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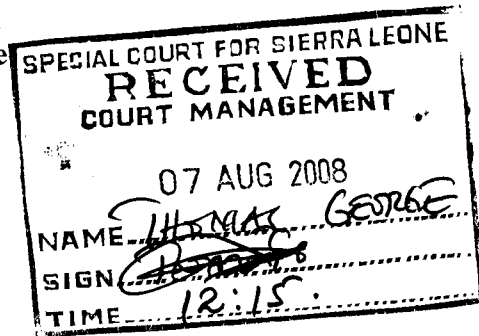
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SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER I

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

Registrar: Mr. Herman Von Hebel

Date filed: 7th August 2008



THE PROSECUTOR

v.

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

Case No. SCSL-04-15-T

PUBLIC

SESAY DEFENCE FINAL TRIAL BRIEF

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I. General Legal Issues: Right to a Fair Trial and Evidence

A. Fair trial requirements and notice of allegations

- The First Accused has been denied proper notice of a substantial part of the factual allegations relied upon by the Prosecution.¹ As the fundamental accusatory instrument, the Indictment must set in motion the criminal adjudicatory process² and plead the material facts with a degree of specificity.³ This means providing sufficient information for the Accused to adequately and effectively prepare his defence.⁴ Article 17 of the Statute presupposes, as a fundamental minimum, that the Defence will have all of the evidentiary material, which the Prosecution intends to rely upon, within a reasonable time and that “the Accused must be able to proceed with preparing his case in full knowledge of all the charges that have been or will be brought against him.”⁵

¹ Annex A.

² *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, Judgement (Trial Chamber I), 2 August 2007, para. 21 (*‘Fofana et. al, Trial Judgment’*).

³ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, para. 37 (*‘Brima et. al, Appeal Judgment’*).

⁴ *Fofana et. al, Trial Judgment, supra*, note 2, para. 22.

⁵ *Prosecutor v. Delic*, IT-96-21, Decision on Defence Motion Alleging Defects in the Form of the Indictment and Order on Prosecution Motion to Amend the Indictment, 13 December 2005, para. 63; *Prosecutor v. Prlic et al*, IT-04-74-PT, Decision on Prosecution Application for Leave to Amend the Indictment and on Defence Complaints on Form of Proposed Amended Indictment, para. 513. It should be

There was accordingly no prospect of adequately preparing a defence to any of the factual allegations contained in Annex A of this brief until a significant period of the trial had passed. This gave rise to incurable prejudice. There should be a distinct guarantee that the “the accused...[should have been]...in a position to prepare his defence in due time with complete knowledge of the matter”⁶

1. Narrow exception

2. As noted by the Appeals Chamber, “there is a *narrow* exception to the specificity requirement for indictments at international tribunals. In some cases, the widespread nature and sheer scale of the alleged crimes make it unnecessary and impracticable to require a high degree of specificity”.⁷ However, this must not be understood to involve any diminution of the rights of the Accused.⁸

2. Consequences of lack of specificity

3. The Chamber may find that the prejudice that was caused was cured by timely, clear and consistent information provided to the Accused by the Prosecution. However, in light of the factual and legal complexities normally associated with the crimes within the jurisdiction of this Tribunal, there can only be a limited number of cases of curing of defects; it is exceptional.⁹

3. Defects in the indictment

noted that the Trial Chamber in *Prlic* considered that, even a new allegation without additional factual allegations, could, if the allegation was capable of being the sole basis for an accused’s conviction, be considered a new charge.

⁶ *Prosecutor v. Blaskic*, IT-95-14, Decision on the Defence Motion to Dismiss the Indictment, 4th April 1997, para. 11.

⁷ *Brima et. al*, Appeal Judgment, *supra*, note 3, at para. 41.

⁸ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 23.

⁹ *Prosecutor v. Kupreskic et al.*, IT-95-16-A, Judgment (Appeals Chamber), 23 October 2001, para. 114 (*‘Kupreskic, Appeal Judgment’*).

4. The Prosecution must now demonstrate that it was not practicable to (i) to name a single victim or physical perpetrator (ii) to provide any particulars regarding time, location and identity of victims in relation to crimes allegedly personally committed by the Accused¹⁰ (iii) to provide any specificity with regards to whether a particular form of participation pursuant to Article 6(1) was alleged in relation to any incident in the 18 counts¹¹ and (iv) pursuant to the Accused's alleged Article 6(3) responsibility; to provide any particulars of the alleged perpetrators of the crimes; the conduct of the Accused by which he may have known or had reason to know that crimes were being committed or had been committed by his subordinates; the related conduct of those alleged subordinates¹² and the relationship of the accused to his subordinates;¹³ his knowledge of the crimes;¹⁴ and the necessary and reasonable measures that he failed to take to prevent the crimes or to punish his subordinates.¹⁵
5. The Prosecution systemically led these details in the course of the trial *through witness and supplementary statements*.¹⁶ In these circumstances, any claim that the

¹⁰ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-T, Judgment (Trial Chamber II), 20 June 2007, para. 53 ('*Brima et. al*, Trial Judgment'). As noted in *Prosecutor v. Brdjanin*, "where the prosecution gave notice of during the trial for the first time of its intention to establish a case that the accused personally perpetrated the crime charged. Such a new case would require extensive amendments to the current indictment, to include detailed material facts such as the identity of the victim, the place and the approximate date of the crime and the means by which the crime was committed" (*Prosecutor v. Brdjanin* IT-99-36, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 13 ('*Brdjanin*, Form of Indictment Decision')).

¹¹ The indictment merely quotes the provisions of Article 6(1), rehearsing the statutory language asserting all forms of individual responsibility, in relation to every criminal event. See *Prosecutor v. Blaskic*, IT-95-14-A, Judgment (Appeals Chamber), 29 July 2004, para. 226 ('*Blaskic* Appeal Judgment'); *Prosecutor v. Kvočka et al*, IT-98-30/1-A, Judgment (Appeals Chamber), 28 February 2005, para. 29 ('*Kvočka* Appeal Judgment').

¹² *Blaskic* Appeal Judgment, *supra*, note 19, para. 218.

¹³ *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 39, citing *Brdjanin*, Form of Indictment Decision, para. 22.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ "Where, therefore, the prosecution seeks to lead evidence of an incident which supports the general offence charged, but the particular incident had not been pleaded in the indictment in relation to that offence, the admissibility of the evidence depends upon the sufficiency of the notice which the accused has been given that such evidence is to be led in relation to that offence. Until such notice is given, an accused will be entitled to proceed upon the basis that the details pleaded are the only case which he has to meet in relation to the offence or offences charged. Notice that such evidence will be led in relation to a particular offence is not sufficiently given by the mere service of witness statements by the prosecution pursuant to the disclosure requirements imposed by Rule 66(A). This necessarily follows from the obligation imposed upon the prosecution pursuant to identify in its Pre-trial Brief, in relation to each count, a summary of the evidence which it intends to elicit regarding the commission of the alleged crime and the form of

defects can be justified by the nature, scale or magnitude of the allegations¹⁷ must inevitably fail.

4. Prejudice: Adduction of new factual allegations throughout the trial by the Prosecution

6. The Appeals Chamber endorsed the approach by Trial Chamber II which had refused to make any findings on crimes perpetrated in locations not specifically pleaded in the indictment on the basis that “an accused is entitled to know the case against him and is entitled to assume that any list of alleged acts contained in an indictment is exhaustive. This remains true regardless of the inclusion of words such as “including”, which may imply that other unidentified crimes in other locations are being charged as well”.¹⁸

7. This also accords with the approach taken by Trial Chamber I in the CDF case, when refusing to allow the Prosecution to expand the particulars in the CDF indictment by leading evidence of crimes “to include all other unspecified geographic locations”.¹⁹ In the CDF case Trial Chamber I recognised that it was unfair to allow the Prosecution to adduce factual allegations of crime within villages and towns not particularised in the Indictment, as “the Indictment in this respect is unspecific and vague”.²⁰ Consistent with this finding the Trial Chamber must strike out paragraphs 58, 60, 67, 68, 73, 74, and 83 of the RUF indictment as “unspecific and vague”.²¹ If the geographical specification, expressed in 24(f) of the CDF Indictment, limited to only the major highways in the southern and eastern Provinces of Sierra Leone, is vague and

responsibility incurred by the accused. If the prosecution intends to elicit evidence in relation to a particular count additional to that summarised in its Pre-trial Brief, specific notice must be given to the accused of that particular intention.” (citing *Brdjanin*, Form of Indictment Decision, *supra*, note 18, para. 62).

¹⁷ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 25. See also *Kvočka* Appeal Judgment, *supra*, note 19, para. 28.

¹⁸ *Brima et. al*, Trial Judgment, *supra*, note 18, paras. 37 and 38.

¹⁹ *Prosecutor v. Norman*, SCSL -04-14-T, Decision on Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, 3 February 2006, para. 8.

²⁰ *Ibid.*

²¹ *Prosecutor v. Sesay*, SCSL-04-15-T, Defence Request for Clarification on Rule 98 Decision, 7th November 2006.

unspecific, then the significantly larger geographical locations specified in the RUF Indictment (Kailahun, Port Loko, Bombali, and throughout or within the territory of Sierra Leone) are clearly problematic.

B. Evidentiary matters

1. Accomplice evidence

8. A witness who could face the same or similar criminal charges based on the same allegations as the Accused *may* be considered an accomplice.²² However, there is no requirement that in order to qualify as an accomplice, a witness must have been charged with a specific offence.²³ The Trial Chamber must approach accomplice evidence with caution.²⁴ The key consideration in a Trial Chamber's evaluation of accomplice evidence is whether the accomplice has an ulterior motive to testify as he did.²⁵ It is submitted that the principal Prosecution witnesses had ulterior motives, ranging from benefits proffered by the Prosecution investigators (monetary rewards for information)²⁶, and guarantees of immunity from Special Court prosecution (e.g. TF1-371) and hostility towards Sesay (e.g. TF1-045, TF1-361, TF1-362, TF1-366) for explicit and implicit reasons.

9. In each case the ulterior motives were manifested by false testimony designed and directed towards implicating Sesay in serious crime. This propensity for falsely implicating the first Accused was demonstrated through obvious untruths. Examples are

²² *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 127, in which reference is made to "the jurisprudence of the international criminal tribunals" without more.

²³ *Ibid.*

²⁴ *Ibid.*, para. 129.

²⁵ *Ibid.*, para. 128.

²⁶ ANNEX B: Prosecutor v. Sesay, SCSL-04-15-1161, Motion to Request the Trial Chamber to hear evidence concerning the Prosecution's Witness Management Unit and its payments to witnesses, 30 May 2008 and Addendum to the Motion, Prosecutor v. Sesay, SCSL-04-15-1166, 30 June 2008.

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footnoted below and will be referenced through the brief.²⁷ This evidence is indelibly tainted. Evidence from these witnesses ought not to be used as the basis for a conviction or against the Accused's interest – without the clearest corroboration.

2. Evidence of Consistent Pattern of Good Conduct: Adherence to RUF ideology: 6(1) and 6(3) responsibility and mens rea

10. There is a huge amount of evidence, from numerous and varied sources which demonstrates that the RUF was underpinned by an ideology, a significant part of which demanded the protection of civilians and the facilitation of their interests.²⁸ As noted by Prosecution and Defence witnesses the RUF had a strict policy against the harassment of civilians.²⁹

11. Logically, any individual who attempted to adhere to the RUF ideology, to any significant degree, could not have also shared a common plan to terrorise and punish the population from 1996 to 2001. The evidence shows that from 1991 onwards Sesay was instrumental in promoting this ideology in Kailahun and in other areas in which he was based. A fair assessment of both Prosecution and Defence evidence illustrates his predominant role in protecting civilians and facilitating their interests, based upon an adherence to the RUF ideology and the dictates of his own conscience. This is relevant to his alleged criminal responsibility in the following ways.

a) The RUF in Kailahun: Adherence to the ideology

12. This was Sesay's principal base during the conflict. The evidence shows that the RUF ideology was at its strongest in this District. There was enforcement of the

²⁷ For example, TF1-045/ Transcript 24 November 2005, pp. 30, line 15 – pp. 34, line 25; TF1-366/ Transcript 8 November 2005, pp. 54, line 11 – pp. 62, 12; TF1-263/ Transcript 6 April 2005, pp. 12, line 10 – pp. 16, line 13.

²⁸ For example, Exhibit 273; TF1-041/ Transcript 11 July 2006, pp. 11, line 16 – pp. 20, line 23.

²⁹ See, for example, TF1-314/ Transcript 4 November 2005, pp. 52, line 19 – pp. 55, line 16 and DIS-188/ Transcript 26 October 2007, pp. 39, line 22- pp. 41, line 21].

ideology and the breach of these laws was met with punishment across Kailahun District.

b) No joint enterprise to cause terror or to collectively punish in Kailahun

13. It is submitted that the Prosecution have failed to prove existence of a policy of terror or collective punishments in Kailahun. The premise, that the civilian population supported the elected government of Tejan Kabbah, must be reassessed – and rejected – along with the allegation that the RUF in Kailahun agreed to punish the population for this alleged support. In light of the RUF ideology and its implementation in the Kailahun District; the collaborative nature of the relationships between the RUF fighters and the civilians; the acts and conduct of the RUF in Kailahun and the selective nature of all the crimes alleged within Kailahun, it is submitted the evidence is incapable of supporting an inference that the purpose of the RUF in *this* District was to spread terror and/or collectively punish the Population.

c) Complete rebuttal of the requisite mens rea

14. The Accused Sesay can rely upon a huge body of evidence in support of his claim to have given a very significant amount of assistance to civilians throughout the conflict and during the indictment period. It is noteworthy that this evidence comes from both Prosecution and Defence witnesses and is factually and legally relevant to the charges. Sesay's name emerges time after time as the RUF Commander doing his best to protect civilians, before and throughout the conflict.

15. Issa Sesay's commitment to the welfare of civilians raises a reasonable doubt in relation to all of the crimes alleged. The Prosecution evidence is incapable of rebutting the evidence to prove any *mens rea* for the crimes alleged. Numerous witnesses have provided strong evidence on this matter. Equally persuasive as substantive testimony,

in this regard, is the sheer number of civilians who wished to give evidence on his behalf which included details of the positive effect of his efforts upon their standard of living at a time of great hardship.³⁰ It is not logical or fair to simply disregard this evidence as “character” evidence, relevant to sentence only. This must be taken into account in an assessment of his alleged criminal responsibility.

(1) Submission one: Rebuttal of mens rea

16. First, the sheer volume of these demonstrably virtuous acts, over such a long period of time, often in adverse circumstances, undermines any allegation that Sesay formed the *mens rea* for any of the enumerated crimes. The Accused is able to rely upon a broad range of acts which incorporate conduct which rebuts any notion that Sesay would have formed the *mens rea* for these offences. It is submitted that the breadth and frequency of the acts, within and outside the temporal framework of the indictment, when subjected to an application of the burden and standard of proof, is a powerful rebuttal of the *mens rea* for all the crimes and any criminal responsibility.

(a) Additional presumption in favour of the Accused

17. In the alternative, the evidence creates a presumption in relation to proof of the requisite *mens rea* for the commission of any charge in the Indictment. The more the evidence of his good acts towards civilians during the conflict, especially those which are linked in time and location to the alleged crime, the greater the presumption that the First Accused did not form the requisite *mens rea*. This is the only logical approach to the evidence.

18. The Defence contends that, whether or not Rule 93 was intended or not to only apply to the Prosecution, a fair trial demands that a consistent pattern of *good* conduct

³⁰ They include Prosecution witnesses TF1-041; TF1-078; TF1-141; TF1-174; TF1-263; TF1-314 and TF1-371.

be taken into account when an assessment is made concerning whether the Accused is criminally responsible for serious violations of criminal law. Rule 89 demands this minimum. It would be not only highly unfair, but also incoherent, to permit evidence of a consistent pattern of violations of international law to be used as proof of charges against an Accused but to deprive the Accused of the same means to prove his innocence, especially when the crimes alleged are said to reflect the habitual behaviour of all but a few. The burden of proof requires that this be taken into account when considering proof of *mens rea*.

(2) Submission two: Rebuttal of inference: agreement to join overarching criminal enterprise

19. Second, and in the alternative, this evidence proves that Sesay had not agreed to any policy to terrorise and collectively punish the population in the whole of Sierra Leone, from 1996 to 2001. The Defence agrees with the Prosecution that considerations which may be taken into account in determining whether the participation of the accused meets the standard, include “the size of the criminal enterprise, the functions performed, the position of the accused, the amount of time spent participating after acquiring knowledge of the criminality of the system, efforts made to prevent criminal activity or to impede the efficient functioning of the system, the seriousness and scope of the crimes committed”.³¹ Other factors include the zealotry or “gratuitous cruelty” or verbal expressions of criminal intentions.³²

20. In other words the body of evidence reflecting the benign exercise of Sesay’s functions; his efforts to prevent and punish crimes; his protection of civilians from the rigours of war; his widely-known reputation for civility towards civilians and his continued expressions and actions indicating disapproval of crimes stand as a powerful

³¹ *Prosecutor v. Sesay*, SCSL-2004-15-PT, Prosecution’s Pre-trial Brief, 13 February 2004, para. 325(c) quoting from the *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgement (Trial Chamber), 2 November 2001, paras. 309 and 311 (‘*Kvočka* Trial Judgment’).

³² *Ibid.*

rebuttal of the Prosecution's case that Sesay agreed and participated in a campaign to terrorise and collectively punish the civilian population. This substantial body of evidence stands in direct contrast to this claim.

(3) Submission Three: Assessment of contribution to the JCE

21. The body of evidence is relevant to an assessment of whether the Accused's participation in the criminal plan was significant enough to create criminal responsibility, for participation. In light of Sesay's contribution to civilian welfare the evidence of his alleged participation is not capable of proving that Sesay's contribution to the crimes was sufficient enough to prove participation in the criminal enterprise so as to give rise to liabilities pursuant to the JCE.

II. The Law of Armed Conflict as Applicable in the Sierra Leonean Civil War

A. Prosecution's attempt to criminalise war

22. It must be borne in mind throughout that the nature of International Humanitarian Law (hereinafter "IHL") and therefore the light in which every one of its rules and principles must be understood – is to regulate armed conflict, not to eradicate it. In brief, while allowing for the occurrence of armed conflict, IHL aims to *minimise* loss of life and property. It does not seek to entirely avoid such harm and damage, as this would be a deleterious objective in a situation which allows armed conflict.

23. The Prosecution's case - seeking to criminalise the totality of the RUF activities and all its interactions with civilians - must be resisted. The thesis propounded by the Prosecution that the RUF were prohibited in IHL from creating an alternative

administration to that of the “democratically” elected Kabbah Government; or were not permitted to provide laws, rules and regulations for all within RUF territory is not based in law. The RUF were not only entitled to organise the civilians and their activities within Kailahun and beyond, whether in the field of trade, farming, health services, and all aspects of civil society, they had a duty to act accordingly to ensure the health, safety and security of the civilians.

24. The Prosecution’s approach to the case involves alleging wholesale breaches of IHL, on the basis of the implementation of *any* rules governing civilian life under the RUF, including movement (e.g. G5 travelling passes), trade (e.g. commissions or contributions), forced communal labour (e.g. farming or carrying items with a corresponding penal enforcement mechanism), use of abandoned or civilian property (e.g. food or drugs), and implementation of security rules (e.g. screening), among many examples. This is based on a pre-conceived notion that any dissident group which attacks or takes over territory in a State is criminal. This approach is inconsistent with IHL, human rights law and common sense.

25. The RUF had rights and duties pursuant to a whole array of IHL rules which could not be evaded. It was required to provide *for civilians* and this required the use of civilian labour, communal food, abandoned medical supplies, civilian property and other civilian persons and property. The use of these items and persons was not prohibited but regulated by IHL.

B. Which parts of IHL apply in this conflict?

26. It is accepted that both the RUF and the Government of Sierra Leone were subject to the rights and duties which are contained in The Hague Regulations, the Geneva Conventions and both Additional Protocol I and II. The RUF had rights and duties analogous to those of the Government of Sierra Leone which are best described with reference to the Geneva Conventions and both Protocols. In these circumstances the

legal status of humanitarian law applied in much the same way as it would in an international conflict.

27. There are solid reasons, grounded in both logic and policy, to wish to erode the internal/international distinction: “Why protect civilians from belligerent violence, or ban rape, torture or the wanton destruction of hospitals, churches, museums or private property, as well as proscribe weapons causing unnecessary suffering when two sovereign States are engaged in war, and yet refrain from enacting the same bans or providing the same protection when armed violence has erupted “only” within the territory of a sovereign State?”³³

28. As noted in the *Tadic* case, “it cannot be denied that customary rules have developed to govern internal strife. These rules... cover such areas as protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, protection of those who do not (or no longer) take active part in hostilities, as well as prohibition of means of warfare proscribed in international armed conflicts and ban of certain methods of conducting hostilities”.³⁴ This means that civilians are protected by the fundamental guarantees, regardless of whether there is an international or internal conflict taking place.³⁵

29. There has also been a merging of the applicability of the provisions contained in each Protocol. Even though Additional Protocol II addresses internal conflicts, the ICTY Appeals Chamber held in *Prosecutor v. Tadic* that “it does not matter whether the ‘serious violation’ has occurred within the context of an international or an internal armed conflict”.³⁶ This means that civilians are protected by the fundamental

³³ *Prosecutor v. Dusko Tadic*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 97, (*Tadic* Jurisdiction Decision’).

³⁴ *Ibid*, para. 127.

³⁵ *Prosecutor v. Norman et al*, SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004, para. 18 (*Norman* Child Recruitment Decision’).

³⁶ *Ibid*, para. 18, citing *Tadic* Jurisdiction Decision, *supra*, note 55, para. 94.

guarantees, regardless of whether there is an international or internal conflict taking place.³⁷

30. It is submitted thus that the RUF and the Government of Sierra Leone were subject to the rights and duties which are contained in both the Conventions and both Additional Protocol I and II. The following ought also to be born into account when considering *the rights and duties* of the RUF and the alleged criminal responsibility of the first Accused.

1. Application of “international” rules to conflicts of “mixed” status

31. The case against all the Accused in the four trials is based upon the premise that, at the very least, the conflict had features common to both internal and international conflicts. The interference or direct involvement by Charles Taylor/Liberia gives rise to the real possibility that the an internal conflict co-existed with an international conflict³⁸ This mixture has previously been recognised as possible³⁹ and additionally as attracting – in addition to Common Article 3 – the regulation applicable to international armed conflicts, hence the Geneva Conventions a whole (or else the customary laws of war).⁴⁰

a) Law on treatment of civilians and civilian property

(1) Field of application

32. It is submitted that the RUF had adopted the role of an occupying force within Kailahun and also to a degree in other parts of Sierra Leone during the indictment

³⁷ *Norman Child Recruitment Decision, supra*, note 57 para. 18.

³⁸ *Tadic Jurisdiction Decision, supra*, note 55, para. 62.

³⁹ *Ibid.*

⁴⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, Jurisdiction and Admissibility, 1984 ICJ Rep. 392, para. 219.

period. Article 42 of the Hague Regulations provides the following definition of occupation: [t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”⁴¹ The question of when effective control has actually been achieved is therefore of vital importance in determining at what point occupying forces are obliged to maintain and restore law and order.

33. The International Committee of the Red Cross asserts that “There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation. Even a patrol which penetrates into enemy territory without any intention of staying there must respect the Conventions in its dealings with the civilians it meets.”⁴² According to Human Rights Watch, “Under customary international law, this duty begins once a stable regime of occupation has been established, but under the Geneva Conventions, the duty attaches as soon as the occupying force has any relation with the civilians of that territory, that is, at the soonest possible moment, a principle that finds reflection in U.S. military policy.”⁴³

34. For the purposes of this Convention – and the rights and duties – therein a state of occupation exists upon the individuals *falling into the hands* of the occupying force. In this respect the rights and duties pursuant to the Geneva Convention IV concerning individuals differs from its application under Article 42 of the Hague Regulations and

⁴¹ *Prosecutor v. Naletilic and Martinovic*, IT-98-34, Judgment (Trial Chamber), 31 March 2003, para. 215 (‘*Naletilic & Martinovic* Trial Judgment’).

⁴² Commentary Art. 6 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

<http://www.icrc.org/ihl.nsf/0/030537c0a8ee01dfc12563cd0042a6be?OpenDocument>

⁴³ “International Humanitarian Law Issues in a Potential War in Iraq”, Human Rights Watch Briefing Paper, February 20, 2003 <http://www.hrw.org/background/arms/iraq0202003.htm> Cf. Hague Regulation [Articles 42, 43]; Fourth Geneva Convention [Article 6]; ICRC Commentary on the Fourth Geneva Convention, p. 60 (“There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation. Even a patrol which penetrates into enemy territory without any intention of staying there must respect the Conventions in its dealings with the civilians it meets.”). The U.S. Army Field Manual also calls for applying the protections that relate to occupation “as far as possible in areas through which troops are passing and even on the battlefield.” (Field Manual, 27-10, p. 138, para. 352)

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does not depend upon the occupying force having actual authority.⁴⁴ In this respect – according to *Naletilic* – there are thus different tests to determine occupation depending upon whether the treatment of individuals or property is being considered.⁴⁵ It is noteworthy that the occupation of Kailahun during 1991 to 2001 would cross the threshold for both tests and thus the Convention becomes applicable.

35. The set of IHL rules which are of particular relevance are those relating to civilians in occupied territory. The international law of occupation is a body of rules designed to regulate the way in which an occupying power governs occupied territory.⁴⁶ Its objective is to provide a legal framework for occupying powers to meet the often conflicting interests of the occupant, the displaced sovereign, and the population of the occupied territory.⁴⁷ The main formal sources of the rules on occupied territory are the Fourth Geneva Convention and the Hague Regulations 1907. Geneva Convention IV constitutes a codification (but not an abrogation) of the relevant Hague Regulations and the rights and duties of the occupying power. Much of the wider body of rules dealing with occupied territory forms part of customary international law.

(2) *Substantive rules*

36. It is clear that, for good reasons, occupying powers have extensive rights, which permit a wide range of activities. Broadly speaking parties to a conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war, provided that certain basic protections of the person, religion, family

⁴⁴ *Naletilic & Martinovic* Trial Judgment, *supra*, note 67, para. 220, citing the Commentary to Geneva Convention IV *inter alia*, “The relations between the civilian population of a territory and troops advancing into a territory and, whether fighting or not, are governed by the present Convention. There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation.

⁴⁵ *Naletilic & Martinovic* Trial Judgment, *supra*, note 67, para. 222.

⁴⁶ C. Greenwood, “Book Review And Note: The International Law of Occupation By Eyal Benvenisti”, 90 *American Journal of International Law* 712 at 712.

⁴⁷ *Ibid.*

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rights, religion and custom are upheld.⁴⁸ In addition to acts necessary for military purposes, occupying powers may also “subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration”.⁴⁹

(a) The principle of distinction

37. It is well known that the principle of distinction between civilians and combatants is one of the bedrocks of international humanitarian law and hence central to a consideration of the rights, duties of the RUF and it is submitted the liability of the first Accused. The prohibition against attacking civilians stems from a fundamental principle of international humanitarian law, the principle of distinction, which obliges warring parties to distinguish *at all times* between the civilian population and combatants and between civilian objects and military objectives and accordingly to direct their operations only against military objectives.⁵⁰

38. Occupying powers do not acquire legal title to occupied territory. Instead they assume obligations as administrators of the territory during the period of occupation.⁵¹ When power passes to the occupier, the latter must “take all measures in his power to restore and ensure as far as possible public order and safety while respecting the laws in

⁴⁸ Convention Relative to the Protection of Civilian Persons in Time of War, The Fourth Geneva Convention, signed August 12, 1949 (hereafter ‘GC4’), art. 27(4).

⁴⁹ GC4, art. 64

⁵⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), adopted on 8 June 1977 (hereafter ‘AP1’), art. 48.

⁵¹ Consequently, sovereignty over occupied territory does not pass to the occupying power. This fundamental norm of international law was reaffirmed by the Security Council in the preamble to Resolution 1483 where specific mention is made of “the sovereignty and territorial integrity of Iraq” and “the right of the Iraqi people freely to determine their own political future and control their own natural resources”. See Resolution 1483 (2003), 22 May 2003 UN Doc. S/RES/1483 (2003)

force in the country.⁵² This obligation is contained in both treaty and customary law,⁵³ but does not arise until an occupying power has achieved effective control.⁵⁴

(b) Basic needs

39. As regards basic needs, the obligations and rights of occupying forces are considerable. They relate predominantly to food and medical concerns. Occupying powers have an obligation to ensure, to the fullest extent of the means available to them, the food and medical supplies of the population⁵⁵ as well as more general satisfaction of the medical needs of the civilian population.⁵⁶ This includes an active duty to bring in the necessary food stuffs, medical stores and other articles if the resources of the occupied territory are inadequate.⁵⁷ There is also a duty to ensure and maintain (with the cooperation of national and local authorities) the medical and hospital establishments and services, public health and hygiene in the occupied territory, to the fullest extent of the means available.⁵⁸

(c) Supply and requisition of property

40. Occupying powers are permitted to requisition foodstuffs or medical supplies available in the occupied territory⁵⁹ or material and stores of civilian hospitals⁶⁰ for use by the occupation forces and administration personnel, if the requirements of the

⁵² Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (hereafter, 'Hague Regulations'), art. 43; GC4, art. 27.

⁵³ Both the Hague Regulations GC4 have entered into custom. See, for example, also Timothy Bulman, "A Dangerous Guessing Game Disguised as Enlightened Policy: United States Law of War Obligations during Military Operations other than War" (1999) 159 *Military Law Review* 152

⁵⁴ Michael J. Kelly, *Restoring and Maintaining Order in Complex Peace Operations: The Search for a Legal Framework* (The Hague: Kluwer, 1999), p185.

⁵⁵ GC4, art. 55.

⁵⁶ AP1, art. 14.

⁵⁷ GC4, art. 55.

