTR and ICTY try individuals for international crimes, similar to the Special Court. Trial Chamber II recently held in its Sentencing Judgement that it would be “guided by the sentencing practices at both the ICTR and ICTY.”¹² Although Article 19(1) of the Statute does not specifically state that the Trial Chamber shall have recourse to the ICTY, the Trial Chamber stated that it would do so “as its statutory provisions are analogous to those of the Special Court and the ICTR.”¹³

⁹ See Dr. David L. Nersessian, *Comparative Approaches to Punishing Hate: The Intersection of Genocide and Crimes Against Humanity*, 43 STAN J. INT’L L. 221 (2007).

¹⁰ *Prosecutor v. Brima et al.*, SCSL-04-16-T, Sentencing Judgement, 10 July 2007, para. 32 (“**Brima et al. Sentencing Judgement**”).

¹¹ *Ibid.*

¹² *Ibid.*, para. 33.

¹³ *Ibid.*

Similarly, the Defence requests that the Trial Chamber have recourse to the sentencing practices of both the ICTR and ICTY in this case.

17. Thus the Defence requests that the Trial Chamber considers the sentencing practices of the ICTR and ICTY and not of the domestic courts of Sierra Leone for those reasons explained above.

3. Conclusion

18. In conclusion, the Defence respectfully requests that the foregoing considerations and also the following factors set forth in Parts III, IV, V, VI, and VII be taken into account when determining Mr. Kondewa's sentence. The Defence requests the Trial Chamber to consider such factors to outweigh any and all considerations set forth by the Prosecution. For these reasons, the Defence respectfully requests the Trial Chamber to give a sentence which is as fair and lenient as possible.

III. PURPOSES OF SENTENCING

19. "The institutions of criminal justice must ... enable the discharge of instinctual desires for vengeance in an orderly socially palatable manner."¹⁴ International criminal law must not develop as a substitute for revenge or vengeance. Rather, the institutions of international criminal law must allow for the rules to be interpreted in a manner that sets forth an exemplary model of justice for the present and for the future.
20. The role a sentence has within the larger context of international criminal law and international justice is undeniable. As stated in United Nations Security Council Resolution 1315 (2000), the circumstances in Sierra Leone necessitate the existence of "a credible system of justice and accountability for the very serious crimes committed [that] would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace."¹⁵
21. The purposes of sentencing have focused upon retribution, deterrence, social defence, and rehabilitation.¹⁶ A sentence focusing on retribution reflects a fair and balanced

¹⁴ Robert D. Sloane, *supra* note 2, at 78.

¹⁵ U.N. Sec Res. 1315(2000), 14 August 2000, para. 7.

¹⁶ Daniel B. Pickard, *Proposed Sentencing Guidelines for the International Criminal Court*, 20 LOY. L.A. INT'L COMP. L.J. 123, 125 (1997). These do not comprise all of the theories underlying the purposes of sentencing. Others include, for example, reconciliation, restitution, and restoration of the rule of law. See Steven Glickman,

approach.¹⁷ Deterrence focuses on “discouraging the commission of similar crimes. The main effect sought is to deter the perpetrator away from further wrongdoing...[and] is assumed that punishment will also have the effect of discouraging others from committing the same kind of crime....”¹⁸ Punishment from a social defence perspective is similar to that of deterrence and holds that society must defend itself from criminals by punishing them.¹⁹ The rehabilitation theory aims mainly at rehabilitating the criminal.²⁰

22. The Defence acknowledges that such purposes remain a vital and critical aspect within international and national sentencing practices and within the development of the jurisprudence of international criminal law. However, the Defence submits that it would be difficult to successfully apply any such theories in this case to Mr. Kondewa. The rehabilitation theory does not apply as there is no criminally minded individual to rehabilitate. The social defence theory, while valid and vital within an overall societal context, does not apply here because there is no criminal to punish in this case. Deterrence plays a critical role within international criminal law, however, in this case there does not exist any criminal behavior which need to be deterred. The fact that the punishment should fit the crime also plays a critical role within international criminal law, as the institutions of justice must fully utilize the mechanisms of justice and dispense all tendencies of vengeance and revenge. In this sense, the Defence agrees that if the punishment should fit the crime, that a lenient and short sentence fits the circumstances surrounding the matters at hand in this case.
23. Thus, the Defence submits that, in light of the theories underlying the purposes of sentencing, the Trial Chamber issues a sentence that is as fair and lenient as possible.

IV. DETERMINATION OF SENTENCE

Victims' Justice: Legitimizing the Sentencing Regime of the International Criminal Court, 43 COLUM. J. TRANSNAT'L L. 229 (2004).

¹⁷ *Prosecutor v. Tadić*, IT-94-1/IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000, para. 48 (“**Tadić Appeal**”).

¹⁸ *Prosecutor v. Babić*, IT-03-72-S, Sentencing Judgement, 29 June 2004, para. 45 (“**Babić Judgement**”).

¹⁹ Daniel B. Pickard, *Proposed Sentencing Guidelines for the International Criminal Court*, 20 LOY. L.A. INT'L COMP. L.J. 123, 126 (1997).

²⁰ Andrew Dubinsky, *An Examination of International Sentencing Guidelines and a Proposal for Amendments to the International Criminal Court's Sentencing Structure*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 609, 618 (2007).

1. International Case Law Regarding Length of Sentence

24. International criminal law has yet to ascertain a consistent guideline for sentencing for genocide, crimes against humanity or war crimes.²¹ Both the ICTY and ICTRY have not implemented any firm sentencing guidelines because each case is assessed differently. Particular and different circumstances are assessed when the sentence is deliberated. Also, the issuance of a single concurrent sentence makes it difficult to assess a practical way in which to find guidance regarding the determination of the appropriate sentence within each particular case.
25. Principal perpetrators of genocide or crimes against humanity or both have received sentences ranging between 15 years to life imprisonment, although some have received lower sentences. In *Prosecutor v. Elizaphan and Gérard Ntakirutimana*, the Trial Chamber sentenced Elizaphan Ntakirutimana to 10 years imprisonment for genocide.²²
26. However, those that partook in lesser or secondary forms of crimes generally have received lower sentences. The Trial Chamber for the ICTR in *Prosecutor v. Ruggiu* gave a sentence of 12 years for directing and publicly inciting to commit genocide.²³ In *Prosecutor v. Prosecutor v. Babić*, the Trial Chamber sentenced Milan Babić to 13 years for persecutions on political, racial and religious grounds.²⁴ In *Prosecutor v. Semanza*, the Trial Chamber gave a total sentence of 24 years for multiple crimes, including complicity to commit genocide, extermination as a crime against humanity, rape, torture, and murder.²⁵ Rape as a crime against humanity has resulted in sentences ranging between 12 years²⁶ to 15 years.²⁷ Torture has been punished with sentences

²¹ Ibid. at 609.

²² Ntakirutimana Judgement and Sentence, paras. 919-21. In the same case, the Trial Chamber sentenced Gérard Ntakirutimana to 25 years for genocide and murder as a crime against humanity. Ntakirutimana Judgement and Sentence, paras. 922-24.

²³ *Prosecutor v. Ruggiu*, ICTR-97-32-I, Judgement, 1 June 2000 (“**Ruggiu Judgement**”).

²⁴ Babić Judgement, para. 102.

²⁵ *Prosecutor v. Semanza*, ICTR-97-20-T, Judgement and Sentence, 15 May 2003, paras. 585-90 (“**Semanza Judgement**”).

²⁶ *Prosecutor v. Kunarac*, IT-96-23 & IT-96-23/1-A, 22 February 2001, Judgement, para. 882 (“**Kunarac Judgement**”).

²⁷ *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, p. 13.

ranging between 5 years²⁸ and 12 years.²⁹ Murder as a crime against humanity has been punished by terms ranging between 12 years³⁰ and 20 years.³¹

2. Factors in Consideration of Length of Sentence

27. The Defence maintains its premise that Mr. Kondewa be given the most lenient sentence. Rule 101(A) of the Rules of Procedure and Evidence states that “[a] person convicted by the Special Court [...] may be sentenced to imprisonment for a specific number of years.” In response, however, to the Prosecution which has asked for 30 years, the Defence respectfully requests that the Trial Chamber issues a sentence lower than the requested number of years that reflects a sentence that is as fair as possible.
28. The “main determinant of any evaluation of an appropriate sentence rests on the circumstances of the crime with which the accused has been found guilty and his role therein.”³² The Defence maintains that the Prosecution has failed, by lack of sufficient evidence, to prove beyond a reasonable doubt the charges for which Mr. Kondewa has been found guilty of in Counts 2, 4, 5, 7, and 8 and that he played a central role therein.³³
29. Proving guilt and elements of a crime beyond a reasonable doubt requires the Prosecution to dispel any and all reasonable doubt that may exist in regards to the guilt of the accused. Evidence admitted to prove guilt beyond a reasonable doubt may be direct or circumstantial, and, additionally, Rule 89(C) gives the Trial Chamber broad discretion to admit hearsay evidence that is relevant.³⁴
30. While hearsay evidence is not inadmissible *per se*, it must be approached with caution and be subject to “tests of relevance, probative value and reliability.”³⁵

²⁸ *Prosecutor v. Simić et al.*, IT-95-9-T, Trial Chamber, 17 October 2003, para. 1123 (“**Simić Judgement**”).

²⁹ *Kunarac Judgement*, para. 882.

³⁰ *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Judgement, 14 January 2000, pages 326-27 (“**Kupreškić Judgement**”).

³¹ *Tadić Appeal*, para. 58.

³² Prosecution Submission Pursuant to Rule 100(A) of the Rules of Procedure, para.41 (footnotes omitted).

³³ See *infra* Part V.

³⁴ Prosecution Final Trial Brief, para. 43, referring to *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, “Decision on Prosecutor’s Appeal on Admission of Evidence,” Appeals Chamber, 16 February 1999, para. 15; *Prosecutor v. Blaškić*, IT-95-14-T, “Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability,” Trial Chamber, 21 January 1998, para. 10; *Prosecutor v. Tadić*, IT-94-1-T “Decision on Defence Motion on Hearsay,” 5 August 1996, paras. 7, 17; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-PT, “Decision on Prosecutor’s Motion on Trial Procedure,” Trial Chamber, 19 March 1999, paras. 281, 282.

³⁵ *Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-T, “Judgement,” 7 June 2001, para. 25 (“**Bagilishema Judgement**”).

31. In instances where circumstantial evidence is used and relied upon, “the inferences reasonably to be drawn from the evidence must not only be consistent with his guilt but inconsistent with every reasonable hypothesis of his innocence.”³⁶ The use of and reliance upon circumstantial evidence and hearsay render a more heightened and sensitive assessment. Should more than one conclusion exist from the evidence, “these conclusions must all be consistent with the guilt of an accused.”³⁷
32. Thus, absolute guilt must be resilient against any stronger belief that such reasonable doubt has in fact *been* dispelled. The following sections and Parts detail legal factors and issues that the Defence respectfully requests the Trial Chamber to consider and requests that the Trial Chamber issues a sentence that is fair and as lenient as possible.

2.1. Gravity of the Offense³⁸

33. Article 19(2) of the Statute states that the Trial Chamber “should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.”
34. The gravity of the offence includes two central elements: 1) the magnitude of the harm caused or risked by the offender and 2) the offender’s culpability with respect to that harm.³⁹ Of the factors used to assess the gravity of the offense, the following have been some that have been considered: “the general nature of the underlying criminal conduct; the form and degree of participation of the Accused or the specific role played by the Accused in the commission of the crime; the degree of suffering, impact of consequences of the crime for the immediate victim in terms of physical, emotional and psychological effects; the effect of the crime on relatives of the immediate victims

³⁶ *Rent v. United States*, 209 F.2d 893, 899 (5th Cir. 1954). *State v. Slaughter* similarly held that for convictions based on circumstantial evidence, the “evidence not only must occur to show defendant guilty, but also must be inconsistent with any other rational conclusion and exclude every other reasonable theory or hypothesis except that of guilt.” *State v. Slaughter*, 425 P.2d 876, 879 (1967).

³⁷ Prosecution Final Trial Brief, para. 44, referring to *Prosecutor v. Halilović*, IT-01-48-T, “Judgement,” Trial Chamber, 16 November 2005, para. 15; *Kordic and Prosecutor v. Kordić and Čerkez*, IT-95-14/2-PT, “Judgement,” Appeals Chamber, 17 December 2004, para. 289; *Simić* Judgement, para. 27.

³⁸ See *infra* Parts VI and VII regarding the individual circumstances of the convicted person as stated in Article 19(2).

³⁹ See A. Carcano, *Sentencing and the Gravity of the Offence in International Criminal Law*, 51 INT’L & COMP. L. QUARTERLY 583, 292 (2002).

and/or the broader targeted group; the vulnerability of the victims; and the number of victims.”⁴⁰

35. Such factors should be considered in the totality of the evidence, not by themselves. They should also not be considered to be of more value or hold more authority.
36. “[The] Chamber ought to go beyond the abstract gravity of the crime to take into account the particular circumstances of the case, as well as the form and degree of the participation of the Accused in the crime.”⁴¹ Thus, the offences should not be assessed in the abstract, but grounded in fact and reality. The offences in the abstract remain as heinous crimes to which no man should consider acting out or contemplating to accomplish. Such a perception should not precede or bias the facts.
37. The evidence that exists does not firmly or definitively establish a nexus between Mr. Kondewa and the crimes for which he was found guilty. The Trial Chamber cited, for example, the fact that Kondewa was one out of many other initiators, including Mama Munde Furtune, Siaka Sheriff (Mualemu) K Saddam and Kamoh Lai Bangura,⁴² thus reducing the fact that Mr. Kondewa bears the “greatest responsibility”. The time in between immunization and when certain atrocities were committed varied widely. An initiate could have decided to fight one or two years later. Additionally, Mr. Kondewa was deposed as High Priest in February or March 1999 and replaced by Kamoh Lahai Bangura.⁴³ The crimes for which Mr. Kondewa has been found guilty cannot be solely attributed to Mr. Kondewa at all times of the indictment or during the conflict. Thus, the nexus linking Mr. Kondewa to the crimes for which he was found guilty can only be tenuous at best.
38. The Defence requests that the gravity of the offense not be considered disjunctively with the individual circumstances of the convicted. Rather, the Trial Chamber should assess both factors, alongside Mr. Kondewa’s character and all mitigating circumstances, conjunctively with each other to comprise a complete, whole, and accurate assessment. Despite the submissions within the Prosecution Sentencing Brief,

⁴⁰ Brima et al. Sentencing Judgement, para 19 (footnotes omitted).

⁴¹ Semanza Judgement, para. 555.

⁴² Judgement, para. 313.

⁴³ Judgement, para. 373.

other factors exist which are set forth in this Sentencing Brief which the Defence respectfully requests the Trial Chamber to consider.

2.2. *Concurrent Sentences*

39. Maintaining a fair trial unbiased in nature has been at the forefront of the proceedings in this case. Such maxims should not be abandoned at the sentencing phase, which the Prosecution advocates throughout the Prosecution Sentencing Brief.
40. The Prosecution advocates in paragraphs 174 through 177 one single, global sentence on Mr. Kondewa for all of the various crimes for which he has been convicted. Not only does such a sentence undermine the purposes for which sentencing and a fair trial uphold; it creates a paradox and undermines the Prosecution's premise that the interests of justice and of sentencing should be served by asking for an injustice to be done.
41. Moreover, the rationale proffered to justify the imposition of one single, global sentence leaves the accused vulnerable to an imprecise examination of all of the evidence, wanting in legal analysis. The Prosecution advocates that one who is convicted of many crimes should serve a longer sentence than an individual having committed only one of those crimes. This cannot stand. Such a position fails to take into account the facts or the circumstances for which both the Prosecution and Defence laboriously endeavored to establish throughout the proceedings. A sentence that embodies the principle that several wrongs lead to a far more egregious worse leaves open the dangers of the whole being far larger than any of its parts.
42. Rule 101(C) of the Rules of Procedure and Evidence states "[t]he Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently." When multiple sentences have existed, judges have issued concurrent sentences so that they may be served simultaneously.⁴⁴
43. The Defence asks the Trial Chamber to recall, as stated above in paragraph 4, that "[p]unishment whether authorized by international or national law, requires justification; otherwise, it is simply cruelty."⁴⁵ Thus, the Defence rejects the imposition of one single, global sentence. The Defence respectfully requests the Trial Chamber to

⁴⁴ See e.g., *Prosecutor v. Imanishimwe*, ICTR-99-24-T, Judgement and Sentence, 25 February 2004, para. 827.

⁴⁵ Robert D. Sloane, *The Expressive Capacity of International Punishment: The Limits of the National Law Analogy and the Potential of International Criminal Law*, 43 STAN. J. INT'L L. 39, 40 (2007).

issue multiple sentences not only fair and as lenient as possible but also precise and legitimate, wherein all sentences are served by Mr. Kondewa concurrently.

2.3. *Bar of De Facto or De Jure Life Sentence*

44. Article 19(1) of the Statute of the Special Court provides that “the Trial Chamber shall imposed upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years.” Thus, the Statute excludes other forms of punishment, including the death sentence or life imprisonment. Life imprisonment is not a sentence that the Special Court has the power to impose. The implication, thus, is that the Statute excludes both *literally* and *implicitly* any sentence which by de facto or de jure will impose a life imprisonment.
45. Thus, the Defence requests the Trial Chamber to consider a sentence that will not by de facto or de jure impose a life sentence upon Mr. Kondewa

2.4. *Element of Crime and Aggravating Factor Cannot Dually Be Counted*

46. An aspect of a criminal conduct already encompassed in a consideration of an offence cannot be counted separately a second time as an aggravating factor.⁴⁶ The ICTY Trial Chamber in *Prosecutor v. Todorovic* held that an element of Todorovic’s criminal conduct could not also be treated separately as an aggravating circumstance.⁴⁷ Additionally, Trial Chamber II held in its Sentencing Judgement that although facts may go both to the proof of the gravity of the offence and aggravating factors, “regardless of the approach, where a factor has already been taken into account in determining the gravity of the offence, it cannot be considered additionally as an aggravating factor and *vice versa*.”⁴⁸
47. The Defence submits that the Trial Chamber should similarly find that an element of a crime cannot also be dually counted as an aggravating factor or that an aggravating factor should again be counted within the element of a crime.

2.5. *Credit for Time Served in Detention*

⁴⁶ *Prosecutor v. Todorovic*, Case No. IT-95-9-1-S, Sentencing Judgement, 31 July 2001, para. 57.

⁴⁷ *Ibid.*

⁴⁸ *Brima et al.* Sentencing Judgement, para. 23.

48. Rule 101(D) of the Rules of Procedure and Evidence states that “[a]ny period during which the convicted person was detained in custody pending his transfer to the Special Court or pending trial or appeal, shall be taken into consideration on sentencing.”
49. Reducing a sentence on account of time served has been common in the ICTR, ICTY, and, most recently, the Special Court.⁴⁹ Thus, the Defence requests that the Trial Chamber reduce Mr. Kondewa’s sentence by factoring in the time period that Mr. Kondewa has served thus far when determining the length of Mr. Kondewa’s sentence.

3. Conclusion

50. The Defence for Mr. Kondewa respectfully submits that the issuance of a lengthy sentence will not legally or conceptually fulfill the purposes for which a sentence is designed to achieve. Rather than serve the purposes of justice, fairness, and evenhandedness, a lengthy sentence in this case would equivocate to a punishment cruel and harsh in nature. Thus, the Defence respectfully requests that the Trial Chamber issues Mr. Kondewa a sentence that is fair and as lenient as possible.

V. OFFENCES IN TONGO FIELD, BONTHE DISTRICT, TALIA / BASE ZERO, MOYAMBA DISTRICT AND OF ENLISTING CHILD SOLDIERS

51. The Defence submits that insufficient evidence exists so as to agree that Mr. Kondewa is guilty of the crimes for which the Trial Chamber found him guilty. Thus, the following Part will briefly assess the Trial Chamber’s findings in regards to Tongo Field, Bonthe District, Talia/Base Zero, and Moyamba District. The Defence respectfully requests that the Trial Chamber takes into account such considerations when considering the length of Mr. Kondewa’s sentence and also conjunctively take into account the factors set forth in Parts VI and VII.

1. Tongo Field

52. The Trial Chamber found Mr. Kondewa guilty for Counts 2, 4, and 7 in Tongo Field, which is also reference in the Prosecution Sentencing Brief in paragraphs 141, 142, 144. The Defence draws the Trial Chamber’s attention to three aspects in relation to the acts

⁴⁹ See, e.g., Semanza Judgement, para. 591; Ntakirumana Judgement and Sentence, paras. 925-26; *Prosecutor v. Rutaganira*, ICTR-95-IC-T, Judgement and Sentence, 14 March 2005, paras. 167, 171 (“**Rutaganira Judgement**”); Simić Judgement, paras. 1127-29; Kupreškić Judgement, pages 327; Tadić Appeal, para. 77; Babić Judgement, para. 103; *Prosecutor v. Češić* IT-95-101-10/1-S, Sentencing Judgement, 11 March 2004, para. 110.

- and offences in Tongo Field: 1) whether Mr. Kondewa's address was *substantial*; 2) the imminent and intense need to defend one's life and one's community; and 3) that the practice for the rebels to dress as Kamajors was frequent and commonly known.
53. The Trial Chamber found that Kondewa's address at the passing out parade in December 1997 "effectively supported Norman's instructions and encouraged the Kamajors to kill captured enemy combatants and 'collaborators,' to inflict physical suffering or injury upon them and to destroy their houses."⁵⁰ The Defence submits that Mr. Kondewa made the address briefly and that it occurred in December 1997.
54. For such a speech to impact all of the incidents where the killings occurred cannot be said to have an effect that is *substantial* as required by Article 6(1) of the Statute for Count 2, 4, and 7. The Defence disputes whether Mr. Kondewa's effect on the perpetration of a certain crime was *substantial* so as to render him guilty under Article 6(1) of the Statute. The Trial Chamber states that "[all] the fighters looked at Kondewa, admiring him as a man with mystic powers, and he made the last comment saying that the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels."⁵¹ Although Mr. Kondewa was admired and well-respected, his words were not an elixir or potent charm substantial enough to legally render him guilty beyond a reasonable doubt under Article 6(1) of the Statute for the time frame referred in the Judgement.
55. Additionally, the Defence submits that the fact that AFRC and RUF rebels collectively attacked Tongo on 11 August 1997 and occupied it until January 1998 cannot and should not be ignored.⁵² The incidents that occurred at Tongo Field cannot be assessed or examined without this surrounding context in two regards: 1) defense out of necessity and 2) high likelihood that some rebels were dressed as Kamajors.
56. The need to defend oneself from threat to life is not only justifiable but reasonable during an armed conflict. As Justice Bankole Thompson stated, "[The defence of necessity] must be grounded either in excuse or justification. The act of the accused must have been done in the interest of self-preservation, characterised not by reference to

⁵⁰ Judgement, para. 735.

⁵¹ Judgement, para. 735.

⁵² Judgement, para. 375 citing Transcript of 1 March 2005, TF2-027, pp. 70-71, Transcript of 22 February 2005, TF2-027, p. 10 Transcript of 18 February 2005, TF2-027, pp. 78-79.

its voluntariness but by its unpunishable nature.....[T]he situation must be so imminent and the peril so pressing that normal human instincts cry out for action and make counsel of patience unreasonable.”⁵³

57. International humanitarian law differentiates between whether attacks are made offensively or defensively, and the Defence submits that any incidents which occurred at Tongo Field were defensive in nature and were undertaken out of necessity. The Trial Chamber states that the offences were linked to the armed conflict. In its Judgement, the Trial Chamber offers facts which explain why and how they were linked. “When the AFRC was in Tongo, they forced civilians to mine diamonds for them and killed those who refused The Kamajors launched numerous armed operations against the rebels in an attempt to regain control over Tongo.”⁵⁴ Thus, by acting on the defense and in a situation where they were under threat of being killed by the AFRC and RUF, the Kamajors acted so as to protect themselves, their families, and the undefended population.
58. Additionally, it is assumed that the Kamajors were the perpetrators of the attacks despite the fact that RUF and AFRC rebels had been collectively attacking and occupying Tongo until January 1998, the timeframe during which Mr. Kondewa was found guilty. Rebels dressing as Kamajors was an occurrence recognized to have frequently occurred. Numerous witnesses, notably many called by the Prosecution, testified that rebels oftentimes dressed in clothing worn by the Kamajors. “[P]eople were caught manufacturing these dresses.”⁵⁵ Such a tactic cannot be ignored, especially when considering that alleged attacks for which Mr. Kondewa is charged with could have been perpetrated by the rebels. Rebels wore Kamajor attire which made it difficult to assess whether the Kamajors or the rebels in fact were the perpetrators.⁵⁶
59. Thus, the evidence fails to prove beyond a reasonable doubt that Mr. Kondewa was guilty for Counts 2, 4, and 7 in Tongo Field.

2. Bonthé District

⁵³ Judgement, Annex C – Separate Concurring and Partially Dissenting Opinion of Hon. Justice Bankole Filed Pursuant to Article 18 of the Statute, para. 79.

⁵⁴ Judgement, para. 375 (footnotes omitted).

⁵⁵ Transcript of Albert Joe Edward Demby, 13 February 2006, p. 28

⁵⁶ Transcript of Ishmael Koroma, 23 February 2006, page 30; Transcript of Fallah Bindi, 23 May 2006, p. 61.

60. The Defence disputes the finding that Mr. Kondewa was individually criminally responsible as a superior pursuant to Article 6(3) for Counts 2, 4, 5, and 7 for offences committed in Bonthe Town and the surrounding areas,⁵⁷ also referenced to in paragraphs 143, 144, 145 in the Prosecution Sentencing Brief.
61. The Trial Chamber stated three elements needed to be satisfied to invoke individual criminal responsibility under Article 6(3) of the Statute: 1) the existence of a superior-subordinate relationship between the superior and the offender of the criminal act; 2) the superior knew or had reason to know that the criminal act was about to be or had been committed; and 3) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the offender thereof.⁵⁸
62. The three-part test for Article 6(3) of the Statute is a conjunctive rather than disjunctive test. All three elements must be proven beyond a reasonable doubt to render an individual criminally responsible as a superior under Article 6(3). The existence of a superior-subordinate relationship cannot in and of itself render an individual guilty. The requisite *mens rea* must also exist as well as the foreseeability that the act would be accomplished.
63. The Defence submits that while the Prosecution *may* have proven the existence of the first element, the Prosecution has failed to prove beyond a reasonable doubt the second and third elements. In fact, the Trial Chamber stated that “[at] a public meeting Kondewa said that he had not allowed his men to enter Bonthe, but that they had not listened to his advice and had done what they had done.”⁵⁹ This contests not only that Mr. Kondewa had any idea that the criminal acts were about to be committed but further that Mr. Kondewa had any measures to prevent the acts. This contests also the existence of any realistic or effective superior-subordinate relationship.
64. Additional evidence illustrates that the commanders did not have effective control. “Splinter groups” looting and killing without any supervision, commands, orders or control were common and prevalent.⁶⁰ One witness stated that leader Morie Jusu

⁵⁷ Judgement, para. 903.

⁵⁸ Judgement, para. 235.

⁵⁹ Judgement, para. 553.

⁶⁰ Transcript of Reverend Father John Garrick, 11 November 2004, pp. 18-19.

Kamara said that “he was not in control of the boys”⁶¹ which reflected an overall lack of organization:

Q: ... Father, would I be correct to say that during this time no leader emerged in Bonthe who happened to be in effective control of the Kamajors - - during this time?

*A: Yes.*⁶²

65. Additionally, sufficient evidence exists that was not considered in the Judgement that would have illustrated that Mr. Kondewa’s guilt was *not* proven beyond a reasonable doubt. For example, Mr. Kondewa was found guilty for an incident on 15 February 1998 when Kamajors captured Lahai Ndokoi Koroma.⁶³ However, what is not mentioned in the Judgement or in paragraph 144 of the Prosecution Sentencing Brief is Mr. Kondewa’s efforts to intervene and save the life of Chief Ndokoi Koroma, his two daughters and his son.⁶⁴ A message was sent to Mr. Kondewa that Chief Ndokoi Koroma was being harassed.⁶⁵ The Kamajors were asking the witness to release him to them. Kondewa out of his own volition “offered to take Ndokoi Koroma out of Bonthe.”⁶⁶ Thus, this evidence clearly illustrates that Mr. Kondewa intervened to prevent further atrocities from occurring and also the point made in paragraph 51 that there were many recalcitrant Kamajors acting beyond the scope of what Mr. Kondewa could have or should have known would have occurred. The scope of evidence when rendering Mr. Kondewa’s guilt was not fully or comprehensively considered.
66. Thus, the evidence fails to prove beyond a reasonable doubt that Mr. Kondewa was guilty for Counts 2, 4, 5, and 7 in the Bonthe District.

3. Talia / Base Zero

⁶¹ Transcript of Reverend Father John Garrick, 11 November 2004, p. 19.

⁶² Transcript of Reverend Father John Garrick, 11 November 2004, p. 19.

⁶³ Judgement, para. 890 (i).

⁶⁴ Transcript of TF2-071, p. 24.

⁶⁵ Transcript of TF2-071, pp. 22-23.

⁶⁶ Transcript of TF2-071, pp. 23-24.

67. The Trial Chamber found Mr. Kondewa individually criminally responsible pursuant to Article 6(1) for Count 2 for the incident specifically in paragraph 921 (iii) of the Judgement, also referenced to in paragraph 143 of the Prosecution Sentencing Brief.
68. For Count 2 to be satisfied, the following elements must be met: 1) the death of one or more persons; 2) the death of the person(s) was caused by an act or omission of the Accused; and 3) the Accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.⁶⁷ The 3-part test is a conjunctive rather than disjunctive test, and all three elements must be proven beyond a reasonable doubt by the Prosecution.
69. “[Relative] to the death of civilians, there are other inferences possible from circumstantial evidence.”⁶⁸ Mr. Kondewa was found guilty of “[taking] a gun from Kamoh Bonnie, and [shooting] one of the Town Commanders.”⁶⁹ The witness saw two graves and was told that the two Town Commanders that had been shot had been buried there.⁷⁰ The witness, however, was only *told* that the two men had 1) died and 2) been buried there. At the time of the shooting, the witness in fact had run away, leaving the bucket at the well.⁷¹ Thus, the witness had not observed whether the two had in fact died or buried there.
70. As stated above, while hearsay evidence is not inadmissible *per se*, it must be approached with caution and be subject to “tests of relevance, probative value and reliability.”⁷² In instances where circumstantial evidence is used and relied upon, “the inferences reasonably to be drawn from the evidence must not only be consistent with his guilt but inconsistent with every reasonable hypothesis of his innocence.”⁷³ The room to find other reasonable hypotheses of Mr. Kondewa’s innocence and to find other alternative explanations exists. Thus, the Defence submits that the Prosecution has

⁶⁷ Judgement, para. 146.