⁵⁸ GC4, art. 56.

⁵⁹ GC4, art. 55.

⁶⁰ GC4, art. 57.

civilian population have been taken into account.⁶¹ Similarly, civilian medical units, their equipment, their material or the services of their personnel can also be requisitioned if these resources are unnecessary for the provision of adequate medical services for the civilian population or for the continuing medical care of any wounded and sick already under treatment.⁶² Any such requisition is subject to the following particular conditions:⁶³ that the resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the armed forces of the Occupying Power or prisoners of war; that the requisition continues only while such necessity exists; and that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment who are affected by the requisition, continue to be satisfied.

41. In addition to the concerns over food and medicine, the occupying power is also obliged to ensure provision of the clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.⁶⁴ This must be carried out to the fullest extent of the means available and without any adverse distinction.⁶⁵

(d) Movement of persons

42. An Occupying Power “may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand”, provided that in doing so, to the greatest practicable extent, proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of families are not separated.⁶⁶ Similarly, imperative military reasons, can also justify displacement of the civilian population, provided that “all possible measures [are] taken in order that the

⁶¹ GC4, arts. 55 & 57.

⁶² AP1, art. 14 .

⁶³ AP1, art 14.

⁶⁴ AP1, art. 69. See also GC 4, art. 23.

⁶⁵ AP1, art. 69.

⁶⁶ GC4, art 49.

civilian population may be received under satisfactory condition of shelter, hygiene, health, safety and nutrition”.⁶⁷ Whilst only strictly applicable to states, it may be argued by analogy that protected persons may be prevented from leaving the territory at the outset of, or during a conflict if their departure is contrary to the armed group’s interests.⁶⁸

(e) Legal system

43. The occupying power must respect the laws and customs in force in the territory at the commencement of the occupation, “unless absolutely prevented”.⁶⁹ Thus the RUF were expected to continue to apply the relevant pre-existing domestic law as a source of rights and obligations.⁷⁰ For example the RUF were obliged to give effect to the definition of forced labour within the Sierra Leonean Constitution whereby the definition of forced labour specifically excludes communal labour.⁷¹

(f) Public Property

44. Destruction of real or personal property, whether privately or publicly owned is permissible if such destruction absolutely necessary for the purposes of military operations.⁷² Public property generally passes to the occupant, either absolutely or by way of a right of usufruct (literally a right to use the fruits of the property without consuming the property itself).⁷³ Whether privately or publicly owned, any appliance “adapted for the transmission of news, or for the transport of persons or things” as well

⁶⁷ AP2, art 17.

⁶⁸ GC4, art 35.

⁶⁹ Hague Regulations, art. 43.

⁷⁰ See GC4, art. 64.

⁷¹ The Constitution of Sierra Leone, 1991, chap III, 19 (1)(e)

⁷² GC4, art. 53.

⁷³ Hague Regulations, arts 52 and 53.

as depots of arms all kinds of munitions of war may be seized but must be restored and compensation fixed when peace is made.⁷⁴

(g) Private Property

45. The right to seize or requisition private property is more limited.⁷⁵ Non-military private property may however, under certain limitations, be requisitioned for the needs of the army of occupation and it is unlawful for an occupant to strip the property of occupied territory for the benefit of the occupant's own people or economy.⁷⁶

(h) Taxes/other financial contributions

46. The occupying power may collect the taxes, dues, and tolls usually imposed for the benefit of the State.⁷⁷ Other money contributions may also be levied, but only for the needs of the army or of the administration of the territory in question.⁷⁸ All collections must be carried out "under a written order, and on the responsibility of a commander-in-chief";⁷⁹ carried out as far as is possible, in accordance with the rules of assessment and incidence in force.⁸⁰ A receipt shall always be given to the contributors.⁸¹

(i) Labour

47. The Occupying Power has a right to remove public officials from their posts.⁸² Requisitions in kind and services can be demanded from municipalities or inhabitants,

⁷⁴ Hague Regulations, art. 53

⁷⁵ Hague Regulations, arts. 52 and 53.

⁷⁶ Hague Regulations, art. 52

⁷⁷ Hague Regulations, art. 48.

⁷⁸ Hague Regulations, art. 49

⁷⁹ Hague Regulations, art. 51.

⁸⁰ Hague Regulations, art. 48 and 51.

⁸¹ Hague Regulations, art. 51.

⁸² GC4, art .51.

but only for the needs of the army of occupation.⁸³ Such demands must be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.⁸⁴ In addition, such requisitions and services shall only be demanded on the authority of the commander in the locality occupied and a receipt must be given.⁸⁵

48. The occupying power can compel protected persons to work,⁸⁶ subject to fulfilment of the following conditions. Compulsion may be only to the same extent as nationals of the Party to the conflict in whose territory they are.⁸⁷ Protected persons of enemy nationality may only be compelled to do work which is normally necessary to ensure the basic needs and not for the purposes of military operations⁸⁸ protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers.⁸⁹ Those compelled must be over eighteen years of age.⁹⁰ The only work which can be compelled is that which is necessary either for the needs of the army of the occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country.⁹¹ The work must be carried out only in the occupied territory where the persons whose services have been requisitioned are⁹² payment of a fair wage.⁹³ The work must be proportionate to their physical and intellectual capacities.⁹⁴

(3) Conclusion: RUF's rights and duties

⁸³ Hague Regulations, art. 52.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ GC4 Art 40

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ GC4, art. 40

⁹⁰ GC4, art. 51

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

49. The Defence submits that the aforementioned rights and duties must be taken into account when considering whether particular activities amounted to crimes and whether Sesay should be held criminally liable for his own actions or those of others within the RUF.

b) The principle of military objectives: effective contribution

50. A widely accepted definition of military objectives is that given by Article 52 of Additional Protocol I as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the *circumstances* ruling at the time, offers a definite military advantage”.⁹⁵ This is a broad definition which must be applied widely within the context of the conflict in Sierra Leone where military action was centred in towns and villages, where territory was the goal of the combat and where the warring factions made use of a wide array of items to advance their military cause. It is submitted that the Trial Chamber must interpret this widely. Some items were by their nature of military importance, e.g., tanks, munitions stores, and army barracks.

51. Many objects within the Sierra Leone conflict (and because of the nature of the conflict) whilst in them selves normally harmless came to make an effective contribution to military action because it was used by enemy forces or simply because their location gave them a military importance. It is submitted that within the context of this type of land warfare, where military gains was characterised by gaining possession of towns and villages within the particular circumstances of this conflict the type of objects which could make an effective contribution to military action was many and wide; including houses, towns, villages, roads, bridges, government vehicles, military

⁹⁵ This is repeated verbatim in several subsequent instruments (Protocols II and III, Annexed to the 1980 Conventional Weapons Convention; 1999 Second Protocol to the Hague Cultural Property Convention. Also reiterated in the (non-binding) San Remo Manual of 1995 on International Law Applicable to Armed Conflicts at Sea) and is largely regarded as embodying customary international law.

vehicles, government stores, abandoned properties including food and clothes. The circumstances must be examined closely before a conclusion of non military objectives can be drawn.

(1) “in the circumstances ruling at the time”

52. This element in the definition requires that a determination of whether specific objects constitute military objectives must be made within the context of the prevailing circumstances. The Trial Chamber must not simply conclude in the abstract (e.g., ‘a bridge is a military objective’; ‘an object located in the zone of combat is a military objective’, etc.). Instead, the Trial Chamber must determine whether, say, the destruction of a particular bridge, which would have been militarily unimportant yesterday, does, in the circumstances ruling today, now offer a ‘definite military advantage’: if so, the bridge now constitutes a military objective and, thus, may be destroyed.⁹⁶

(2) Defended objects are military

53. The real test in land warfare is whether a given place, inhabited by civilians, is actually defended by military personnel. Should that be the case, the civil object becomes – owing to its use – a military objective. The criterion of the defence of an otherwise civilian object is highlighted in Article 25 of the Hague Regulations. The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.⁹⁷ Article 8(2)(b)(v) of the Rome Statute brands as a war crime, “Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives”.

⁹⁶ F. Kalshoven, *Belligerent Reprisals* (Leiden: Nijhoff, 1971), p.111.

⁹⁷ Hague Regulations, art. 25.

(3) Defended localities are military

54. The addition of the words “and which are not military objectives” to the original Hague formula are significant insofar as they appear to denote that some undefended civilian habitation may constitute military objectives. Article 59(1) of Additional Protocol I also states that “[i]t is prohibited for the Parties to the conflict to attack, by any means whatsoever, non-defended localities”. In other words it is the Hague criterion which is employed: if a place is defended it may be attacked. Article 59(1) and its use of the term “localities” suggests that the analysis should be in reference to areas which, whilst narrower than cities or towns, are substantially larger than single buildings.⁹⁸

55. It is obvious that any building which is sheltering combatants becomes a military objective. In cases which fierce fighting may be conducted from house to house, a whole city block or section may be regarded as a single military objective; partly by (actual) use and partly by purpose (namely potential use). The fact that, in the meantime, a given building within the block or section is not yet occupied by a military unit is immaterial. The reasonable expectation is that, as soon as the tide of battle gets nearer, it would be converted into a military stronghold. Hence it may be bombarded even before this occurs.⁹⁹

(4) Conclusions

56. The Prosecution must prove that the Mr. Sesay not only attacked a civilian but that in the given circumstances a reasonable person could not have believed that the

⁹⁸ The notion of military targets as being predicated upon whether it is defended – is furthered by the remainder of Article 59 of AP I, which provides for a belligerent to declare any inhabited place “near or in a zone where armed forces are in contact” as “non-defended” thus enabling the place to be kept safe from attack. The conditions which must be adhered to pursuant to the declaration include the removal of all “combatants, as well as mobile weapons and mobile military equipment” and the cessation of hostilities within the locality.

⁹⁹ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, (New York: Cambridge University Press, 2004), pp. 100.

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individual he or she attacked was a combatant.¹⁰⁰ The Prosecution must prove that Mr. Sesay not only attacked a civilian object but that it was *not* reasonable for him to believe, in the circumstances of the person contemplating the attack, including the information available to him, that the object was being used to make an effective contribution to military action.¹⁰¹ This analysis must take into account that the military advantages which may accrue from an attack must be viewed contextually and from a long and short term perspective.

C. Law applicable to Article 2 of the SCSL Statute – Crimes against humanity: counts 3, 4, 6, 7, 8, 11, 13 & 16

1. Chapeau requirements

57. The Prosecution must prove

- a. the occurrence of an “attack”
- b. that the attack was either widespread or systematic¹⁰²
- c. that the attack was directed against a civilian population.¹⁰³
- d. the existence of a “nexus” between the alleged crime and the attack¹⁰⁴
- e. that the accused had knowledge of the attack and the way in which his actions were part thereof.¹⁰⁵

58. It should be noted that these requirements relate to the context, not the act itself: it is the attack, not the individual acts, which must be widespread or systematic.¹⁰⁶ Likewise, it is the attack, not the individual acts, which must be directed against the target population.¹⁰⁷

¹⁰⁰ *Galic* Trial Judgment, *supra*, note 79, para. 55.

¹⁰¹ *Ibid*, paras. 51 and 52.

¹⁰² *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, Judgement (Trial Chamber I), 3 April 2008, , para. 103, (*‘Haradinaj et al* Trial Judgment’); *Prosecutor v. Dragomir Milosevic*, IT-98-29/1-T, Judgement (Trial Chamber III), 12 December 2007, para. 916 (*‘D. Milosevic* Trial Judgment’).

¹⁰³ *Haradinaj et al* Trial Judgment, *ibid*.

¹⁰⁴ *Haradinaj et al* Trial Judgment, *ibid*; *D. Milosevic* Trial Judgment, *supra*, note 135, para. 916.

¹⁰⁵ *Ibid*.

¹⁰⁶ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 120.

¹⁰⁷ *Prosecutor v. Mrksic, Radic and Sljivancanin*, IT-95-13/1-T, Judgement (Trial Chamber II), 27 September 2007, para. 439; *Prosecutor v. Martic*, IT-95-11-T, Judgement (Trial Chamber I), 12 June 2007, para. 49 (*‘Martic* Trial Judgment’).

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a) “Attack”

59. In order to prove the occurrence of an attack, the Prosecution must establish
- a. the occurrence of a campaign, operation or course of conduct,¹⁰⁸
 - b. which involved mistreatment of a civilian population and violence¹⁰⁹
 - c. which amounts to an unlawful act of the kind enumerated in Articles 3(a) to (h) of the Statute¹¹⁰ and
 - d. that physical or mental injury was caused.¹¹¹

b) “Widespread or systematic”

60. In the context of a crime against humanity, an attack must be “widespread” or “systematic” but need not be both.¹¹²

(1) “widespread”

61. In order to establish that a given attack was “widespread”, the Prosecution would be required to prove that
- a. the attack was on a massive or large-scale
 - b. the attack was directed to sufficient victims

62. The term “widespread”, in the context of an attack alleged to constitute the context of a crime against humanity denotes “massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed to multiple victims”.¹¹³ As to the latter, it is clear that the number of victims forms part of the legal

¹⁰⁸ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 111, citing *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-T, Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98, 31 March 2006, para. 42 (*Brima et al.*, Rule 98 Decision’).

¹⁰⁹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 111; *Prosecutor v. Vasiljevic*, IT-98-32, Judgment (Trial Chamber II), 29 November 2002, para. 29 (*Vasiljevic* Trial Judgment’); *Brima et al.*, Rule 98 Decision’, *ibid*, para. 42(a).

¹¹⁰ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, “Prosecution’s Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (under Rules 54 and 73 *bis*) of 13 February 2004”, 27th February 2004, para. 184.

¹¹¹ *Haradinaj et al* Trial Judgment, *supra* note 135, para. 104; *Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (Trial Chamber I), 27 September 2006, para. 706 (*Krajisnik* Trial Judgment): “An attack is formed of conduct causing physical or mental injury, as well as acts preparatory to such conduct”.

¹¹² *D. Milosevic* Trial Judgment, *supra* note 135, para. 925; *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 112.

¹¹³ *Akayesu* Trial Judgment, *supra*, note 63, para. 580.

conditions for the existence of a widespread attack.¹¹⁴ The lack of absolute or specific numerical requirement must not be interpreted as diminishing the importance of the number of victims in finding that a particular attack was “widespread”. However, it should be noted that an attack may be widespread by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude”¹¹⁵

(2) “systematic”

63. In order to establish that an attack was “systematic”, the Prosecution must prove that

- a. the attack constituted of acts of violence which were organised;¹¹⁶
- b. it would be improbable for such an attack to occur randomly;¹¹⁷

64. The existence of patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – is a common expression of a systematic occurrence.¹¹⁸ In the context of a long running civil war, involving thousands of combatants and civilians, the Prosecution must demonstrate “organised action following a regular pattern”¹¹⁹ and “[p]atterns of crimes - that is the non-accidental repetition of similar criminal conduct on a regular basis”¹²⁰, in order to establish the systematic nature of an attack in the absence of these characteristics.

(a) Assessment of facts pertaining to the “widespread or systematic” requirement

¹¹⁴ “Denotes “massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed to multiple victims” - ‘*Brima et al.*, Rule 98 Decision’, *supra*, note 141, para. 42(b); “a finding of widespreadness, which refers to the number of victims”. See also *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 112.

¹¹⁵ *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Judgement (Trial Chamber I), 17 January 2005, para. 545.

¹¹⁶ *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 105; *D. Milosevic* Trial Judgment, *supra*, note 135, para. 925; *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 112.

¹¹⁷ *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 112; *Blaskic* Appeal Judgment, *supra*, note 19, para. 101.

¹¹⁸ *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 112.

¹¹⁹ *Brima et al.*, Rule 98 Decision’, *supra*, note 141, para. 42(b); *Akayesu* Trial Judgment, *supra*, note 63, para. 580.

¹²⁰ *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 112.

65. The assessment of whether an attack is widespread or systematic is essentially a relative exercise in that it depends upon the civilian population allegedly being attacked.¹²¹ A Trial Chamber must first identify the population which is the object of the attack, then, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic.¹²² Factors to consider include, but are not limited to, consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities and any identifiable patterns of crimes.¹²³

66. Two factors have been considered especially relevant regarding the characterisation of an attack as “systematic”: the existence of a plan or policy¹²⁴ and patterns of crimes, or the non-accidental repetition of similar criminal conduct on a regular basis.¹²⁵

c) “directed against any civilian population”

67. In order to establish that a given attack was directed against a civilian population, the Prosecution must prove

- a. that the entity affected by the attack was within the definition of a “population”
- b. that the attack was “*directed against*” the population
- c. that the population concerned is of a “*civilian character*”¹²⁶
- d. the invalidity of various objections to the population’s protected status

¹²¹ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 926, citing *Kunarac* Appeal Judgement, para. 95; *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 112.

¹²² *D. Milosevic* Trial Judgment, *supra*, note 135, para. 926.

¹²³ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 112.

¹²⁴ *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 105, citing *Kunarac et al. Appeal Judgement*, paras 98, 101; *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1-A, Judgement (Appeal) 12 June 2002, para. 98 and footnote 114, with long discussion of conflicting authorities. para. 98: “neither the attack nor the acts of the accused needs to be supported by any form of ‘policy’ or ‘plan’ [...] It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was in fact a policy or plan, but it may be possible to prove these things by reference to other matters.” *Blaskic* Appeal Judgement, paras 100, 120. While there had previously been some uncertainty in the jurisprudence of the ICTY and IC1R, this was resolved by the *Kunarac et al. Appeal Judgement*.

¹²⁵ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 112.

¹²⁶ *Haradinaj et al* Trial Judgment, *supra*, note 135; *D. Milosevic* Trial Judgment, *supra*, note 135, para. 916.

(1) Was the attack directed against a civilian population?

68. The Prosecution must prove that the attack was directed against a civilian population. There is an absolute prohibition on targeting civilian populations but there are situations in which *civilians* can be the object of attacks. The Prosecution must prove, at a minimum, that enough individuals were targeted in the course of the attack or that they were targeted in such a way as to satisfy the Trial Chamber that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.¹²⁷ Second, a civilian population can be targeted providing that this targeting is incidental. The Prosecution must prove that the civilian population was the primary target of the attack, rather than the incidental target.¹²⁸ The Prosecution must therefore establish beyond a reasonable doubt that the target was *not* military but was a civilian population. This means that the Prosecution must prove that the population attacked was civilian¹²⁹ and that the primary target of the attack was the civilian population.

69. This means that the Trial Chamber must be satisfied that the civilians were not attacked as a result of being within a defended target (see Part II above); were not

¹²⁷ *Blaskic* Appeal Judgment, *supra*, note 19, para. 105; ‘*Martić* Trial Judgment’, *supra*, note 140, citing *Kunarac et al.* Appeal Judgment, para. 90. The Appeals Chamber also held (para. 91) that: [i]n order to determine whether the attack may be said to have been so directed, the Trial Chamber will consider, inter alia, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.

¹²⁸ *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 299; *D. Milosevic* Trial Judgment, *supra*, note 135, para. 921.

¹²⁹ A key preliminary matter relates to burden of proof. It has been asserted that the IHL provision “[i]n case of doubt whether a person is a civilian, that person shall be considered to be a civilian” (Article 50, paragraph 1, of Additional Protocol I, second sentence) should lead to a reduction in the burden placed upon the Prosecutor as regards this element. This issue has now been clarified by the ICTY Appeals Chamber: “the imperative “in case of doubt” is limited to the expected conduct of a member of the military.” However, when the latter’s criminal responsibility is at issue, the burden of proof as to whether a person is a civilian rests on the Prosecution.” (See *Blaskic* Appeal Judgment, *supra*, note 19, para.111, emphasis added).

attacked as a result of an attack which made an effective contribution to the military action or which provided a military advantage; or were not collateral victims of military attacks (for example had lost their protected status by being being situated in a military objective e.g., place where weapons are stored/made) or due to the failure of combatants nearby/among them to distinguish themselves from those with civilian status

70. Civilians include those who have taken no active part in the hostilities.¹³⁰ Second, civilian status is also accorded to persons who have been, but are no longer, taking part in hostilities.¹³¹ Under this broad conception, the former includes all who are not members of the armed forces at the time or otherwise recognised as combatants¹³² (e.g., resistance fighters)¹³³ – i.e., all who are not taking active part in the hostilities. Assessment of whether civilian status is fulfilled in a particular instance is assessed on the basis of the specific situation of the victim at the time the crimes are committed”.

***(2) Assessment of facts as to the question of whether
“directed against a civilian population”***

71. The assessment of whether a civilian population was the primary object of attack, may refer, *inter alia*, to the following factors:¹³⁴ In order to determine whether the attack may be said to have been so directed, the Trial Chamber will consider, *inter alia*, the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war

¹³⁰ See *Prosecutor v. Musema*, ICTR-96-13-A, Judgement and Sentence (Trial Chamber I), 27 January 2000, para. 207 (‘*Musema* Trial Judgment’).

¹³¹ *Prosecutor v. Blaskic*, IT-95-14-T, Judgement (Trial Chamber), 3 March 2000, paras. 208-13.

¹³² *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 116.

¹³³ *Ibid.*

¹³⁴ *D. Milosevic* Trial Judgment, *supra*, note 135.

provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.¹³⁵

72. It has been held that the “directed against” requirement would not be fulfilled:
- a. Where the “evidence [...] indicates that the victims may have been targeted primarily for reasons pertaining to them individually rather than them being members of the targeted civilian population”,¹³⁶ for example when individuals are targeted due to being perceived as collaborators rather than a larger group of civilians.¹³⁷
 - b. When “the Trial Chamber has heard evidence on a relatively small number of incidents”¹³⁸ and the “evidence is often insufficiently precise to conclude who was or were responsible for the incidents and whether they formed part of a larger attack against a civilian population.”¹³⁹
 - c. When civilians left the locality or their homes out of fear due to armed conflict”¹⁴⁰
 - d. When the Prosecution had failed to exclude personal motives, such as animosity among the factions which may have caused individuals belonging to one faction to act violently against individuals belonging to the other out of personal anger rather than in a structured or organized manner.¹⁴¹

d) Nexus with between alleged crime and attack

73. The Prosecution must prove that the acts constituting the alleged crime are objectively part of the attack.¹⁴² This means “commission of an act which, by its nature

¹³⁵ *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23/1-A, Judgement (Appeals Chamber), 12 June 2002, para. 91.

¹³⁶ *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 114.

¹³⁷ *Ibid*, para. 122.

¹³⁸ *Ibid*, para. 118.

¹³⁹ *Ibid*, para. 118.

¹⁴⁰ *Ibid*, para. 120.

¹⁴¹ *Ibid*, para. 120.

¹⁴² *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 108, citing *Kunarac et al*. Appeal Judgment, *supra* note 171, para. 100.

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or consequences, is objectively part of the attack.”¹⁴³ An isolated act does not fulfil the objective nexus requirement.¹⁴⁴ An act would be considered “isolated” when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.¹⁴⁵

74. The Prosecutor has the burden of proving three aspects of mental state of the accused, which must have existed at the time of commission of the alleged crime against humanity.

- a. First, it must be proven that the accused knew that that his or her acts were part of an attack.¹⁴⁶
- b. Second, the Prosecutor must prove that the accused had knowledge of the widespread or systematic nature of the attack.¹⁴⁷
- c. Third the accused must also have known that the attack was directed against a civilian population.¹⁴⁸

75. Each of these requirements may be fulfilled by actual or constructive knowledge.¹⁴⁹ Evidence of knowledge depends on the facts of a particular case. The manner in which this legal element may be proved may therefore vary from case to case.¹⁵⁰

76. While it has been stated that the accused does not need to have knowledge of all of the detail of the entire attack¹⁵¹ this should be interpreted in line with the

¹⁴³ *Fofana et al.*, Trial Judgment, *supra*, note 2, para. 120, citing *Kunarac et al.* Appeal Judgment, *supra* note 171, para. 99.

¹⁴⁴ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 919, citing *Kunarac et al.* Appeal Judgment, *supra* note 171, para. 100.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Haradinaj et al* Trial Judgment, *supra*, note 135, paras. 103 and 109; *Kunarac et al.* Appeal Judgment, *supra* note 171, para. 99

¹⁴⁷ *Kunarac et al.* Appeal Judgment, *supra* note 171, paras. 85 and 99.

¹⁴⁸ *Haradinaj et al* Trial Judgment, *supra*, note 135, paras. 103 and 109; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-A, Judgement (Appeals Chamber), 17 December 2004, paras. 99-100.

¹⁴⁹ *Prosecutor v. Sesay, Kallon and Gbao*, Decision on defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 8, lines 13-16.

¹⁵⁰ *Fofana et al.*, Trial Judgment, *supra*, note 2, para. 121.

¹⁵¹ *Kunarac et al.* Appeal Judgment, *supra* note 171, para. 102; *Prosecutor v. Marques et al.*, Special Panel for Serious Crimes, East Timor, Judgment, 11 December 2001, paras. 640-641.

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jurisprudence as nevertheless requiring a considerable level of knowledge. The accused needs to understand the overall context in which his acts took place.¹⁵² A crime against humanity may be committed for purely personal reasons.¹⁵³ It should also be noted that, in line with the fact that the chapeau elements pertain to the attack, not the individual acts, it is irrelevant whether the accused intended his act to be directed against the targeted population or merely against his victim.¹⁵⁴ Indeed, there is no requirement that he approve of the context in which his acts occurred or share the purpose or goal behind the attack.¹⁵⁵

2. Specific crimes

a) Count 3: SCSL Statute, Article 2(b) – Extermination

77. The Prosecution must prove:

- a. occurrence of a mass killing¹⁵⁶
- b. the accused must have been responsible for the death of one or more persons by any means.¹⁵⁷
- c. a nexus between accused's killing/s and the mass killing (killing must have itself constituted or, alternatively, have been part of or contributed to the mass killing of members of a civilian population)¹⁵⁸
- d. intent to kill at least one person
- e. knowledge of the nexus

(1) Mass killing

78. “Mass”, for these purposes, means “large scale”.¹⁵⁹ “[T]he material element of extermination is the mass killing of a substantial number of civilians”; it is “mass

¹⁵² *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 121

¹⁵³ *Kordic and Cerkez* Appeal Judgment, *supra*, note 185, para. 99.

¹⁵⁴ *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 121; *Prosecutor v. Limaj, Bala and Musliu*, IT-03-66-T, Judgement (Trial Chamber II), 30 November 2005, para. 190.

¹⁵⁵ *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 121; *Kunarac et al.* Appeal Judgment, *supra* note 171, paras 102-103.

¹⁵⁶ *Martic* Trial Judgment, *supra*, note 140, para. 62.

¹⁵⁷ *Brima et al.*, Rule 98 Decision', *supra*, note 141, para. 73.

¹⁵⁸ ICC Elements of Crimes, article 7(1)(a); *Brima et al.*, Rule 98 Decision', *supra*, note 141, para. 73.

murder”.¹⁶⁰ While the mass or large scale characteristic of the killings refers to the number of victims, it does not suggest a numerical minimum. Instead, the question of whether the requirement of the killing’s “mass” or “large scale” nature is fulfilled must be determined on a case-by-case basis using a common-sense approach.¹⁶¹

(2) Nexus/link between act of killing/death and mass killing

79. It must be established that the act or omission which fulfils the requirements for the crime of murder form part of a mass killing event/part of a widespread or systematic attack against any civilian population.¹⁶² An “event” exists when the (mass) killings have close proximity in time and space”¹⁶³ The Prosecution must therefore prove that the act of the Accused was closely annexed to and took part within this context. The link between the mass killing event and the act of the Accused must be closely linked in time and geography and sufficiently scrutinised so that the distinction between murder and extermination (as a crime against humanity) is maintained – without the link the offence would be murder.

80. The Prosecution need not prove a discriminatory intent.¹⁶⁴ However “the very term extermination strongly suggests that the commission of massive crime, which in turn assumes a substantial degree of preparation and organisation”.¹⁶⁵ The Prosecution must therefore prove that “that a particular population was targeted”,¹⁶⁶ notwithstanding that it need not be on a discriminatory basis. The Prosecution must prove and identify the population which was the target of the mass killing which forms the context of the

¹⁵⁹ *Prosecutor v. Kayishema & Ruzindana*, ICTR-95-1-T, Judgement (Trial Chamber), 21 May 1999, para. 145.

¹⁶⁰ *Blagojevic & Jokic*, Trial Judgment, *supra*, note 148, para 571.

¹⁶¹ *Kayishema & Ruzindana* Trial Judgment, *supra* note 196, para. 145.

¹⁶² *Ibid*, para. 144.

¹⁶³ *Ibid*, para. 147.

¹⁶⁴ *Prosecutor v. Krstic*, IT-98-33-T, Judgement (Trial Chamber), 2 August 2001, para. 500

¹⁶⁵ *Ibid*, para. 501.

¹⁶⁶ *Ibid*, para. 503.

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alleged acts of the accused. It follows that the Trial Chamber would need to be sure that the victim forms part of the target group.¹⁶⁷

(3) *Mens rea*

81. The Prosecutor must prove two elements of *mens rea*. The first relates to the act of killing as carried out by the accused himself, and is simply an incorporation of the requirement for the crime of murder (see below).¹⁶⁸ Second, the accused must have had knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed¹⁶⁹

b) Counts 4 & 16: SCSL Statute, Article 2(a) – Murder (as CAH)

82. The Prosecution must prove¹⁷⁰

- a. that the victim has died.¹⁷¹
- b. death was caused by an act or omission (if there was a legal duty to act, as with all omission liability) of the accused
- c. prove either intent¹⁷² to kill the victim or intent to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death.¹⁷³

¹⁶⁷ The Prosecution has argued that “it is not necessarily a requirement for the Prosecution to adduce conclusive evidence, not only relating to the number, but also concerning the identity of the victim as well as the reason for this murder.” *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, “Prosecution’s Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (under Rules 54 and 73bis) of 13 February 2004”, 27 February 2004, para. 195.

¹⁶⁸ *Vasiljevic* Trial Judgment, *supra*, note 142, para. 229; *Sesay et al*, Rule 98 Decision, *supra*, note 186, p. 17.