⁶⁸ Final Trial Brief of Third Accused, Allieu Kondewa, Re-Filed Pursuant to Order of Court Dated the 15th December 2006, p. 74. (“**Final Trial Brief of Third Accused, Allieu Kondewa**”).

⁶⁹ Judgement, para 623 citing Transcript of 8 November 2004, pp. 24-26.

⁷⁰ Judgement, para. 623 citing Transcript of 8 November 2004, TF2-096, p. 27.

⁷¹ Transcript of TF2-096, 8 November 2004, p. 26.

⁷² Bagilishema Judgement, para. 25.

⁷³ *Rent v. United States*, 209 F.2d 893, 899 (5th Cir. 1954). *State v. Slaughter* similarly held that for convictions based on circumstantial evidence, the “evidence not only must occur to show defendant guilty, but also must be inconsistent with any other rational conclusion and exclude every other reasonable theory or hypothesis except that of guilt.” *State v. Slaughter*, 425 P.2d 876, 879 (1967).

failed to prove beyond a reasonable doubt the 3-part test to satisfy that Mr. Kondewa is guilty of Count 2.

71. Additionally, there is the argument that during the time of the conflict, although individuals may not have been associated with the RUF or AFRC, it was a risk to assume that a former rebel or an individual formerly under the control of the rebels had been reformed. The incident occurred at the end of 1997 when the RUF and AFRC attacks were intensifying as was the panic and chaos. The Town Commanders had been appointed by the rebels, and similar to the arguments made in paragraphs 43 through 46, the context within which the incident occurred cannot be ignored.
72. Thus, the evidence fails to prove beyond a reasonable doubt that Mr. Kondewa was guilty for Counts 2 in Talia / Base Zero.

4. Moyamba District

73. The Trial Chamber found Mr. Kondewa individually criminally responsible as a superior pursuant to Article 6(3) for pillage under Count 5, also referenced to in paragraphs 145 and 165 in the Prosecution Sentencing Brief.
74. The three elements that must be satisfied for Count 5 are: 1) the Accused unlawfully appropriate the property; 2) the appropriation was without the consent of the owner; and 3) the Accused intended to unlawfully appropriate the property.⁷⁴ Additionally, The Trial Chamber stated that three elements needed to be satisfied to invoke individual criminal responsibility under Article 6(3) of the Statute, stated above in paragraph 57.
75. The two incidents which could be attributable for Count 5 are when a Mercedes-Benz was taken in November 1997 and then given to Mr. Kondewa and when the Kamajors took a generator, car tires, and other tools from TF2-073.⁷⁵ The Trial Chamber sustained its holding on the grounds that the offences were “sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes” and that the victims were not taking direct part in the hostilities and that the perpetrator was aware of this.⁷⁶
76. Neither incident, however, sufficiently links Mr. Kondewa in showing that he had intended to unlawfully appropriate the property or that he had unlawfully appropriate the property. Neither incident shows that he 1) *consciously* 2) *chose* to support their

⁷⁴ Judgement, para. 165.

⁷⁵ Judgement, para. 951.

⁷⁶ Judgement, para. 952.

actions and benefit from their criminal activities as stated in paragraph 165 of the Prosecution Sentencing Brief.

77. Thus, the incidents cannot satisfy any responsibility under Count 5 pursuant to Article 6(3) of the Statute.

5. Child Soldiers

78. The Trial Chamber found Mr. Kondewa individually criminally responsible pursuant to Article 6(1) of Count 8. The specific elements of enlisting children under the age of 15 years into an armed force or groups are:

- (i) One or more persons were enlisted, either voluntarily or compulsorily, into an armed force or group by the Accused;
- (ii) Such person or persons were under the age of 15 years;
- (iii) The Accused knew or had reason to know that such person or persons were under the age of 15 years; and
- (iv) The Accused intended to enlist the said persons into the armed force or group.

79. The Defence submits that the Prosecution and the evidence have failed to clearly establish beyond a reasonable doubt that Mr. Kondewa in fact intended to enlist the said persons into the armed force or group. Evidence points out that Mr. Kondewa was an initiator, however, this should not *per se* mean that Mr. Kondewa *intended* to enlist anyone into the armed forces. The Trial Chamber's judgement itself states that "Kondewa was in charge of the initiations at Base Zero; however, it was Norman who decided who should be initiated or who could join the Kamajors."⁷⁷ Thus, in fact, enough evidence exists to establish beyond a reasonable doubt that Mr. Kondewa did *not* enlist children under the age of 15 years into an armed force or group.

6. Conclusion

80. In conclusion, the Defence submits that there are factors which must not only be considered but be assessed in light of the Judgement rendered by the Trial Chamber. Thus, the Defence respectfully requests the Trial Chamber to take into account the above arguments when determining the length of Mr. Kondewa's sentence.

⁷⁷ Judgement, para. 316.

VI. BACKGROUND AND INDIVIDUAL CIRCUMSTANCES OF MR. KONDEWA

81. The Defence disputes the Prosecution's contention in the Prosecution Sentencing Brief that there are no personal circumstances as stated in paragraphs 156 through 159 to mitigate the length of Mr. Kondewa's sentence.
82. Born in the village of Mokieme in Bumpeh in the Bo District, Mr. Kondewa is a farmer and herbalist who spent the majority of his life as an herbalist in the villages and towns of the southern region in Sierra Leone.
83. For more than 20 years prior to the war, Mr. Kondewa healed the ill and the sick. His reputation and recognition as a healer grew. Even during and after the war, Mr. Kondewa was liked extensively within the Chiefdoms he resided.
84. People began to call him "Kondewa," which in Mende translates as "what he says, he does." Many gave their daughters to him in marriage because they wanted to create a familial connection with Mr. Kondewa. Additionally, plots of land were given to him out of respect and due to his successful work.
85. Mr. Kondewa's central occupation was as an initiator. He was an initiator before the war began.⁷⁸ During the war, the "[s]ole task of Kondewa and his co-initiators was to prepare you people, the fighters, for the battlefield . . . to immunize you, the fighters, against bullets."⁷⁹ As an herbalist of the Mende tribe, he partook in the tradition of initiation which had developed over an extensive period of time. The practice of initiation was believed to immunize individuals from bullet wounds. Initiators immunizing individuals would apply mystical medicinal herbs in order to immunize the body from harm. Initiators were regarded as "private medical doctors who sit in their homes or places of practice, and people who want to be immunized or be initiated go to them, pay them before they are immunized."⁸⁰
86. Upon hearing of Mr. Kondewa's ability to provide protection from bullet wounds, individuals sought Mr. Kondewa to receive protection. A central component of becoming an initiate was to accept and follow the laws of initiation. An initiate would be punished by his Paramount Chief if he broke the law and it was also believed that the

⁷⁸ Transcript of TF2-82, 17 September 2004, p. 2.

⁷⁹ Transcript of TF2-190, 10 February 2005, p. 86 lines 11 to 21.

⁸⁰ Final Trial Brief of Third Accused, Allieu Kondewa, p. 17.

- protection and immunization received from initiation would weaken and the initiate will subsequently die in combat.
87. In a war that was brutal and chaotic, individuals feared for their own lives as well as the lives of those within their families. Individuals sought ways to protect themselves and their families. Mr. Kondewa used herbs to bless young men so that they and their families would be protected from the atrocities committed by the RUF and AFRC rebels.
88. As an initiator, Mr. Kondewa was only involved in the initiation process.⁸¹ Mr. Kondewa had no control over any of the individuals that had been immunized prior to or after the initiation. The candidates were not selected by Mr. Kondewa but rather by the Paramount Chiefs. A candidate was selected after a lengthy interview in order to make sure that the candidate had good moral character. The candidates would then be handed over to Mr. Kondewa. The initiation process took one full day, and the candidates would pray the entire night in the shrine. Upon the completion of the initiation, the initiates would immediately be handed back over to the Paramount Chiefs. Mr. Kondewa spent most of his time at the initiation shrine located at Mokosi. As more people arrived at Talia, Mr. Kondewa moved to a nearby village in Nyandehun.
89. Mr. Kondewa and all other initiators never went to battle.⁸² Mr. Kondewa and all other initiators never took part in the planning or fighting during the war.⁸³ Mr. Kondewa was never present during the planning for the war and he was not a combatant.⁸⁴ Mr. Kondewa did not have any troops under his command; he only had aides and bodyguards by his side.⁸⁵ Mr. Kondewa did not have any commanders associated with him, and he was not involved with any aspect of the Kamajors after the initiation process was completed.⁸⁶

⁸¹ Transcript of Kini Torma, 2 June 2006, p. 41.

⁸² Transcript of Lansana Bockarie, 26 June 2006, p. 29 lines 12 to 18.

⁸³ Transcript of Joe Nunie, 11 May 2006, p. 53; Transcript of Albert Nallo, 15 March 2005 page 42 lines 26 & 27.

⁸⁴ Transcript of Osman Vandy (Vanjawai), 17 February 2006, p. 105 lines 9 to 23.

⁸⁵ Transcript of Daniel Hoffman, 9 October 2006, p. 122; Transcript of Albert Nallo, 15 March 2005 page 43 lines 1 & 2.

⁸⁶ Transcript of Haroun Aruna Collier a.k.a. Hardway, 15 May 2006, p. 52.

90. Mr. Kondewa does not hold, nor has ever held, any military rank or position in a government office. His occupation and profession focused on healing individuals. Furthermore, he is illiterate, has no formal education, and spoke only Mende prior to his arrest. He now speaks a limited amount of Krio. Such factors have limited the amount of responsibility given to him and in fact were reasons as to why he was deposed as High Priest.
91. Mr. Kondewa is a man who is fair, humble, and modest. His character reflects an individual who was disciplined and good natured. Never allowing his reputation as a successful herbalist to precede his work, Mr. Kondewa continued to follow his occupation as a healer, which had been chosen by his father and his ancestors.

VII. MITIGATING CIRCUMSTANCES

92. The Defence disputes the Prosecution's contention in the Prosecution Sentencing Brief that there are no personal circumstances as stated in paragraphs 168 through 173 to mitigate the length of Mr. Kondewa's sentence.
93. The Defence submits the following mitigating circumstances and requests that the Trial Chamber considers the following factors when determining Mr. Kondewa's sentence. While mitigating circumstances may be considered individually, they should also be jointly considered so as to comprise an accurate representation portraying the totality of the circumstances. The Defence submits that it has proven on a balance of probabilities all mitigating circumstances as relevant to Mr. Kondewa's sentencing and that the Prosecution has failed to meet its burden in proving all aggravating circumstances set forth in the Prosecution Sentencing Brief.

1. Lack of Military Involvement or Criminal Intent

1.1. Lack of Any Prior Criminal Record or Convictions

94. Lack of any prior criminal convictions or record has been acknowledged and recognized in both the ICTR and ICTY.⁸⁷ Mr. Kondewa does not have any criminal record, and the Defence submits that this should be a mitigating circumstance. A lack of any criminal record reflects the absence of any tendency, inclination, or any predisposition to break

⁸⁷ Bisengimana Judgement, paras. 160, 165; Simič Judgement, paras. 1089, 1100, 1113; *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2005, para. 728; Rutaganira Judgement, para. 130; Nikolić Judgement, para. 265, Ruggiu Judgement, paras. 59-60.

any laws. A lack of any criminal record displays in fact one's respect for the laws and the choice to follow the laws. It reflects the moral character of the individual in choosing to follow and do what is right and what is just.

95. Thus, the Defence submits that the fact that Mr. Kondewa does not hold any criminal record should mitigate the length of his sentence.

1.2. No Rank or Position Held in Armed Forces

96. Mr. Kondewa has never held any rank or position within any of Sierra Leone's armed forces, and the Defence submits that this should be considered as a mitigating factor. Holding a rank or position in an armed force has been held as an aggravating factor in the ICTR, ICTY, and most recently in the Special Court.⁸⁸ Given that holding a rank has been an aggravating factor, the opposite thus should hold: not holding a rank or position in the armed forces should be a mitigating factor.
97. Two implications follow from the mitigating factor that Mr. Kondewa did not hold a rank or position in the armed forces: 1) the duty expected of an officer was absent and 2) Mr. Kondewa did not have, nor was responsible for, any form of subordinates under his command.
98. The duty of an officer or soldier within any armed force is to ensure, among other things, the protection of civilians and citizens. This imposes the responsibility of the officer or soldier to ensure that such measures are being taken. As recently held in the Special Court, the convicted were "professional soldier[s] whose duty it was to protect the people of Sierra Leone. The fact that [those charged] attacked innocent and unarmed civilians is considered by the Trial Chamber to be an aggravating factor."⁸⁹ Thus, the clear violation was counted not only as a breach of conduct but also an aggravating factor.
99. The position of an officer also creates a formal rank and position held above other subordinate soldiers for whom he is responsible for and for whose actions he may be held accountable for Trial Chamber II recently held that the position of the convicted accused persons as "overall commanders" and holding "command authority"

⁸⁸ *Prosecutor v. Krstic*, IT-98-33-T, Judgement, 2 August 2001, paras. 718, 721, 724; *Brima et al. Sentencing Judgement*, paras. 52, 81, 106.

⁸⁹ *Brima et al. Sentencing Judgement*, para. 52. *See also* paras. 81, 106.

contributed as an aggravating factor.⁹⁰ Thus, not only must the officer be responsible for his actions, but he may also be responsible for any of his subordinates' actions.

100. Thus, the Defence submits that the fact that Mr. Kondewa did not hold any rank or position within the armed forces count as a mitigating factor because the duty expected of an officer was absent for Mr. Kondewa and because Mr. Kondewa did not have, nor was responsible for, any form of subordinates under his command.

1.3. No Military Training

101. Mr. Kondewa has never had any military training, and the Defence submits that this should be considered as a mitigating factor. Trial Chamber II recently held in its Sentencing Judgement that the lack or limited amount of military training for the convicted Santigie Borbor Kanu would not be considered as a mitigating factor.⁹¹ However, Kanu's circumstances are distinguishable from that of Mr. Kondewa's in that Kanu's limited or lack of military training could possibly be regarded as a mitigating circumstance in light of the fact that he held a position as an officer within the army. The circumstances differ and should not by default be automatically disregarded.

102. Thus, Defence submits that Mr. Kondewa never underwent any military training and so should be regarded as a mitigating circumstance. If the Trial Chamber does not consider this to be a mitigating factor in and of itself, then the Defence respectfully requests the Trial Chamber to consider this in conjunction with, and as part of the fact that, Mr. Kondewa did not hold any rank or position in the armed forces nor did he command any troops.

2. Ethical Character and Highly Respected Prior To, During, and After War

103. Good character has been acknowledged and recognized as a mitigating factor.⁹² Rather than acknowledge that civilians sought Mr. Kondewa to be immunized for protection during a time of chaos and need, the Prosecution has misconstrued Mr. Kondewa as an individual who manipulated mystical powers to captivate and enchant civilians into committing offences as evidenced in paragraphs 158 and 166 in the Prosecution Sentencing Brief. Whether Mr. Kondewa was respected or admired is separate from

⁹⁰ Ibid, paras. 55 88, 116.

⁹¹ Brima et al. Sentencing Judgement, para. 125.