¹⁶⁹ *Vasiljevic* Trial Judgment, *supra*, note 142, para. 229.

¹⁷⁰ *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 124

¹⁷¹ *Ibid.*

¹⁷² *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 124.

¹⁷³ *Krstic* Trial Judgment, *supra*, note 201, para. 485.

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c) Counts 6 & 7: SCSL Statute, Article 2(g) – Rape, sexual slavery, any other form of sexual violence

83. Article 2(g) provides for 5 distinct crimes against humanity, each of which is of a sexual nature:¹⁷⁴ rape, sexual slavery, enforced prostitution, forced pregnancy, any other form of sexual violence.

(1) Rape (count 6)

84. The Prosecution must prove
- a. occurrence of sexual penetration in the absence of the victim's consent¹⁷⁵
 - b. that the accused intended the sexual penetration¹⁷⁶
 - c. that the accused knew of the victim's lack of consent¹⁷⁷

(a) Absence of victim's consent

(i) Means of implying lack of consent

85. The Prosecution have to prove a lack of consent. This may be proven through the circumstances, as opposed to proof an *explicit* refusal of consent. The Prosecution have to prove that true consent in those circumstances was not possible or that any consent was negated as a consequence.¹⁷⁸ Consent cannot be inferred (i) by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent; (ii) by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent; (iii) by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence.¹⁷⁹

(b) Relationship between non-consent and use/threat of force

¹⁷⁴ *Brima et. al*, Appeal Judgment, para.102.

¹⁷⁵ *Haradinaj et al* Trial Judgment, *supra*, note 135, para. 130.

¹⁷⁶ *Kunarac et al*. Appeal Judgment, *supra* note 171, para. 127.

¹⁷⁷ *Sesay et al*, Rule 98 Decision, *supra*, note 186, pp. 21-22.

¹⁷⁸ *Kunarac et al*. Appeal Judgment, *supra* note 171, para. 132.

¹⁷⁹ Rule 96 SCSL RPE. See also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, "Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (under Rules 54 and 73bis) of 13 February 2004", 27 February 2004, para. 205.

86. While force or threat of force is not *per se* an element of rape, it may be evidence of non-consent.¹⁸⁰

(2) Sexual slavery (count 7)

87. The Prosecution must prove:

- a. that victims were caused to engage in one or more acts of a sexual nature¹⁸¹
- b. that any or all of the powers attaching to the right of ownership were exercised of over one or more persons¹⁸²
- c. that the accused intended to exercise the powers attaching to the right of ownership over a person.¹⁸³
- d. the exercise of any or all of the powers attaching to the right of ownership over one or more persons. The threshold is high, as indicated by the established examples of these powers: purchasing, selling, lending, or bartering such a person or persons, or imposing on them a similar deprivation of liberty.¹⁸⁴

d) Counts 8 & 11: SCSL Statute, Article 2(i) – Other inhumane acts

88. The Prosecution must prove

- a. infliction of suffering of the requisite level/seriousness
- b. that the accused was aware of the factual circumstances that established the character/gravity of the act¹⁸⁵

¹⁸⁰ *Kunarac et al.* Appeal Judgment, *supra* note 171, paras. 129 - 130.

¹⁸¹ *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 109.

¹⁸² *Brima et. al.*, Appeal Judgment, *supra*, note 3, para. 102; *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 109. This requirement differentiates sexual slavery from other forms of sexual violence: it is the status or condition of being enslaved which gives rise to sexual slavery, as opposed to other forms of sexual violence.

¹⁸³ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, “Prosecution’s Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (under Rules 54 and 73bis) of 13 February 2004”, 27 February 2004, para. 212.

¹⁸⁴ *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 109.

¹⁸⁵ *Brima et. al.*, Appeal Judgment, *supra*, note 3, para. 198.

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- c. that the accused intended to commit the inhumane act or acted in the reasonable knowledge that this would likely occur¹⁸⁶

(1) Infliction of suffering of requisite level

89. The Prosecution must prove infliction of suffering of the requisite level. This is serious injury to body or to mental or physical health¹⁸⁷ or suffering which constituted a serious attack on human dignity¹⁸⁸ and must, moreover, be “sufficiently similar in gravity to the acts referred to in Article 2.a to Article 2.h of the Statute”.¹⁸⁹

(2) Mens rea

90. The Prosecutor must prove

- a. that the Accused was aware of the circumstances which establish the character of the gravity of the act¹⁹⁰
- b. and that at the time of the act or omission the Accused intended to commit the inhumane act or acted in the reasonable knowledge that this would likely occur.¹⁹¹

**e) Count 13: SCSL Statute, Article 2(c) -
Enslavement**

91. The Prosecution must prove:

- a. exercise of any or all of the powers attaching to the right of ownership over person(s) over the alleged victim¹⁹²
- b. the lack of consent of the victim (iii)
- c. that the accused intended to exercise of such powers or acted in the reasonable knowledge that they would be exercised

¹⁸⁶ *Fofana et. al*, Trial Judgment, *supra*, note 2, para.150. See also, *Sesay et al*, Rule 98 Decision, *supra*, note 186, p. 23.

¹⁸⁷ *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 198; *D. Milosevic* Trial Judgment, *supra*, note 135, para. 934.

¹⁸⁸ *Martic* Trial Judgment, *supra*, note 140, para. 83.

¹⁸⁹ *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 198; *D. Milosevic* Trial Judgment, *supra*, note 135, para. 934; *Martic* Trial Judgment, *supra*, note 140, para. 83.

¹⁹⁰ *Ibid*, para. 198.

¹⁹¹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para.150.

¹⁹² *Brima et al.*, Rule 98 Decision, *supra*, note 14, para. 209.

- d. that the accused intended to exercise of such powers against a person who did not consent,¹⁹³ or acted in the reasonable knowledge that they would be exercised against a person who did not consent.¹⁹⁴

(1) Exercise of powers attaching to the right of ownership

92. These powers include purchasing, selling, lending, or bartering such person(s), or by imposing on them a similar deprivation of liberty.¹⁹⁵ Relevant indicia to establish exercise of ownership rights are control of someone's movement or physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and occurrence of forced labour.¹⁹⁶

93. The Prosecution have to prove a lack of consent. This may be proven through the circumstances, as opposed to proof an *explicit* refusal of consent. The Prosecution have to prove that true consent in those circumstances was not possible or that any consent was negated as a consequence.¹⁹⁷

(2) Defective Notice: Forced Marriage

94. The Appeals Chamber in the AFRC case found that Trial Chamber II was wrong to dismiss Count 8. Trial Chamber II had ruled that the count was redundant as the evidence led in support of the count did not establish an offence distinct from sexual slavery.¹⁹⁸ The Appeal Chamber found that "forced marriage" *was* an offence, committed when the "perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim. The Appeal Chamber ruled that it was "not

¹⁹³ *Ibid.*

¹⁹⁴ *Sesay et al.*, Rule 98 Decision, *supra*, note 186, p. 31.

¹⁹⁵ *Brima et al.*, Rule 98 Decision, *supra*, note 14, para. 209; *Kunarac et al.* Appeal Judgment, *supra* note 171, paras 116, 122.

¹⁹⁶ *Kunarac et al.* Appeal Judgment, *supra* note 171, para 119.

¹⁹⁷ *Ibid.*, para. 132.

¹⁹⁸ *Brima et. al.*, Trial Judgment, *supra*, note 18, paras. 93-95.

predominantly a sexual crime”.¹⁹⁹ The offence is punishable under Article 2.i. of the Statute (Other Inhumane Acts).²⁰⁰

(3) Lack of Notice of the elements of “Forced Marriage”

95. The Prosecution in the RUF case have not provided adequate notice of this offence, causing prejudice to the Defence. The Prosecution first stated that the offence was based on “the same factual allegations” contained in the paragraphs which supported the “sexual violence charges in Counts 6-8 of the Consolidated Indictment”.²⁰¹ At that time Count 6 charged Rape, a Crime Against Humanity, punishable under Article 2.i of the Statute; Count 7 charged Sexual Slavery and any other form of sexual violence, a Crime Against Humanity, punishable under Article 2.g and Count 8 charged Outrages upon personal dignity, a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.e of the Statute.

96. At that time the Prosecution emphasised that forced marriage contained the “same exact factual context as charges relating to sexual violence and forced labour” as previously existed in the consolidated Indictment²⁰² The proposed “new count...[was]... based on the legal characterisation of the conduct of the Accused”²⁰³ and not any change in the material facts alleged.²⁰⁴

97. The Prosecution contended that “Force Marriage” was primarily a sexual offence. It was demarcated as “Sexual Violence” and its alleged factual underpinnings contained at Paragraphs 55 – 60 of the indictment. This was an offence consisting of “[a]cts of sexual violence”. The Pre-Trial Brief stated that the offences being alleged in these

¹⁹⁹ *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 196.

²⁰⁰ *Ibid*, para. 20.

²⁰¹ *Prosecutor v. Sesay*, SCSL-2004-15-PT, Prosecution “Request for Leave to Amend the Indictment”, 9 February 2004, para. 10.

²⁰² *Prosecutor v. Sesay*, SCSL-2004 – 15 –PT, Prosecution Consolidated Reply to Defence (Sesay and Gbao) Response to Prosecution’s “Request for Leave to Amend the Indictment”, 24 February 2004, Para. 4.

²⁰³ *Ibid*, para. 8.

²⁰⁴ *Ibid*, para. 11.

paragraphs were Rape, Sexual Slavery and Sexual Violence.²⁰⁵ The Prosecution described the act of forced marriage as preceding any forced “conjugal duties”.²⁰⁶ In the Supplementary Pre-trial Brief the Prosecution gave further notice that the crime of forced marriage was a crime of sexual violence.²⁰⁷

98. The Appeal Chamber has recognised that this notice – and particularly the listing of the offence of “Forced Marriage” within the Sexual Violence Counts - was capable of misleading the Accused.²⁰⁸ The first Accused was misled and this lack of clarity RUF was not cured.

99. Conversely at the close of the Prosecution case the Prosecution chose to re-define the elements of the alleged offence, as unlawful force “to carry out domestic work and other tasks associated with marital relationships, *which may include sexual relations*” [emphasis added].²⁰⁹ This volte-face was an attempt to circumvent a finding by Trial Chamber I in the CDF case, namely forced marriage had been wrongly charged under Article 2i. of the Statute (because the category referred to as “other inhumane acts”... must logically be restrictively interpreted as covering only acts of a non-sexual nature amounting to an affront to human dignity”). The Prosecution redefined the offence at the time of the RUF rule 98 arguments in order to prevent the count from being dismissed as a consequence of the decision in the CDF case (which found that forced marriage had been wrongly charged under Article 2i of the Statute).²¹⁰ The Defence

²⁰⁵ *Prosecutor v. Sesay*, SCSL-2004-15-797 - PT, Prosecution’s Pre-trial Brief, 27 February 2004, paras. 202.

²⁰⁶ *Ibid*, para. 94 and 121.

²⁰⁷ *Prosecutor v. Sesay*, SCSL-2004-15-797 - PT, Prosecution’s Supplementary Pre-trial Brief, 21 April 2004: for example Paragraph 108 dealing with the general allegation of “sexual violence” and “sexual slavery” with Paragraph 109 purporting to give a specific example of that violence or slavery as “the use of women as wives”. See also paragraph 116 and 117 and also the generalities of paragraph 126 exemplified at a-e.

²⁰⁸ *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 181

²⁰⁹ *Prosecutor v. Sesay*, SCSL-04-15- T, Consolidated Prosecution Skeleton Response to the Rule 98 Motions by the three Accused, 6th October 2006, para. 16.

²¹⁰ *Prosecutor v. Norman*, SCSL-04-14-T, Reasoned Majority on Prosecution Motion for a Ruling on the Admissibility of Evidence, 24 May 2005, Para. 19(iii)(b). This shift was matched in the AFRC case wherein – as found by the Appeal Chamber the Prosecution alleged “that while acts of forced marriage may, in certain circumstances amount to sexual slavery, in practice they do not always involve the victim being subjected to non-consensual sex or even forced domestic labour. Therefore, the Prosecution contends that forced marriage is not a sexual crime”. (AFRC Appeal, Para. 189).

have been misled concerning the material elements of the forced marriage count.²¹¹ An Accused must know the nature of the charge and its alleged factual basis. The pleading must be specific.²¹²

100. Count 8 (and its alternative Count 9) must be dismissed for want of notice.

D. Law applicable to war crimes: Counts 1, 2, 5, 9, 10, 12, 15, 17 & 18.

1. Count 1: SCSL Statute, Article 3(d) – Acts of terrorism

101. The Prosecutor must prove

- a. The occurrence of acts or threats of violence²¹³ which amount to one or more of the enumerated crimes in Counts 3 - 14²¹⁴
- b. that the *object/s* of the acts or threats were the civilian population or individual civilians not taking a direct part in hostilities²¹⁵ (and not property²¹⁶)
- c. that the acts or threats caused death or serious injury to body or health within the civilian population²¹⁷
- d. that the acts or threats either caused terror or were capable of spreading terror²¹⁸
- e. that the primary purpose of the acts or threats was to spread terror among the civilian population²¹⁹

²¹¹ *Brima et. al*, Appeal Judgment, *supra*, note 3, para. 181

²¹² *Ibid*, para. 37.

²¹³ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgment (Appeals Chamber), 28 May 2008 para. 350; *Prosecutor v. Galic*, IT-98-29-A, Judgement (Appeals Chamber), November 30, 2006, paras 99-104 ('*Galic* Appeal Judgment').

²¹⁴ Para. 15 of the Prosecution Supplemental Pre-trial Brief.

²¹⁵ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 350; *Galic* Appeal Judgment, *supra*, note 256, paras 99-104.

²¹⁶ In *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 170 the Trial Chamber found that the objects could include property. However in the RUF case the Prosecution have limited the case to the enumerated crimes within Counts 3 – 14 and for the reasons explained these include only crimes against civilians and not property.

²¹⁷ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 875.

²¹⁸ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 352

²¹⁹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 170

- f. that the accused wilfully made protected persons the object of those acts and threats of violence²²⁰

a) Defining “acts or threats of violence”

(1) Enumerated crimes only

102. The crime can comprise attacks or threats of attacks²²¹ or threats of violence against the civilian population.²²² In the RUF case the Prosecution allege that the Accused “committed the crimes set forth...in paragraphs 45 through 82 and charged in Counts 3 through 14, as part of a campaign to terrorize the civilian population”²²³ of Sierra Leone. The Prosecution have given notice that the “nexus between Issa Hassan Sesay and Count 1” is his alleged commission of the crimes alleged in Counts 3 – 14²²⁴ [emphasis added].

103. At both the SCSL and the ICTY in which terror has been charged as a substantive crime, the pleading has not been so limited. In the CDF case the Appeal Chamber examined the pleading and found that the relevant acts went beyond the enumerated crimes. In that case the Prosecution had specifically pled the other acts, namely “threats to kill, destroy and loot, as a campaign to terrorize”.²²⁵ In the RUF case the Prosecution have not included these “other acts”. The pleading has been limited, in the Indictment (and the Pre-trial Brief) to the enumerated crimes in Counts 3-14. The Prosecution must not be permitted to expand the factual basis of this count.

104. The Prosecution provided further notice that the enumerated crimes were committed exclusively as *direct* attacks against civilians as part of the commission of the enumerated crimes. The violence alleged in Counts 3-14, as defined in paragraphs 45 – 82 of the Indictment and thereafter purportedly elucidated in the Pre-trial Briefs

²²⁰ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 352.

²²¹ *Galic* Appeal Judgment, *supra*, note 256, para. 102

²²² *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 351; *Galic* Appeal Judgment, *supra*, note 256, para. 100.

²²³ Paragraph 44 of the Consolidated Indictment.

²²⁴ Paragraph 15 of the Supplemental Pre-trial Brief.

²²⁵ *Fofana et. al*, Appeal Judgment, *supra*, note 256, paras. 360 – 364.

incorporate only direct attacks against civilians. (This pleading is different to the case of *Galic* at the ICTY²²⁶ which found that the Prosecution had pled terror as direct attacks or threats of attacks against civilians and also indiscriminate or disproportionate attacks or threats).²²⁷ For these reasons the crime of terror as alleged in the RUF case is limited. Count 1 must be proven by proof of the commission of the enumerated crimes within Count 3-14²²⁸ and the crimes which constitute the offence must amount to direct attacks against civilians.

(2) Object/s of the acts or threats

105. The violence must be unlawful violence against civilians²²⁹ or installations which would cause victims as a side-effect²³⁰

(3) Caused death or serious injury within the civilian population

106. In agreement with recent jurisprudence of the ICTY, the Defence submits that an act or threat cannot be considered “terrorism” unless the Prosecution proves that it caused “death or serious injury to body or health within the civilian population or to individual civilians”²³¹

107. There is “no need to demonstrate that the protected population actually was terrorised”²³² but there is a need to be satisfied beyond a reasonable doubt that the

²²⁶ *Galic* Appeal Judgment, *supra*, note 256, para. 102.

²²⁷ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 351; *D. Milosevic* Trial Judgment, *supra*, note 135, para. 877; *Galic* Appeal Judgment, *supra*, note 256, para. 102

²²⁸ This was also the case in the *Galic* case at the ICTY which found that the crime of terror against the civilian population as pleaded in the Indictment consisted *inter alia* of “[a]cts of violence directed against the civilian population or individual civilians” and on that basis the question of whether the International Tribunal would have jurisdiction over forms of violence other than those charged under” the count did not arise (*Galic* Appeal Judgment, *supra*, note 256, para. 100).

²²⁹ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 877.

²³⁰ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 351, citing ICRC Commentary on Additional Protocol II, Article 13(2).

²³¹ *D. Milosevic* Trial Judgment, *supra*, note 135, paras. 876, 880.

²³² *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 174. The argument that actual terrorisation of the civilian population is a required element of the offence was rejected by both the Trial Chamber and the Appeals Chamber of the ICTY in *Galic* based on the rejection of attempts in the travaux préparatoires to Additional Protocol I to replace the intent to terrorise with actual terror. See *Galic* Appeal Judgement, paras 103-104.

crime was at the very least capable of spreading terror”.²³³ Whether any given crime is capable of spreading terror is to be judged on a case-by-case basis within the particular context involved. It is submitted thus that not every enumerated crime in Count 3 – 14 will – from its nature, manner, timing and duration²³⁴ – support the required irresistible inference that the Accused was guilty of the crime of terror.

(4) Caused terror or capable of causing terror

108. Terror should be defined as “extreme fear”,²³⁵ “the state of being terrified or greatly frightened; intense fear, fright or dread” or the “action or quality of causing dread; terrific quality or terribleness”.²³⁶ “This is a fear calculated to demoralise, to disrupt, to take away any sense of security from a body of people who have nothing [...] to do with the combat.”²³⁷ This consequence must be distinguished from the effects that acts of legitimate warfare can have on a civilian population;²³⁸ a certain degree of fear and intimidation among the civilian population is present in nearly every armed conflict.²³⁹ The closer the theatre of war is to the civilian population, the more it will suffer from this “ordinary” fear and intimidation. This is particularly the case in an armed conflict conducted proximate to a civilian dwelling environment, where even legitimate attacks against combatants may result in intense fear and intimidation among the civilian population, but to constitute terror, intent to instil fear beyond this level is required.²⁴⁰ Thus the enumerated crime and the context must be examined closely to ascertain beyond a reasonable doubt whether the crime of terror has been committed.²⁴¹

²³³ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 352.

²³⁴ *Galic* Appeal Judgment, *supra*, note 256, para. 104.

²³⁵ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 879.

²³⁶ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 884, citing Oxford English Dictionary, Second Edition 1989, ‘terror’; ‘Terror-bombing’ denotes “intensive and indiscriminate bombing designed to frighten a country into surrender”. ‘Reign of terror’ denotes “a state of things in which the general community live in dread of death or outrage”.

²³⁷ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 884, referring to Prosecution Closing arguments, 9 Oct 2007, T. 9472.

²³⁸ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 888.

²³⁹ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 884, referring to Prosecution Closing arguments, 9 Oct 2007, T. 9472 - TC (in *D. Milosevic*) in which the Court approved Prosecution’s submission: “And it’s not just [...] the fear that comes from being nearby the combat”; citing also, French delegation, Official Records, vol. XIV, p. 65: “in traditional war attacks could not fail to spread terror among the civilian population: what should be prohibited [...] was the intention to do so.”

²⁴⁰ *D. Milosevic* Trial Judgment, *supra*, note 135, para. 888.

²⁴¹ *Ibid.*

(5) Primary purpose to spread terror among the civilian population

109. The Prosecution must prove that the primary purpose of the enumerated crime was to spread terror among the civilian population.²⁴² The evidence must be capable of supporting an irresistible inference that the enumerated crime(s) was committed with the primary purpose of spreading terror. “Primary” does not mean that the infliction of terror is the only objective of the acts or threats of violence.²⁴³ Other purposes may exist simultaneously with the purpose of spreading terror among the civilian population (provided that the intent to spread terror is principal among the aims of the acts of violence). Whether in fact the primary purpose was to spread terror is to be assessed by reference to the circumstances of the acts or threats; that is from their nature, manner, timing and duration.²⁴⁴

(6) Mens rea

110. The Prosecution must prove two mental elements: the first pertaining to the purpose of the acts or threats and the second relating to the objects thereof. First, it must be proved beyond reasonable doubt that the acts or threats of violence were committed with the primary purpose of spreading terror among protected persons.²⁴⁵

111. The requirement that the purpose be “*primary*” denotes that the crime of terror is a “specific intent crime”.²⁴⁶ This is a high threshold: It is insufficient either for the Prosecution to prove that the Accused accepted the likelihood that terror would result

²⁴² “Primary” does not mean that the infliction of terror is the only objective of the acts or threats of violence. Other purposes may exist simultaneously with the purpose of spreading terror among the civilian population (provided that the intent to spread terror is principal among the aims of the acts of violence). *D. Milosevic* Trial Judgment, *supra*, note 135, para. 879; *Galic* Appeal Judgment, *supra*, note 256, para. 104.

²⁴³ *Galic* Appeal Judgment, *supra*, note 256, para. 104.

²⁴⁴ *Ibid.*

²⁴⁵ *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 49; *Prosecutor v. Norman*, SCSL – 2004-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para. 112. See also *Galic* Appeal Judgment, *supra*, note 256, para. 104: “The mens rea of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population is composed of the specific intent to spread terror among the civilian population.”

²⁴⁶ *Galic* Trial Judgment, *supra*, note 79, para. 136

from the illegal acts or that he was aware of the possibility that terror would result. It must have been the result that he intended.²⁴⁷

112. Second, the accused must have wilfully made protected persons the object of those acts and threats of violence. We are in agreement with the Prosecution that the *mens rea* is not satisfied by a “reasonable knowledge” requirement. The accused must have “wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence”.²⁴⁸

113. In light of these considerations it is submitted that crimes within Count 14 are not capable of constituting the crime of terror as pled against Mr. Sesay. First, Count 14 is limited to the crime of looting – and not burning.²⁴⁹ Second, terror as pleaded must be proven by evidence that the enumerated crime caused “death or serious injury to body or health within the civilian population”.²⁵⁰ Third, the enumerated crime must be capable of spreading terror. Fourth, the commission of the enumerated crime must be capable of supporting an inference that the underlying intent was primarily to cause terror. It is submitted that the looting of property could not satisfy the aforementioned criteria given the object and purpose (the focus on the appropriation of property and not the person) and the nature of the crime (the lack of threats or inherent violence).

b) Count 2: SCSL Statute, Article 3(b) – Collective punishments

114. The Prosecution must prove that

a. a punishment was imposed collectively and upon protected persons²⁵¹

²⁴⁷ *Galic* Trial Judgment, *supra*, note 79, para. 136; See also Additional Protocol II to the Geneva Convention 12 August 1949, Article 13 para. 2.

²⁴⁸ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, “Prosecution’s Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (under Rules 54 and 73bis) of 13 February 2004”, 27 February 2004, para. 244 (d).

²⁴⁹ *Fofana et. al*, Appeal Judgment, para. 409

²⁵⁰ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-PT, “Prosecution’s Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (under Rules 54 and 73bis) of 13 February 2004”, 27 February 2004, para. 244(a).

²⁵¹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 180 – view of elements is based on Article 4 of Additional Protocol II to the Geneva Conventions and Article 33 of the Fourth Geneva Convention,

- b. the punishment was imposed for omissions or acts that the persons concerned have not committed²⁵²
- c. that the accused intended the punishment.

(1) Punishment, imposed collectively, upon protected persons

115. Punishment has to be understood in its widest sense²⁵³ broadly conceived²⁵⁴ and encompasses²⁵⁵ penal sanctions and also any other kind of sanction that is imposed on persons collectively.²⁵⁶ The punishment must be imposed on multiple persons.²⁵⁷

116. The Prosecution allege that the first Accused “committed the crimes set forth... in paragraphs 45 through 82 and charged in Counts 3 through 14 as part of a campaign to terrorize the civilian population...[and] also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to AFRC/RUF”.²⁵⁸ The Prosecution have given explicit notice that “[i]t is the prosecution theory of the case that at various locations throughout Sierra Leone during the period covered by the indictment, the AFRC/RUF engaged in the crimes charged in counts 3 to 13 to punish the population...”[emphasis added].²⁵⁹ There is no reference in the indictment or the Pre-trial Brief to any other punishment act or omission except the crimes alleged in Counts 3 through 14. Count 2 cannot therefore be proven by any act therefore which itself does not amount to one of these enumerated crimes.

²⁵² *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 180;

Brima, Decision on Defence Motion for Acquittal, para. 62; Norman Decision on Motion for Acquittal, para. 118.

²⁵³ Norman Decision on Motion for Acquittal, para. 117; Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (Geneva: ICRC; Martinus Nijhoff, 1987), para. 4536.

²⁵⁴ *Fofana et. al*, Trial Judgment, *supra*, note 2, paras. 179 & 181, citing ICRC Commentary on Geneva Convention IV, Article 33, p. 225 and ICRC Commentary on Additional Protocols, paras 4535-4536.

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*

²⁵⁷ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 977.

²⁵⁸ RUF Consolidated Indictment, para. 44.

²⁵⁹ Prosecution’s supplemental pre-trial Brief, para. 16.

(2) Mens rea

117. The Prosecutor must prove intent on the part of the accused. The *mens rea* is not made out unless it is established, beyond reasonable doubt, that this intention pertained both to the reason to punish and to the protected status of those affected. As to the former, the Prosecution must prove “intent, on the part of the Accused, to punish [...] for acts which form the subject of the punishment.”²⁶⁰ As to the latter, the *mens rea* of collective punishments demands proof of intent, on the part of the Accused, to punish protected persons or group of protected persons.²⁶¹

c) Counts 5, 10 & 17: SCSL Statute, Article 3(a) – Violence to life, health and physical or mental well-being of persons...

(1) ...in particular murder (counts 5 & 17)

(a) Tadic conditions

118. Charges of murder as war crimes are based on Common Article 3 of the 1949 Geneva Conventions.²⁶² It is settled jurisprudence that violations of Common Article 3 fall within the scope of Article 3 of the Statute. In particular, it is now established that Common Article 3 forms part of customary international law and that violation of this provision entails criminal liability.²⁶³

(b) Elements

119. The elements of the crime of murder as a war crime and as a crime against humanity are identical, with the exception that the respective general requirements for the application of these provisions must be met.²⁶⁴

²⁶⁰ *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 62; *Fofana et. al.*, Trial Judgment, *supra*, note 2, para. 900.

²⁶¹ *Brima et al.*, Rule 98 Decision, *supra*, note 141 para. 62.

²⁶² *Martic* Trial Judgment, *supra*, note 140, para. 426

²⁶³ *Prosecutor v. Mrksic, Radic and Sljivancanin*, IT-95-13/1-T, Judgement (Trial Chamber II), 27 September 2007, para. 426, citing *Tadic* Jurisdiction Decision, paras 89, 98, 134; *^elebici Appeals Judgement*, paras 125, 136, 153-174; *Kunarac Appeals Judgement*, para 68.

²⁶⁴ *Martic* Trial Judgment, *supra*, note 140, para. 58, citing *Kordic and Cerkez* Trial Judgement, paras 229, 233, 236.

(2) in particular mutilation (count 10)

120. The Prosecution must prove that
- a. the victim was subjected to mutilation, by permanently disfiguring the victim, or permanently disabling or removing an organ or appendage of the victim.²⁶⁵
 - b. that the injury either caused the death or seriously endangered the physical or mental health of the victim.²⁶⁶
 - c. that the accused intended to subject the person or persons to mutilation.

121. It is submitted that the Prosecution must prove that the injury either caused the death or seriously endangered the physical or mental health of the victim.²⁶⁷ This element is necessary in order to ensure that the disfigurement reaches the requisite gravity envisaged by Article 3(a). The Prosecution's reliance on amputations and the carving of insignia into skin by sharp implements as constituting these alleged crimes²⁶⁸ would appear to acknowledge this requirement. The mutilation must be neither justified by medical, dental or hospital treatment of the victim nor carried out in victim(s)' interest.²⁶⁹

d) Count 9: SCSL Statute, Article 3(e) – Outrages upon personal dignity

122. The Prosecution must prove
- a. occurrence of an assault which, from an objective point of view, caused severe humiliation or degradation, or otherwise was a serious attack on human dignity²⁷⁰
 - b. that the accused intended both the act committed and the effect of causing severe humiliation or degradation or a serious attack on human dignity.

²⁶⁵ *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 172.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ Prosecution's Supplemental Pre-Trial Brief, examples: paras. 135 and 151.

²⁶⁹ *Brima et al.*, Rule 98 Decision, *supra*, note 141

²⁷⁰ *Kunarac et al.* Appeal Judgment, *supra* note 171, paras 161-163.