⁹² Rutaganira Judgement, para. 127; *Prosecutor v. Bisengimana*, ICTR-00-60-T, Judgement, 13 April 2006, para. 150; *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2005, para. 728; Krnojelac Judgement, para. 519.

whether that respect and admiration can be affirmatively and legally linked to the offences for which Mr. Kondewa was found guilty. The Defence submits that such a nexus does not exist.

104. The following factors reflect Mr. Kondewa's good character, which is apparent from his good reputation, the fact that he was highly regarded and esteemed within his community. Nothing leads to the conclusion that Mr. Kondewa manipulated or took advantage of these circumstances. His exemplary behavior after the war, while in detention and in court during these proceedings also confirm Mr. Kondewa's good nature and moral character. The factors not only establish Mr. Kondewa's good character but also affirm the factors above detailing his lack of military involvement or criminal intent.

2.1. Well-Liked and Respected

105. Prior to the war, Mr. Kondewa dedicated his life as an herbalist to cure the sick for over 20 years. His status and prominence grew, and he was revered by many as he continued to successfully heal the sick and the ill. His reputation as a healer expanded and went beyond his village.
106. The Defence submits that a preliminary distinction should be made between the specific type of respect held towards Mr. Kondewa and the eminence and esteem that have been held as aggravating circumstances in cases prior. In *Prosecutor v. Bisengimana*, for example, Paul Bisengimana was a *bourgmestre* and had the duty and authority to protect the population.⁹³ The Trial Chamber stated that as such, "Paul Bisengimana was under a duty to uphold a higher degree of morality than is usually demanded."⁹⁴ Similarly, in *Prosecutor v. Semanza*, Laurent Semanza as *bourgmestre* held an influence and eminence which he utilized to his own advantage, wherein his commune became his own backyard.⁹⁵ Thus, eminence, esteem and respect have been held as aggravating when such authority was used or not used to prevent atrocities from occurring and are dissimilar from Mr. Kondewa's circumstances.
107. Mr. Kondewa's circumstances are more similar to those, for example, in *Prosecutor v. Elizaphan and Gérard Ntakirutimana* wherein the respect people held towards

⁹³ Bisengimana Judgement, para. 113.

⁹⁴ Ibid.

⁹⁵ Semanza Judgement, para. 300.

Elizaphan Ntakirutimana came from how he dedicated time to saving souls and his son's, to healing the sick and saving lives.⁹⁶ Such acts, similar to those of Mr. Kondewa, were held to be mitigating circumstances.⁹⁷ Moreover, in Mr. Kondewa's case, he was not found guilty of any offences in those areas he worked and was respected.

108. Mr. Kondewa was well-liked and beloved by those who met him. As a result, plots of land were given to Mr. Kondewa. For example, people from the Nongoba-Bullom Chiefdom and Yawbeko Chiefdom gave Mr. Kondewa a portion of the land that lay on the Chiefdoms' border as a result his ability to heal the sick. Mr. Kondewa built four small mud houses on the border and established a village – Njoporwahun – which still exists to this day. In addition, because Mr. Kondewa was well-liked and beloved, fathers gave their daughters to him in marriage to create a familial connection with Mr. Kondewa. The practice and tradition of associating one's family with a well-respected figure through marriage was and still is a customary practice in Mende culture.
109. Moreover, the fact that Mr. Kondewa is widely, if not solely, known as "Kondewa" as opposed to his real name Allieu Musa illustrates how his medicinal and healing abilities were widely known. "Kondewa" in Mende generally translates as "what he says, he does." The name "Kondewa" is a name which was given to him by the people as they began to see that when he said he would heal an ill or wounded individual person he in fact did.

2.2. Good Behavior and Simple Life Led Subsequent to War

110. Mr. Kondewa led a simple life after moving to Balihun, where he continued to heal the sick and the ill and also became a farmer. He remained there for four years until the time he was arrested. While he was in Balihun, he decided to erect a new village, Hinda and began constructing his new village in order to restart his life.
111. After the war, Mr. Kondewa still held a good reputation and was still highly regarded. People continued calling Mr. Kondewa "High Priest" and "Hero" even after he was deposed as High Priest because they regarded him as a well-respected figure. Many people outside of Balihun continued to visit Mr. Kondewa and sang praises about him.

2.3. Good Behavior Recognized by President Kabbah

⁹⁶ Ntakirutimana Judgement and Sentence, para. 891.

⁹⁷ Ibid., para. 906.

112. Mr. Kondewa's efforts and good character had been recognized by the President of the Republic of Sierra Leone, His Excellency Dr. Ahmad Tejan Kabbah. President Kabbah promised to award Mr. Kondewa a medal rewarding him for his good work and efforts to install democracy although he has yet to receive the medal⁹⁸.

113. Such a gesture by the President reflects not only Mr. Kondewa's recognized good behavior but also the extent to which Mr. Kondewa was involved during the conflict and was aware of Mr. Kondewa's actions. As the Trial Chamber stated, "[in] light of the evidence adduced We have no doubt in Our minds that President Kabbah occupied and played a central role in this conflict because it was his overthrown Government that was waiting in the wings to be restored after the bitter wrangling and struggle that preceded it and continued after the Kabbah Government was ousted."⁹⁹

2.4. Excellent Record of Behavior in Detention and in Court

114. Good behavior in detention¹⁰⁰ and, additionally, good behavior in court¹⁰¹, have both been acknowledged and recognized as mitigating factors.

115. Mr. Kondewa's good character has been evidenced while in detention and during the proceedings at the Special Court. Mr. Kondewa never disrupted the proceedings. Rather, he always remained calm and quietly observed the hearings during his trial. Mr. Kondewa has become a man well-liked, respected and popular in the detention facility. Due to his popularity and reputation, he has even been named as the "Chairman" at the detention facility.

116. The Defence submits that Mr. Kondewa's good character and behavior while at the Special Court should be counted as mitigating factors. The significance lies in the fact that an individual lacking in good and moral character would have found it difficult to maintain continual good character cooperative in nature during the entire duration of his detention. Additionally, it is relevant in the sense that Mr. Kondewa's good character has been observed and can be attested to by those at the Special Court.

3. Assistance to Victims During War

⁹⁸ Judgement paragraph 720.

⁹⁹ Judgement, para. 708.

¹⁰⁰ Bisengimana Judgement, paras. 160, 165; *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2005, para. 728; Simič Judgement, paras. 1091, 1102, 1114; Rutaganira Judgement, paras. 130, 131; Krnojelac Judgement, para. 519; *Prosecutor v. Krstić*, IT-98-33-T, Judgement, 2 August 2001, para. 715.

¹⁰¹ *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2005, para. 728

117. Despite allegations made in paragraphs 161 and paragraphs 163 through 165 in the Prosecution Sentencing Brief, evidence exists to illustrate that Mr. Kondewa did reprimand individuals and intervene to assist civilians.
118. During the war, Mr. Kondewa intervened on behalf of individuals that saved their lives and their families' lives. Mr. Kondewa saved the lives of individuals, even those who were known to be collaborators with the rebels. In one instance, Mr. Kondewa intervened to save the life of Chief Ndokoi Koroma, his four daughters and his son.¹⁰² A message was sent to Mr. Kondewa that Chief Ndokoi Koroma was being harassed.¹⁰³ The Kamajors were asking the witness to release him to them. Mr. Kondewa dispatched two delegations from Talia to Bonthe investigate the issue of Lahai Ndokoi Koroma. Mr. Kondewa personally traveled to Bonthe covering a distance of 26 miles on land and 10 nautical miles on sea after he received a letter that Lahai Ndokoi Koroma was being harassed and threatened with death. A journey lasting over twelve hours. Mr. Kondewa out of his own volition "offered to take Ndokoi Koroma out of Bonthe"¹⁰⁴ and to this day, Ndokoi Koroma, his two daughters and son are still alive.¹⁰⁵
119. This intervention was acknowledged by witness Reverend Rather John Garrick during his testimony:

Q: So it was quite a laudable thing that [Kondewa] did to take Ndokoi Koroma out to safety?

A: Yes.¹⁰⁶

120. In addition, the witness stated that he was personally appreciative of the gesture:

Q: ... And were you personally appreciative of that particular gesture of Kondewa?

A: Yes.¹⁰⁷

¹⁰² Transcript of Reverend Father John Garrick, 11 November 2004, p. 24.

¹⁰³ Ibid., pp. 22-23.

¹⁰⁴ Ibid., pp. 23-24.

¹⁰⁵ Ibid., p. 28.

¹⁰⁶ Ibid., p. 28.

¹⁰⁷ Ibid., p. 28.

121. Thus, the Defence submits that Mr. Kondewa's intervention and assistance to civilians and others' acknowledgement of such acts should not be ignored. Such evidence undermines the Prosecution's insistence that Mr. Kondewa did nothing to prevent the commission of criminal acts or help the defenseless when such insistence is based upon facts that only portray a partial picture of the events. Mr. Kondewa's assistance to victims during the war should be considered as a mitigating circumstance and should also be considered in conjunction with the other mitigating circumstances.

122. The ICTR have held the fact that an Accused intervened and saved a group of refugees from Interahamwe who accused them of being Inkotanyi as a mitigating factor.¹⁰⁸

4. Admonishing Commanders to Uphold Initiation Laws

123. Despite the Prosecution's assertion in paragraph 164 in the Prosecution Sentencing Brief that Mr. Kondewa failed "to take the necessary steps to discharge his duty to prevent or punish crimes by his subordinates who were deliberately targeting civilians", Mr. Kondewa did in fact take measures to admonish figures in positions of authority.

124. Chief Hinga Norman had held a meeting wherein he said that Koribundo should be attacked at all costs.¹⁰⁹ Mr. Kondewa, however, defied that position despite Norman's order and admonished the commanders to uphold the laws of the initiation when they went to battle. Before giving his blessings, he stated "I am going to give you my blessings. I am going to give you the medicines, which would make you to be fearless if you don't spoilt the law."¹¹⁰ The laws of the Kamajor were inter alia that combatants should not kill innocent civilians, loot, rape or distress civilians.

125. Thus, the Defence submits that Mr. Kondewa did in fact admonish commanders and continually attempted to ensure that the laws of initiation were abided by and followed.

5. Immunisation Sought for Protective Measures

5.1 Immunisation Offered Protection During Armed Conflict

126. As the RUF and AFRC continued to harass, maim, mutilate and murder the civilian population, individuals sought measures to protect themselves and their families.

¹⁰⁸ The Prosecutor Vs. Eliezer Niyitegeka Case No. ICTR-96-14-T para 494.

¹⁰⁹ Transcript of TF2-201, 4 November 2004, p. 114.

¹¹⁰ Ibid.

- Individuals sought to immunize themselves and their families which would protect them from bullets.¹¹¹ Men, women, elders, and children sought to be immunized.¹¹²
127. The Trial Chamber's Judgement and the Prosecution in paragraph 162 of the Prosecution Sentencing Brief equivocates initiation with enlistment. Undergoing initiation was done for protective measures, regardless of whether the individual ended up fighting on the warfront.¹¹³ "[M]ore people were initiated as Kamajores for safety than were initiated for combat."¹¹⁴ It is imperative the Trial Chamber recall that there is a difference between initiation and enlistment and that both not remain undistinguishable or undifferentiated.
128. The objectives of the immunization process known to Mr. Kondewa and others were solely limited to protecting and immunizing the individual. The laws existed and were there to protect lives.¹¹⁵ The initiation process was seen as a way "to become bulletproof and [was not seen in connection with] military training."¹¹⁶
129. Moreover, not every initiate became a combatant.¹¹⁷ Thus, it was possible "to become initiated just for protection, not as a combatant and that this would involve the same rites of initiation."¹¹⁸ To insist or assert that these procedures were the equivalent to enlistment ignores the proper legal analysis that must be undertaken and which, after analysis has been made, cannot prove beyond a reasonable doubt that Mr. Kondewa is guilty. Thus, Mr. Kondewa initiated not to prepare individuals for battle but to offer protection.

5.2. Rules of Initiation Instilled Principles Moral in Nature and Mandated Respect to Other Human Beings

130. The Defence submits as a mitigating circumstance that the laws Mr. Kondewa gave to initiates as part of the initiation process instilled a moral practice ethical, principled, and just in nature. The laws given upon initiation were as follows:

¹¹¹ Judgement, para. 313.

¹¹² Transcript of Albert Joe Demby, pp. 13-15.

¹¹³ Transcript of Kavura Kongomeh II, 1 June 2006, p. 56; Transcript of TF2-011, 8 June 2005, p. 44 (witness stating that some became initiated solely to protect themselves from battle).

¹¹⁴ Transcript of Haroun Aruna Collier, a.k.a. Hardway, 12 May 2006, p. 18.

¹¹⁵ Transcript of Mohamed Kaineh, 19 May 2006, p. 11.

¹¹⁶ Transcript of TF2-068, p. 79 lines 1 to 18.

¹¹⁷ Transcript of TF2-011, 8 June 2005, pp. 42-43.

¹¹⁸ Transcript of Arthur Koroma, 3 May 2006, p. 4 (witness was initiated but did not fight); Transcript of TF2-012, 21 June 2004, p. 59, 62 lines 21 to 21 (witness was initiated but did not fight).

- Respect elders¹¹⁹
- Fear women, don't have affairs¹²⁰
- Don't touch civilian property¹²¹
- Don't leave wounded fighters at the warfront¹²²
- Retrieve guns dropped by the enemy at the warfront¹²³
- Don't harm surrendering combatants. Hand them to chiefdom authorities¹²⁴
- Don't play with corpses¹²⁵
- We should not kill any innocent person¹²⁶
- We should not harass civilians whom we were meant to defend¹²⁷

131. The laws were seen as a type of ethical code of conduct. They had their roots in the Bible and were respected among all initiates.¹²⁸ Following the laws would provide continued protection.

132. Mr. Kondewa encouraged and instructed the initiates to abide by the laws. A violation of a law was believed to result in one's death on the battlefield.¹²⁹ Mr. Kondewa did not, however, have the power to punish or condemn anyone who broke these laws.¹³⁰ Violation of any the laws would lead to reprimand and punishment by the Paramount Chiefs.

6. Remote Connection and No Control after Initiates Immunized

6. Remote Connection and No Control after Initiates Immunized

¹¹⁹ Transcript of Abiba Brima, 12 October 2006, p. 35.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid. p. 36

¹²⁴ Ibid

¹²⁵ Ibid 37-38

¹²⁶ Transcript of TF2-005, 15 February 2005, p. 82.

¹²⁷ Ibid.

¹²⁸ Final Trial Brief of Third Accused, Allieu Kondewa, p.20.

¹²⁹ Transcript of Mohamed Kaineh, 19 June 2006, p. 11; Transcript of Kini Torma, 2 June 2006 p. 19.

¹³⁰ Transcript of Haroun Aruna Collier, a.k.a. Hardway, 15 May 2006, p. 52. .

133. Mr. Kondewa was not responsible for what the initiates did afterwards or whether the Paramount Chiefs decided to use the initiates for battle. The following factors illustrate that Mr. Kondewa initiated to provide all individuals an equal opportunity to receive protection from death or harm from the rebels and that Mr. Kondewa did not influence the initiates in any ways after the initiation process.