(1) The assault

123. The Prosecution must prove that from an objective point of view the assault caused severe humiliation or degradation, or otherwise was a serious attack on human dignity.²⁷¹ The Prosecution must prove that the act or omission was objectively of this nature. The humiliation of the victim must be so serious that a reasonable person would be outraged.²⁷² The humiliation and degradation must have been serious as to be generally considered as an outrage upon personal dignity.²⁷³

124. Although this crime is animated by contempt for the human dignity of another person, it is not necessary for the act directly to harm the physical or mental well-being of the victim.²⁷⁴

125. The Prosecution have failed to specify which acts are alleged to be Outrages Upon personal Dignity, save to list the broad categories of acts within the Pre-trial Briefs concerning alleged rapes and “sexual violence” or “sexual abuse” in the various Districts. This particularisation is limited to the global allegations of rape; use of women as sex slaves and forced marriage.²⁷⁵

(2) Mens rea

126. The Prosecutor must prove:
- a. intention to commit the act or omission concerned²⁷⁶
 - b. and that the accused intended to humiliate, degrade or otherwise violate the dignity of the person or acted in the reasonable knowledge this was likely to occur.²⁷⁷

²⁷¹ *Ibid.*

²⁷² *Kunarac et al.* Appeal Judgment, *supra* note 171, para. 162.

²⁷³ *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 115.

²⁷⁴ *Alekovski* Trial Judgment, para. 56..

²⁷⁵ Supplemental Pre-trial Brief, 21 April 2004, e.g. Para. 98(a), 101(d), 110(a).

²⁷⁶ *Kunarac et al.* Appeal Judgment, *supra* note 171, paras. 161-163; *Brima et al.*, Rule 98 Decision, *supra*, note 141, para. 115.

²⁷⁷ *Sesay et al.*, Rule 98 Decision, *supra*, note 186, p. 23.

e) Count 14: SCSL Statute, Article 3(f) – Pillage

127. The Prosecution must prove:

- a. unlawful appropriation of the property²⁷⁸
- b. that the appropriation was without the consent of the owner²⁷⁹
- c. that the Accused intended to deprive the owner of the property²⁸⁰

(1) Unlawful appropriation of property

(a) “appropriated”

128. Black’s Law Dictionary defines appropriation as “the exercise of control over property; a taking or possession.”²⁸¹

129. The crime encompasses appropriations for either public or private purposes and “extends both to acts of looting committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory”.²⁸² It covers cases of organised and systematic seizure of property²⁸³ as well as isolated acts of individuals.²⁸⁴ It covers instances where property is given to third persons and not only used by the perpetrator.²⁸⁵

(b) The property

²⁷⁸ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 165, *Kordic and Cerkez* Appeal Judgment, *supra*, note 185, paras 79 and 84.

²⁷⁹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 165

²⁸⁰ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 163, citing *Kordic and Cerkez* Appeal Judgment, *supra*, note 185, para. 84.

²⁸¹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 166, citing Black's Law Dictionary, 7th Edition, (St. Paul: West Group, 1999) [Black's Law Dictionary], "appropriation".

²⁸² *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 160,.

²⁸³ *Celebici* Trial Judgement, para. 590.

²⁸⁴ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 159

²⁸⁵ See Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p.273, pp. 464-465 ('Doermann').

130. The prohibition extends to all types of property, including State-owned and private property²⁸⁶). Protected property is not limited to civilian property²⁸⁷ – it covers all types of property, including State-owned and private property.²⁸⁸

131. Trial Chamber I has held that under international law, pillage does not require the appropriation to be extensive or to involve a large economic value.²⁸⁹ However, while the substantive requirements of the crime of pillage do not themselves entail a need to indicate that the property concerned has a certain threshold value, whether pillage committed on a small scale fulfils the jurisdictional/Tadic condition requirement that the violation be serious is a different question.²⁹⁰

(2) Seriousness

132. The requirement that the jurisdiction of the SCSL is restricted to only the most “serious” violations of IHL is expressed in article 1 of the SCSL Statute²⁹¹ and reiterated in article 3.²⁹² The Prosecution, therefore, must prove that the violation is sufficiently serious to entail grave consequences.

133. In this regard the requisite seriousness as regards the crime of pillage may be established when one victim suffers severe economic consequences because of the

²⁸⁶ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 159. ICRC Commentary on Additional Protocols, para. 4542: “[t]he prohibition of pillage is based on Article 33, paragraph 2, of the Fourth Convention. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It is prohibited to issue order whereby pillage is authorized. The prohibition has a general tenor and applies to all categories of property, both State-owned and private.”

²⁸⁷ Doermann, *supra*, note 331, pp. 464-465.

²⁸⁸ *Fofana et. al*, Trial Judgment, *supra*, note 2, para 159, citing Commentary, Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Convention IV (Geneva: ICRC, 1960), pp. 226-227. See also ICRC Commentary on Additional Protocols, para. 4542: “[t]he prohibition of pillage is based on Article 33, paragraph 2, of the Fourth Convention. It covers both organized pillage and pillage resulting from isolated acts of indiscipline. It is prohibited to issue order whereby pillage is authorized. The prohibition has a general tenor and applies to all categories of property, both State-owned and private.”

²⁸⁹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 161,

²⁹⁰ *Ibid.*

²⁹¹ “The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations Leonean law committed in the territory of Sierra Leone...”

²⁹² “The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations...”

appropriation.²⁹³ In some circumstances it may also be a serious violation when property is appropriated from a large number of people.²⁹⁴ In the latter instance the Prosecution must prove that the reiteration of the acts and their overall impact amounts to or involves grave consequences.²⁹⁵ The ICTY, in considering the crime of plunder²⁹⁶ has held that the property unlawfully appropriated must be of “sufficient monetary value” for its appropriation to involve grave consequences for the victim.²⁹⁷ The assessment of whether a piece of property holds the required value “can only be made on a case-by-case basis and only in conjunction with the general circumstances of the crime”.²⁹⁸ This requirement could be met in cases where appropriations take place vis-à-vis a large number of people, even though they do not lead to grave consequences for each individual.²⁹⁹ What needs to be considered is “the overall effect on the civilian population and the multitude of offences committed”.

(3) A violation of IHL?

134. In the context of an armed conflict, it is vital to note that destruction of property is not necessarily unlawful.³⁰⁰ International humanitarian law provides a general exception to the prohibition of destruction of property as a grave breach under the Geneva Conventions when the destruction is justified by military necessity. Thus will be assessed on a case-by-case basis. Where military necessity is invoked as a defence

²⁹³ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 162.

²⁹⁴ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 162.

²⁹⁵ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 162, citing Naletilic and Martinovic Trial Judgement, para. 614 (in the context of determining whether the violation - plunder in this case - is a serious violation pursuant to Article 1 of the ICTY Statute).

²⁹⁶ Relevance of ICTY jurisprudence re “plunder”: The prohibition of plunder includes “all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as ‘pillage’”. See *Prosecutor v. Martić*, IT-95-11-T, Judgement (Trial Chamber I), 12 June 2007, para. 101, citing Kordic and Cerkez Appeal Judgement, para. 79.

²⁹⁷ *Martić* Trial Judgment, *supra*, note 140, para. 103, citing Celebici Trial Judgement, para. 1154, referred to by Kordic and Cerkez Trial Judgement, para. 352 and later upheld by Kordic and Cerkez Appeal Judgement, para. 82.

²⁹⁸ *Martić* Trial Judgment, *supra*, note 140, para. 103; *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 162.

²⁹⁹ *Ibid.*

³⁰⁰ *Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (Trial Chamber I), 27 September 2006, para. 776, citing Geneva Convention IV, art. 147. (NB. ICTY was addressing destruction as a form of persecution here, but there is no reason why this point should not be relevant.)

the Prosecution will have to prove *inter alia* that the taking of the asserted property was not so justified.³⁰¹

(a) Military Necessity

135. The Prosecution case has been advanced on a wholly misconceived premise, namely on the assumption that a general prohibition against pillage contained in Article 3(f) of the Statute³⁰² prevents any taking of public or private property. The RUF were entitled, in certain circumstances, to use public or private property. This stems first from the fact that appropriations justified by military necessity cannot constitute the crime of pillaging³⁰³ and second from the legal rights and duties pursuant to its status as a belligerent occupying force. The RUF had security and humanitarian obligations towards the civilians within its territory and these allowed – indeed mandated – that property was requisitioned or used in order to compliance with these humanitarian law obligations.

(b) Civilian necessity

136. It is submitted that necessity is an exception to the prohibition on the appropriation of public or private property. The underlying principles of IHL must dictate that an Accused when faced with a choice between the death of civilians and the taking of property, such as food or medical supplies, the taking of the property must not be categorised as crime. The following conditions must be met

- a. there must be a real and imminent threat of severe and irreparable harm to life;
- b. the acts of plunder must have been the only means to avoid the aforesaid harm;
- c. the acts of plunder were not disproportionate and,

³⁰¹ *Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (Trial Chamber I), 27 September 2006, para. 776, citing Geneva Convention IV, art. 147.

³⁰² *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 160, citing Rule 98 Decision, para. 102, where the Chamber found that one of the elements of pillage was that: "[t]he perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use". This element was not included in the Sesay et al. Oral Rule 98 Decision.

³⁰³ K. Dörmann, *Elements of War Crimes under the Rome Statute*, (Cambridge: Cambridge University Press, 2002), at 464.

- d. the situation was not voluntarily brought about by the perpetrator himself.³⁰⁴

(c) Military needs and War Booty

137. At the ICTY it has been held that appropriation of private or public property must be done without lawful basis or legal justification.³⁰⁵ A party to the conflict is also allowed to seize enemy military equipment captured or found on the battlefield as war booty, with the exception that the personal belongings of the prisoners of war may not be taken away.³⁰⁶

138. Treaty and customary law does provide for exceptions to the principle of protection of public and private property enshrined in Article 3 of the Statute. Belligerent occupants may, in certain instances, lawfully use private or public property in the occupied territory for their military needs. According to national practices, war booty includes enemy property or military equipment captured on the battlefield.³⁰⁷ Property also considered as war booty includes weapons, ammunition, equipment, or any other materials with military applications, communications equipment, vehicles, and other means of transportation. These regulations also provide that weapons, ammunition, and other materials which have direct military applications, even if they are private property, may be seized as war booty.³⁰⁸

³⁰⁴ *Prosecutor v. Hadzihasanovic Amir Kubura*, IT-01-47-AR73.2,

³⁰⁵ *Martic* Trial Judgment, *supra*, note 140, para. 102, citing Naletilic and Martinovic Trial Judgement, para. 616; Hadzihasanovic and Kubura Trial Judgement, para. 51.

³⁰⁶ *Martic* Trial Judgment, *supra*, note 140, para. 102, citing Hadzihasanovic and Kubura Trial Judgement, para. 51. See also Lieber Code, Article 45; Hague Regulations, Article 4; Geneva Convention III, Article 18 (1).

³⁰⁷ *Martic* Trial Judgment, *supra*, note 140, para. 102, citing Naletilic and Martinovic Trial Judgement, para. 616; Hadzihasanovic and Kubura Trial Judgement, para. 51.

³⁰⁸ *Martic* Trial Judgment, *supra*, note 140, para. 102, citing Hague Regulations, Articles 51-53. Article 52 provides that "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible". See also Geneva Convention IV, Articles 55(2) and 57.

139. According to the Hague Regulations, forcible contribution of money, requisition for the needs of the occupying army, and seizure of material obviously related to the conduct of military operations, though restricted, are lawful in principle.³⁰⁹

f) Count 18: SCSL Statute, Article 3(c) – Hostages

140. The Prosecution must prove

- a. the occurrence of seizure, detention or otherwise holding hostage of one or more persons³¹⁰
- b. that the above was accompanied by a threat to kill, injure or continue to detain such person or persons
- c. that the Accused was aware that the “protected” persons were acting in a peacekeeping role at the time of the occurrence,³¹¹
- d. that the accused acted with an intention to compel a state, an international organisation, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.³¹²

g) Count 15: SCSL Statute, Article 4(b) – Intentionally directing attacks against personnel involved in humanitarian assistance/peacekeeping mission

141. In addition to the chapeau requirements the Prosecutor must prove the following:

- a. There was an attack the object of which was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations;

³⁰⁹ *Martić* Trial Judgment, *supra*, note 140, para. 102, citing Hague Regulations, Articles 51-53.

³¹⁰ Article 8 (2) (a) (viii) ICC Elements of Crimes, para. 1.

³¹¹ Article 8 (2) (a) (viii) ICC Elements of Crimes, para. 5.

³¹² ICC Elements of Crimes, Article 8(2)(b)(iii)

- b. The accused *directed* the relevant attack.³¹³ This is an exception from the standard *actus reus* requirement for commission due to the specificity of the term “directing” and requires proof of an integral controlling role, incorporating proof of substantial involvement in the planning, ordering and commission of the offence through its preparatory and execution phases)
- c. Such personnel, installations, material, units or vehicles were involved in a peacekeeping role in accordance with the Charter of the United Nations and were entitled to that protection given to civilians or civilian objects under the international law of armed conflict;³¹⁴
- d. That the Accused intended the object of the attack to be personnel, installations, material, units or vehicles involved in a peacekeeping mission in accordance with the Charter of the United Nations;³¹⁵
- e. That the Accused was aware that the personnel, installations, material, units or vehicles which were the subject of the attack were involved in a peacekeeping role at that time³¹⁶ and
- f. That the accused intentionally directed the attack.

**h) Count 12: SCSL Statute, Article 4(c) –
Conscripting/enlisting/using children in armed forces**

142. Conscripting, enlisting and using are separate forms of liability.

(1) Common aspects

143. In order to establish liability under any of the above crimes, the Prosecution must prove:

- a. that the entity to which the child was conscripted or enlisted or in which he/she was used was an “armed force or group”
- b. that the person/s affected were under the age of 15 years and;³¹⁷

³¹³ ICC Elements of Crimes, Article 8(2)(b)(iii). See also UN SC Resolution 1502.

³¹⁴ ICC Elements of Crimes, Article 8(2)(b)(iii)

³¹⁵ ICC Elements of Crimes, Article 8(2)(b)(iii)

³¹⁶ ICC Elements of Crimes, Article 8(2)(b)(iii)

- c. that they were to be trained/used to actively participate in hostilities.³¹⁸

(a) “Armed force or group”

144. It has been recognised that the phrase “armed forces or groups” has been the subject of a variety of legal interpretations. e.g., in Brussels Declaration 1874, Hague Convention II of 1899, the Hague Convention IV of 1907, and the Geneva Conventions of 1949.³¹⁹ The Prosecution must prove that the entity concerned is an *organised and hierarchically* structured group.³²⁰ This is to be distinguished from individuals acting on behalf of a State or the RUF without specific instructions.³²¹ It is submitted, therefore, that a *de facto* link to the group’s authority structure must be found. In the context of the RUF during the indictment period, it was frequently the case that lines of communication were problematic and, moreover, that during much of the conflict, it would be unrealistic to characterise the RUF as a coherent whole. In this regard, the Prosecutor must counter such suggestions in order to demonstrate that those carrying out recruitment were acting on specific instructions of the RUF as an “armed force or group”

(b) Mens rea

145. It is submitted that in relation to the three means by which responsibility arises pursuant to Article 4(c) there must be a nexus between the act of the accused and the child joining the armed force or group or the active participation in hostilities. There must also be knowledge on the part of the accused that the child is under the age of 15 years and that he or she may be trained for combat or used to participate actively in hostilities.³²²

146. The accused must have intended to conscript or enlist the said persons into the armed force or group and intended to use the said persons to actively participate in

³¹⁷ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 195

³¹⁸ *See for example*, Child Recruitment Decision, Dissenting Opinion of Justice Robertson, para. 46.

³¹⁹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgment (Appeals Chamber), 28 May 2008, para. 194

³²⁰ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 194.

³²¹ *Ibid.*

³²² *See for example*, Child Recruitment Decision, Dissenting Opinion of Justice Robertson, para. 46.

hostilities.³²³ Whether such a nexus exists is a question of fact which must be determined on a case-by-case basis.³²⁴

(2) *Conscripting*

147. Conscription means “to compel to military service by conscription; to enlist compulsorily”.³²⁵

(3) *Enlisting*

148. Enlistment means “accepting and enrolling individuals when they volunteer to join an armed force or group”.³²⁶ The Appeals Chamber has held that in the relevant context (i.e., the Sierra Leonean civil war, in which the armed groups were not conventional military organisations), “enlistment” cannot narrowly be defined as a formal process.³²⁷ As a result, the Appeals Chamber regards “enlistment” in the broad sense as including any conduct accepting the child as a part of the militia.³²⁸ This would include making him participate in military operations,³²⁹ as well as, for example e.g., gathering information, transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage.³³⁰

(4) *Using*

149. The Prosecution must prove that one or more children under 15 years were used by the Accused to actively participate in hostilities.³³¹

³²³ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 195.

³²⁴ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 141

³²⁵ Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (2003), p. 377.

³²⁶ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 140, citing AFRC Trial Judgment, para. 735; Prosecutor v. Thomas Lubanga Dyilo, ICC-01104-01106, International Criminal Court, Decision on the Confirmation of Charges, 29 January 2007, para. 247; see also, Child Recruitment Decision, Dissenting Opinion of Justice Robertson, para. 5(b).

³²⁷ *Fofana et. al*, Appeal Judgment, *supra*, note 256, para. 144

³²⁸ *Ibid.*

³²⁹ *Ibid.*

³³⁰ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgment (Appeals Chamber), 28 May 2008, para. 143, citing ICRC Commentary on Additional Protocol II, para. 4457.

³³¹ *Fofana et. al*, Trial Judgment, *supra*, note 2, para. 195

E. Law pertaining to modes of responsibility for crime

1. Planning

a) Actus reus

150. The Prosecutor must prove that the accused planned a crime that is later committed by the principal perpetrator.³³² The accused must have “designated the criminal conduct constituting the crimes charged” either alone or together with others³³³ which are later perpetrated.³³⁴

151. Even though the crime may have actually been committed by another person, an individual may only incur responsibility for planning when his level of participation is substantial³³⁵ and where the “planning was a factor substantially contributing to such criminal conduct.”³³⁶ Moreover, “planning” implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. There must be a “sufficient link between the planning of a crime both at the preparatory and the execution phases”, for the purposes of which the Prosecutor must prove that “the planning was a factor substantially contributing to such criminal conduct.”³³⁷ Circumstantial evidence may provide proof of the existence of a plan.³³⁸

b) Mens rea

152. It must be proven or that the accused intended the commission of the crime, or that he intended the execution of the plan and was aware of the substantial likelihood that it would lead to the commission of the crime.³³⁹

³³² Kordić and Čerkez Appeal Judgement, para. 26

³³³ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Para. 301, citing AFRC Trial Judgment, para. 766.

³³⁴ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 221; Kordic and Cerkez Appeal Judgement, para. 26,

³³⁵ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Para. 301

³³⁶ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 221,

³³⁷ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Para. 301, Kordic Appeal Judgment, para. 26.

³³⁸ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Para. 301.

³³⁹ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Para. 301, citing AFRC Trial Judgment, para. 2092.

2. Instigation

a) Actus reus

153. The Prosecution must prove that the accused instigated the principal perpetrator to commit a crime.³⁴⁰ Instigating a crime means urging, encouraging or prompting another to commit an offence.³⁴¹ The actus reus requirement is an act or omission, covering both express and implied conduct of the Accused,³⁴² which is shown to be a factor substantially contributing to the conduct of another person committing the crime.³⁴³ A causal relationship between the instigation and the perpetration of the crime must be demonstrated, although it is not necessary to prove that the crime would not have occurred without the Accused's involvement.³⁴⁴

b) Mens rea

154. The Prosecution must prove that the Accused intended to provoke or induce the commission of the crime, or had reasonable knowledge that a crime would likely be committed as a result of that instigation.³⁴⁵

3. Ordering

a) Actus reus

155. The Prosecution must prove that, at the material time, the accused was in a position of formal or informal authority over the person who committed the crime.³⁴⁶

Prosecutor v. Fofana and Kondewa, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 221. (The *mens rea* "requires that the accused acted with direct intent in relation to his or her own planning or with the awareness of the substantial likelihood that a crime would be committed).

³⁴⁰ *Kordić and Čerkez* Appeal Judgement, para. 27

³⁴¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 223; *Kordić and Čerkez* Appeal Judgement, para. 27

³⁴² *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 223; *Blaskić* Trial Judgement, para. 280;

Limaj et al. Trial Judgement, para. 514;

³⁴³ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 223; *Limaj et al.* Trial Judgement, para. 514.

³⁴⁴ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 223; *Kordić and Čerkez* Appeal Judgement, para. 27;

³⁴⁵ *Kordić and Čerkez* Trial Judgement, para. 380.

³⁴⁶ *Kordić and Čerkez* Appeal Judgement, para. 28; *Galić* Appeal Judgement, para. 176; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007,

While no formal superior-subordinate relationship is required (authority can be de jure or de facto and can be reasonably implied³⁴⁷), there must be proof of a position of authority on the part of the accused that *would compel* another to commit a crime in compliance with the Accused's order.³⁴⁸

156. If that is established, the liability may arise if the Prosecutor proves that the accused actually ordered the principal perpetrator to commit a crime or to engage in conduct that resulted in the commission of a crime.³⁴⁹ A “causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering”.³⁵⁰ However, this “link need not be such as to show that the offence would not have been perpetrated in the absence of the order.”³⁵¹

b) Mens rea

157. The Prosecution must prove that the person giving the order intended the commission of the crime or was aware of the substantial likelihood that the crime would be committed in the execution or implementation of the order.³⁵²

4. Aiding & abetting

a) Actus reus

158. The Prosecution must prove that the Accused carried out acts directed to assist, encourage or lend moral support to the commission of a crime.³⁵³ The Prosecutor must prove that the act of the accused had a substantial effect on the perpetration of a certain

³⁴⁷ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 225; Limaj et al Trial Judgement, para. 515

³⁴⁸ (Emphasis added) *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 225, citing Gacumbitsi Appeal Judgement, paras 181-182;

³⁴⁹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 225, citing Kordic and Cerkez Appeal Judgement, para. 28; Limaj et al Trial Judgement, para. 514.

³⁵⁰ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 225, citing Strugar Trial Judgment, para. 332.

³⁵¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 225, citing Strugar Trial Judgment, para. 332.

³⁵² Blaškić Appeal Judgement, para. 42; Kordić and Čerkez Appeal Judgement, paras 29-30]. *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 226.

³⁵³ Tadić Appeal Judgement, para. 229; Čelebići Appeal Judgement, para. 352; Vasiljević Appeal Judgement, para. 102.

crime.³⁵⁴ There is no requirement of a causal relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct was a condition precedent to the commission of the crime. An omission may, in the particular circumstances of a case, constitute the *actus reus* of aiding and abetting.³⁵⁵

159. While each case turns on its own facts, mere presence at the scene of a crime will not usually constitute aiding or abetting. However, where the presence bestows legitimacy on, or provides encouragement to, the actual perpetrator, that may be sufficient. In a particular case encouragement may be established by an evident sympathetic or approving attitude to the commission of the relevant act. For example, the presence of a superior may operate as an encouragement or support.³⁵⁶

160. Moreover, the accused's actions must be specifically directed to this end (assisting, encouraging, etc.) and must envisage a certain specific crime.³⁵⁷ The content of the encouragement or the support/threat must relate to criminal acts.³⁵⁸ Encouragement/support can be implicit and there is a need to consider the context.³⁵⁹

161. Proof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required.³⁶⁰

162. Mere presence at the scene of a crime will not usually constitute aiding and abetting,³⁶¹ unless such presence fulfils the requirements described above (providing

³⁵⁴ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 229, citing *Vasiljevic Appeal Judgement*, para. 102; see also *Blaskic Appeal Judgement*, para. 46 referring to *Furundzija Trial Judgement*, para. 249.

³⁵⁵ *Limaj Trial Judgement*, Para. 516.

³⁵⁶ *Limaj Trial Judgement*, Para. 516.

³⁵⁷ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 229, citing *Vasiljevic Appeal Judgement*, para. 102; see also *Blaskic Appeal Judgement*, para. 46 referring to *Furundzija Trial Judgement*, para. 249.

³⁵⁸ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, paras. 722-4, 766.

³⁵⁹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, See para. 735.

³⁶⁰ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 229, citing *Blaskic Appeal Judgement*, para. 48; see also *Gacumbitsi Appeal Judgement*, para. 140.

encouragement or support to the principal offender and having a substantial effect). The presence of a person with superior authority at the scene of a principal crime may be probative to a determination whether such person encouraged or supported the principal perpetrator.³⁶² In addition, a superior's failure to punish for past crimes might result in acts that could constitute instigation or aiding and abetting for further crimes.³⁶³

163. Acts which do not necessarily amount to aiding and abetting include giving moral support or blessing,³⁶⁴ providing medicine believed to protect against bullets,³⁶⁵ mere presence at a subsequent meeting, at which orders are given to commit criminal acts.³⁶⁶

b) *Mens rea*

164. Two *mens rea* elements must be proven by the Prosecutor, the first concerning the mental state of the accused as to his own actions, the second relating to the mental state of the accused in connection with the actions of the principal.

165. The first requirement is satisfied either if the accused has knowledge that his or her act(s) assists the commission of the crime of the principal perpetrator^{367 368}

166. Second, the aider and abettor must also be aware of the principal perpetrator's criminal acts.³⁶⁹ It is irrelevant whether he shared the intent of the perpetrators³⁷⁰ and

³⁶¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 230

³⁶² *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 230, citing Blaskic Appeal Judgement, para. 47; see also Limaj et al. Trial Judgement, para. 517; Brđjanin Trial Judgement, para. 271 and footnoted references; Aleksovski Trial Judgement, para. 65.

³⁶³ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 230, citing Blaskic Trial Judgement, para. 337

³⁶⁴ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 799.

³⁶⁵ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 799.

³⁶⁶ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Paras. 801-802.

³⁶⁷ Vasiljević Appeal Judgement, para. 102; Blaškić Appeal Judgement, paras 45-46; Simić et al. Appeal Judgement, para. 86; Brđjanin Appeal Judgement, paras 484, 488; Blagojević and Jokić Appeal Judgement, para. 127.

³⁶⁸ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 231, citing Vasiljevic Appeal Judgement, para. 102; see also Blaskic Appeal Judgement, para. 49; Tadic Appeal Judgement, para. 229.

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there is no requirement that the aider and abettor knew either the precise crime that was intended or the one that was actually committed.³⁷¹ However, he must be aware of the principal offender's intention³⁷² and he must also be aware that one of a number of crimes will probably be committed.³⁷³ Such knowledge may be inferred from all relevant circumstances.³⁷⁴ The aider and abettor must be aware of the essential elements of the crime which was ultimately committed by the principal.³⁷⁵

167. For specific intent crimes, the Prosecutor must prove that the aider and abettor had knowledge of the specific intent of the perpetrator to commit such crimes.³⁷⁶ In the absence of explicit evidence on this point, the presence of "another reasonable inference" will preclude the existence of specific intent.³⁷⁷

³⁶⁹ Aleksovski Appeal Judgement, para. 162; Simić et al. Appeal Judgement, para. 86; Brđanin Appeal Judgement, paras 484, 487-488

³⁷⁰ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para.724

³⁷¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para.724; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 231, citing Blaskić Appeal Judgement, para. 50, Furundžija Trial Judgement, para. 246, Limaj et al. Trial Judgement, para. 518.

³⁷² *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 231, citing Prosecutor v. Aleksovski, IT-95.14/1.A, Judgement (AC) , 24 March 2000, para. 162 [Aleksovski Appeal Judgement] referring to Furundžija Trial Judgement, para. 245; see also Limaj et al Trial Judgement, para. 518; Brđjanin Trial Judgement, para. 273; Kunarac et al. Trial Judgement, para. 392.

³⁷³ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Paras. 242-3, citing TC with approval. The Appeals Chamber of the ICTY in both Blaskić and Simić found that it was not necessary to prove that the aider and abettor knew the precise crime that was intended Dr actually committed by the principal perpetrator. - Simić Appeal Judgment, para. 86; Blaskić Appeal Judgment, para. 50 .

³⁷⁴ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 231, citing Limaj et al Trial Judgement, para. 518 referring to Celebici Trial Judgement, para. 328; Tadić Trial Judgement, para. 676.

³⁷⁵ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, para. 244; Aleksovski Appeal Judgment, para. 162; Krnojelac Appeal Judgment, para. 51; Brđjanin Appeal Judgment, para. 484. ?

³⁷⁶ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 728.

³⁷⁷ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 731 - "while spreading terror may have been Norman's primary purpose in issuing the order to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond reasonable doubt that Fofana had the requisite knowledge"

c) Assistance after the principal crime

168. Further, the assistance may occur before, during or after the principal crime has been perpetrated.³⁷⁸ The aiding and abetting may occur before, during, or after the commission of the principal crime³⁷⁹ and at a location geographically removed from the location of the principal crime.³⁸⁰ Aiding and abetting liability (in advance of the act) only applies to the acts as planned at the time of the support. Subsequent changes or additions to the planned acts do not add to the supporter's liability.³⁸¹

169. Aiding and abetting after the commission of a crime is possible if the perpetrator committed the crime in the knowledge that the aider and abettor was to supply practical assistance.³⁸² This requirement however must be approached with the utmost caution given the requirement that the aider and abettor must also be aware of the "essential elements" of the crime committed by the principal offender, including the state of mind of the principal offender.³⁸³

170. It is thus required for *ex post facto* aiding and abetting that at the time of the planning, preparation or execution of the crime, a prior agreement existed between the principal and the person who subsequently aids and abets in the commission of the crime.³⁸⁴ The evidence must support a conclusion beyond a reasonable doubt that the aiding and abetting act was agreed upon at the time of the planning, preparation or

³⁷⁸ Limaj Trial Judgement, Para. 516.

³⁷⁹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Footnote 1544.

³⁸⁰ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 229, citing Blaskic Appeal Judgement, para. 48; see also Vasiljevic Trial Judgement, para. 70, Aleksovski Trial Judgement, para. 62.

³⁸¹ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, "Judgement" (TCI), 2 August 2007, Para. 725: Not liable for acts resultant from change in orders: "Fofana was present and contributed to the discussion at the subsequent commanders' meeting in December 1997 at Base Zero where plans to attack Togo were discussed. At this meeting Norman further reiterated, clarified and expanded his unlawful orders, which now included looting, to the Kamajor commanders from Togo. In the absence of any evidence showing how Fofana contributed to the discussion and decision at this meeting the Chamber finds that in the circumstances there is no evidence to prove beyond reasonable doubt that Fofana either planned the commission of this additional crime of looting or that he aided and abetted in the planning, preparation or execution of this additional crime in Togo."

³⁸² *Blagojević and Jokić* Trial Judgement, para. 731

³⁸³ *Blagojević and Jokić* Trial Judgement, para. 727.

³⁸⁴ *Ibid*, para. 731.

execution of the crimes.³⁸⁵ Hence in the case of Blagojevic, a burial operation (designed to conceal killings in Srebrenica) could not amount to aiding and abetting the murder operation which had taken place previously.³⁸⁶

5. Joint Criminal Enterprise

171. The first Accused is charged with terrorising the civilian population and collective punishments pursuant to a joint criminal enterprise. Conviction is dependent upon the Prosecutor meeting the burden of proof with regard to the following requirements:

- a. the accused participated in a plan, design or purpose to terrorise and collectively punish the population,³⁸⁷
- b. which was common to a plurality of persons³⁸⁸ and
- c. which amounted to or involved the commission of a crime provided for in the Statute³⁸⁹ or contemplated crimes within the Statute as the means of achieving its objective”.³⁹⁰
- d. mens Rea

a) Participation

172. In both the basic form of JCE (hereinafter JCE 1) and the JCE dependent upon foreseeability (JCE 3) the accused must have voluntarily participated in one aspect of the common criminal design.³⁹¹

173. The second category (JCE 2) is characterised by the existence of an organised criminal system, analogous to or the same as that found in concentration or detention camps. The required *actus reus* of JCE 2 is the active participation in the enforcement of repression, as it could be inferred from the position of authority and the specific functions held by each accused.³⁹²

³⁸⁵ *Ibid*, para. 731.

³⁸⁶ *Ibid*, para. 731.

³⁸⁷ *Tadic* Appeals Judgment, para. 227.

³⁸⁸ *Prosecutor v. Tadic*, Appeal Judgement, Case No. IT-94-1, 30 July 2002, Para. 227 and *Prosecutor v. Stakic* Appeal Judgement, Case No. IT-97-24, 22 March 2006, Para 69.

³⁸⁹ *Prosecutor v. Brdjanin*, Appeal Judgement, Case No. IT-99-36, 3 April 2007, Para. 364.

³⁹⁰ *Prosecutor v. Brima et al*, Appeal Judgement, Case No. SCSL-04-16-A, 22 February 2008, Para. 80.

³⁹¹ *Prosecutor v. Krajisnik*, Trial Judgement, Case No. IT-00-39/40, 27 September 2006, Para. 879.

³⁹² *Prosecutor v. Tadic*, Appeal Judgement, July 15, 1999, Para. 203.

174. In the three types the Accused must be acting “in concert” with the other persons in the JCE.³⁹³

(1) Nature of participatory act/s: criminal or non-criminal

175. Participation need not involve the commission of specified crimes under the statute but may take the form of assistance in, or contribution to, the execution of the common purpose.³⁹⁴

(2) Level of participation required: significant participation

176. The Trial Chamber must characterise the contribution of the accused in this common plan and it must amount to “a significant contribution to the crimes for which the accused is to be found responsible”.³⁹⁵ Significant participation is to be interpreted strictly and equates to “substantially assisted or significantly affected” the enterprise’s goals. The participation should be “indispensable for the achievement of the final result”³⁹⁶ (whilst not having to be a *sine qua non*, or that the offence would not have occurred but for the participation of the accused).³⁹⁷

177. However there may be specific cases which require as an exception to the general rule, a substantial contribution of the accused to determine whether he participated in the JCE.³⁹⁸ In practice the significance of the accused’s contribution will have to be carefully assessed – and will be relevant to – demonstrating that the accused shared the

³⁹³ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 215, citing *Tadic Appeals Judgment*, para. 227.

³⁹⁴ *Prosecutor v. Stakic* Appeal Judgement, Case No. IT-97-24, 22 March 2006, Para 64.

³⁹⁵ *Brdjanin*, Appeal Judgement, Para. 430.

³⁹⁶ Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003) at 183.

³⁹⁷ *Trial of Feurstein and others*, Proceedings of a War Crimes Trial Held at Hamburg, Germany, 4-24 August, 1949, Judgment of 24 August 1948 cited in *Tadic*, at para. 199.

³⁹⁸ *Prosecutor v. Kvočka* Appeal Judgement, Case No. IT-98-30/1, 28 February 2005, Para 97.

intent to pursue the common purpose; not every type of conduct would be sufficient enough contribution.³⁹⁹

b) “A criminal plan, design or purpose” common to a plurality of persons

178. A common criminal objective alone is not always sufficient to determine a group, as different and independent groups may happen to share identical objectives. It is the interactions or cooperation among persons – their joint action – in addition to their common objective, that makes these persons a group. The persons in a criminal enterprise must be shown to act together, or in concert with each other; in the implementation of a common criminal objective, if they are to share responsibility for the crimes committed in the JCE.⁴⁰⁰

179. In relation to the first two elements of JCE liability, it is the common criminal objective that begins to transform a plurality of persons into a group, or enterprise, because what this plurality then has in common is the particular objective. It is evident, however, that a common objective alone is not always sufficient to determine a group, because different and independent groups may happen to share identical objectives. It is thus the interaction or cooperation among persons – their joint action – in addition to their common objective, that forges a group out of a mere plurality⁴⁰¹ In other words, the persons in a criminal enterprise must be shown to act together, or in concert with each other, in the implementation of a common objective, if they are to share responsibility for crimes committed through the JCE.⁴⁰²

180. Moreover, a JCE may exist even if none or only some of the principal perpetrators of the crimes are members of the JCE. For example, a JCE may exist where none of the principal perpetrators are aware of the JCE or its objective, yet are procured by one or more members of the JCE to commit crimes which further that objective. Thus, “to hold

³⁹⁹ *Brdjanin*, Appeal Judgement, Para. 427 and 430.

⁴⁰⁰ *Krajisnik*, Trial Judgement, Para. 884.

⁴⁰¹ *Krajisnik* Trial Judgement, para. 884.

⁴⁰² *Brdjanin* Appeal Judgement, paras 410, 430

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a member of a JCE responsible for crimes committed by non-members of the enterprise, it has to be shown that the crime can be imputed to one member of the joint criminal enterprise, and that this member – when using a principal perpetrator –acted in accordance with the common plan.”⁴⁰³

c) amounts to or involves the commission of a crime provided for in the Statute;⁴⁰⁴

181. An essential requirement of JCE 1 is that in order to impute liability to any accused for a crime committed by another person is that the crime in question forms part of the common criminal purpose.⁴⁰⁵ The criminal purpose or plan must be linked to “specific material elements” that demonstrate the existence of an objectively punishable criminal act, precisely determined in time and space”.⁴⁰⁶

(1) “Amounts to or involves”

182. The “criminal purpose underlying the JCE can derive not only from its ultimate objective, but also from the means contemplated to achieve that objective”.⁴⁰⁷ This would appear to mean that there must be a common criminal plan but this need not be the ultimate objective or the final aim of the overall plan.

d) Mens rea

183. The *mens rea* required for a finding of guilt differs according to the category of joint criminal enterprise liability under consideration. The participant must share the purpose of the joint criminal enterprise as opposed to merely knowing about it.⁴⁰⁸

(1) Basic JCE 1

⁴⁰³ *Brdjanin* Appeal Judgement, para. 413.

⁴⁰⁴ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 214, citing *Stakic* Appeal Judgement, para. 114; *Tadic* Appeal Judgement, para. 227.

⁴⁰⁵ *Brdjanin*, Appeal Judgement, Para. 418.

⁴⁰⁶ *Prosecutor v. Sagahutu et al.*, ICTR-00-56-T, Trial Decision, 25 September 2002, at para. 39.

⁴⁰⁷ *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-A, Appeals Chamber Judgement, Para. 76, 80.

⁴⁰⁸ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 208, citing *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 20. See also *ibid.*, para. 31: “joint criminal enterprise is to be regarded, not as a form of accomplice liability, but as a form of ‘commission’ and that liability stems not [...] from mere membership of an organization, but from participating in the commission of a crime as part of a criminal enterprise” .

184. Where JCE 1 is concerned, the accused must intend the commission of the crime and intend to participate in a common plan aimed at its commission.⁴⁰⁹ The intent to commit the crime must be shared by all the participants in the JCE.⁴¹⁰ The member of the JCE acts by directly perpetrating a crime or through “acts or omissions that facilitated crimes committed” in furtherance of the enterprise.⁴¹¹

(2) JCE 2

185. For JCE 2 liability, the accused must be shown to have personal knowledge of an organised criminal system and intent to further the criminal purpose of the system. The accused must be shown to knowingly and actively adhere to a *system* of repression. The system must be an overarching criminal system into which the defendant’s act fits, rather than an isolated criminal enterprise.⁴¹²

186. The accused’s position of authority is particularly relevant⁴¹³: The “requisite intent could be inferred from the position of authority held by the camp personnel. Indeed, it was scarcely necessary to prove intent where the individual’s high rank or authority would have, in and of itself, indicated an awareness of the common design and intent to participate therein.”⁴¹⁴

(3) Category 3/Extended JCE

187. This situation arises when one of the group members commits an act which, “while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common [criminal] purpose.”⁴¹⁵

188. For convictions under the third category the accused can only be held responsible if he “intended to further the common purpose of the joint criminal enterprise and the

⁴⁰⁹ *Brdjanin*, Appeal Judgement, Para. 365.

⁴¹⁰ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-T, “Judgement” (TCI), 2 August 2007, Para. 218, citing *Tadic* Appeal Judgement, para. 28.

⁴¹¹ *Furundzija*, at para. 249; *Tadic*, at para. 229.

⁴¹² For the notion of “system”, see *Krnojelac* Appeal Judgement, para. 89 and *Vasiljević* Appeal Judgement, para. 105.

⁴¹³ *Tadic*, at para. 203.

⁴¹⁴ *Tadic*, at para. 203.

⁴¹⁵ *Tadic*, para. 204.

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crime was a natural and foreseeable consequence of that common purpose”.⁴¹⁶ In other words if, under the circumstances of the case: (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group and (ii) the accused willingly took that risk. The crime must be shown to have been foreseeable to the accused in particular.⁴¹⁷

189. A Chamber can only find that the accused has the requisite intent if this is the only reasonable inference on the evidence.⁴¹⁸

190. In the third category wherein an accused may be responsible for crimes committed beyond the common purpose it is particularly important to assess this in relation to the knowledge of the particular accused because there may be a large number of participants performing distant and distinct roles. What is natural and foreseeable to one person participating in a joint criminal enterprise might not be natural and foreseeable to another, depending on the information available to them. A participant may be responsible for such crimes only if the Prosecution proves that the accused had sufficient knowledge such that the additional crimes were a natural and foreseeable consequence to him.⁴¹⁹

e) Dismissal of the JCE: defective notice

191. In the AFRC appeal the Appeal Chamber found that the JCE was properly pleaded. The JCE pleading in the AFRC indictment is identical to that in the RUF indictment. However the question whether a JCE has been properly pleaded must be judged on a case by case basis and an assessment must be made whether the accused have been meaningfully “informed of the nature of the charges so as to be able to make an effective defence”.⁴²⁰ In this case the Defence agree with the RUF Prosecution that the reasoning employed in relation to the notice provided by the AFRC indictment can

⁴¹⁶ *Stakic* Appeal Judgement, Para. 65.

⁴¹⁷ *Brdjanin*, Appeal Judgement, Para. 365 and 366.

⁴¹⁸ *Brdjanin*, Appeal Judgement, Para. 429.

⁴¹⁹ *Prosecutor v. Kvočka* Appeal Judgement, Case No. IT-98-30/1, 28 February 2005, Para 86.

⁴²⁰ *Prosecutor v. Ntakirutimana*, Appeal Judgement, Case No. ICTR-10/17-A, 30 December 2004, Para 86.

be distinguished from the RUF case.⁴²¹ It is submitted that JCE liability in the RUF case should be dismissed for the following reasons.

192. The Prosecution failed to provide the first Accused with timely notice of the JCE or having provided notice to the Accused then fundamentally change the pleading with the provision of further highly misleading information.

(1) The Prosecution's first pleading and notice of the JCE

193. In the first instance the Prosecution provided notice through the Corrected Amended Consolidated Indictment (“the Indictment”). The nature of the JCE was thereafter explained in the opening and the Pre-trial Briefs.

194. As was found by Trial Chamber II in the AFRC case⁴²² - and reviewed by the Appeals Chamber on that basis⁴²³ - the language used in this first notice pleads the requirements for the first and the third category of JCE. This was stated in paragraphs 36 and 37 of the indictment.

195. This notice – of JCE 1 and 3 – was mirrored in the Prosecution’s Pre-trial Brief wherein it was repeatedly stated that the crimes enumerated in the Indictment “resulted from the participation of Issa Hassan Sesay in the common plan”⁴²⁴ or “were a foreseeable risk of the common plan to gain and exercise political power and control over the territory of Sierra Leone”.⁴²⁵

⁴²¹ *Prosecutor v. Sesay*, SCSL-04-15-T, “Prosecution Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment” (“Joint Criminal Enterprise Notice”) 3 August 2007.

⁴²² *Prosecutor v. Brima*, SCSL-04-16-T, Judgement, June 2007, Para. 71.

⁴²³ AFRC Appeal, Para. 85.

⁴²⁴ For example para. 22 of *Prosecutor v. Sesay*, SCSL-2004-15-PT, Prosecution’s Pre-trial Brief, 2 April 2004.

⁴²⁵ *Ibid*, Para. 23.

196. The Defence for Sesay complained of the vagueness in the pleading of the JCE.⁴²⁶ Trial Chamber I disagreed. However, Trial Chamber II considered that it was improperly pled and that it failed to provide adequate notice to the accused. This finding was overturned by the Appeal Chamber in the AFRC case who found the indictment properly pled.⁴²⁷

197. It is reasonable to conclude that in light of these controversies that the pleading of the JCE was less than ideal. Indeed it is an unassailable fact, notwithstanding the Appeals Chamber's findings, that the JCE does not name the categories of JCE; did not explicitly specify a criminal purpose and did not state which particular crimes were foreseeable from which particular crimes within the common purpose. The Appeals Chamber was constrained to *interpret* the JCE and *inter alia* stated,

198. “[T]he requirement that the common plan, design or purpose of a joint criminal enterprise is inherently criminal means that it must either have as its objectives a crime within the Statute, or contemplate crimes within the Statute as a means of achieving its objectives.”⁴²⁸

199. “the Indictment... demonstrates the Prosecution’s allegation that the parties to the common enterprise shared a common plan and design to achieve by conduct constituting crimes within the Statute”⁴²⁹

200. Consequently the notice provided to the RUF Accused was; Issa Sesay, Morris Kallon and Augustine Gbao, and the AFRC, including Brima, Kamara and Kanu, shared a “common plan, purpose or design (joint criminal enterprise) to terrorise and collectively punish the population by the commission of the enumerated crimes contained within the indictment in order to “gain and exercise political power and

⁴²⁶ For example *Prosecutor v. Sesay*, SCSL-2003-05-PT-055, Preliminary Motion for Defects in the Form of the Indictment, 23 June 2003, Para. 22 in which the Defence argued that the indictment failed to plead with sufficient particularity the nature of the accused’s participation in the criminal enterprise.

⁴²⁷ *Prosecutor v. Brima*, SCSL-04-16-A, Appeal Judgement, 22nd February 2008, Para. 84 and 86.

⁴²⁸ *Ibid* para. 80.

⁴²⁹ *Ibid* para. 82.

control over [both] the territory of Sierra Leone, in particular the diamond mining areas” (JCE 1).⁴³⁰ In the alternative the crimes within the indictment were a reasonably foreseeable consequence of the joint criminal enterprise⁴³¹ (JCE 3).

(2) Prosecution’s Second Notice: new JCE notice

201. On the 27 February 2004 the Prosecution disclosed its Pre-trial Brief.⁴³² The brief cursorily listed the relevant elements concerning JCE liability, including that relevant to JCE 3.⁴³³ The Prosecution were to later claim that this was in purported furtherance of notice to the Accused that the Indictment pled all of the three categories of JCE.⁴³⁴ The Prosecution failed to allege this liability *at any stage* of the proceedings until October 2006, two years after the commencement of the proceedings. Notwithstanding, it demonstrates the confusion in the Prosecution’s own minds concerning the nature of the JCE/s alleged and the lack of proper notice to the defence.

202. The Prosecution advanced this theme. On October 2006 the Prosecution claimed that the Accused “participated in all three forms of JCE... *For example, the execution of 60 persons investigated and detained by Gbao, in Kailahun town is an example of the first form of the JCE, as are the acts of Operation Pay Yourself, to which Sesay and Kallon were participants. If they do not fall within the first form of JCE, they are examples of the crimes which were the foreseeable consequence of the JCE, and fall within the third form of JCE. Forced mining and forced farming are examples of the second form of JCE*” [emphasis added].⁴³⁵ These JCE’s bear no resemblance to the notice previously provided or interpreted by the Appeal Chamber in the AFRC judgement.

(3) Third Notice: the JCE changes again

⁴³⁰ Indictment, paras. 36 and 37.

⁴³¹ *Ibid*, para. 37.

⁴³² *Prosecutor v. Sesay*, SCSL-2004-15-797 - PT, Prosecution’s Pre-trial Brief, 27 February 2004, paras. 209 – 210.

⁴³³ *Ibid*, para. 322 – 325.

⁴³⁴ *Prosecutor v. Sesay*, SCSL-04-15- T, Consolidated Prosecution Skeleton Response to the Rule 98 Motions by the three Accused, 6th October 2006, para. 10.

⁴³⁵ *Prosecutor v. Sesay*, SCSL-04-15- T, Consolidated Prosecution Skeleton Response to the Rule 98 Motions by the three Accused, 6th October 2006, Para. 18.

203. On the 3 August 2007 the Prosecution, purporting to act “consistent with the AFRC Judgement and out of an abundance of caution” filed a “Prosecution Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment” (“JCE Notice”).⁴³⁶ In this notice the accused were informed,

- a. That there was two (arguably three) common criminal purposes: to “pillage the resources in Sierra Leone, particular diamonds, and to control forcibly the population and territory of Sierra Leone”⁴³⁷
- b. The “crimes charged in Counts 1 through 14 of the Corrected Amended Consolidated were within the joint criminal enterprise”⁴³⁸ and were the means by which the common criminal purposes were to be achieved⁴³⁹ or
- c. Alternatively, from 30 November 1996 through about 18 January 2002, the crimes contained within counts 1, 2, 12, 13 and 14 were within the joint criminal enterprise⁴⁴⁰ and the crimes charged in Counts 3 through 11 were the foreseeable consequences of the crimes agreed upon in the joint criminal enterprise.⁴⁴¹

204. Consequently the JCE liability must not be considered in the RUF case. The Prosecution do not know the nature and scope of the JCE/s alleged and neither do the Accused. The Prosecution is required to know its case before the start of the trial and cannot be permitted to mould it as the evidence unfolds or as the Appeal Chamber defines the material elements of an offence.⁴⁴²

6. Superior/command responsibility

205. The burden is on the Prosecution to prove the following three elements:⁴⁴³

- a. the existence of a superior-subordinate relationship between the superior and the offender of the criminal act;

⁴³⁶ SCSL-04-15-T, 3 August 2007

⁴³⁷ *Ibid*, para. 6.

⁴³⁸ *Ibid*, para. 7.

⁴³⁹ *Ibid*, para. 6.

⁴⁴⁰ *Ibid*, para. 8.

⁴⁴¹ *Ibid*, para. 8.

⁴⁴² *Prosecutor v. Brima, Kamaru and Kanu*, SCSL-2004-16-T, “Judgement” (TCII), 20 June 2007, para 80.

⁴⁴³ CDF TC Judgment, para. 235. See also AFRC TC Judgment, para.781; Kordic and Cerkez Appeal Judgement, para. 827; Aleksovski Appeal Judgement, para. 72; Galic TC para.173.

- b. the superior knew or had reason to know that the criminal act was about to be or had been committed;
- c. the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the offender thereof.

a) Superior-subordinate relationship

206. A superior-subordinate relationship may be of a military or civilian character,⁴⁴⁴ but in all cases, the Prosecution must prove effective control. The Prosecution are required to account for the inherent differences in the nature of military and civilian superior-subordinate relationships in showing effective control.⁴⁴⁵ Whether the evidence regarding a civilian's *de jure* or *de facto* authority establishes effective control over subordinates must be determined on a case-by-case basis.⁴⁴⁶

207. In short, the Prosecution must show more than a mere objective likelihood of control, but must indicate actual control as per the particular circumstances, and the particular persons involved. An Accused could not be held liable under Art.6(3) for crimes committed by a subordinate before the said Accused assumed command over that subordinate.⁴⁴⁷ Mere substantial influence that does not meet the threshold of effective control is not sufficient to serve as a means of exercising superior responsibility.⁴⁴⁸ Specifically, the superior must have the capacity to prevent the commission of a crime by a subordinate or to punish the offender of the crime after the crime has been committed.⁴⁴⁹

⁴⁴⁴ CDF TC Judgment, Para. 241. Celebici Appeal Judgement, para. 195; Celebici Trial Judgement, paras 735-736; Kayishema and Ruzindana Trial Judgement, para. 216; Aleksovski Appeal Judgement, para. 76. See also AFRC AC, para.257. See also Akayesu TC Judgment, para.49, Musema TC Judgment, para.148; Bagilishema TC Judgment para. 40 and f. Kalijeli A Judgment, para.85;

⁴⁴⁵ CDF TC Judgment, Para. 241.

⁴⁴⁶ CDF TC Judgment, Para. 241. No quotes.

⁴⁴⁷ CDF TC Judgment, par. 240. quotes Hadzihasanovic et al. Appeal Decision on Command Responsibility, para. 51. See also AFRC TC Judgment para. 1673. Kajileji TC para.773.

⁴⁴⁸ CDF TC Judgment, par. 238. quotes Celebici Appeal Judgement, para. 266. See AFRC AC Judgment, para.289.

⁴⁴⁹ CDF TC Judgment, par. 238. See also AFRC TC Judgment, para. 784 quotes Celebici Appeal Judgement, para. 256. See also AFRC AC Judgment, para. 289.

208. Whether *de jure* or *de facto* in its origin, command responsibility cannot be found in the absence of such control.⁴⁵⁰ On the other hand, the superior can be found responsible for a crime committed by a subordinate two levels down in the chain of command.⁴⁵¹ Superior responsibility is not excluded by the concurrent responsibility of other superiors in a chain of command.⁴⁵²

209. The relative lack of resources of a non-state actor such as the RUF, as compared to the circumstances of state forces in the same conflict must militate against a finding of effective control, for example. The burden is on the Prosecution to establish otherwise.

b) Knowledge of criminal act

210. The Prosecution must prove that the superior knew or had reasons to know that his subordinate was about to commit a crime or had committed such crimes.⁴⁵³ Assessment of the mental element required by art.6(3) must be conducted in the particular circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.⁴⁵⁴

211. Actual knowledge cannot be presumed and may be established by circumstantial evidence only in the absence of direct evidence.⁴⁵⁵ Indicia include:⁴⁵⁶ number, type and scope of crimes; time during which the illegal acts occurred; number and type of subordinates involved; logistics involved, if any; means of communication available;

⁴⁵⁰ CDF TC Judgment, Para. 236. Kordic and Cerkez Appeal Judgement, para. 840; see also Celebici Trial Judgement, para. 377; Strugar Trial Judgement, para. 359.

⁴⁵¹ CDF TC Judgment, par. 238. quotes Strugar Trial Judgement, para. 361. Halilovic TC para.63.

⁴⁵² AFRC TC Judgment, para. 786. See also AFRC AC Judgment, para.262: concurrent command does not vitiate the individual responsibility of any of the commanders.

⁴⁵³ CDF TC Judgment, para. 242. No quotes.

⁴⁵⁴ CDF TC Judgment, Para. 245. quotes Krnojelac Appeal Judgement, para. 156 referring to Celebici Appeal Judgement, para. 239.

⁴⁵⁵ CDF TC Judgment, Para. 243. quotes Oric Trial Judgement, para. 319 and footnoted references. See AFRC TC Judgment, para. 792. Celebici TC para.386. Galic TC para.174. OTP PT para.220.

⁴⁵⁶ CDF TC Judgment, Ibid. quotes Celebici Trial Judgement, para. 386; Strugar Trial Judgement, para. 368; Limaj et al. Trial Judgement, paras. 319 and 524; Blaskic Trial Judgement, para. 307 endorsed in Blaskic Appeal Judgement, para. 57; see also Oric Trial Judgement, fn 909. See also AFRC TC Judgment, para. 792. Stakic TC para. 466. OTP PT para.221.

geographical location of the area; widespread occurrence of the acts; tactical tempo of operations; the modus operandi of similar illegal acts; the officers and staff involved; and the location of the superior at the time and the proximity of the acts to the location of the superior.

212. The evidence required to demonstrate actual knowledge may differ depending on the position of authority held by a superior and the level of responsibility in the chain of command. The membership of the accused in an organised and disciplined structure with reporting and monitoring mechanisms has been found to facilitate proof of actual knowledge. Conversely, the standard of proof of the actual knowledge of a superior exercising a more informal type of authority will be higher.⁴⁵⁷
213. The constructive knowledge standard will only be satisfied if information was available to the superior which would have put him on notice of offences committed by his subordinates or about to be committed by them.⁴⁵⁸ The information must be available to the superior. He may not be held responsible for failing to acquire such information.⁴⁵⁹
214. Although the information need not be such that, by itself, it was sufficient to compel the conclusion of the existence of such crimes,⁴⁶⁰ it must be sufficiently alarming so as to alert the superior to the risk of the crimes being committed or about to be committed,⁴⁶¹ and to justify further inquiry in order to ascertain whether indeed such crimes were committed or were about to be committed by the subordinates.⁴⁶² Reports

⁴⁵⁷ AFRC TC Judgment, para. 793. see also OTP PT Brief, para.227.

⁴⁵⁸ CDF TC Judgment, para. 244. quotes Galic Appeal Judgement, para. 184 referring to Celebici Appeal Judgement, para. 241; see also Blaskic Appeal Judgement, paras 62-63, Celebici Trial Judgement, para. 393, Strugar Trial Judgement, para. 369, Krnojelac Appeal Judgement, para. 154.

⁴⁵⁹ CDF TC Judgment, Para. 245. Blaskic Appeal Judgement, paras 62-63; Celebici Appeal Judgement, para. 226. See also AFRC TC Judgment, para.794. Halilovic TC para.69.

⁴⁶⁰ CDF TC Judgment, para. 244. quotes Celebici Trial Judgement, para. 393; Strugar Trial Judgement para. 369; Limaj et al. Trial Judgement, para. 525.

⁴⁶¹ CDF TC Judgment, para. 244. Krnojelac Appeal Judgement, para. 155. See also AFRC TC Judgment, para.794.

⁴⁶² CDF TC Judgment, para. 244. Celebici Appeal Judgement, paras 233, 223; see also Limaj et al. Trial Judgement, para. 525 and footnoted references.

addressed to the superior, the level of training and instruction of subordinate officers are factors to be taken into account when determining imputed knowledge.⁴⁶³

215. Negligent ignorance is insufficient to attribute imputed knowledge. What is required is the superior's factual awareness of information which should have prompted him or her to acquire further knowledge. However, command responsibility can arise when the superior remains "wilfully blind" to the criminal acts of his or her subordinates.⁴⁶⁴

c) Failure to prevent or punish

216. Even if the above elements are established, no liability arises unless the superior fails to fulfil the duty to prevent the commission of the offence or punish the perpetrators.⁴⁶⁵ The relevant test is whether the superior in the circumstances had the material ability to act.⁴⁶⁶ *De jure* status is also irrelevant here.

217. Whether the duty was fulfilled depends upon the degree of effective control exercised by the superior at the relevant time and on the severity and imminence of the crimes that are about to be committed.⁴⁶⁷

218. The duty to prevent arises from the time a superior acquires knowledge or has reason to know that a crime is being or is about to be committed. The duty to punish arises after the superior acquires knowledge of the commission of the crime.⁴⁶⁸ The superior must act from the moment that he acquires such knowledge; his obligation to prevent will not be met by simply waiting and punishing afterwards.⁴⁶⁹

⁴⁶³ See also AFRC TC Judgment, para. 794.

⁴⁶⁴ AFRC TC Judgment, para. 796.

⁴⁶⁵ See also AFRC TC judgment, para. 797.

⁴⁶⁶ CDF TC Judgment, Para. 246. Celebici Trial Judgement, para. 395; Limaj et al. Trial Judgement, para. 526; Halilovic Trial Judgement, para. 73. See also OTP PT para. 28.

⁴⁶⁷ AFRC TC Judgment, para. 798.

⁴⁶⁸ CDF TC Judgment, Para. 247. Limaj et al. Trial Judgement, para. 527 referring to Blaskic Appeal Judgement, para. 83 and Kordic and Cerkez Trial Judgement, paras 445-446, 447. Halilovic TC para. 79.

⁴⁶⁹ CDF TC Judgment, Para. 247. Limaj et al. Trial Judgement, para. 527; Strugar Trial Judgement, para. 373. Bagilishema TC para. 49.

219. The superior must intervene as soon as he becomes aware of the planning or preparation of crimes to be committed by his subordinates and as long as he has the effective ability to prevent them from starting or continuing.⁴⁷⁰ Whether a superior has otherwise discharged the duty to prevent the commission of a crime will depend on his material ability to intervene in a specific situation.⁴⁷¹ Factors include⁴⁷² failure to secure reports that military action have been carried out in accordance with international law; failure to issue orders aimed at bringing the relevant practices into accord with the rules of war; failure to protest against or to criticise criminal action; failure to take disciplinary measures to prevent the commission of atrocities by the troops under the superior's command, and failure to insist before a superior authority that immediate action be taken.