6.1. *Insubstantial Control over Entire Process of Initiation*

134. The fact that Mr. Kondewa was an initiator does not equivocate to the fact that Mr. Kondewa exerted any substantial control over the entire process of initiation. The immunization part of the initiation process which Mr. Kondewa was a part of lasted for only day. "Kondewa did not do business with Kamajors after initiation. He didn't have command or control of Kamajors and didn't go to the warfront."¹³¹

135. Prior to immunization, the candidates were selected by the Paramount Chiefs in the local village from which they came. They would then go to Talia and would first go to the Paramount Chiefs at Talia. There, the Paramount Chiefs would approve or disapprove whether the candidate was to be initiated. This decision was made by the Paramount Chiefs after a lengthy and thorough interview and investigation of the candidate's moral character and background were made. The Paramount Chief and elders would then walk with the candidates and present them to Mr. Kondewa where they would remain with Mr. Kondewa for one day. Upon completing the immunization, Mr. Kondewa would immediately hand the initiates back over to the Paramount Chiefs.

136. Furthermore, evidence concluded and confirmed the existence of recalcitrant Kamajors,¹³² which was attributed to the lack of command structure that existed within the Kamajors. One witness stated, for example, the "area of operation was so wide that in some cases, some fighters acted on their own, without the central command knowing."¹³³ Thus, despite the fact that Mr. Kondewa had the authority to issue the laws during initiation, he had no control over any of the actions the initiates embarked upon afterwards.

6.2. *No Presence at Warfront or Planning for War*

¹³¹ Transcript of Kini Torma, 2 June 2005 p. 41.

¹³² Transcript of TF2-013, 24 March 2005, pp. 30-37.

¹³³ Transcript of TF2-005, 16 February 2006, p. 70. .

137. In conjunction with the prior factor, Mr. Kondewa's sole and only role was as an initiator. Mr. Kondewa and all other initiators never went to battle.¹³⁴ Mr. Kondewa and all other initiators never took part in the planning or fighting during the war¹³⁵ and never commanded any troops.¹³⁶ Mr. Kondewa was never present during the planning for the war.¹³⁷ Mr. Kondewa did not have any troops under his command; he only had aides and bodyguards by his side.¹³⁸ Mr. Kondewa did not have any commanders associated with him, and he was not involved with any aspect of the Kamajors after the initiation process was completed.¹³⁹

6.3. *Numerous Initiators Precludes Level of "Greatest Responsibility"*

138. Mr. Kondewa was not the only initiator during the war and thus cannot justifiably be held as having had the greatest responsibility. Other initiators included Ndovo from the Moyamba district, Allieu Sesay, Mama Munda Furtune from Bo Town, Lahai Bangura in Jerihun, Sankara Mento in Kono District, Kamo Balahun in Kono District, Kamo Brima Bangura in Kenema District, Mualemu Kallon in Pujehun District, and Kamo Kowah in Tongo Fields.

139. Thus, in conjunction with the fact that Mr. Kondewa was only in contact with the candidates during the initiation process for one day, the Defence submits that it is difficult to assert that any definitive or substantial connections existed between Mr. Kondewa and the perpetrators of the acts detailed within the charges for which Mr. Kondewa was found by the Trial Chamber to be guilty of. The Defence also submits that such factors would also make it difficult to assert that Mr. Kondewa exerted any substantial, if any, control over the perpetrators of the acts for which Mr. Kondewa was found guilty.

140. In conclusion, the factors above illustrate that any subsequent actions cannot and should not be attributed to Mr. Kondewa, especially in conjunction with and consideration of

¹³⁴ Transcript of Lansana Bockarie, 26 June 2006, p. 49 lines 12 to 18; Transcript of Keikula Amara a.k.a. Kamabotie, 18 May 2006, pp. 70, 71.

¹³⁵ Transcript of Joe Nunie, 11 May 2006, p. 53; Transcript of Albert Nallo, 15 March 2005 page 42 lines 26 & 27.

¹³⁶ Transcript of Keikula Amara a.k.a. Kamabotie, 17 May 2006, pp. 22, 23.

¹³⁷ Transcript of Osman Vandy (Vanjawai), 17 February 2006, p. 105 lines 9 to 23.

¹³⁸ Transcript of Daniel Hoffman, 9 October 2006, p. 122; Transcript of Albert Nallo, 15 March 2005 page 43 lines 1

& 2.

¹³⁹ Transcript of Haroun Aruna Collier a.k.a. Hardway, 15 May 2006, p. 52.

the fact that Mr. Kondewa was one initiator out of many others who had only one role within the initiation process.

7. Inconclusive Identification and Participation of Perpetrators

141. In addition to the factors above illustrating that Mr. Kondewa had no control over the initiates once they were immunized are two additional factors mitigating the alleged charge that Mr. Kondewa planned, controlled, commanded, or led initiates to battle. The Defence submits that these are mitigating factors not only in and of themselves but also as factors that inconclusively connect Mr. Kondewa to the crimes committed.

7.1. Lack of Predominant Organization or Command

142. The Defence wishes to highlight and re-emphasize the fact that the Kamajors were but only one faction among many others within the CDF. The CDF was an umbrella organization created by President Kabbah,¹⁴⁰ and was composed of different factions which included the Donsos, Gbentis, Kappras, and Tamaboros.

143. Additionally, within the Kamajor society “[t]here was no one leader of all the Kamajors. They had leaders in their respective chiefdoms.”¹⁴¹ The Kamajors suffered from a lack of central command and structure.¹⁴² Traditionally, however, the Kamajor society was distinctly organized within their respective Chiefdoms, and the hierarchal structure within each Chiefdom was also clearly composed. “Kamajor organization [was] structured in towns: town commanders, section commanders, chiefdom commanders. Witness was answerable to no one other commander than CO Sahr and Sahr only answered to chiefs, who gave him the assignment.”¹⁴³ The Chiefs within the respective Chiefdoms would control and decide who would go to battle.¹⁴⁴ They planned and ordered the attacks.¹⁴⁵ They also were responsible for logistics. “[The] Chiefs bought food, cartridges, [and] organized Kamajors to send soldiers.”¹⁴⁶

¹⁴⁰ Judgement, para. 80.

¹⁴¹ Transcript of Arthur Koroma, 3 May 2006, pp. 15, 16.

¹⁴² Transcript of TF2-005, 16 February 2005, p. 70 (witness stating that the “area of operation was so wide that in some cases, some fighters acted on their own, without the central command knowing”)

¹⁴³ Transcript of Lahai Koroma, 24 May 2006, pp. 27, 28.

¹⁴⁴ Transcript of BJK Sei, 15 May 2006, p. 80 (witness stating that Chiefdom people appointed him as Chiefdom Kamajor commander); Transcript of Kenei Torma, 2 June 2006, p. 49 (witness stating that Chiefdom people appointed witness commander and later the position of overall commander).

¹⁴⁵ Transcript of Lahai Koroma, 24 May 2006, pp. 27, 28 (witness stating that the Paramount Chief was the one who gave orders for his Chiefdom).

¹⁴⁶ Final Trial Brief of Third Accused, Allieu Kondewa, p. 29.

144. Evidence also illustrates that the commanders did not have effective control. “Splinter groups” looting and killing without any supervision, commands, orders or control were common and prevalent.¹⁴⁷ One witness stated that leader Morie Jusu Kamara said that “he was not in control of the boys”¹⁴⁸ which reflected an overall lack of organization:

Q: ... Father, would I be correct to say that during this time no leader emerged in Bonthe who happened to be in effective control of the Kamajors - - during this time?

A: Yes.¹⁴⁹

7.2. *Rebels Dressed as Kamajors*

145. In addition is the fact that numerous witnesses, notably many called by the Prosecution, testified that rebels oftentimes dressed in clothing worn by the Kamajors. “[P]eople were caught manufacturing these dresses.”¹⁵⁰ Such a tactic cannot be ignored, especially when considering that alleged attacks for which Mr. Kondewa is charged with could have been perpetrated by the rebels. Rebels wore Kamajor attire which made it difficult to assess whether the Kamajors or the rebels in fact were the perpetrators.¹⁵¹

146. This tactic reflects two points: 1) that the rebels were cognizant of the Kamajors’ position as defenders of the local villages and contorted that perception to their advantage and 2) that the rebels were cognizant that use of this tactic would instill fear, prejudice and bias towards the Kamajors.

8. **Mr. Kondewa is Illiterate and Uneducated and Cannot Speak Krio**

147. The fact that Mr. Kondewa is illiterate, uneducated and has a limited working knowledge of Krio cannot be ignored or go unnoticed. Education, intelligence, and membership in a professional association have all been considered aggravating

¹⁴⁷ Transcript of Reverend Father John Garrick, 11 November 2004, pp. 18-19.

¹⁴⁸ Ibid., p. 19.

¹⁴⁹ Transcript of Reverend Father John Garrick, 11 November 2004, p. 19.

¹⁵⁰ Transcript of Albert Joe Edward Demby, 13 February 2006, p. 28.

¹⁵¹ Transcript of Ishmael Koroma, 23 February 2006, p. 30; Transcript of Fallah Bindi, 23 May 2006, p. 61.

circumstances prior.¹⁵² Proper education has also been considered a factor in what the accused should have known in addition to the acts that he should have done. For example, in *Prosecutor v. Bisengimana*, Paul Bisengimana's "education enabled him to know and appreciate the dignity and value of human life."¹⁵³

148. A lack of education or being illiterate does not automatically preclude an individual's capability or capacity in understanding certain issues. However, it does tend to preclude one's awareness of issues that may exist. Additionally, there is oftentimes an understanding within society that there exists a heightened sense of duty or sense of responsibility which comes with more knowledge, education, and degree of professionalism obtained.¹⁵⁴ However, in this case, Mr. Kondewa remains illiterate and uneducated, speaking only Mende and not a word of Krio during the war. These factors undermined his authority and limited Mr. Kondewa's responsibility once he became High Priest and were in fact the very reasons why he was deposed.

9. Personal Circumstances

9.1. Age

149. Age has been acknowledged and recognized to be a mitigating circumstance.¹⁵⁵ The advanced age of Mr. Kondewa cannot be ignored by the Trial Chamber when considering the length of his sentence. The youth of an accused has been considered as a mitigating circumstance due to the fact that "he is reformable and should be given a second chance to start his life afresh upon his release, whilst still young enough to do so."¹⁵⁶ Similarly, the old age of an individual should allow one to live out the rest of his life and be considered a mitigating factor as to the length of Mr. Kondewa's sentence.

¹⁵² Simić Judgement, paras. 1084 (Trial Chamber finding that "the fact that [he was] intelligent, educated and a member of the medical profession constitute[d] an aggravating circumstance"), 1095 (Trial Chamber finding that Tadić was a school teacher and an intelligent and educated man, counting as aggravating factor), 1108 (Trial Court finding that Zarić's education an aggravating circumstance). In *Prosecutor v. Bisengimana*, Bisengimana's background meant that he was enlightened to know and that he should have known better to protect the civilian population. *Bisengimana Judgement*, para. 113.

¹⁵³ *Bisengimana Judgement*, para. 113.

¹⁵⁴ Similarly, it is this duty required of officers to be responsible towards society and civilians, held and expected by society, which makes one's position or rank within a military a possible aggravating circumstance. *See infra* subsection 1.2

¹⁵⁵ Rutaganira Judgement, paras. 132, 136 (60 years old); *Prosecutor v. Erdemović*, IT-96-22-Tbis, Second Sentencing Judgement, 5 March 1998, para. 16(i) ("**Erdemović Judgement**"); *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2005, para. 728; Krnojelac Judgement, para. 533 (Krnojelac was 62 years of age).

¹⁵⁶ *Erdemović Judgement*, para. 16(i).

150. Advanced age has been considered for those in their 60s, and the age Mr. Kondewa is currently – 50 – is also considered an advanced age, especially given the life expectancy in Sierra Leone. The 2004 United Nations Development Programme report estimates a life expectancy of 41 years in Sierra Leone.¹⁵⁷ Thus, the age of 50 exceeds the life expectancy in Sierra Leone. Imposing a sentence beyond 5 years would, by default, be imposing a life sentence.

9.2. *Family Circumstances*

151. Family circumstances and the fact that an individual is married and has children have been considered mitigating circumstances.¹⁵⁸ Mr. Kondewa believes that he is socially handicapped and is concerned with not only how he will begin his life but also how he will be able to provide for his family.
152. Mr. Kondewa is currently married and has eighteen wives and seventeen children. They are unable to provide for themselves and do not receive any pension because Mr. Kondewa never held any position within the armed forces or government. Kondewa's wives are unemployed and cannot fend for themselves. They are currently unable to sustain themselves and their children and they live by handouts provided by friends and family. Kondewa requests that his friends not give any gifts to him but instead give them to his wives.
153. Additionally, two of Mr. Kondewa's wives have died while he has been in detention. He has not been able to properly bury them and believes this to be a hindrance for him and his family.
154. Mr. Kondewa is currently 50 years, and even if he were to be released in the near future he would have a difficult time starting his life and making a new beginning. He is not familiar with Freetown and would return back to the Bonthe District where he could be a farmer. Given his age, it would be difficult to farm and undergo the labor necessary to farm. Mr. Kondewa also does not have the financial resources to hire anyone to farm the land.

¹⁵⁷ Kanu Defence Sentencing Brief, para. 178, referring to UNDP Human Development Report 2006, Human Development Indicators, Country Fact Sheets, Sierra Leone, at http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_SLE.html.

¹⁵⁸ Bisengimana Judgement, para. 1441; *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2005, para. 728.

155. Issuing a long sentence would, by default, mean a life imprisonment for Mr. Kondewa. Should Mr. Kondewa live long enough to serve his sentence, it would be almost impossible to restart his life again and support his family either in Freetown or anywhere else in Sierra Leone. Thus, the Defence respectfully requests the Trial Chamber to consider Mr. Kondewa's family circumstances as a mitigating circumstance in mitigating the length of his sentence.

10. Expression of Remorse

156. Both the ICTR and ICTY have held the expression of remorse for crimes committed by an accused person to be mitigating circumstances.¹⁵⁹

157. Counsel for Kondewa denies the Prosecution's allegation in paragraph 173 of the Prosecution Sentencing Brief that "Kondewa has never expressed remorse for his crimes". Counsel refers the Trial Chamber to the evidence of TF2-116¹⁶⁰:

Question: So what did he do in Bonthe?

Answer: He called a public meeting at the town hall, and the meeting was well attended. A lot of people spoke, complaints were made. For him, finally he said he did not allow his men to enter Bonthe; it was unfortunate, but they did not listen to his advice, they have now entered and done all what they did, therefore he was sorry.

158. Counsel submits that this expression of regrets and remorse was unqualified and unequivocal and should be considered by the Trial Chamber as a mitigating factor. The fact that Mr. Kondewa personally traveled at his own costs to Bonthe covering a distance of 26 miles on land and 10 nautical miles on sea, a journey lasting twelve hours, to express his remorse should also be considered by the Trial Chamber.

11. Mr. Kondewa Aided Restoration of Democracy & Rule of Law.

¹⁵⁹Prosecutor v. Paul Bisengimana Case No. ICTR-00-06-T para. 180, The Prosecutor Vs. Jean Kambanda Case No. ICTR 97-23-5 paras. 46 & 52.

¹⁶⁰ Transcript of Tf2-116 dated 9th November 2006 on page 30 lines 23 – 29.

159. The Statute of the Special Court for Sierra Leone provides: *“The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires”*¹⁶¹.
160. Counsel relies on the Trial Chamber’s findings of facts contained in paragraphs 705 through 720 of its judgement dated 2 August 2007.
161. Paragraph 709 of the said judgement reads “In the light of the evidence adduced We have no doubt in Our minds that President Kabbah occupied and played a central role in the conflict because it was his overthrown Government that was waiting in the wings to be restored after the bitter wrangling and struggle that preceded it and continued after the Kabbah Government was ousted”.
162. The Trial Chamber also found in paragraph 716 as follows “In view of the international recognition accorded to his Government, President Kabbah made it possible for the Economic Community of West African States through ECOMOG to provide military assistance to the CDF to enable it attain the objective of restoring his ousted Government to power. Indeed ECOMOG fought alongside the CDF Kamajor forces against the combined forces of the RUF and of the AFRC as the war raged inside the country for control of areas occupied by enemy forces”.
163. Counsel submits that Mr. Kondewa being illiterate and unable to express himself in krio at the time did not stand to gain anything by way of appointment or reward for his efforts during the war.
164. In conclusion, Counsel submits that the factors above illustrate that Mr. Kondewa was motivated by no other reason than a sense of patriotism in joining and assisting the Civil Defence Forces in the restoration of democracy in Sierra Leone..

VIII. CONCLUSION

165. For the reasons set forth in the Sentencing Brief, the Defence respectfully submits that the arguments in the Prosecution Sentencing Brief be dismissed.
166. The Defence thereby respectfully requests that the Trial Chamber takes into account all considerations within this Sentencing Brief, especially all mitigating factors. The

¹⁶¹ The Statute of the Special Court for Sierra Leone – Article 6(4).

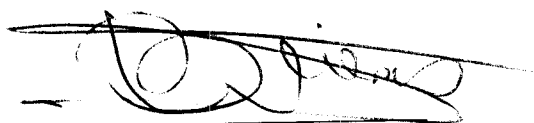
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Defence respectfully requests that the Trial Chamber's sentence in respect of Accused, Kondewa be limited to the time period he has already spent in custody at the behest of the Court.

Respectfully Submitted,

On 31 August 2007

For the Defence of Allieu Kondewa,

A handwritten signature in black ink, appearing to read 'Yada Williams', written over a horizontal line.

YADA WILLIAMS.

NORMAN ET AL
4 NOVEMBER 2004 CLOSED SESSION

1 A. Mr Mambu -- Commander Mambu --

2 PRESIDING JUDGE: Listen to the question first. "That
3 situation report." Listen to the question.

4 MR KAMARA: Thank you, Your Honour.

17:17:18

5 Q. Mr witness, tell us about the situation report. what did
6 Mambu say about the capture of Tongo or the fall of
7 Tongo?

17:17:43

8 A. He said Kamajors had come from all over the chiefdoms;
9 there were over 5 to 6,000. They attack Tongo for over
10 four days, and after they had fought, they killed the RUF
11 and -- many of the RUF and juntas in order to hide their
12 casualties, the Kamajors. They had -- they seize a lot
13 of ammunition - shotgun weapon, shotgun weapon, even RPG
14 tube, AK47 and so on.

17:18:10

15 Q. And you said this situation report was made to?

16 A. He made it directly to Chief Hinga Norman in the presence
17 of the body that I had already called.

18 Q. Were you present when that report was made?

19 A. Yes, I was there. Yes, I came there. I was in there
20 when they brought the situation report.

17:18:36

21 Q. Thank you, Mr witness. Now, I would like to move you on
22 to the next attack you say you were present when planning
23 was being done, and that is Koribundu. You did mention
24 to this Court that you were at a meeting when planning
25 was done for the Tongo, Koribundu and Bo attacks, so I've
26 divided it. You've told this Court about the Tongo
27 attack. Could you move on to now the Koribundu attack,
28 and when was this planning done -- in what year, do you
29 remember?

17:18:54

NORMAN ET AL
4 NOVEMBER 2004 CLOSED SESSION

- 1 A. It was in 1997. Tongo fell in December 1997. In 1997
2 December, that's when Tongo fell. Tongo fell before
3 Koribundu, but Koribundu plan was getting older, because
4 many time Kamajors were going to take over Koribundu but
17:19:37 5 it did not work. On the last day, Chief Hinga Norman
6 called and said --
- 7 Q. Slowly, slowly. You were telling this court that finally
8 Hinga Norman called a meeting?
- 9 A. Finally called a meeting and said -- Moinina Fofana and
17:20:00 10 Kondewa were present at that meeting. Moinina Fofana
11 said that it was a disgrace to the Kamajors who were
12 there close to Base Zero, because that medicine that is
13 given to Kamajors comes from there. That's where they
14 come from to attack Koribundu many a time, and they're
17:20:24 15 unable to take Koribundu. But this time around, he wants
16 them to go and capture Koribundu. Then Kondewa said, "I
17 am going to give you my blessings. I'm going to give you
18 the medicines, which would made you to be fearless if you
19 didn't spoil the law." He said, "I will give it to you.
20 I will prepare you." And Chief Norman said, "well, he
20:40 21 spoke too late. Lamin" --
- 22 Q. What did Chief Norman say to -- [Overlapping speakers]
- 23 A. He call the National Director for Operations, the late
24 Lamin Ngobeh. He said, "Now, call Mr Commander, who has
25 come from Koribundu, Joe Temidey. I'm giving him my last
17:21:04 26 words that they should take Koribundu. Now we've spent a
27 lot of cartridges, money and lot of energies, but now we
28 should take -- Koribundu should be taken under all cost,
29 because we spent a lot on Koribundu." Then the commander

- 1 Q. When you say "us", it's the same group, the members of
2 the Bonthe Working Committee?
- 3 A. Yes, sir.
- 4 Q. Did you go to JP Koroma's house?
- 10:56:37 5 A. We got there, yes, sir.
- 6 Q. What happened?
- 7 A. Before we got there, there was already an old woman by
8 the name of Cecilia Caulker.
- 9 Q. Was she a member of the working committee as well?
- 10:57:00 10 A. No, sir; no, sir. She went ahead that morning to give a
11 testimony about the Bonthe Working Committee, and the
12 district commander and his men were convinced that they
13 have wronged us, because of what they did to us -- their
14 men have wronged us because of what they did to us as
10:57:38 15 innocent people. We never cooperated with the junta
16 forces, we are working in the best interests of the
17 Bonthe people, because when the grass grew up, snakes
18 started biting people -- that is what we saw and went to
19 the commander, and asked him to allow us brush the
10:58:02 20 township.
- 21 So when we got there that same morning, the district
22 commander and his men apologised to us and they were
23 sorry, because they were misled by some people who have
24 hatred minds for us in Bonthe. They were pleading that
10:58:30 25 forgive them, and in fact they requested us to join
26 forces with them to handle other matters in Bonthe.
27 Well, at that time, we had no option. They were the
28 powers of the day. We accepted, and that was what we did
29 for that day.

NORMAN ET AL
9 NOVEMBER 2004 OPEN SESSION

- 1 Q. After that, did anything else happen to you, or was this
2 the end of the harassment?
- 3 A. I think nothing else happened again. I did not
4 experience any other pressure or humiliation.
- 10:59:31 5 Q. Do you know who the leaders of the Kamajors were at this
6 time?
- 7 A. The leaders?
- 8 Q. Yes.
- 9 A. Apart from the commanders?
- 10:59:46 10 Q. The high-level leaders.
- 11 A. Okay. Even the high priest?
- 12 Q. For example, yes.
- 13 A. Okay. I saw him once in Bonthe. The high priest Allieu
14 Kondewa -- is that not the name? I saw him once in
11:00:08 15 Bonthe. After that incident he visited Bonthe.
- 16 Q. What incident do you mean?
- 17 A. When the Kamajors looted and vandalised us -- the
18 killings and so on.
- 19 Q. That means you are speaking of the incident in February
11:00:32 20 1998?
- 21 A. Yeah - yes, sir -- sorry -- yes, sir.
- 22 Q. So what did he do in Bonthe?
- 23 A. He called a public meeting at the town hall, and the
24 meeting was well attended. A lot of people spoke,
11:00:54 25 complaints were made. For him, finally he said he did
26 not allow his men to enter Bonthe; it was unfortunate,
27 but they did not listen to his advice, they have now
28 entered and done all what they did, therefore he was
29 sorry.

1 He went further to say we should forget about ECOMOG
 2 at that time. I mean, he said ECOMOG was not in charge
 3 of Bonthe -- was not responsible to cover Bonthe; they,
 4 the Kamajors, were responsible to cover Bonthe
 11:01:54 5 security-wise.

6 Q. What time after the conquering, or however you would call
 7 it, of Bonthe by the Kamajors did Mr Kondewa come to
 8 Bonthe -- was it weeks, months, years?

9 A. Not too long; not too long.

11:02:18 10 Q. What is "not too long"?

11 A. Well, I cannot precisely say how many weeks, how many
 12 months or how many days it took for him to visit Bonthe,
 13 but it was not too long after that incident when he
 14 visited Bonthe.

11:02:35 15 Q. And did you see anyone else of the leaders of the
 16 Kamajors in Bonthe around this time?

17 A. Again, yes.

18 Q. Who did you see?

19 A. I saw once Chief Hinga Norman. That was in fact at the
 11:03:03 20 Bonthe airfield. He was accompanied by, I think, two
 21 ECOMOG officers at that time. I cannot tell precisely
 22 whether he travelled by plane or helicopter, but it was
 23 by air. At that time we are in a situation of receiving
 24 ECOMOG, so any time we hear the sound of a plane or

11:03:46 25 helicopter, almost half of Bonthe would run to the
 26 airstrip to see whether ECOMOG had arrived, but this time
 27 when we went -- I went there personally, because we were
 28 all eager to receive ECOMOG -- we only saw Chief Hinga
 29 Norman and the two ECOMOG officers.

1 He came down and said to us we should not be used to
2 that practice of rushing to the airfield whenever we hear
3 a plane or a helicopter. At that time we are in a war
4 situation. It could have been an enemy plane, and when
11:04:39 5 they landed, they just spray all of us. So he said to
6 us, "With effect from today, if you want to see the plane
7 or the helicopter that's coming down to Bonthe, you keep
8 off and watch first and see who's coming down before you
9 come in closer." That was the advice Chief Hinga Norman
11:05:05 10 gave us. He later held a short indoors, so to speak,
11 meeting with his men, but I cannot tell you what they
12 discussed.

13 MR SAUTER: Okay. Thank you, Mr Witness, for your testimony.
14 That is all. I have no more questions of this witness.

11:05:29 15 Thank you very much.

16 THE WITNESS: Thank you.

17 JUDGE BOUTET: Thank you.

18 PRESIDING JUDGE: There is this Julius Squire. Yes?

19 THE WITNESS: May I ease myself, sir?

11:06:00 20 PRESIDING JUDGE: Yes, please. The Court will rise for five
21 minutes to enable the witness to ease himself.

22 [Break taken at 11.06 a.m.]

23 [On resuming at 11.18 a.m.]

24 PRESIDING JUDGE: We are resuming the session, but before we
11:18:37 25 rose, I was asking a question about Julius Squire. Is he
26 still in Bonthe?

27 THE WITNESS: Unfortunately, he's dead.

28 PRESIDING JUDGE: Mmm?

29 THE WITNESS: He's dead, sir.

1 A. K-P-A-N-A M-A-N-S-O.
2 PRESIDING JUDGE: You say he was killed by who?
3 THE WITNESS: Baigeh.
4 PRESIDING JUDGE: How?
15:52:53 5 THE WITNESS: He was shot with a gun.
6 PRESIDING JUDGE: And this was in your presence?
7 THE WITNESS: Yes.
8 MR SAUTER:
9 Q. So what did you do when the Kamajors came to Bonthe,
15:53:22 10 apart from going to the billet?
11 A. After going to the billet, when they asked us to go to
12 our different houses, I ran straight to the Catholic
13 mission and I gathered my family members with me, who
14 were all there, where I saw other people also seeking
15:53:45 15 refuge there at Father Garrick's place.
16 Q. Did anything happen at Father Garrick's place?
17 A. Yes, so many things happened. We were there and
18 sometimes the Kamajors would come to him --
19 Q. To him?
15:54:08 20 A. To Father Garrick to ask for food, and then they would
21 line us up, because they wanted somebody from us.
22 According to my consultations, I said I would not reveal
23 the person's identity. So they would line us up. If we
24 could not produce that person, they were going to kill
15:54:34 25 us, but Father went and give money on our behalf. He
26 would atone for us.
27 Q. So they were searching for a specific person?
28 A. Yeah.
29 Q. Would you please mention the name of this person?

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1 A. Yes.

2 Q. Just the name, nothing else.

3 A. I also want to say if I mention the person's name now,
4 and I want to hide my identity, how could I hide my
15:55:02 5 identity when I have relation with the person? I don't
6 think I'm safe enough to do that.

7 PRESIDING JUDGE: Please don't answer that question.

8 Mr Witness, have you heard -- don't mention the person's
9 name.

15:55:18 10 THE WITNESS: Okay, sir.

11 MR SAUTER:

12 Q. So did you produce this person?

13 A. No.

14 Q. Do you know what happened to this person?

15:55:34 15 A. The person fled into the bush.

16 Q. Did he stay in the bush?

17 A. Yes, he stayed in the bush for one week. He came back to
18 the compound where other people -- where other chiefdom
19 authorities were hiding also at Father Garrick's
15:56:11 20 compound.

21 Q. What happened after this person came back or came to
22 Father Garrick's compound?

23 A. Well, we all stayed there, but there was another man who
24 was being hunted, which I know of apart from the person
15:56:36 25 that they were asking us to produce. This other person
26 was Lahai Ndokoi Koroma. He also was in that compound
27 and on the Sunday he was captured, because he had been
28 seen by a cleaner and the cleaner went and told the
29 Kamajors that, "One of the people whom you are looking

- 1 for has come, and he's hiding in the Catholic secret
2 confession room."
- 3 Q. You said this person was captured -- captured by whom?
4 A. The Kamajors.
- 15:57:15 5 Q. Do you know what happened to him after he was captured by
6 the Kamajors?
7 A. Yes. We saw him being taken out of the compound and
8 taken to his brother's house, JP Koroma's house, at
9 Medina Street and he stayed with them for a long time.
15:57:38 10 They caught him at around 5.00 o'clock in the evening and
11 he was there for up to about midnight and they brought
12 him back to the compound. I saw him being brought back
13 to the compound.
14 PRESIDING JUDGE: To which compound?
- 15:57:53 15 THE WITNESS: To Father Garrick's compound. Then the clothes
16 that he wore were all torn -- he was even stripped naked,
17 except the brief he was wearing at that time.
- 18 MR SAUTER:
19 Q. In which physical condition was he when he was brought
15:58:16 20 back?
21 A. He was tired, tattered, as I said earlier. They had torn
22 his clothes -- only the brief was with him now.
- 23 Q. Did anything else happen to this person after he was
24 brought back to Father Garrick's compound?
15:58:35 25 A. Yes. They left him there and I heard them say they were
26 going to send a letter to Chief Dr Allieu Kondewa to
27 inform him that the man has been captured. After some
28 time a delegation came from Talia Yobehko.
29 Q. Did you see this letter, or how did you learn about this

- 1 letter? *
- 2 A. They told us they were going to write a letter to the
3 man. We were all held captive at the compound. Our fate
4 lay in the hands of what Chief Allieu Kondewa would say.
15:59:16 5 And so they told us the letter had been sent, and we did
6 see people coming as a delegation from Talia. It was led
7 by Imam Fuad. He came to investigate the issue,
8 particularly concerning the man that was captured.
- 9 Q. Do you know the reason why this man was searched for and
15:59:44 10 subsequently captured?
- 11 A. Yes, there were so many factors they alleged they were
12 looking out for him for. One was that he was a witch
13 doctor, he had fetishes in his house, and that he did not
14 compromise with the Kamajors, so anybody found him, they
16:00:10 15 were going to kill him. But at this time now,
16 King Dr Allieu Kondewa sent a delegation to come and
17 investigate the issue, so the delegation was led by Imam
18 Fuad. He was also tipped by Father Garrick with some
19 money.
- 16:00:31 20 Q. How do you know that they were given money by --
- 21 PRESIDING JUDGE: The delegation was led by?
- 22 THE WITNESS: Imam Fuad, F-U-A-D.
- 23 PRESIDING JUDGE: So who compromised him?
- 24 THE WITNESS: He did not compromise with them.
- 16:01:01 25 PRESIDING JUDGE: Who?
- 26 THE WITNESS: The man that they had captured did not
27 compromise with them. He was a witch doctor, that's why
28 they were going to kill him, but the delegation came to
29 investigate this issue.