220. The duty to punish includes the obligation to investigate the crime or have the matter investigated in order to assist in the determination of the proper course of conduct to be adopted.⁴⁷³ The superior has the obligation to take active steps to ensure that the offender will be punished. In order to discharge this obligation, the superior may exercise his own powers of sanction or, if he lacks such powers, report the offender to the competent authorities.⁴⁷⁴

III. The District of Kailahun: Counts 3-5, 6-9, 12 and 13

A. Status of the RUF in Kailahun District

221. The RUF had adopted the role of an occupying force, as regards both persons and property,⁴⁷⁵ within Kailahun. In accordance with the criteria employed by the ICTY for these purposes,⁴⁷⁶ it is submitted that the authority of the RUF had been established and

⁴⁷⁰ AFRC TC Judgment, para. 798.

⁴⁷¹ CDF TC Judgment, Para. 248. No quotes. See also OTP PT para.228.

⁴⁷² CDF TC Judgment, Ibid. Strugar Trial Judgement, para. 374 and footnoted references; see also Limaj et al. Trial Judgement, para. 528; Oric Trial Judgement, para. 331; Halilovic Trial Judgement, para. 89.

⁴⁷³ CDF TC Judgment, Para.250. Strugar Trial Judgement, para. 376; Halilovic Trial Judgement, para. 97; Kordic and Cerkez Trial Judgement, para. 446.

⁴⁷⁴ CDF TC Judgment, Para.250. See also AFRC TC Judgment, para.799. OTP PT para.228

⁴⁷⁵ See Section 1: The Law

⁴⁷⁶ Prosecutor v. Naletilic and Martinovic TC, Para. 217

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exercised⁴⁷⁷ and the civilians of Kailahun were governed by the RUF's de facto government.⁴⁷⁸

222. The status of occupying power does not signify that the RUF breached international humanitarian law.⁴⁷⁹ Quite the contrary: in fact it entails a number of legal rights and concomitant obligations. However, it does affect the assessment of the RUF and the Accused's actions subsequent to establishment of its status as occupying power, by creating extensive rights and obligations. It is submitted that the RUF was required to:

- a. take all measures in its power to restore and ensure as far as possible public order and safety while respecting the laws in force in the country;⁴⁸⁰
- b. ensure, to the fullest extent of the means available to them, the food and medical supplies of the population⁴⁸¹ as well as more general satisfaction of the medical needs of the civilian population;⁴⁸²
- c. ensure provision of the clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship;⁴⁸³

223. As an occupying power, the RUF was permitted to

- a. take such measures of control and security in regard to protected persons as was necessary as a result of the war, provided that certain basic

⁴⁷⁷ Article 42 of the Hague Regulations provides the following definition of occupation: [t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory of the hostile army.

⁴⁷⁸ This is the requirement for Geneva Convention IV to apply. In this respect the rights and duties pursuant to the Geneva Convention IV concerning individuals differs from its application under Article 42 of the Hague Regulations and does not depend upon the occupying force having actual authority. *See* Prosecutor v. Naletilic and Martinovic TC, Para. 220 and legal submissions in part I of this brief.

⁴⁷⁹ *See* UN Security Council Resolution 1483. *See also* Eyal Benvenisti, "Agora: Future Implications of the Iraq Conflict: Water Conflicts During the Occupation of Iraq" 97 *American Journal of International Law* 860 at 861-3.

⁴⁸⁰ Article 43 The Hague Regulations IV (1907). *See also* Hague Regulations (IV) of 1907 art. 43; 4th Geneva Convention, art. 27.

⁴⁸¹ GC 4 Art 55.

⁴⁸² API Art 14.

⁴⁸³ API Art 69. *See also* GC 4 Art. 23.

protections of the person, religion, family rights, religion and custom were upheld;⁴⁸⁴

- b. subject the population to measures necessary to enable the occupying power to fulfil the above obligations, to maintain the orderly government of the territory, to ensure the security of the Occupying Power, and the members and property of the occupying forces or administration;⁴⁸⁵
- c. requisition foodstuffs or medical supplies available in the occupied territory⁴⁸⁶ or material and stores of civilian hospitals⁴⁸⁷ for use by the occupation forces and administration personnel, if the requirements of the civilian population have been taken into account;⁴⁸⁸
- d. undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand”;⁴⁸⁹
- e. displace the civilian population for imperative military reasons, provided that “all possible measures [are] taken in order that the civilian population may be received under satisfactory condition of shelter, hygiene, health, safety and nutrition”;⁴⁹⁰
- f. prevent protected persons from leaving the territory if their departure is contrary to the armed group’s interests;⁴⁹¹
- g. change the law in force where necessary;⁴⁹²
- h. impose sanctions and penalties, provided that the objects thereof can be considered as jointly and severally responsible for the acts concerned;⁴⁹³
- i. requisition civilian medical units, their equipment, their material or the services of their personnel if these resources are unnecessary for the

⁴⁸⁴ GC 4 Art 27(4).

⁴⁸⁵ GC 4 Art 64.

⁴⁸⁶ GC 4 Art 55.

⁴⁸⁷ GC 4 Art 57.

⁴⁸⁸ GC 4 Art 55; GC 4 Art 57

⁴⁸⁹ GC 4 Art 49.

⁴⁹⁰ AP2 Art 17.

⁴⁹¹ GC 4 Art 35.

⁴⁹² See, in particular, paragraph 4 of UN Security Council Resolution 1483, which calls upon the Authority “to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people may freely determine their own political future.”

⁴⁹³ Hague Regulations, Art 50

provision of adequate medical services for the civilian population or for the continuing medical care of any wounded and sick already under treatment;⁴⁹⁴

- j. destroy real or personal property, whether privately or publicly owned if absolutely necessary for the purposes of military operations;⁴⁹⁵
- k. control public property;⁴⁹⁶
- l. seize any appliance “adapted for the transmission of news, or for the transport of persons or things” as well as depots of arms all kinds of munitions of war⁴⁹⁷
- m. seize or requisition private property for the needs of the army⁴⁹⁸
- n. collect the taxes, dues, and tolls usually imposed for the benefit of the State;⁴⁹⁹
- o. levy other contributions for the needs of the army or of the administration of the territory;⁵⁰⁰
- p. remove public officials from their posts;⁵⁰¹
- q. demand requisitions in kind and services from municipalities or inhabitants, for the needs of the army of occupation;⁵⁰²
- r. compel protected persons to work,⁵⁰³ subject to fulfilment of the following conditions:
 - (i) compulsion may be only to the same extent as nationals of the Party to the conflict in whose territory they are;⁵⁰⁴
 - (ii) the work must be necessary to ensure basic needs and not for the purposes of military operations;⁵⁰⁵
 - (iii) those compelled must be over eighteen years of age;⁵⁰⁶

⁴⁹⁴ AP1 Art 14.

⁴⁹⁵ GC 4 Art 53.

⁴⁹⁶ Hague Regulations, Articles 52 and 53.

⁴⁹⁷ Hague Regulations, Art. 53.

⁴⁹⁸ Hague Regulations, Articles 52 and 53.

⁴⁹⁹ Hague Regulations, Art. 48.

⁵⁰⁰ Hague Regulations, Art. 49.

⁵⁰¹ GC 4 Art 51.

⁵⁰² Hague Regulations, Art. 52.

⁵⁰³ GC 4 Art 40.

⁵⁰⁴ GC 4 Art 40.

⁵⁰⁵ GC 4 Art 40.

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- (iv) the only work which can be compelled is that which is necessary either for the needs of the army of the occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country;⁵⁰⁷
- (v) the work must be carried out only in the occupied territory where the persons whose services have been requisitioned are;⁵⁰⁸
- (vi) payment of a fair wage⁵⁰⁹
- (vii) the work must be proportionate to their physical and intellectual capacities⁵¹⁰

B. No crimes against humanity whatsoever in Kailahun

224. The Prosecution have failed to prove the occurrence of a campaign, operation or course of conduct which involved the violent mistreatment of a civilian population. The criminal acts were not widespread or systematic. The Prosecution have not proven that the offences committed were either massive or large scale. The Prosecution have not proven that the acts of violence were organised or repetitious. There was no attack directed against the civilian population. Conversely the bulk of the Kailahun civilians supported the RUF from 1993 onwards. The crimes that were committed were relatively few; against a limited number of individuals who were targeted due to being perceived as traitors or collaborators or were committed for personal reason, rather than in a structured or organised manner. For these reasons – and those outlined below – no liability arises pursuant to Article 2 or 3 of the Statute for crimes found to have been committed in Kailahun during the indictment period.

225. Notwithstanding the lack of fulfilment of the general elements of crimes against humanity, it is clear from the evidence that none of the requirements of the specific crimes are made out either.

⁵⁰⁶ GC 4 Art. 51.

⁵⁰⁷ GC 4 Art. 51.

⁵⁰⁸ GC 4 Art. 51.

⁵⁰⁹ GC 4 Art. 51.

⁵¹⁰ GC 4 Art. 51.

C. The Prosecution's allegations in Kailahun: implausible factual underpinnings

1. Abductions

226. The Prosecution laid the foundations of its enslavement case, whether sexual or otherwise, upon the occurrence of abduction as a means by which civilians were forced to work and women were kept as sexual slaves or became victims of forced marriage. Neither logic nor evidence supports this proposition.

227. The Prosecution rely upon the following allegations:

- a. At all times relevant to the Indictment, the RUF abducted civilians for the purpose of providing sources of labour various locations within the District of Kailahun;⁵¹¹
- b. Sesay witnessed more than 500 abductees from all over Sierra Leone in Kailahun District following the February 1998 ECOMOG intervention;⁵¹²
- c. Sesay gave orders not to kill civilians but to capture them,⁵¹³ to gather “manpower”;⁵¹⁴
- d. Many of the alleged victims of forced marriage were captured in other areas of the Republic of Sierra Leone and brought to AFRC/RUF camps in the District, and used as sex slaves and/or forced into “marriages”.⁵¹⁵

228. The suggestion that those coming from outside Kailahun were forced in this manner is devoid of any credibility. In addition to testimony led during the case for the Defence,⁵¹⁶ much of the evidence called by the Prosecution illustrates the point.

⁵¹¹ Over 200 civilians were captured in Pendembu (Supplemental Pre-Trial Brief, Para. 223(a)); Civilians were brought from outside Kailahun into the district for labour (Indictment, Para. 74); 500 civilians were captured all over Sierra Leone and brought to Kailahun (Supplemental Pre-Trial Brief, Para. 223(b)).

⁵¹² Prosecution Supplemental Pre-Trial Brief, Para. 225(c)

⁵¹³ Prosecution Supplemental Pre-Trial Brief, Para. 225(f)

⁵¹⁴ Prosecution Supplemental Pre-Trial Brief, Para. 228(e)

⁵¹⁵ Indictment, para. 58.

⁵¹⁶ DIS-157/Transcript, 28 January 2008, pp. 29, line 14 – pp. 30, line 6.

229. First, it is much more plausible that those travelling with the RUF did so because of the protection afforded to them as a result. The Crimes Against Humanity committed by the Kamajors in Kenema made this not only likely but certain. This has been repeatedly stated by witnesses called by the Prosecution, including TF1-045, who explained that some civilians “ran with the RUF because they were afraid of the incoming CDF” and the consequences of “being labelled collaborators left with the AFRC/RUF”.⁵¹⁷ TF1-045 confirmed that civilians knew if they went outside of RUF territory they would be captured and killed by Kamajors.⁵¹⁸ This was confirmed by TF1-041. While for many, such a situation would have been far from ideal, it is vital to recognise that this was armed conflict.

230. The Prosecution seek to draw support for allegations of abduction from the fact that some civilians in Kailahun were there against their will. However, this is much more plausibly explained by the dangers of leaving Kailahun posed by the Kamajors and the CDF (as well as, no doubt, due to the services provided to the civilian population of Kailahun by the RUF, including healthcare, education and ongoing protection). Support for this view can be gleaned from the Prosecution evidence.⁵¹⁹

231. Moreover, shortly after the intervention civilians *were* permitted to leave, to the extent that legitimate security concerns made this possible. A 48 hour period was provided under the authority of Sam Bockarie immediately after the intervention, during which civilians, including those originating in Kenema, were permitted to leave Kailahun. This contradicts the suggestion that the RUF forced civilians to remain in Kailahun. It was also made clear that, following this 48 hour period, the border would be sealed and those remaining would be considered a civilian in occupied territory. Not only does this cast substantial doubt upon the central allegation that the RUF were terrorising and collectively punishing the population of Kailahun but this evidence indicates a genuine attempt to balance legitimate security concerns with the right of civilians to leave RUF territory.

⁵¹⁷ TF1-045/Transcript, 23 November 2005, pp. 15, line 19 – pp. 16, line 4.

⁵¹⁸ TF1-045/Transcript, 23 November 2005, pp. 69.

⁵¹⁹ TF1-045/Transcript, 24 November 2005, pp. 66, line 24 – pp. 69, line 26.

232. Finally, the evidence offered in support of the allegations of abductions is not credible and does not support an inference of mass abductions into Kailahun. A reasonable assessment of the evidence leaves a huge doubt over the premise of the Prosecution case. TF1-366 claimed that he was ordered by Sesay to send people to work in Kailahun on the farms. This happened from 1997 to 1998. Civilians from Kono would be captured and sent. The witness claimed he was sending them from Nimikoro, Sewafe, Kombayende and even Guinea.⁵²⁰ The witness was unable to explain why civilians would be captured in Kono and sent to Kailahun in 1998 when Kailahun was heavily populated by civilians,⁵²¹ bizarrely asserting that the ones that were being sent to Kailahun were, “different” but offering no further explanation. This evidence was refuted by TF1-367, DIS-214 and DIS-288. Further submissions are contained in the Kono 1998 section.

233. TF1-113 testified that civilians were brought into Kailahun Town after the intervention, from Kono, Makeni, and Freetown. The witness claimed that they had been used to carry loads. Prosecuting Counsel attempted to elicit evidence of enslavement by asking the question, “And did you see how the civilians were treated?” The witness’s immediate response was not to detail brutality or evidence which supports an inference that the civilians were enslaved. The witness instead answered stated, “[t]hey would bring them to the G5 office and they would investigate them. But they call it screening ... they were going to investigate them. Just like I have come here, [the court] they would ask them you where you are from, what work you are doing. That was what they were asking them about. That’s how they investigated them”.⁵²² The witness stated that these civilians would be taken to the training base. Please see below for submissions in relation to the activities on Bunumbu.

234. The evidence given was curiously devoid of any description of discomfort or coercion, even describing the experience as similar to attending the Special Court as a

⁵²⁰ TF1-366/Transcript, 14 November 2005, pp. 93- 97; and 15 November 2005, pp. 59 – 60.

⁵²¹ TF1-366/Transcript, 15 November 2005, pp. 59.

⁵²² TF1-113/Transcript, 2 March 2006, pp. 53 - 54.

witness. This is significant. According to the Prosecution these civilians had been wrenched from their homes and loved ones, chain-ganged across the best part of Sierra Leone carrying loads and yet this was the description adduced. The witness described how civilians were returning home to Kailahun at this time, were obtaining passes from the G5 to travel around Kailahun *safely*, civilians were being assisted by RUF soldiers to make a living, chiefs were working alongside the civilians, children of “captured” civilians were going to school and the G5 worked inter alia to “organise us [the civilians] for themselves and for us to give assistance to them”.⁵²³ Furthermore despite being “enslaved” the witness was absolutely categorical that the only woman she was aware of who had been raped was a woman named Fati who had been raped at the war front.⁵²⁴ Common sense dictates that if women are being dragged into Kailahun by men rape would not only be a distinct possibility but inevitable. Instead TF1-113 confirmed that there was an absolute prohibition on rape, punishable by death.⁵²⁵ The witness confirmed that, “if a soldier did something wrong – if a soldier did something wrong to a civilian, that civilian would report it to the G5, and if they found out that it was your doing, they would be punished”.⁵²⁶ The version of events proffered does not support a policy or practice of abductions for enslavement purposes.

235. TF1-108 is typical of the changing accounts proffered in support of mass abductions. Having stated that JPK came to Kailahun with a large group of civilians who had been “captured”,⁵²⁷ he then says that he did not recall the existence of any captives at the time.⁵²⁸ The same witness provided the scant basis for the in Prosecution’s allegations of abductions for the purposes of forced mining in Giema in particular.⁵²⁹

⁵²³ TF1-113/Transcript, 6 March 2006, pp. 87.

⁵²⁴ TF1-113/Transcript, 3 March 2006, pp. 34.

⁵²⁵ TF1-113/Transcript, 3 March 2006, pp. 33.

⁵²⁶ TF1-113/Transcript, 3 March 2006, pp. 36, line 26 - 29.

⁵²⁷ TF1-108/Transcript, 8 March 2006, pp. 52, lines 5 – 14.

⁵²⁸ TF1-108/Transcript, 10 March 2006, pp. 11, line 7 – pp. 13, line 8; with reference to March ‘03 statement at ERN 10763.

⁵²⁹ TF1-108/Transcript, 10 March 2006, pp 37, line 3 – pp. 41, line 4.

236. The Defence also established that there was a system establish to allow for the influx of captured persons from the front line. This system involve ensuring that the new persons were lodged and their welfare looked after. DIS-069, DIS-085, DIS-157, DIS-164, DIS-174, DIS-187, DIS-188. DIS-191, and DIS-281 speak about the methods through which the RUF sought to cater to the welfare of these displaced people. This alone is sufficient to raise doubt.

2. Camps

237. A key aspect of the case against the RUF and Sesay *in Kailahun* is the “presence of training camps [...] in Kailahun District where large numbers of AFRC/RUF forces were present”⁵³⁰ and where “an unknown number of women and girls[, m]any of [whom] were captured ... brought to AFRC/RUF camps in the District, and used as sex slaves and/or forced into “marriages”.⁵³¹ The Prosecution failed to name or particularise these or any other camps in the Indictment or the Pre-Trial Brief, other than to assert that they were “AFRC/RUF camps”. Despite predicating upon the existence of camps, particularly in relation to the charges of sexual violence, the Prosecution have failed to produce any reliable evidence to prove this significant claim. Only two camps were eventually named: “Bagalagao”⁵³² and the Bunumbu Training camp.

238. The testimony of the TF1-093 who claimed the existence of “Bagalagao” cannot be relied upon. It is replete with contradiction, confusion and inconsistencies. Having initially stated that she had seen Foday Sankoh at the camp so frequently as to be unable to count how many times, she later stated that she never saw him at the camp at all. She went on to claim never to have said otherwise to the Prosecution and, moreover, never to have met him.⁵³³ The remainder of her evidence was equally unreliable and in large part bordering on the incomprehensible.⁵³⁴

⁵³⁰ OTP, Supplemental PTB, 21 April 2004, para. 110(c)

⁵³¹ Example: Consolidated Indictment, Para. 58.

⁵³² TF1-093/Transcript, 29 November 2005, pp. 85.

⁵³³ TF1-093/Transcript, 1 December 2005, pp. 69, line 14 – pp. 73, line 12. TF1-093’s statement at p. 13844, says “Also in 1997 we reached Kailahun, in the dry season”. Witness agreed with this. On p. 13845, the TF1-093 said “In Kailahun we had a boss called Bagalagao”. Witness said that this was incorrect as the camp was called Bagalagao not the boss. The statement went on to say “I saw Foday Sankoh there many times, I can’t count how many”. TF1-093 said she never saw Sankoh at the camp and she never said that to

239. [REDACTED] (TF1-362), in an inadvertent moment, testified to the non-coercive and sexually free environment which existed at the camp [REDACTED] the “[r]ecruits were loving each other. That used to happen. Instructors used to love recruits”.⁵³⁵ There was a standing order on the base (and in the RUF) that “[t]wo women should not love to a man”.⁵³⁶ Please see the section concerning the RUF Training Bases for further submissions on the alleged happenings on this military and ideological training base.

240. The existence of these bases, throughout the indictment period, underpinned the Kailahun crime base. The failure to adduce this evidence undermines the whole premise of the Prosecution case against the RUF, its alleged use of terror and punishments and the responsibility of the RUF and Sesay for crimes of sexual violence as alleged in Counts 6–9.

the Prosecution. The witness said in evidence says she had never met Sankon. On p. 17047 (Nov 05), the witness said *"The RUF built a base camp in Kailahun called 'Bagalagao', which is not the name of a person, as stated in paragraph 3 of the statement dated 26 March 2003...."*. The witness saw Foday Sankoh when he visited the camp. The witness stated Foday Sankoh visited the Bagalagao camp soon after the camp was set up when the group entered Kailahun.... *"The witness saw Foday Sankoh visit the camp on only one occasion, and not many occasions as stated in paragraph 3 of the statement dated 26 March 2003. The witness states that that was the first and only time that she saw Foday Sankoh"*. The witness eventually stated that she never saw Sankoh and she did not tell the Prosecution that.

⁵³⁴ TF1-093/Transcript, 1 December 2005, pp. 80, line 26 – pp. 81, line 20. At the training camp, the TF1-093 suggested that she was trained in the art of attacking a town, how to fire a gun and how to capture people. The witness testified that even if there were only 2 people, she would be able to attack the Special Court. When asked how she would do that, she said *"I am sitting here, you are standing here, one will stand over there and I'll be here. You call my name, I call your name. You call different name and I run, go there, and I too will run, go where you were. You move from there. The name you call me right now, you call another name. Any name that comes in your mind, you call it. Then you'll say, "Yes, I've arrived here. Have you arrived here?" "Yes". "James, have you gone?" "Yes." "Wake him up." "I've woke him up." Quickly. So that was the way. That was the way an attack was launched, okay"*.

⁵³⁵ TF1-362/Transcript 26 April 2005, pp. 94, lines 1 – 3.

⁵³⁶ TF1-362/Transcript 26 April 2005, pp. 91, lines 10 – 11.

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D. Enslavement

1. Dismissal of the new allegations

241. The Prosecution, in Count 13 of the Indictment, allege that Sesay is responsible for abductions and forced labour, constituting enslavement, a crime against humanity punishable under Article 2(c) of the Statute. At the outset of the case the Prosecution's allegation of enslavement in Kailahun was predicated upon the abduction of a discrete number of civilians within the District. It was alleged that these individuals were thereafter detained and enslaved through forced labour in the form of farming, domestic labour, mining and carrying loads.⁵³⁷ Subsequent to the notice provided in the indictment and the Prosecution's 21 April 2004 Pre-trial brief the Prosecution expanded the case to include a range of further types of enslavement; namely forced hunting, fishing, food-finding, work on airfields, inhibition of trade, and inhibition of religious practice. The premise of the case changed to allege enslavement of the *whole* of the civilian population of Kailahun.

242. This widening of the case is impermissible. It illustrates the impoverishment of the Prosecution case in Kailahun. Instead of acknowledging the failure to secure reliable civilian witnesses (or specific evidence of specific crimes) the Prosecution's case now relies upon the self-serving evidence of insiders, whose evidence is demonstrably unreliable. It is not possible to prove a crime base without civilians or victims. Victim attest to the crimes and insiders explain the means by which they were committed. The abandonment of this approach led to the additional allegations which remain unsubstantiated. The additional allegations should be dismissed for want of notice.⁵³⁸

2. No attempted exercise of ownership rights

243. The Prosecution's thesis, oft repeated during cross examination, regarding the commission of enslavement in Kailahun is misconceived. The new Prosecution case, that all of the civilians in Kailahun were enslaved, is premised upon the proposition that

⁵³⁷ Prosecution Supplemental Pre-Trial Brief, Paras. 223–229.

⁵³⁸ See Annex A.

the RUF curtailed the freedom of movement and activity within the District. This must be rejected for two reasons. First, the failures of the Prosecution to adduce evidence which satisfies, or which could satisfy, the legal test for enslavement. This was the result of a wholesale misconception of International Humanitarian law. International Humanitarian Law requires military organisations to impose certain restrictions in order to ensure the security and welfare of civilians. This misconception and the flippant use of the term slavery (that bears no resemblance to the legal test for “enslavement”) is exemplified by the testimony upon which they rely.⁵³⁹

244. It emerged from Prosecution (and Defence) evidence that the most significant factors in reducing civilians’ freedoms, either in terms of day-to-day activity, movement in Kailahun or out of the district were the normal exigencies of war, including the need to ensure security for all, starvation, illness, the threats from the CDF and the Kamajors.⁵⁴⁰

245. Second, to the extent that the RUF did impinge upon individual freedoms, the evidence suggests that this was done in order to protect the civilian population in the Kailahun District. The net effect was to increase personal liberty. The Prosecution’s own evidence indicates that the curtailment of movement of *all* within the District was to “prevent the CDF from coming in”.⁵⁴¹ The RUF’s system of passes, which civilians

⁵³⁹ TF1-113/Transcript, 2 March 2006, pp. 70 – 72. The RUF G5 would gather civilians from all over Kailahun to work on RUF farms. The government farm was under the G5 ad AG. “If they took you from Jojoima and brought you to do that farming or they took you from Buedu for that farming, if you are not lucky, you would spend a whole week there. When you spent the whole day on the farm, if you only had a dress on that you had come with, you will still be having that clothes on. When you spend the whole day on the farm, when you returned you would fend food for yourselves to feed yourselves. They wouldn’t want to know whether you need some food to eat, or you would -- should sleep in a comfortable place. That was why I said it was a kind of slavery.”

⁵⁴⁰ TF1-045/Trancript, 24 November 2005, pp. 66, line 24 – pp. 69, line 7. Civilians and fighters were living together in various villages in Kailahun from February 1998. Fighting was going on at the frontlines but not in the areas where civilians lived. Civilians knew if they went outside of RUF territory they would be captured by Kamajors.

⁵⁴¹ TF1-371/Transcript, 28 July 2006, pp. 118, line 29 – pp.119, line 27. When the RUF took over an area, it would impose its own laws. G5 would issue passes to allow civilians to move through RUF territory. The RUF would seal its area to prevent CDF from coming in.

needed during 1998, in order to move from one region to another, was imposed as a safety measure to identify and protect civilians from harassment.⁵⁴²

246. The Prosecution case on trade within Kailahun is difficult to discern. At one time the Prosecution determined to prove that civilians could not trade, this developed into an allegation that civilians were forced to trade at gun point, before finally settling on an allegation of restraint of trade, relying upon the defence admission that civilians, during a large part of the conflict had to trade through the RUF contractors and a percentage of the proceeds of the trade was handed over to the RUF. The Prosecution's case shifted after the evidence of both Prosecution and Defence witnesses established that civilians traded under the RUF regime in Kailahun,⁵⁴³ not only with each other but also with RUF soldiers.⁵⁴⁴ Myriad witnesses – many by reference to personal experience – attested to the fact that civilians were travelled to the “waterside” or “riverside” (an area adjacent to the Mano River, on the Guinea-Sierra Leone border) to trade. Trade was facilitated – indeed protected – by the RUF. Military protection was provided to those wishing to travel to the waterside for trade purposes. Moreover, such protection was organised by individuals described as “contractors”,⁵⁴⁵ who were employees of the RUF.

247. As noted previously the status of the RUF as an occupying power and the legitimacy of the organisation's role as the *de facto* authority, entitled – if not obliged – the RUF to collect contributions or taxes. Even in a fully fledged state, contributions are necessary – indeed, this is a feature of the legitimate use of political authority. The role of the “contractors” can be viewed as equivalent to that of tax officers. This enabled the RUF in Kailahun to fulfil its obligations to the civilians, namely the provision of public services and security guarantees as required in international humanitarian law.

⁵⁴² TF1-371/Transcript 28 July 2006, pp.118, line 29 – pp. 119, line 27.

⁵⁴³ TF1-036/Transcript, 1 August 2005, pp.10, line 11 – pp.13, line 13; TF1-371/Transcript, 28 July 2006, pp. 82, line 16 – pp. 83, line 10.

⁵⁴⁴ TF1-045/Transcript, 24 November 2005, pp. 69, line 27 – pp. 71, line 16.

⁵⁴⁵ *E.g.*, DIS-069.

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248. Second, even if it were to be argued that the RUF were not obliged to raise funds for the benefit of all within the territory, the role of the RUF in providing security for all within the territory or in providing protection to civilians conducting trade is enough to legitimise payments by civilians. Several witnesses have attested to their protective role.

3. Allegations of forced labour

a) Communal Labour in Sierra Leone

249. The Prosecution's allegations that the RUF required civilians to contribute to communal resources, whether through labour or the fruits of their labour, are irrelevant – or at least insufficient – for purposes of proof of the crime of enslavement. The Prosecution suggest that the mere existence of a requirement for civilians to perform labour is indicative of forced labour and therefore enslavement.⁵⁴⁶ This cannot be accepted. International humanitarian law permits occupying groups, such as the RUF in Kailahun, to collect contributions.⁵⁴⁷ The Sierra Leonean constitution sensibly precludes communal labour from the definition of forced labour.

250. The Prosecution has adduced evidence of farm and other labour as a form of contribution as well as other kinds of contributions, including cocoa and coffee.⁵⁴⁸ In light of the exigencies of the situation and the applicable law, as described above,⁵⁴⁹ these were well within the boundaries of international humanitarian law. The national currency was not in use at the time,⁵⁵⁰ and material goods and labour were the only conveyors of value. Prosecution witnesses have provided evidence illustrating the situation in Sierra Leone, in which currency was of little value. Moreover, it was even

⁵⁴⁶ Prosecution Supplemental Pre-Trial Brief, Para. 224(c).

⁵⁴⁷ See discussion of the law of occupancy, Section 1 on the Law.

⁵⁴⁸ TF1-371/Transcript, 28 July 2006, pp. 120, line 19 – pp. 124, line 27.

⁵⁴⁹ See Section 1: the Law

⁵⁵⁰ TF1-114/Transcript, 28 April 2005, pp. 99. lines 3 – 11. TF1-114, agrees that farmers were bartering as the SL currency was not of value there. Agrees it was surviving by trading goods in difficult war circumstances.

Q: It is right, isn't it, that it was normal for all at that time in the absence of a Sierra Leonean currency, people were fed instead of being paid?

A. Yes, sir. You were fed to work, so that you have energy to do the work. There was no other reward.

recognised by witnesses such as TF1-330, that survival during armed conflict produces a need to cooperate and to pool resources which is much greater than during peacetime.⁵⁵¹ The RUF, as the Prosecution has also recognised, responded to this need by creating the “Agricultural Unit”.⁵⁵² The facts that RUF created a civilian led system to facilitate farming and respond to the needs of civilians and fighters and meet the collective needs of the population is further proof of the legitimacy of the process.

251. The suggestion that, rather than to protect and assist the civilian population, the result of contributions to the RUF was to enslave, is absurd. This is especially so in light of the evidence, also within the Prosecution case itself, of the protection and services (education, healthcare, etc.) provided by the RUF to the civilians of Kailahun.

b) Remuneration for Work

252. As regards the Prosecution’s allegations of enslavement, the assertion that civilians did not benefit from their own harvests⁵⁵³ or were not paid for communal labour, and this constitutes enslavement or an indication of control probative of enslavement is deeply flawed.

253. First the evidence falls way short of proof of the exercise of rights of ownership over persons. Civilians were free to work, play and within the confines of the prevailing attacks from the enemy, had freedom of movement, sexuality and religion. In the circumstances the fact that civilians had to contribute their labour, without receiving money in exchange, is not an indication of enslavement. First, while working on their own personal farms, civilians were permitted to keep the harvest for themselves (minus contributions, as described above). Second, civilians and their families received numerous other benefits as a consequence of their labour.⁵⁵⁴ In addition to the services

⁵⁵¹ TF1-330/Transcript, 14 March 2006, pp. 41, line 22 – pp. 46, line 10.

⁵⁵² TF1-371/Transcript, 28 July 2006, pp. 121, line 25 – pp. 124, line 7. There was an agricultural unit which coordinated agricultural activities. The High Command would issue instructions about what contributions were needed.

⁵⁵³ TF1-108/Transcript, 9 March 2006, pp. 72, line 11 – pp. 76, line 20; TF1-367/Transcript, 22 June 2006, pp. 25, line 10 – pp. 26, line 25; TF1-114/Transcript, 28 April 2005, pp. 57, line 22 – pp. 61, line 16.

⁵⁵⁴ TF1-371/Transcript, 28 July 2006, pp. 129, line 24 – pp. 130, line 19.

provided to the civilian population in general by the RUF,⁵⁵⁵ workers were frequently provided with food.⁵⁵⁶ In the context of armed conflict, with its attendant shortages and hardships, this was of immense value. Participation in the system of collective provision was also repaid by protection.⁵⁵⁷ The fact that the civilians received in exchange for their labour free medical care and free schooling,⁵⁵⁸ a privilege denied to many civilians even today, further underlines this point.

c) Alleged incidences of forced labour

(1) Farming in Kailahun

254. The Prosecution's case on the issue of forced farming does not stand up to scrutiny. Throughout the evidence, a variety of names have been given to the farms which existed throughout the war in Kailahun. This includes "target farms", "community farms", "RUF farms" "commanders' farms" and "personal farms". It is difficult to find a consistent narrative concerning which farms were labelled accordingly. However the name of the farm does not matter, as a conviction for enslavement requires the Prosecution to prove the exercise of powers of ownership over persons⁵⁵⁹ and their lack of consent thereto. Even taking the Prosecution case at its highest, in none of these farms, were working conditions within the definition of "enslavement".

(a) TF1-108 and TF1-330

255. The Prosecution managed to find only two civilians to support their case that the whole of the Kailahun citizenry was enslaved in chain-gang and forced to farm, hunt, fish and carry loads for the RUF High Command. This fact alone raises a reasonable doubt. According to the Prosecution, hundreds – if not thousands – of civilians were brutalised and enslaved in Kailahun by the RUF over a ten year period. Two came to

⁵⁵⁵ Healthcare, schools, protection from attack. In return for labour, civilians received among other things, food and medical treatment.

⁵⁵⁶ TF1-045/Transcript, 24 November 2005, pp. 71, line 10 – pp. 72, line 26.

⁵⁵⁷ TF1-371/Transcript, 21 July 2006, pp. 60, line 1 – pp. 62, line 4.

⁵⁵⁸ See, generally, DIS-074, DIS-077, DIS-078, DIS-080, DIS-128, DIS-149, DIS-157, DIS-163, DIS-164, DIS-177, DIS-178, DIS-187, DIS-188, DIS-191, DIS-225, DIS-252, and DIS-301.

⁵⁵⁹ Brima Decision on Motion for Acquittal, para. 209; Kunarac Appeals Chamber paras 116, 122

court. The witnesses were unreliable, unrealistic and clearly not telling the truth about a whole range of matters. The Sesay Defence will rely upon the submissions advanced by other Accused and will deal with a limited few.

(i) TF1-108

256. This witness formed the bulwark of the Prosecution enslavement case. The inevitable rejection of all his evidence ought to lead to the acquittal of the first Accused on charges of enslavement, as a crime against humanity, punishable under Article 2.c. of the Statute. TF1-108 was clearly prepared to say or allege anything to support the Prosecution. First, after having described, in great detail, [REDACTED], it becomes absolutely clear that this elaborate and lengthy part of his testimony was falsified in its entirety. [REDACTED],⁵⁶⁰ and the Prosecution failed to offer any challenge [REDACTED]. The Prosecution's unwillingness to explicitly concede the point is unfortunate. The witness falsely accused Sesay of a heinous crime. It might be thought that a fair Prosecutor might have wanted to concede the point and lift the burden of suspicion from an innocent Accused. Notwithstanding this unwillingness, the totality of the witness' evidence must now be disregarded.

257. If, nonetheless, the Trial Chamber should be minded, to give any weight to any aspect of his testimony the Defence submit that his evidence of enslavement was demonstrably unreliable. First, the witness was unable to offer any corroborative details; the witness failed to provide names of alleged victims and contradicted himself on a number of important issues. The witness appeared untruthful and his evidence and the numerous inconsistencies left the matter in no doubt.⁵⁶¹ The witness, despite living in Kailahun during the war and "suffering" collective enslavement was unable to offer names or corroborative details. Stereotyped evidence only. Conversely tens of civilians, farmers, petty traders, nurses, town and section Chiefs, including DIS-302, DIS-301, DIS-074, DIS-177, DIS-080, DIS-077, DIS-225, DIS-078, DIS-078, DIS-178, DIS-187, DIS-191, DIS-297, DIS-255, and several others left their homes and families to travel

⁵⁶⁰ [REDACTED].

⁵⁶¹ Exhibits 77 and 78.

to Freetown to testify on behalf of the first Accused who was present and it is alleged participated in their enslavement. There were many more willing and able. It makes little or no sense.

(ii) TF1-330

258. TF1-330 was little better. The witness claimed that the only RUF who he knew with family amongst the whole of the Kailahun citizenry was Morie Fekai.⁵⁶² The witness claimed that civilians would be killed if they did not have a pass to travel. No names of victims were forthcoming. The witness claimed that 200 civilians were enslaved on government farms. No victims were identified by name.⁵⁶³ The witness claimed that civilians were beaten and killed on Sesay's farm but was unable to identify any such victim.⁵⁶⁴ The witness claimed that workers on farms were not given food but was forced to admit that to having stated the opposite in a previous statement.⁵⁶⁵

259. Furthermore, the witness produced exhibits 82, 83 and 84 which completely contradicted his own version of events. The witness, who was illiterate⁵⁶⁶ had clearly not read the exhibits and was not aware of their contents. The exhibits demonstrated the real nature of the farming labour. Civilian labour was compellable and compelled but on terms which were reasonable and with due regard for remuneration for work done. The witness was visibly shaking when the contents were read to him and his whole version of events fell apart. In response to Exhibit 83 which showed that the civilians were remunerated, even for working on Bockarie's farm, the witness reluctantly conceded that civilians were provided with seedling rice in exchange for their labour.⁵⁶⁷ This was not enslavement.

(2) *Sesay's personal farms/swamps*

260. The Prosecution's case is fatally undermined by the strength of the Defence case. This case demonstrates that without a shadow of a doubt Sesay worked with civilians to

⁵⁶² TF1-330/Transcript, 14 March 2006, pp. 96.

⁵⁶³ TF1-330/Transcript, 14 March 2006, pp. 25.

⁵⁶⁴ TF1-330/Transcript, 14 March 2006, pp. 30.

⁵⁶⁵ TF1-330/Transcript, 15 March 2006, pp. 50, line 15 – pp. 54, line 13.

⁵⁶⁶ TF1-330/Transcript, 15 March 2005, pp. 4.

⁵⁶⁷ TF1-330/Transcript, 16 March 2006, pp. 35 – 36.

ensure their welfare. The evidence is far ranging and unassailable. It undermines any allegation of terror, collective punishment or enslavement. The witnesses were many and spanned from 1991 to the end of the war.⁵⁶⁸ There can be no doubt that Sesay intended to – and did – assist the civilians.

261. There is cogent evidence of Sesay's views regarding the importance of civilians' autonomy as regards labour and in terms of farming in particular – and his actions in realisation of those views. In light of this, it is impossible to conclude that he could have possessed the *mens rea* for the crime of enslavement effected through labour at farms in Kailahun. The strength of this evidence is reinforced by the fact that it emanates, in part from the Prosecution's case.

262. According to Prosecution witness TF1-041, in testimony relating to 1999, Sesay believed the RUF should work with civilians, not against them.⁵⁶⁹ In this regard, the same witness stated that Sesay wanted the G5 and JSU to do their best to allow the civilians to make a living for themselves and that harassment of civilians was not to be tolerated.⁵⁷⁰

263. Sesay did much to implement his personal policy that civilians should cultivate for themselves. This corroborates the substantial doubts, as to his *mens rea* for the crime of enslavement. In response to the plan of witness DIS-078 to cultivate a very large farm for himself in Giema, Sesay gave him two bushels and-a-half.⁵⁷¹ There is also reliable evidence of Sesay having providing similar assistance to many other people, including witnesses DIS-077 and DIS-080.⁵⁷²

⁵⁶⁸ DIS-069, DIS-078, DIS-080, DIS-128, DIS-177, DIS-178, DIS-188, DIS-191, DIS-225, DIS-301.

⁵⁶⁹ TF1-041/Transcript, 10 July 2006, pp. 81, line 25 – pp. 84, line 12.

⁵⁷⁰ TF1-041/Transcript, 10 July 2006, pp. 81, line 25 – pp. 84, line 12.

⁵⁷¹ DIS-078/Transcript, 11 October 2007, pp. 48, lines 17 – 27.

⁵⁷² DIS-077/Transcript., 8 October 2007, pp. 53, line 9 – pp. 55, line 18. Every morning, DIS-077 would ask a favour of Sesay for food, rice, salt, and Maggi. In DIS-077's first year in Giema, DIS-077 asked Sesay for seed rice. Sesay gave DIS-077 seed rice with which DIS-077 cultivated a farm. DIS-077's dependants worked on DIS-077's farm. DIS-077 was not the only person that to whom Sesay gave seed rice.

DIS-080/Transcript, 5 October 2007, pp. 93, lines 7 – 16. DIS-080 came to know Sesay and had personal dealings with him. DIS-080 did not have salt so Sesay gave DIS-080 salt; if DIS-080 wanted a cigarette,

264. Moreover, having generously provided assistance of this kind, which is some way beyond the minimum requirements of international humanitarian law, Sesay expected nothing in return.⁵⁷³ This reaffirms once again, if this was necessary, Sesay's commitment to civilians' autonomous farming. This alone must instil, at an absolute minimum, considerable doubt as to Sesay's intention to⁵⁷⁴ or reasonable knowledge of⁵⁷⁵ exercise of powers attaching to the right of ownership⁵⁷⁶ over any civilian farmer in Kailahun.

265. The following evidence, concerning Tukpagbehun, is illustrative of the formidable testimony provided by independent civilians with nothing to gain by giving evidence on behalf of the first Accused.

266. As regards the G5's role at Tukpagbehun, DIS-252 observed, "We [the civilians and RUF fighters] all worked together."⁵⁷⁷ The witness was vehement in response to the Prosecution allegation that civilians were working against their wishes: "every arrangement that would come from Mr Sesay, they were the ones who give us the information and, as long as they tell us, we are ready to do it" and "[Sesay is] our master and he did not give us any bad treatment so whatever he wanted we will do for him."⁵⁷⁸ It was also made clear that no soldiers were present to attempt to force the workers.⁵⁷⁹ The strength of this evidence is clear from the witness' response to challenge under cross-examination by the Prosecution: "The first thing I want to tell

Sesay would provide it DIS-080. "Q. Was it just you he assisted in that way? A. Anybody; we, the civilians. You that God has given you that luck for that day, while you are meeting, he will do it very quickly. There was no discrimination on his side." DIS-080/Transcript, 5 October 2007, pp. 95, line 24 – pp. 96, line 7. DIS-080 believes that Sesay gave these things to other civilians as well because DIS-080 didn't hear any bad thing about Sesay.

⁵⁷³ DIS-077/Transcript., 8 October 2007, pp. 85, line 6 – pp. line 12.

⁵⁷⁴ Brima Decision on Motion for Acquittal, para. 209; Kunarac Appeals Chamber paras 116, 122 CHECK

⁵⁷⁵ Prosecutor v. Sesay, Kallon, Gbao, Decision on Defence Motion for Acquittal Pursuant to Rule 98, Transcript, 25 October 2006, p. 31.

⁵⁷⁶ These powers include purchasing, selling, lending, or bartering such person(s), or by imposing on them a similar deprivation of liberty. See Brima Decision on Motion for Acquittal, para. 209; Kunarac Appeals Chamber paras 116, 122 CHECK

Kunarac, AC, Para. 119.

⁵⁷⁷ DIS-252/Transcript, 18 January 2008, pp. 26, line 21 – pp. 28, line 26.

⁵⁷⁸ DIS-252/Transcript, 18 January 2008, pp. 26, line 21 – pp. 28, line 26.

⁵⁷⁹ DIS-252/Transcript, 18 January 2008, pp. 26, line 21 – pp. 28, line 26.

this Court is that nobody was forced to do anything. These men, women, we were happy and we loved that man so we used to work for him wholeheartedly.”⁵⁸⁰ The witness continued:

267. “I told you when we were going to the farm, we were happy going there because if we were around for two weeks and you had nothing to eat the day you go to that farm you had something to eat, and you would be full before coming home.”⁵⁸¹

268. As to what was received in return “[W]hen we used to go to that farm, we were all happy people to do that because we ate so much on that farm. If we wanted to drink, we drink enough; if you wanted to smoke, you smoke enough. So, if something like that was going on, everybody will be happy to do it. So that is why we were happy.”⁵⁸²

269. It is vital to note that the above is not merely evidence of compliance with international humanitarian law regarding the treatment of civilian workers, but demonstrates that Sesay went considerably beyond the call of duty. As set out above, an obligation to work or contribute is acceptable. In particular, in a situation such as that of Kailahun during the Indictment period, in which traditional currency carried little or no value, taxation or contribution in the form of a certain amount of unpaid labour is undoubtedly acceptable. Sesay, on the other hand, did provide compensation/remuneration and looked after the welfare of workers at the farm extremely effectively

270. Despite having made a wide range of allegations regarding the forced nature of work on Sesay’s farms and swamps, the Prosecution have failed to substantiate their case. Only two civilians asserted that mistreatment occurred on Sesay’s farms.

⁵⁸⁰ DIS-252/Transcript, 18 January 2008, pp. 49, lines 2 – 27. The witness disagreed with the Prosecution’s suggestion that Sesay was forcing civilians to work.

⁵⁸¹ DIS-252/Transcript, 18 January 2008, pp. 49, lines 2 – 27.

⁵⁸² DIS-252/Transcript, 18 January 2008, pp. 26, line 21 – pp. 28, line 26.

271. It emerged from the Prosecution's cross examination of witness DIS-191 that there was no use of force at Sesay's farm, no armed soldiers or other armed RUF members.⁵⁸³ This was powerfully and repeatedly confirmed by other Defence witnesses.

272. Civilians working on Sesay's farms and swamps did so voluntarily, under the assumption that the produce belonged to Sesay personally. Even despite that, his commitment to the welfare of the civilians of Kailahun was such that he was well known for providing Maggi, salt, tobacco, cigarettes and other essential goods to those who worked for him.⁵⁸⁴ As established above, such remuneration at a time of armed conflict was the only means by which workers could truly be compensated.⁵⁸⁵

273. Moreover, the produce of Sesay's farms was intended by Sesay for the civilian population of Kailahun, notably those living in and around Giema (and actually received by them). Witness DIS-188 stated that Sesay was interested in providing food for the people as well as to providing seedlings to civilians.⁵⁸⁶ The importance that Sesay placed upon the fact that "the people of Kailahun are farmers"⁵⁸⁷ indicates that, in addition to providing for their survival, he was mindful of their social needs. As well as directly providing for the civilian population, the function of Sesay's farm was to facilitate the subsequent personal endeavours of civilian farmers in providing for themselves and others.⁵⁸⁸ All of this was corroborated by yet another witness, under cross-examination by the Prosecution.⁵⁸⁹

(3) Mining

274. The Prosecution has failed to prove that the way in which mining was administered by the RUF fulfils the elements of the crime of enslavement. Mere

⁵⁸³ DIS-191/Transcript, 21 January 2008, pp. 25 – 28.

⁵⁸⁴ E.g., DIS-188/Transcript, 26 October 2007, pp. 27 – 31; DIS-301/Transcript, 28 June 2007, pp. 57 – 58.

⁵⁸⁵ DIS-188/Transcript, 26 October 2007, pp. 27 – 31.

⁵⁸⁶ DIS-188/Transcript, 26 October 2007, pp. 27 – 31.

⁵⁸⁷ DIS-188/Transcript, 26 October 2007, pp. 27 – 31.

⁵⁸⁸ DIS-188/Transcript, 26 October 2007, pp. 27 – 31.

⁵⁸⁹ DIS-191/Transcript, 21 January 2008, pp. 28 – 29.

assertions of either the need for revenue from diamond mining⁵⁹⁰ or the fact that mining occurred in Kailahun during the Indictment period⁵⁹¹ do nothing to assist the Prosecution's case.

275. Similarly, testimony to the effect that armed members of the RUF were present at mines⁵⁹² does not corroborate the Prosecution's theory. There are several other explanations for the presence of RUF soldiers at mines which are much more credible in the circumstances than the coercion of the workforce. It is obvious that the presence of armed RUF members is not indicative of coercion. As stated earlier, it is a method of protection, rather than a means of asserting ownership over persons. Equally, the value of the resources being mined as well as of the equipment used at mines means that mining sites often require protection – even during peacetime. The Prosecution's thesis that the presence of guns at the mines (or any work place) during war is stretching bounds of incredulity.

276. Moreover the allegations advanced by the Prosecution's witnesses were demonstrably unreliable. TF1-045 boldly claimed that civilians were forced to mine in Giema in 1998 and everyone knew it but during cross examination retracted admitting that he did not see it and could not say how civilians were treated.⁵⁹³ TF1-108 claimed that there had been forced mining at Giema, Yandawahun, Mafindo and Jojoima in 1998-1999 and some of the civilians fled and informed him. Characteristically no names were provided and no explanation proffered as to how civilians might run away from gun toting rebels.⁵⁹⁴ TF1-366 in his inimitable way had something to say about the subject claiming that he had sent people from Kono to mine and had received messages about the mining at Yenga, Morfindo, Jojoima, Jabama and Golahun. The witness made the bizarre claim that the diamonds from these locations first went to him and then to

⁵⁹⁰ OTP Supplementary PTB.

⁵⁹¹ TF1-367/Transcript, 22 June 2006; TF1-366/Transcript, 7 November 2005.

⁵⁹² TF1-330/Transcript, 14 March 2006. Civilians used to mine in Giema – 330 saw it twice. Saw AG and Patrick Bangura there overseeing the miners and the soldiers with guns.

⁵⁹³ TF1-045/Transcript, 18 November 2005, pp. 62- 73.

⁵⁹⁴ TF1-108/Transcript, 8 March 2006, pp. 37 - 41.

Sesay.⁵⁹⁵ How or why this would occur in 1996, 1997, 1998 or 1999 when Sesay was in Kailahun was never explained. Nor was the reason for sending civilians from Kono given that thousands of civilians were resident in Kailahun. This testimony, like most from TF1-366 was contradicted. TF1-367 confirmed the only mining in Kailahun was in Giema and no diamonds had been found. This was corroborated by DIS-078 who confirmed the truth of the matter.⁵⁹⁶

277. TF1-330 claimed that there had been forced mining at Giema in 1998 to 1999 but showed his hostile animus to Sesay by bizarrely claiming that “Mr Issa, because there was a large crowd there, I did not see him, because there was a large crowd”.⁵⁹⁷ The Prosecution rely upon this witness as evidence of enslavement but upon closer inspection his testimony supports the Defence case. The witness was asked by Prosecuting Counsel

Q. How the people doing the mining were treated?

A. They didn't eat food there. They were just working on empty stomach, on that day that I went when I met them there.⁵⁹⁸

278. This exposes the fallacy of the Prosecution's case; uncomfortable conditions do not equate to enslavement. The exercise of powers equivalent to purchasing, selling, lending or bartering does and this evidence is demonstrably incapable of amounting to proof of the same. The remainder of the evidence TF1-330 gave can be contextualised by a more truthful account of this mining. TF1-078 confirmed that one of the authorities present was a Patrick Bangura. He was overseeing the mining. The witness confirmed that on the day he attended the RUF were conducting a sacrifice, a sheep.⁵⁹⁹ This little snippet of truth should be seen in light of the evidence of DIS-078, a Kailahun civilian, who confirmed in a detailed and at time humorous account that

⁵⁹⁵ TF1-366/Transcript, 10 November 2005, pp. 6- 8.

⁵⁹⁶ DIS-078/Transcript, 16 October 2007, pp. 81-85.

⁵⁹⁷ TF1-330/Transcript, 14 March 2006, pp. 50, line 5 – 7.

⁵⁹⁸ TF1-330/Transcript, 14 March 2006, pp. 49, line 16 - 18.

⁵⁹⁹ TF1-330/Transcript, 14 March 2006, pp. 50.

Patrick secretly placed a diamond in the gravel so that the mining would continue and more food would be provided.⁶⁰⁰

(4) Buedu Airfield

279. Having alleged the occurrence of force labour at Buedu airfield, the Prosecution have failed to substantiate their assertions with any credible evidence. They rely, in this regard, upon TF1-114 and TF1-371.

280. TF1-114's evidence is instructive. The witness, whilst using emotive terms like "slavery" went on to say, "These civilians were from the whole of the chiefdom, the whole of the Kailahun District. They send message; they say, "Let them come." When they come, they walk for the whole day and they go back. They only prepare food for them, no salary. After working they give you food, and then you walk on foot back. Even if you come 20 miles, you have to walk about 20 miles home". The witness was asked, "Mr Koker, this that you are describing right now occurred over how long of a period of time?" The witness responded by stating, "Well, I will tell the Court that as for me I saw it happen twice. One was when we were making the playing field where the planes should be falling. Even Issa went there. He told me that we should make people to work there".⁶⁰¹ In other words according to the witness there was some compulsion but the civilians were given food and it only happened twice. This is hardly indicative of a policy of enslavement.

281. The former's credibility having been impugned, the Prosecution must rely entirely upon the testimony of TF1-371 in support of their allegation. However, TF1-371 simply claimed that civilians were engaged in a "government job" constructing the air strip near Buedu. TF1-371 does not explicitly mention force in connection with this construction.⁶⁰²

⁶⁰⁰ DIS-078/Transcript, 16 October 2007, pp. 81-85.

⁶⁰¹ TF1-114/Transcript 28 April 2005, pp.61, line 10-21.

⁶⁰² TF1-371/Transcript, 21 July 2006, pp. 60, lines 1 – 14. TF1-371 continues that civilians were engaged in forced labour. However, that forced was mentioned only in connection with farming activities.

282. On the other hand, several witnesses, called by the Defence, provided cogent, credible testimony regarding work at Buedu airfield. Particularly significant in this sense was DIS-188, who admitted coordinating work at the airfield. His testimony provided detailed evidence on the subject of civilian labour there. The Prosecution failed outright, through cross-examination, to raise any doubt at all about the Defence's account of events, let alone establish any coherent account to support their own theory.⁶⁰³

283. Aside of questions of credibility, it is far from clear that TF1-371 gave details of anything that would fall within the definition of enslavement. The witness stated that civilians in Kailahun were doing government work which combatants could not do as they were fighting. He also commented that civilians in Buedu built bridges and an airstrip.⁶⁰⁴ The witness' principal thesis concerning his definition of forced labour of any kind was summed up by an exchange with His Honour Judge Boutet, who enquired (in relation to the witness' identical description of forced farming) whether the witness was "describing in some cases civilians would have their own farm and at times would be requested to go and do farming on some of the other farms, is it what you are describing?" The witness responded, "Exactly, My Lord".⁶⁰⁵ The witness' definition of forced labour did not equate to enslavement in a legal sense. The witness' definition that civilians were not able to negotiate the timing of the work and were not compensated for it⁶⁰⁶ is far from a sufficient definition of enslavement, as a Crime against Humanity, even if it was true.

284. The civilians *were* compensated for their work in the form of food. Both DIS-188 himself and DIS-281 gave evidence of this fact.⁶⁰⁷ It has already been established that

⁶⁰³ DIS-188/Transcript, 29 October 2007, pp. 56, line 25 – pp. 59, line 5. *See also*, DIS-225/Transcript, 11 October 2007, pp. 32, line 3 – pp. 34, line 16 and pp. 37, line 10 – pp. 39, line 4 (civilians went to work on the airfield voluntarily; they were fed at the airfield and returned home after the work); and DIS-178/Transcript, 18 October 2007, 80, line 9 – pp. 81, line 29 (DIS-178 saw civilians going to the airfield on their own and did not hear any complaints in connection with this work).

⁶⁰⁴ TF1-371/Transcript, 21 July 2006, pp. 60, lines 1 – pp. 62, line 4.

⁶⁰⁵ TF1-371/Transcript, 21 July 2006, pp.61, lines 1 – 6.

⁶⁰⁶ TF1-371/Transcript, 21 July 2006, pp. 60, lines 1 – pp. 62, line 4.

⁶⁰⁷ Civilians received salt, Maggi, rice through chiefdom commander, town commanders, and immediate commanders through the G5. Civilians and soldiers treated nicely; Sam Bockarie provided food and the

this is the most appropriate form of remuneration given the circumstances, in which currency was of little use or value. As described above, the provision of food in this manner is also commensurate with the RUF's policy of safeguarding the welfare of civilians.

285. As established above, the communal labour in effect in Kailahun was not only clearly within the acts permitted by international humanitarian law, but was identical in all relevant senses, to the nature of work more generally during peacetime. In this sense, the Prosecution have supplied no evidence whatsoever to suggest that work at the airfield was different, in any material way, from that carried out in the farms in Kailahun. It is clear from TF1-371's account that he was suggesting the system was identical. The fact that the airfield was welcomed by the civilian inhabitants reinforces the Defence's version of events yet further. In the view of DIS-188, for example, "an airfield is good because it would help provide logistics for the war; this is good for Kailahun because it would push the war farther away from Kailahun."⁶⁰⁸

286. Notwithstanding that a requirement for civilians to work is entirely within the limits of the law, especially during times of armed conflict, several witnesses, attested to the fact that they were not, in fact, obliged to work to any extent greater than any employee is required to abide by work rules and regulations. According to DIS-225, for example, fifteen people, including himself, went to the field voluntarily.⁶⁰⁹ Perhaps most revealing in this regard is the testimony of DIS-178, who gave a detailed account of the autonomy possessed by workers at the airfield, notably demonstrated by the fact that those who received medical treatment could take some time off work as a result.⁶¹⁰

food was cooked for them. If there was no food at the airfield, food from surrounding villages brought, cooked, and eaten together (DIS-188/Transcript 29 October 2007, pp. 56, line 25 – pp. 59, line 5). Food was cooked for the civilians (DIS-281/Transcript, 9 November 2007, pp. 70, line 23 – pp. 71, line 17).

⁶⁰⁸ DIS-188/Transcript, 29 October 2007, pp. 56, line 25 – pp. 59, line 5.

⁶⁰⁹ DIS-225/Transcript, 11 October 2007, pp. 32, line 3 – pp. 34, line 16.

⁶¹⁰ DIS-178 did not see anybody escorting the civilians to the airfield; they were going there on their own. Some of the civilians that came to the clinic for treatment stayed overnight and did not go to the airfield in the morning. Those people that could not go to work returned to their houses after treatment. They did not go to work. DIS-178/Transcript, 18 October 2007, pp. 80, line 9 – pp. 81, line 29.

The assertion that workers were coerced to work by armed force is entirely incongruous with the evidence, and this is confirmed by DIS-188.⁶¹¹

287. Given these circumstances, it is unsurprising that the Prosecution's cross-examination of another Defence witness revealed that "civilians were very happy to work on the airfield".⁶¹²

E. Sexual violence

1. Expert testimony called by the Prosecution

288. Myriad key aspects of the Prosecution's allegations of sexual violence rely upon the opinions expressed by Prosecution witness, TF1-█, █ who purports to be █. In the absence of victim or civilian testimony this is the height of the Prosecution's case in Kailahun. Rather than advancing the Prosecution's case, her evidence succeeds only in casting yet further doubt upon the coherence and credibility of the Prosecution's interpretation of events. It is impracticable to outline all the shortcomings in her approach and her testimony but it is clear that this evidence was of limited value, especially in the conclusions drawn concerning women and their experiences in the Kailahun District.