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1 PRESIDING JUDGE: And when Imam Fuad came with the delegation,
2 what happened?

3 THE WITNESS: Father Garrick left me in the compound. He
4 spoke with me. He went and tipped them and so they left
16:01:29 5 for Talia again. They said they have the final orders -
6 they will have the final orders from Kondewa, they are
7 going there again.

8 MR SAUTER:

9 Q. So what happened after this delegation left?

16:01:41 10 A. Another delegation came. This time it was led by
11 Commander Vanjawai.

12 Q. Who is Commander Vanjawai?

13 A. Kamajor commander. He was also sent by Dr Kondewa to
14 come and investigate the same issue.

16:02:01 15 Q. Do you happen to know the results of his investigations?

16 A. As I was working in close ally with Father in this issue
17 in particular, so he also tipped them, and he pretended
18 to the Bonthe people, the Bonthe Kamajors that, "We will
19 be coming back to kill this man, but let's go first and
16:02:31 20 confer with the War Council at Talia." So they also
21 went.

22 Q. What happened after this second delegation has left
23 Bonthe?

24 A. The harassment was too much. The Bonthe community made a
16:02:55 25 delegation to come to Freetown to report to the
26 authorities in this country. I was a member of that
27 delegation as an elderly person in the community. We
28 came by sea from Bonthe -- it was a two-day journey on
29 sea. Then our President was returning from --

- 1 you to the period of the 29th of February 1998. Where
2 were you during that time? Were you still in Bonthe?
- 3 A. Yes, but there was a last group of Kamajors that came to
4 the situation -- to deal with the situation.
- 12:18:59 5 Q. Which last group was that?
- 6 A. Kondewa himself. Allieu Kondewa himself came.
- 7 Q. Okay. He came to Bonthe?
- 8 A. Yes.
- 9 Q. What was the purpose of his visit, do you know?
- 12:19:14 10 A. Well, on the request of the battalion commander, on their
11 complaining about the attitude of the Kamajors against
12 the civilians, and also especially with regards one chief
13 whom I had staying with me.
- 14 Q. What is the name of that chief?
- 12:19:40 15 A. Lahai Ndokoi Koroma.
- 16 Q. Your Honours, it's spelt as L-A-H-A-I N-D-O-K-O-I,
17 Koroma, K-O-R-O-M-A. When you say chief, what kind of
18 chief was he?
- 19 A. The chiefdom speaker.
- 12:20:04 20 Q. He was a chiefdom speaker?
- 21 A. Of Sittia Chiefdom.
- 22 Q. Of Sittia Chiefdom. How would you relate the visit of
23 Allieu Kondewa to this chiefdom speaker Lahai Koroma?
- 24 A. All those -- the groups of Kamajors that were coming --
12:20:30 25 not the ones that were sent to the investigate the
26 matter, but those that were coming, were kept on
27 demanding that I shall hand over the chiefdom speaker to
28 them, but I kept telling them that, "I don't have the man
29 with me." And they were moving -- telling -- saying

1 that, "We are going to kill the chiefdom speaker." So I
2 hid him in one of the vestries of the church.
3 Q. And do you know why they were threatening to kill him?
4 PRESIDING JUDGE: Please wait.
12:21:03 5 MR KAMARA: Sorry, Your Honour.
6 THE WITNESS: I don't know.
7 MR KAMARA:
8 Q. Yes, you were trying to relate the visit of Allieu
9 Kondewa to Chief Speaker Koroma?
12:22:11 10 A. Yes, I explained the matter to him myself about Chief
11 Koroma.
12 Q. Are you referring to Kondewa -- you explained to Allieu
13 Kondewa, himself?
14 A. Yes.
12:22:23 15 Q. And did he give you any advice or suggestions?
16 PRESIDING JUDGE: What did he explain to --
17 MR KAMARA: Allieu Kondewa.
18 PRESIDING JUDGE: Yes.
19 MR KAMARA:
12:22:39 20 Q. What was the explain to Allieu Kondewa?
21 A. That I had a chief with me and I will not be able to
22 continue to guarantee his safety, but even before that --
23 Q. Take your time.
24 A. -- yes. I had wanted to --
12:22:55 25 Q. Wait, wait.
26 PRESIDING JUDGE: You mean, this chief, is it? Is this a
27 chiefdom speaker?
28 MR KAMARA: Yes, that is a chiefdom speaker.
29 PRESIDING JUDGE: Chiefdom speaker, not a chief?

1 THE WITNESS: Yes.

2 PRESIDING JUDGE: That's Lahai Koroma?

3 THE WITNESS: Yes.

4 MR KAMARA: Yes.

12:23:10 5 PRESIDING JUDGE: Yes. You told Kondewa that?

6 THE WITNESS: Yes.

7 PRESIDING JUDGE: What did you tell Kondewa, Reverend Father?

8 THE WITNESS: That I will not be able to continue looking
9 after him under this situation, every now and then
12:23:17 10 Kamajors coming to ask for him. There is one part which
11 I jumped. I wanted to say something how he was
12 discovered in my premises.

13 MR KAMARA:

14 Q. How who -- Lahai Koroma was discovered in your premises?

12:23:41 15 A. Yes.

16 Q. Okay, let's leave that for the time being. Let's finish
17 with this incident. We've got to keep the records
18 straight and comprehensive. What did Allieu Kondewa say
19 to you after you've explained to him?

12:23:54 20 A. He, himself, mentioned or spoke about some of the
21 atrocities caused by the Kamajors, and he said the only
22 way to solve that problem is for him to get the chiefdom
23 speaker out of Bonthe.

24 Q. He suggested to you to get Lahai Koroma out of Bonthe?

12:24:30 25 A. Out of Bonthe, yes.

26 Q. Were any arrangements made with regard to that?

27 A. Yes. I was asked to provide some money for his upkeep
28 and his security, by Kondewa, himself, that he will take
29 him along with him. But I should pay some money to take

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1 care of his feeding and then his security.

2 Q. So did you give that money to Kondewa?

3 A. Yes, the money was handed over -- not directly to him,
4 but he was there when the money was handed over.

12:25:33 5 Q. Okay. Father Garrick, are you in a position to tell the
6 sum involved? Not really as to the exactitude of the
7 sum, but if you can approximate, we would appreciate
8 that.

9 A. Yes, that -- when I was going for that meeting, I took
12:26:00 10 along a million Leones with me, but out of that money --

11 Q. Take your time, Father Garrick. Their Lordships are
12 taking note of what you say.

13 A. I went round, talking to some Kamajors, and give them
14 something out of that as well.

12:26:36 15 Q. Out of the million Leones you had?

16 A. Yes, the remaining one, either 600 or so, that was what I
17 presented?

18 Q. And what year are we referring to here, Father Garrick?

19 A. 1998.

12:27:04 20 PRESIDING JUDGE: You said 600.

21 THE WITNESS: Yes.

22 PRESIDING JUDGE: Is it 600 or 600,000?

23 THE WITNESS: 600,000.

24 MR KAMARA: 600,000, yeah.

12:27:14 25 Q. Are you referring 600,000 Leones?

26 A. Yes, about that. I can't really -- after giving, what
27 the remainder was.

28 Q. Yes.

29 JUDGE BOUTET: And did you give a date or just a year?

1 MR KAMARA:
2 Q. Do you recall the date of this incident or the year --
3 just the year?
4 A. Well, 1998.
12:27:37 5 MR KAMARA: It was in 1998, Your Honour.
6 Q. So was Chief Lahai eventually taken --
7 A. Yes.
8 Q. -- along with Kondewa?
9 A. Yeah, the next day Kondewa called --
12:28:00 10 PRESIDING JUDGE: Why are you calling him "chief"? Don't
11 confuse the records. Is he a chief or a spokesman?
12 MR KAMARA: Your Honour --
13 THE WITNESS: No --
14 MR KAMARA: -- sometimes chiefdom speakers are referred to --
12:28:03 15 [Overlapping speakers]
16 THE WITNESS: The chiefdom speakers are chiefs, the second in
17 command.
18 PRESIDING JUDGE: I see. They're the second in command, so
19 they are chiefs?
12:28:13 20 THE WITNESS: Yes.
21 MR KAMARA: They are chiefs, yes, Your Honour.
22 PRESIDING JUDGE: Oh, well, okay. So he's not only a chiefdom
23 speaker, but a chief himself?
24 THE WITNESS: Yes.
12:28:22 25 MR KAMARA: Yes, Your Honour.
26 THE WITNESS: So that morning, the next day, I contacted
27 Mr Kondewa, and he told me to wait when many of the
28 Kamajors are not around the seaface, "Then I will take
29 the man to the boat," and then they will leave.

- 1 MR KAMARA:
- 2 Q. Did you comply with those instructions?
- 3 A. Yes.
- 4 PRESIDING JUDGE: So he was to board a boat?
- 12:29:50 5 THE WITNESS: Yes.
- 6 MR KAMARA: Yes.
- 7 PRESIDING JUDGE: For what destination?
- 8 THE WITNESS: Talia, Base Zero.
- 9 MR KAMARA:
- 12:30:17 10 Q. Father Garrick, did you have cause to pay money for the
11 release of any other persons during that period?
- 12 A. Yes, many people. There were also other chiefs who were
13 brought in whom I paid for. The Chief of Mania, Chief
14 Bureh Kalo.
- 12:30:43 15 Q. Spell Mania for us?
- 16 A. M-A-N-I-A.
- 17 Q. Chief of Mania, and his name is Bureh -- Chief Bureh?
- 18 A. Bureh Kallon.
- 19 MR KAMARA: The spelling for Bureh, Your Honours, is
- 12:30:56 20 B-U-R-E-H, and Kalo, K-A-L-O.
- 21 Q. So what happened to Chief Bureh Kalo?
- 22 A. He was brought in and, in fact, the Kamajors -- the
23 Kamajor elders were meeting in my compound, in the Barri.
24 And he was brought there, and he was accused of
- 12:31:24 25 collaborating with the junta forces.
- 26 Q. And is that why you had to pay money for him?
- 27 A. Yes, I intervened on his behalf and then I asked them to
28 hand him over to me, but they said they will only do that
29 if I pay a certain amount, which I don't remember now how

1 JUDGE BOUTET: Again, Mr Williams, are we still talking of the same
2 time frame?

3 MR WILLIAMS: No, My Lord.

4 Q. This body was created whilst you were at Base Zero; is that correct?

11:54:54

5 A. Yes, My Lord.

6 Q. Kondewa belonged to that body; correct?

7 A. Yes, My Lord. That's why he represented the initiators at the War
8 Council, he was a member.

9 Q. We'll come back to the War Council later. But that body of
10 initiators is separate and distinct from the War Council; is that correct?

11:55:41

11 A. Yes, My Lord.

12 Q. Did you say you were sacked by the vice president -- the then vice
13 president, Joe Demby, in the early part of 1998 from the position you
14 held -- that of Director of Operations South?

11:56:27

15 A. Yes, My Lord.

16 Q. But in 1999/2000 you found yourself in another position?

17 A. Yes, My Lord. The resident minister, Foday Sesay, and some other
18 authorities asked us to form that office, because the undisciplined had
19 become too much in the society. So I took up the position.

11:57:13

20 PRESIDING JUDGE: What is the name of the resident, Foday Sesay?

21 THE WITNESS: Yes, My Lord, Foday Sesay. The resident minister
22 Southern Province, Foday Sesay.

23 MR WILLIAMS:

24 Q. Mr Witness.

11:57:31

25 A. Yes, My Lord.

26 Q. Kondewa was not a fighter; is that correct?

27 A. Yes, My Lord.

28 Q. He had bodyguards that he went around with; is that correct?

29 A. Yes, My Lord.

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1 Q. He did not command any troops; is that correct?

2 A. Yes, My Lord.

3 Q. You mentioned that a motor bike was commandeered by you. A motor
4 bike that belonged to Africare was commandeered by you; is that correct?

11:59:20

5 A. It was commandeered by my Kamajors under the directive of
6 Chief Hinga Norman, so that I would be using the Honda bike to be visiting
7 the front line. The four districts that were under me: Bo, Bonthe,
8 Moyamba and Pujehun.

9 Q. That motor bike was commandeered for the purposes of the war. I
10 mean, to facilitate your movement from place to place?

12:00:02

11 A. You are correct, My Lord. In Jiama Bongor Chiefdom.

12 Q. Did the government also provide vehicles for the Kamajors? Did they
13 provide vehicles -- I will refrain from using the word also. Did the
14 government provide vehicles for the Kamajors?

12:00:52

15 A. Not to my knowledge, My Lord. Everything we used at Base Zero was
16 commandeered.

17 THE INTERPRETER: My Lord, can the witness please speak through the
18 microphone. We are not getting him clearly.

19 MR WILLIAMS:

12:01:23

20 Q. You said all the vehicles that you used were commandeered?

21 A. At Base Zero when we were there, we commandeered them. One vehicle
22 was commandeered from Sembehun [inaudible] from Sorgba Stevens, which Chief
23 Norman used and later give it to Kondewa.

24 PRESIDING JUDGE: One vehicle was --

12:02:02

25 MR WILLIAMS: Commandeered and given to --

26 PRESIDING JUDGE: Commandeered from who?

27 THE WITNESS: From one Sorgba Stevens, former Honourable Sorgba
28 Stevens, Sembehun, Bagruwa. Sembehun Town, Bagruwa Chiefdom, Moyamba
29 District.

- 1 A. You're quite correct.
- 2 Q. Thank you. Father, you encountered one Morie Jusu
3 Kamara, didn't you?
- 4 A. Yes.
- 11:25:46 5 Q. When you encountered him, you perceived him to be the
6 leader the Kamajors?
- 7 A. Not only perceived; he was introduced to the committee.
- 8 Q. He was introduced to the committee as the leader?
- 9 A. Yes.
- 11:25:58 10 PRESIDING JUDGE: What was the name again?
- 11 MR BOCKARIE: Morie Jusu Kamara.
- 12 THE WITNESS: Morie Jusu.
- 13 MR BOCKARIE:
- 14 Q. And, further, you confronted him with what was going on
11:26:16 15 in the township?
- 16 A. Yes.
- 17 Q. Relating to the killing and the looting?
- 18 A. Yes.
- 19 Q. Father, his reply was in unequivocal terms that he was
11:26:32 20 not in control of the boys -- did he say that? He [sic]
21 said it in evidence?
- 22 A. Not in control of all the groups.
- 23 Q. Yes, but he told you that he was not in control, did he?
- 24 A. Yes.
- 11:26:44 25 Q. Thank you. Father, would I be correct to say that during
26 this time no leader emerged in Bonthe who happened to be
27 in effective control of the Kamajors -- during this time?
- 28 A. Yes.
- 29 MR BOCKARIE: And that will be all for him.

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1 JUDGE BOUTET: Counsel for the third accused.
2 CROSS-EXAMINED BY MR WILLIAMS:
3 Q. Father Garrick, could you tell the Court how many times
4 Kondewa went to Bonthe in 1998?
11:28:43 5 A. I can only remember one time.
6 Q. Which month was that?
7 A. I cannot just remember the month, but he went there once.
8 Q. Could you say, with any certainty, that that was not in
9 February of 1998?
11:29:35 10 PRESIDING JUDGE: I don't like putting witnesses, you know,
11 under unnecessary pressure. He said it was 1998, he
12 cannot remember. If you want to put it to him, please
13 put it to him that it was in February so that we proceed,
14 because the Father is busy -- he is entangled in a
11:30:00 15 reflection as to what month. If you think it's February,
16 put it to him, and let's move. He has clearly said he
17 cannot remember the month, but if you think it's February
18 it's your right to put it to him.
19 MR WILLIAMS: I have specific instructions with regard to this
11:30:18 20 particular matter.
21 PRESIDING JUDGE: Okay, you may proceed, Mr Williams.
22 MR WILLIAMS: Thank you very much, My Lord.
23 Q. Could you say with any certainty that that visit did not
24 take place in February 1998?
11:30:39 25 A. I can't really tell that.
26 Q. Thank you very much. Could you tell the Court the reason
27 why Lahai Ndokoi Kamara was being harassed by Kamajors?
28 A. Get the name straight.
29 Q. Lahai Ndokoi -- what's the surname -- Koroma?

- 1 A. Koroma.
- 2 Q. Yes, I'm sorry.
- 3 A. The only thing I could get is that he was being accused,
4 of being a junta collaborator.
- 11:31:37 5 Q. Was Ndokoi Koroma in Bonthe during the junta period?
- 6 A. Yes.
- 7 Q. And could you tell the Court how he collaborated with --
8 how it was alleged he collaborated with the junta?
- 9 A. Please rephrase the question.
- 11:32:41 10 Q. You said Lahai Ndokoi Koroma was accused of being a junta
11 collaborator. I want to know on what that accusation was
12 based.
- 13 A. Well, I can't --
- 14 JUDGE THOMPSON: Quite. I was going to add wouldn't you ask
11:33:03 15 him why he was being -- it would be unfair to say why was
16 that the case when he was not the one making the
17 accusation.
- 18 MR WILLIAMS: I didn't get Your Lordship.
- 19 JUDGE THOMPSON: I said it would be unfair to say why was he
11:33:16 20 being accused when he was not making the accusation.
- 21 MR WILLIAMS: Why was he being accused by those --
- 22 JUDGE THOMPSON: That's what I'm saying. The proper approach
23 would have been does he know why he was accused.
- 24 MR WILLIAMS: I'll take the cue.
- 11:33:28 25 Q. Do you know why Ndokoi Koroma was being harassed?
- 26 A. No.
- 27 Q. You don't.
- 28 JUDGE THOMPSON: Yes. I am sure the answer is that he does
29 not know why he was being accused of being a

21985

1 collaborator.

2 MR WILLIAMS: Yes.

3 JUDGE THOMPSON: Not why he was being harassed.

4 MR WILLIAMS: Sorry, that is it, My Lord.

11:33:54 5 JUDGE THOMPSON: So we don't get the evidence mixed up.

6 MR WILLIAMS:

7 Q. Father, did you inquire from any of those that were

8 harassing him the reason for their conduct?

9 A. Yes.

11:34:22 10 Q. And I presume you made the inquiry from Kamajors?

11 A. Yes.

12 Q. And what did they tell you?

13 A. Simply that he was with a junta -- that he was with the

14 soldiers, yes.

11:34:51 15 Q. He was with the junta?

16 A. Soldiers, yes; he collaborated with the junta.

17 Q. And is it correct that when Kondewa went to Bonthe the

18 plight of Ndokoi Koroma was brought to his attention?

19 A. Yes.

11:35:25 20 Q. Was it you who personally told Kondewa the plight of

21 Ndokoi Koroma?

22 A. No.

23 Q. Who told him?

24 A. A letter was first sent -- a message, I don't know

11:36:24 25 whether a letter, but some form of message was sent to

26 him by the battalion commander, Morie Jusu Kamara,

27 explaining the general situation in Bonthe, including the

28 case of Chief Lahai Ndokoi Koroma.

29 PRESIDING JUDGE: A letter was sent to whom?

1 THE WITNESS: I can't tell whether it was a letter, but some
2 form of message was sent to Allieu Kondewa by the
3 battalion commander, Morie Jusu Kamara.

4 MR WILLIAMS:

11:37:26 5 Q. Did you personally re-echo the content of that message as
6 far as Ndokoi Koroma was concerned when Kondewa came to
7 Bonthe?

8 A. Yes.

9 Q. You re-echoed it to him?

11:37:57 10 A. Yes.

11 Q. And, Father Garrick, could you tell the Court what
12 exactly you said to Kondewa as far as Ndokoi Koroma is
13 concerned?

14 A. And as far as I can remember.

11:38:37 15 Q. Yes.

16 A. I explained to him that Chief Lahai Ndokoi was discovered
17 in the parish, specifically in one of the rooms in the
18 church, and since then groups of Kamajors have been
19 coming demanding -- asking me to release him to them, but

11:39:06 20 I have tried to talk with the Kamajor battalion
21 commander, Morie Jusu Kamara. We have tried to keep him,
22 but maybe we'll come to a point where I would be unable
23 to keep him again, so his case is very serious -- he
24 needs to talk to his men.

11:39:30 25 Q. Is that all you said to him as far as Ndokoi was
26 concerned?

27 A. Yes.

28 Q. Okay, that is fine, thank you. And was it Kondewa on his
29 own volition that offered to take Ndokoi Koroma out of

1 Bonthé?

2 A. Yes.

3 Q. And is it true that Kondewa did not only take Lahai
4 Ndokoi Koroma -- did not only take Ndokoi Koroma but he
11:40:59 5 also took the four daughters of that gentleman away?
6 A. With regards to that, I can't really tell, but I know of
7 another person that joined Chief Lahai Ndokoi Koroma.
8 Q. Who was that?
9 A. His son.
11:41:25 10 Q. His son.
11 PRESIDING JUDGE: Let's get the first reply first -- "I cannot
12 say..."
13 THE WITNESS: Yes, that I cannot say.
14 PRESIDING JUDGE: "...that" -- did you say four daughters,
11:41:40 15 Mr Williams?
16 MR WILLIAMS: Yes, My Lord.
17 Q. And --
18 PRESIDING JUDGE: We're at the level of --
19 MR WILLIAMS:
11:42:22 20 Q. According to you, you cannot confirm that he took Ndokoi
21 Koroma and his four daughters?
22 A. Yes.
23 Q. What you know is that he took Ndokoi Koroma and his son?
24 A. Umaru.
11:42:40 25 Q. And his son, Umaru?
26 A. Yes.
27 PRESIDING JUDGE: Umaru?
28 MR WILLIAMS: Yes, Umaru Koroma.
29 THE WITNESS: Umaru.

- 1 PRESIDING JUDGE: They travelled together out of Bonthe?
- 2 MR WILLIAMS: Yes, My Lord.
- 3 Q. Did you say in your evidence-in-chief that Kondewa told
4 you that he would have to wait for a time when the
11:43:24 5 Kamajors were not present at the seafront?
6 A. Yes, when their numbers were less around the area?
- 7 Q. Did he tell you the reason why he would have to wait
8 until the Kamajor presence at the seafront was reduced
9 before he would take these people away?
- 11:44:21 10 A. Well, to prevent some -- to prevent confrontation.
- 11 Q. Thank you very much. Basically, what Kondewa was seeking
12 to do was to smuggle Lahai Ndokoi Koroma and his family
13 out of Bonthe; would you agree with me?
14 A. No.
- 11:45:06 15 Q. No. Why wouldn't you agree with me?
- 16 A. Part of his family still remained with me when he left.
- 17 Q. No, those that he was taking away?
- 18 PRESIDING JUDGE: When you say "those he was taking away", how
19 many was he taking away, Mr Williams?
- 11:45:30 20 MR WILLIAMS: According to him, two, My Lord.
- 21 PRESIDING JUDGE: Yes, himself and when you say", and his
22 family", one person constitutes a family?
- 23 JUDGE BOUTET: If this is your question, Mr Williams, be fair
24 to the witness. He told you it was one son. Now you're
11:45:45 25 telling him the family.
- 26 MR WILLIAMS: I did not say his entire family.
- 27 JUDGE BOUTET: That's the question you asked him [overlapping
28 speakers].
- 29 MR WILLIAMS: I'll rephrase the question, My Lord.

1 Q. Would you say that Kondewa was basically smuggling Ndokoi
2 Koroma and his son out of Bonthe? I am sorry if I misled
3 you -- I'm sorry.

4 A. I may even need to add a note here.

11:46:19 5 Q. No, just answer the --

6 JUDGE THOMPSON: Before he adds the note, I'm troubled and
7 perhaps I need to be enlightened. Why "smuggle" -- is
8 that your instruction, or is it just a manner of
9 speaking? The word "smuggle", I can take issue with you
11:46:35 10 on it as being a very controversial word, but if you are
11 eliciting facts, how does a Court evaluate an answer to a
12 question like that? If he says, "Yes, smuggled", doesn't
13 that multiply the issues if we don't have any indication
14 of something in the indictment which suggests smuggle?

11:47:05 15 MR WILLIAMS: My Lord, we're not saying that to smuggle
16 somebody to his safety is --

17 JUDGE THOMPSON: I don't know. It's just because you are a
18 lawyer I am taking issue with you on the use of the word
19 "smuggle". Isn't it a technical word?

11:47:19 20 MR WILLIAMS: I don't think so, My Lord.

21 JUDGE THOMPSON: You don't think so?

22 MR WILLIAMS: Yes, but I can use the word "sneak" -- "sneak
23 out".

24 JUDGE THOMPSON: Before you continue, I'm asking you to give
11:47:29 25 me the ordinary meaning of the word "smuggle", which
26 I suggest to you would also have a technical meaning; in
27 other words, is it fair to ask this witness whether
28 Kondewa was trying to smuggle them out of Bonthe.

29 MR WILLIAMS: The ordinary meaning for "smuggle" I would say

1 is sneak out.

2 JUDGE BOUTET: What does "sneak out" mean?

3 MR WILLIAMS: I mean, you take away secretly.

4 JUDGE THOMPSON: Let me not pursue it further and let you go

11:48:06 5 ahead. Maybe the Reverend Father will be able to sneak

6 out of it.

7 MR WILLIAMS:

8 Q. Reverend Father, I'll rephrase my question. Would you

9 say that -- would you agree with me if I were to say that

11:48:22 10 what Kondewa was -- the manner in which he chose to take

11 Ndokoi Koroma and his son out was synonymous to him

12 sneaking out with them?

13 A. Not really.

14 Q. Not really?

11:48:43 15 A. Yes.

16 Q. Mr Witness, you don't recall the month, I suppose, when

17 Lahai Ndokoi Koroma was taken out of Bonthe?

18 A. Yes, I can't just recall the month now.

19 Q. I just want to refer to your statement so I can refresh

11:50:20 20 your memory, please.

21 JUDGE BOUTET: Maybe you can ask him first if he has read the

22 statement.

23 MR WILLIAMS:

24 Q. Yes, did you say you can recall the month?

11:50:45 25 A. As I sit now, it would be a bit difficult for me to just

26 recall that.

27 Q. All right, thank you. I cannot find the portion of your

28 statement, but at the time Kondewa came to Bonthe, would

29 you say that atrocities against civilians had totally

1 stopped?

2 A. I could say minimised.

3 Q. You say minimised?

4 A. Yes.

11:52:00 5 Q. Is Ndokoi Koroma still alive?

6 A. Yes.

7 Q. Together with his son, Umaru Koroma?

8 A. Yes.

9 PRESIDING JUDGE: What's his son's name again.

11:53:01 10 MR WILLIAMS: Umaru.

11 PRESIDING JUDGE: Yes, yes, Umaru Koroma.

12 MR WILLIAMS:

13 Q. Would you say, Father Garrick, that it was quite a

14 laudable thing that Kondewa did to take these people to

11:53:27 15 their safety?

16 A. Well, not so much the people, but --

17 Q. These two people?

18 A. Not so much the two, but the one.

19 Q. All right, thank you very much. I accept that. So it

11:53:40 20 was quite a laudable thing that he did to take Ndokoi

21 Koroma out to safety?

22 A. Yes.

23 Q. Thank you. And were you personally appreciative of that

24 particular gesture of Kondewa?

11:54:22 25 A. Yes.

26 Q. Talia Yobehko, you said that was where Kondewa was based?

27 A. Yes.

28 Q. Which district is that?

29 A. Bonthe District.

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- 1 Q. Talia Yobehko is part of the Bonthe --
- 2 A. District.
- 3 Q. -- District. And where were you based?
- 4 A. Bonthe Town.
- 11:55:24 5 Q. How far is Bonthe Town from Talia Yobehko?
- 6 A. I can't tell the distance.
- 7 Q. I would appreciate an estimation, please.
- 8 A. That, I can't.
- 9 Q. All right. Thank you. How long did it take you and that
- 11:56:06 10 delegation to reach Talia Yobehko? You left Bonthe, you
- 11 were headed for Talia Yobehko. How long did it take you
- 12 and that delegation to reach --
- 13 A. Two days.
- 14 Q. Two days. So would you say --
- 11:56:51 15 PRESIDING JUDGE: Just out of curiosity, Father, you say you
- 16 left with this delegation and you stopped in certain
- 17 places. Supposing you went straight, how long do you
- 18 think it would have taken you to get to your destination?
- 19 THE WITNESS: Less than a day.
- 11:57:06 20 PRESIDING JUDGE: Less than a day?
- 21 THE WITNESS: Yes.
- 22 PRESIDING JUDGE: If you did not make those stops, it would
- 23 have taken you less than a day to get there?
- 24 THE WITNESS: Yes, if I even asked to pass the night in
- 11:57:17 25 Mattru, because of lack of transportation, we would have
- 26 been there the same day.
- 27 MR WILLIAMS:
- 28 Q. I would conclude from your last answer that there was a
- 29 transportation problem around that period from -- you

1 know, travelling out of Bonthe was quite a difficult
2 thing?
3 A. Yes.
4 Q. Father, are you au fait -- are you familiar with the
11:58:48 5 hierarchical structure of the CDF?
6 A. No.
7 PRESIDING JUDGE: May I have the benefit of your last
8 question, please? I was conspiring on the Bench here.
9 It was a very constructive conspiracy.
11:59:53 10 JUDGE BOUTET: If you knew the structure of the hierarchy of
11 the CDF, and the answer is no.
12 JUDGE THOMPSON: He said, "I'm not familiar with the
13 hierarchical structure of the CDF."
14 MR WILLIAMS: Yes, My Lord.
12:00:07 15 Q. Were you aware that there was a War Council of the CDF --
16 that the CDF had a War Council?
17 A. Yes.
18 Q. And do you know that Kondewa was never a member of that
19 body -- do you know that?
12:00:39 20 JUDGE BOUTET: I have missed your question, Mr Williams. You
21 speak to the witness and your mike is quite a way from
22 you.
23 MR WILLIAMS: I am sorry, My Lord. The last question was
24 whether he knows that Kondewa was never a member of that
12:00:54 25 War Council.
26 THE WITNESS: Well, I can't tell that.
27 MR WILLIAMS:
28 Q. Thank you very much. But you knew that a War Council
29 existed in 1997 and 1998; is that correct?