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It is plainly inadequate to claim to have held four focus groups in Kailahun⁶¹⁴ with alleged victims and claim to understand the complexities of their experiences. It is plainly specious to claim, after such limited

⁶¹¹ The civilians were not under armed guard because the area was a safety zone. Some of the soldiers that were working were armed in case of any invasion. When they were actually doing the work they were not carrying the arms. DIS-188/Transcript, 29 October 2007, pp. 59, lines 6 – 18.

⁶¹² DIS-225/Transcript, 11 October 2007, pp 51, line 27 – pp. 52, line 2.

⁶¹³ Cross-Examination by Counsel for Kanu; ERN 18696.

⁶¹⁴ TF1-█ held four focus groups with 32 bush wives and 10 other women in Kailahun District over a few days. At the focus groups, TF1-█ "sat down and talked" with the women. ERN 18713

subjective research that thousands of women in Kailahun were not reintegrated after the war.⁶¹⁵ In these circumstances, and the clearest socio-economic void between the expert and those from whom she was collecting information, it is difficult to see how she could claim to have gained a sufficient understanding to be able to reach such wide ranging conclusions about the complicated issue of war and women.

290. The methodology that was employed to gather data [REDACTED] [REDACTED] can only be described as absurdly self-serving. Her selection of interviewees does not appear to be based upon anything than her own discretion.⁶¹⁶ The flaws in her research methods, including the variation in interview format from one interviewee to another, disregarding some material, not including interviews and not citing material that was used, are apparent even from the most cursory examination of her investigation.⁶¹⁷ Furthermore, there was no way of verifying that an interviewee was correct when they pinned blame on a particular group, including the RUF, among others.⁶¹⁸ There was no way in which the quality of her methodology could be confirmed, especially given the witness had curiously thought it appropriate to destroy many of her purported research notes.⁶¹⁹

291. Moreover, acknowledging the high level of factual distortion which is present in the literature that relates to the conflict, the witness assessed this distortion only by

⁶¹⁵ Cross-Examination by Counsel for Kanu; ERN 18776. "Currently there are thousands of bush wives who have not been reintegrated and who do not have any source of livelihood, especially in Kailahun."

⁶¹⁶ ERN 18711. To complete the report the witness went to Kailahun, Makeni, Kenema and Kono. There were also meetings with CGG field staff in Freetown. Four focus group meetings were held in Kailahun. She also spoke with Paramount Chiefs, local Court Clerks and Imams, including the head of all the Imams in Sierra Leone. She also spoke with ex-combatants.

TF1- [REDACTED] instructed human rights officers that were to conduct interviews that were to form the basis of TF1- [REDACTED]'s report. TF1- [REDACTED] explained to the human rights officers "the information I'd like and the way in which I think they should ask the question to ... get the precise information that I think is important" (ERN 18723-24). TF1- [REDACTED] was only interested in those women that had crimes committed against them. She was not interested in women that actively chose to be with commanders or with rebels (TF1- [REDACTED]/Transcript, [REDACTED], pp. 105, line 14 – pp. 106, line 10) As such, TF1-369 limited her report to only women that were victims against whom human rights violations were committed (TF1- [REDACTED]/Transcript, [REDACTED], pp. 61, lines 8 – 11).

⁶¹⁷ Cross-Examination by Counsel for Kanu; 18758 – 18814.

⁶¹⁸ Cross-Examination by Counsel for Kanu; 18758 – 18814.

⁶¹⁹ TF1-369/Transcript, [REDACTED], pp. 97 – 98 (TF1-369 testified that she destroyed some of the source materials from the original interviews while packing because she deemed them unnecessary when she moved to a country other than Sierra Leone).

reference to her own preconceptions.⁶²⁰ The problems do not end there. Having recognised, in cross examination, that customary courts have what is called a Customary Law Officer (or judicial adviser) who are legally trained persons who provide advice and are the link between the customary and general law systems, the witness, nevertheless, regards her report as complete despite not having spoken to any Customary Law Officers.⁶²¹ It is no surprise, then that the report was not subject to any peer review.⁶²²

292. Broadly, the witness testifies that the situation of women during the conflict was bad and that the phenomenon of forced marriage was one of the worst tragedies that could befall a Sierra Leonean woman in the conflict. However, she weakens her support for the Prosecution case by admitting that there was an element of choice in being a “forced wife”.⁶²³ The witness noted that being in a marriage offered a degree of protection.⁶²⁴

293. In making her claims about forced marriage, she relies upon a large number of highly questionable assertions which further damage the credibility of the Prosecution evidence. Where the witness makes comments such as “hundreds of women were forced to marry” this statement is based on her own experience, rather than any empirical conclusion from the investigation upon which she appears to rely.⁶²⁵ Similarly, the statement “there are thousands of women in Kailahun who are not reintegrated” rests upon no empirical; foundation whatsoever, other than her own assumption.⁶²⁶ If there were any need for further evidence in order to raise concerns

⁶²⁰ TF1-█ relied on secondary sources to complete her report “because the war in Sierra Leone has been highly documented.” TF1-█ restricted herself to only those documents for which she knew the author because “I have seen reports in which I myself have criticised, you know, in which some of the facts are not the same.” ERN 18724-26. *See also*, Cross-Examination by Counsel for Kanu; 18758 – 18814.

⁶²¹ Cross-Examination by Counsel for Fofana; ERN 18817 – 18855.

⁶²² Cross-Examination by Counsel for Kanu; ERN 18758 – 18814.

⁶²³ Cross-Examination by Counsel for Kanu; ERN 18807-18812.

⁶²⁴ Cross-Examination by Counsel for Kanu; ERN 18812.

⁶²⁵ Cross-Examination by Counsel for Kanu; ERN 18758 – 18814.

⁶²⁶ Cross-Examination by Counsel for Kanu; ERN 18758 – 18814.

over such assumptions, the witness provides it herself, repeatedly asserting that women cannot be raped by their husbands: "It's not rape. It's the women not agreeing."⁶²⁷

2. Forced marriage in Kailahun?

294. The Prosecution have failed to establish any reliable evidence of forced marriage having occurred in Kailahun, involving members of the RUF. The Prosecution were unable to produce any victims of any forced relationship which took place within the indictment period. This despite the fact that TF1-█ was apparently able to speak to 42 women in the space of a few days⁶²⁸ and despite the presence of "thousands" of women unable to be re-integrated. This is not realistic.

295. Even discounting the important differences between peacetime and armed conflict which must be borne in mind, there is strong evidence, emerging from even from the Prosecution case, that the relationships with RUF combatants bore a much greater similarity to those arising "normally". Even TF1-█ confirmed that the women she spoke to in Kailahun had been forced very early in the conflict.⁶²⁹ Prosecution witness TF1-045, for example, gave evidence of a "break-up" in an apparently forced relationship.⁶³⁰ Other *non sequiturs* include references by several witnesses to individuals whose allegedly forced relationships with RUF members began as a result of having "fallen in love".⁶³¹ This was not an expert witness.

⁶²⁷ See, generally, TF1-█/Transcript, █, pp. 40 – 42. "It's not rape. It's the women not agreeing. They don't say it's rape because of where they find themselves. That's how they have been brought. It's under force. It's not under gunpoint. It's not under war. This is her husband;" at pp. 42, lines 6 – 9.

⁶²⁸ TF1-█ held four focus groups with 32 bush wives and 10 other women in Kailahun District over a few days. At the focus groups, TF1-█ "sat down and talked" with the women. ERN 18713.

⁶²⁹ Most of the women that TF1-369 spoke to were abducted in the early years of the war (TF1-█/Transcript, █, pp. 101, lines 23 – 27); Out of the 50-something women that TF1-█ interviewed, the vast majority of them were abducted at the beginning of the war (TF1-█/Transcript, █, pp. 101, line 28 – pp. 102, line 7).

⁶³⁰ TF1-045's sister was captured by an RUF fighter and were together for more than six years. TF1-045/Transcript, 23 November 2005, pp. 12, line 25 – pp. 15, line 18. TF1-045's sister broke up with this man in 2004. TF1-045/Transcript, 23 November 2005, pp. 17, lines 1 – 5.

⁶³¹ E.g., TF1-045/Transcript, 23 November 2005, 12, line 25 – pp. 13, line 6; and TF1-168/Transcript, 3 April 2006, pp. 58 – 60. For the proposition that women that fell in love fled with the RUF combatants on the Intervention, see, pp. 59, lines 19 – 25..

296. Moreover, to the extent that the Prosecution's evidence did allege forced marriage in Kailahun, it is dependent upon ambivalent testimony and inconclusive evidence. It must, therefore, be rejected. Prosecution witness TF1-036, for example, having speculated that women had no choice but "to stay with" RUF men, admits that he "does not know if women stayed voluntarily".⁶³² In contrast, under cross-examination by the Prosecution, Defence witness DIS-069 maintained that he had not heard of any woman being forced to marry RUF soldiers between 1996 and 2000.⁶³³

297. Reliance upon the testimony of TF1-093 discredits the Prosecution case here, as elsewhere. Having stated in cross-examination that "[REDACTED] had taken me as his wife and he had virginated me",⁶³⁴ the same witness also claims that, in fact, [REDACTED] did not virginate her as she had been raped by Junior and Foday beforehand.⁶³⁵ It is not surprising, then, that Prosecution investigators at the second interview advised the witness to stop smoking marijuana.⁶³⁶ It is surprising,⁶³⁷ however, that the Prosecution then persisted in relying upon her evidence so heavily as regards their case in relation to Kailahun District.

⁶³² TF1-036/Transcript, 28 July 2005, pp. 10, line 23 – pp. 11, line 25.

⁶³³ DIS-069/Transcript, 25 October 2007, pp. 46, lines 9 – 16. *See also*, Denis Koker (TF1-114) who claimed that commanders took women as their wives (with some commanders taking five or six wives). Koker/Transcript, 23 April 2005, pp. 63 – 64. Although Koker may have been half the age of those commanders, Koker claimed that if a wife of a commander complained to him, he would investigate the complaint. Koker/Transcript, 28 April 2005, pp. 75, line 27 – pp. 76, line 2.

⁶³⁴ TF1-093, Statement to Prosecution of 26 March 2003, at ERN 13844.

⁶³⁵ TF1-093, Statement to Prosecution of 26 March 2003, at ERN 13844.

⁶³⁶ TF1-093/Transcript, 1 December 2005, pp. 44, lines 2 – 6.

⁶³⁷ In the statement to the Prosecutor at ERN 10727, TF1-093 says it was while she was in Makeni in 1997-8 that a RUF commander took her as his wife. On cross-examination, TF1-093 says it was not in Makeni; it was in the Eastern jungle not in the town. She can't remember when. TF1-093/Transcript, 4 November 2005, pp. 28, line 9 – pp. 29, line 11.

In the statement to the Prosecutor at ERN 10727, TF1-093 says that a RUF commander CO Musa took her as his wife in Makeni and they retreated to Kailahun together. She lost her baby in Kailahun. On cross-examination, TF1-093 says she did not say Makeni to the prosecution and she cannot recall saying that she went from Makeni to Kailahun with CO Musa. TF1-093/Transcript, 4 November 2005, pp. 33, lines 12 – 25.

TF1-093 said that she believed AG knew about the forced marriages in Buedu because he was a commander. She did not know AG at that time (TF1-093/Transcript, 7 November 2005, pp. 13, line 24 – pp. 14, line 24). TF1-093 agrees she said she was in love with Alie. He left her in Kono. They were together for over a year and carried a gun. He had no rank. W was also in love with CO Musa and was very upset when he died (TF1-093/Transcript, 7 November 2005, pp. 14, line 25 – pp. 16, line 16). TF1-093 was impregnated by CO Musa and Alie. She was first pregnant when she was 10 yrs old but not in Makeni as in her statements but in Buedu. TF1-093 cannot remember the year of the birth (TF1-093/Transcript, 7 November 2005, pp. 37, line 15 – pp. 40, line 25).

298. Cogent evidence has been adduced by the Defence to demonstrate that marriages between civilians and soldiers were not the product of coercion. Witness DIS-187 [REDACTED] was, therefore, ideally poised to provide evidence regarding personal interactions with a large number of married couples. Her cross-examination by the Prosecution is illuminating:

Q. Now, the women who were married to fighters, did they ever tell you they were captured and forced to be with those fighters?

A. No. Some of them used to say that they were married before the war, but nobody ever told me that they were forced to get married to them.

Q. So when I put it to you that young women were forced to know marry fighters and have children by them, you would not know anything about that; is that correct?

A. I would know something about that because I was there working with a woman. I am telling you that everybody at Kailahun Town, where there was war, there was no woman who was forced or raped. They got married willingly. They were moving peacefully.⁶³⁸

299. Mr. Sesay himself presided over domestic cases such as ordinary quarrels or when a man and a woman fell out of love. Mr. Sesay warned men about the way to behave towards women.⁶³⁹ If women were afraid to approach Mr. Sesay with their complaint, they took the complaint to the Military Police office.⁶⁴⁰ TF1-371 testified that Mr. Sesay, personally, was against rape, other senior commanders were against rape, and, in fact, rape was against the policy of the RUF generally.⁶⁴¹ Without knowing Mr. Sesay's personal convictions, TF1-371 knew that Mr. Sesay would punish the perpetrators of crimes against civilians. The protection of civilians by the RUF was an agreed upon policy.⁶⁴²

⁶³⁸ DIS-187/Transcript, 26 November 2007, pp. 74, line 13 – pp. 76, line 1. DIS-187 also testified in her direct evidence that women had no problem with fighters: no rape, no force, no beating. Fighters gave DIS-187 respect. Other civilians were treated with respect. DIS-187/Transcript, 26 November 2007, pp 48, lines 7 – 18.

⁶³⁹ Sesay/Transcript, 10 May 2007, pp. 99 – 100.

⁶⁴⁰ Sesay/Transcript, 10 May 2007, pp. 99 – 100.

⁶⁴¹ TF1-371/Transcript, 28 July 2006, pp. 111.

⁶⁴² TF1-371/Transcript, 28 July 2006, pp. 110 – 112.

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300. Notwithstanding the lack of sufficient evidence to indicate that force marriage occurred in Kailahun, conviction of Sesay for enslavement due to the alleged responsibility of the RUF as a whole for forced marriages must be seen in light of the RUF's policy and accompanying means of redress in the event of rape. In this regard, the Prosecution's failure to raise little more than a general assertion of forced marriage must be seen as the result of a successful implementation of RUF policy. The repeated reference, in evidence led by the Prosecution, to the RUF's policy against all forms of sexual violence, is powerful proof of its effectiveness in Kailahun, specifically regarding relationships/marriages between RUF soldiers and civilians.⁶⁴³

a) The RUF's provision of protection in adverse circumstances: G5 and Women Chiefs

301. Prosecution and Defence witnesses confirm that there was a well-established law preventing the rape and mistreatment of women. If the person breaching the law were a civilian, the matter would be reported to the G5; if the person breaching the law were a combatant, the MP.⁶⁴⁴ This law applied both in the towns and the bush.⁶⁴⁵

⁶⁴³ TF1-114/Transcript, 28 April 2005, pp. 64, lines 13 – 14.

⁶⁴⁴ TF1-113/Transcript, 3 March 2006, pp. 34, line 8 – pp. 39, line 3. A law was passed by Foday Sankoh that rape was punishable by execution. If a wrong was done to a civilian by a civilian, the matter would be reported to and investigated by the G5; if the wrong was done by a combatant, the Military Police would punish the combatant.

Comments from several Defence witnesses:

DIS-074: A law was in place that a man cannot harass a woman or take her to a house and have an affair with her. If this were to happen, the G5 would report the matter to the MP and the MP would arrest the culprit (DIS-074/Transcript, 4 October 2007, pp. 26, line 25 – pp. 28, line 9).

DIS-164 No one was entitled to have sex forcefully. That is rape. The law against rape was seriously enforced. If the G5 received a report about rape it would be taken quite seriously (DIS-164/Transcript, 29 January 2008, pp. pp. 67, line 8 – pp. 68, line 17).

DIS-178: If the law preventing rape was violated, the matter should be taken to the G5. (DIS-178/Transcript, 18 October 2007, pp. 63, line 28 – pp. 64, line 24).

DIS-191: If a combatant raped, he would be taken to the MP. However, in the later stages of the war, DIS-191 did not hear of rapes being committed (DIS-191/Transcript, 18 January 2008, pp. pp. 85, line 25 – pp. 86, line 24).

DIS-252: Rules were in place that prevented the rape of a woman. In Pendembu, a local court was established to deal with mistreatment of women and other civilian matters. If the matter involved soldiers, the matter would be taken to the MP. (DIS-252/Transcript, 18 January 2008, pp. 39, line 7 – pp. 41, line 16).

⁶⁴⁵ "Of course" the law that women should not be harassed applied in the bush (DIS-074/Transcript, 4 October 2007, pp. 35, line 23 – pp. 36, line 26). There were laws against rapes and forced marriages; they applied in the bush and the towns (DIS-191/Transcript, 18 January 2008, pp. pp. 86, line 25 – pp. 89, line 13).

302. There is strong evidence to suggest that the effect of RUF policy was to prevent forced marriage altogether. Defence witness DIS-188, for example, stated that no reports were being made to local MP offices, local MP adjutants, of women being taken as commanders' wives.⁶⁴⁶ This is particularly persuasive evidence since, [REDACTED], the witness would have been made aware of this. He also gave details of the means by which he would be informed of forced marriages (in reports like those used in a rape case). The consequences of such an allegation would be an arrest.⁶⁴⁷ While the testimony of this witness pertains directly to Giema, it is indicative of the situation in Kailahun more generally because if the MP in Buedu apprehended a suspect, [REDACTED].⁶⁴⁸ This explains why the Prosecution failed to credibly name a single victim of forced marriage or rape.⁶⁴⁹

303. Similarly, DIS-191 confirmed that there were laws against forcing relationships and forced marriages and that, moreover, these types of relationships did not happen.⁶⁵⁰

DIS-191 [REDACTED]

[REDACTED].⁶⁵¹ [REDACTED]

[REDACTED].⁶⁵² Presumably there is at least one of the "thousands" ⁶⁵³ of bush wives that [REDACTED] purports to have spoken to or been told about being present in Kailahun District. However, to the contrary, DIS-191 further stated that since the war has finished, she did not receive a single complaint about being forced to marry an RUF

⁶⁴⁶ DIS-188/Transcript, 2 November 2007, pp. 77, line 12 – pp. 80, line 6.

⁶⁴⁷ DIS-188/Transcript, 2 November 2007, pp. 77, line 12 – pp. 80, line 6.

⁶⁴⁸ DIS-188/Transcript, 2 November 2007, pp. 77, line 12 – pp. 80, line 6.

⁶⁴⁹ Apart from the ubiquitous allegation that "all the commanders had wives" and TF1-108's allegation (*below*) the only named victims of rape in Kailahun District are Monjama Bockarie (DIS-255), Johnny Paul Koroma's wife (TF1-045 and TF1-366) and "Fati" (TF1-113).

⁶⁵⁰ DIS-191/Transcript, 18 January 2008, pp. 86, line 25 – pp. 89, line 13.

⁶⁵¹ DIS-191/Transcript, 18 January 2008, pp. 65, line 7 – pp. 67, line 8.

⁶⁵² DIS-191/Transcript, 18 January 2008, pp. 67, line 9 – pp. 68, line 4.

⁶⁵³ Cross-Examination by Counsel for Kanu; ERN 18776. "Currently there are thousands of bush wives who have not been reintegrated and who do not have any source of livelihood, especially in Kailahun."

fighter during the war.⁶⁵⁴ This witness has no reason to support the first Accused at the expense of the women in her community.

304. Similarly, in Pendembu, Defence evidence also demonstrated a complete lack of forced marriages.⁶⁵⁵ This was confirmed by TF1-371 who noted that it was RUF policy to punish soldiers who harassed civilians and it was not only successful in Pendembu but also in Buedu and Kailahun Town. Civilians knew to approach Mr. Sesay and Mr. Sesay took actions against the behaviour of some commandos. Not only was Mr. Sesay against rape but all senior commanders were. It was the RUF policy. The witness could not remember any incidence of rape in Pendembu.⁶⁵⁶

305. Evidence of Mr. Sesay's personal policy against forced marriage, as well as his implementation thereof, is provided by DIS-252. As the evidence of this witness indicates, Sesay gave directives to the G5 relating to relationships between RUF fighters and civilian women.⁶⁵⁷ Among these rules was that an absolute prohibition of rape.⁶⁵⁸ So if you wanted a woman's hand in marriage, you will find the parents and put the word across to them, but I did not hear of any fighter raping a woman."⁶⁵⁹

306. Even if there are suggestions that some members of the RUF were errant in this regard, it is clear that that Mr. Sesay was not among their number. TF1-114 himself was a member of the Military Police charged with this function.⁶⁶⁰ The very existence of his role demonstrates that there was a mechanism by which to put into effect the RUF policy against forced marriage.

⁶⁵⁴ DIS-191/Transcript, 18 January 2008, pp 86, line 25 – pp. 89, line 13.

⁶⁵⁵ DIS-188/Transcript, 26 October 2007, pp. 105, lines 20 – 28; pp. 106, lines 14 – 17. In Pendembu 1998, fighters didn't approach women because almost everyone was married.

⁶⁵⁶ TF1-371/Transcript 28 July 2005, pp. 110, line 24 – pp. 113, line 14.

⁶⁵⁷ DIS-252/Transcript, 18 January 2008, pp. 39, line 7 – pp. 41, line 16.

⁶⁵⁸ DIS-252/Transcript, 18 January 2008, pp. 39, line 7 – pp. 41, line 16.

⁶⁵⁹ DIS-252/Transcript, 18 January 2008, pp. 39, line 7 – pp. 41, line 16.

⁶⁶⁰ TF1-114/Transcript, 28 April 2005, pp. 76.

307. Reference has been made during evidence led by both Prosecution and Defence to the G5.⁶⁶¹ This was a part of the RUF which was essential in the implementation of its policy of civilian protection. In fact, its designated role was the coordination of interactions between the RUF and the civilian population.

308. It is important, at this point, to clear up a confusion which emerged from the use of vocabulary by some of the witnesses for both Prosecution and Defence. In referring to individuals who had been “captured”, many witnesses were describing those who had been evacuated from the front lines of conflict, in particular by the RUF.⁶⁶² This is important because the persons concerned were not really “captured” (in the sense of being taken prisoner by the RUF) but were displaced persons, in the care of the G5.

309. Obviously, those displaced by armed conflict are likely to be fearful of the immediate future and certainly cannot be described as possessing the same capacity to exercise autonomy over their circumstances, as people are in other situations. However, it is vital to note that any coercion that arose in these circumstances must be presumed to have been the result of the occurrence of armed conflict (which is, of course, permitted by international humanitarian law) as opposed to the mistreatment of civilians by the RUF, unless proven otherwise. Nothing can be presumed from the fact that the men have guns or were members of the RUF. In fact the existence of the panoply the G5 in facilitating the evacuation of civilians from the theatre of conflict is, rather, further evidence of the RUF’s intent to act properly and lawfully.

310. Given the importance of marriage in Kailahun, as well as the benefits to be gained, in terms of protection and welfare more generally, from being in a relationship, it is unsurprising that the G5 assisted in organising marriages. In the context, it was the most effective means by which the safety of the displaced women could be assured.

⁶⁶¹ E.g., TF1-113, DIS-074, DIS-164, DIS-174, DIS-178.

⁶⁶² This distinction was drawn attention to in the exchange at pp. 45, 27 June 2007, where Defence Counsel attempted to re-examine the first civilian Defence witness (DIS-302) on the definition of “capture”. Re-examination on this point was precluded.

The RUF's G5, along with the women chiefs in the areas to which women were evacuated fulfilled a role similar to that which parents would undertake in peacetime.

311. This context explains the testimony of DIS-174, who explained that, as a fighter, if “you want a woman, you can go to the G5. You arrange. If the woman accept your love then you can go to the zoo bush commanders. You sit down and discuss. So you will be taking care of that woman.”⁶⁶³

312. [REDACTED]
[REDACTED],⁶⁶⁴ the testimony of DIS-129 carries considerable weight. This is particularly so given that her role is not one which is part of the RUF structure. Indeed, her responsibilities in the said roles would have included reacting to any problems caused by the RUF to women within the boundaries of her authority. Her evidence is pertinent in several regards.

313. First, she provides useful evidence of one of the systems by which the RUF ensured the welfare of civilians. [REDACTED]
[REDACTED].⁶⁶⁵ The G5, in turn, was in charge of protecting the civilian welfare.⁶⁶⁶ In particular, “[i]f a fighter behaved badly to a civilian, the civilian would report to a G5 and the G5 would investigate the matter.”⁶⁶⁷

314. Of greatest relevance, for present purposes, is the insight brought by this witness as to the nature of marriages between members of the RUF and civilians during wartime. Considerable attention is paid to this testimony in light of its high level of credibility, and the extent to which it exposes the numerous falsehoods in the Prosecution's allegations of forced marriage:

⁶⁶³ DIS-174/Transcript, 21 January 2008, pp. 106, lines 1 – 4.

⁶⁶⁴ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.1.

⁶⁶⁵ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.5

⁶⁶⁶ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.5

⁶⁶⁷ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.5

The relationships in war time did not come into being exactly as how would have traditionally occurred in peacetime. In peacetime, if a man wants to marry a woman, he will first approach her. If the woman accepts the man, then the woman and man will approach her parents for their consent. If the parents do not consent, then the woman will usually tell the man she cannot marry him as her family do not accept the relationship.⁶⁶⁸

[...]

In wartime, however, many of the parents were not present as they had fled to Guinea and other places. [...] As the parents were absent, the Women's Chief – or if the woman lived in the same chiefdom as the Mammy Queen, the Mammy Queen – would represent the parents as the woman's guardian.⁶⁶⁹

[...]

[REDACTED]

[REDACTED]

[REDACTED].⁶⁷⁰

[...]

Our culture requires this: you cannot just live with a woman and have the community accept it.⁶⁷¹

[...]

[REDACTED]

[REDACTED].⁶⁷²

[...]

It was compulsory that the G5 be informed about a relationship between a fighter and a civilian. This was because if the relationship became difficult later on, the G5 would need to be involved.⁶⁷³

315. DIS-129 also provides persuasive testimony regarding the long-term effects of these relationships, which contrast sharply with the Prosecution's case, especially the views advanced by their expert witness. The account given by DIS-129, in this regard, is a picture of normality: Of the women who married rebels, some are still with them. Some of the relationships broke up or were cut short by death. The women and their

⁶⁶⁸ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.7.

⁶⁶⁹ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.8.

⁶⁷⁰ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.8.

⁶⁷¹ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.8.

⁶⁷² DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.9.

⁶⁷³ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.9.

children are accepted into their community.⁶⁷⁴ Numerous examples are then provided of functional relationships that arose in the way described, during wartime in Kailahun.⁶⁷⁵

316. I never heard of any rapes while I was in Kailahun [after the departure of the Gios]. The Gios raped but after they left, the RUF treated women well. I knew many women in the towns and villages who were having relationships with RUF men.⁶⁷⁶

317. Once the Gios left, the RUF who remained were very respectful in their treatment of women in Kailahun. I did not see or hear of any rapes or of any men forcing women to marry them during the time of war. Many women are still married to husbands who were part of the RUF during the war and those relationships are accepted by the community. Even where the relationships did not last, the women and the children are very much part of the community in Kailahun.⁶⁷⁷

b) Direct allegations against Sesay – Girls From Dodo Kotoma

318. TF1-108 claims to have met two girls from Kono in Dodo Kotoma, one named “Bondu,” who told him they were wives of Sesay. The witness alleges, furthermore that “they do sleep in the same house, they will go fish for him, they'll launder for [Mr. Sesay].”⁶⁷⁸

319. This allegation is mentioned, for the first time, in November 2005.⁶⁷⁹ Its evidentiary value is undermined even further by the fact that they suggest no means by which to confirm the identity of the alleged victims. Perhaps even more tellingly, no Prosecution RUF insider witness ever mentioned the women concerned. This is further proof of TF1-108’s unreliability.

⁶⁷⁴ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.12.

⁶⁷⁵ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p.12 – 16.

⁶⁷⁶ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p. 4.

⁶⁷⁷ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, p. 16

⁶⁷⁸ TF1-108/Transcript, 9 March 2006, pp. 4, line 14 – pp. 6, line 28.

⁶⁷⁹ TF1-108/Transcript, 9 March 2006, pp. 46, lines 20 – 27.

320. The Prosecution also allege that Sesay also entered forced sexual relationships of his own. Aside of the fact that these allegations remain entirely uncorroborated, the testimony of Prosecution witness TF1-371 exposes the flaws in these assertions. Having suggested, in accordance with the Prosecution's theory that forced relationships occurred in Kailahun between RUF soldiers and civilians, the same witness went on to state specifically that Sesay did not enter such a relationship at any time.⁶⁸⁰

321. Having admitted to associating with Sesay on a regular basis, witness TF1-371 in fact gave a detailed account of the relationship between Sesay and his wife, as well as his girlfriend. None of this account supports the Prosecution's allegations as regards Sesay's personal acts of forced marriage. To the contrary, this testimony portrays entirely normal relationships, formed in the absence of any coercion whatsoever. TF1-371 explains that Kadi seemed happy about going out with Sesay and that they had a child in the end.⁶⁸¹ His testimony reveals a similar view of Sesay's relationship with Elsie, who initially was in Buedu, but later moved to Pendembu to be with him.⁶⁸²

322. This positive view of Sesay's relationships is corroborated by witness DIS-069, who confirms that Sesay did not have any sexual relationships while in Pendembu apart from with his wife.⁶⁸³ Sesay's wife, according to this witness, was Elsie May Kaitonge, [REDACTED]. Despite possessing no political or ideological affiliation to Sesay as a member of the RUF, DIS-069 states that he loves Sesay as a member of his family.⁶⁸⁴

323. In summary, then, the evidence supporting the view that Sesay formed non-coercive relationships is considerable, and is rendered more credible by the level of detail and nuance apparent therein. In stark contrast, the allegations upon which the Prosecution seeks to rely are easy for witnesses to make – especially those who harbour

⁶⁸⁰ TF1-371/Transcript, 28 July 2006, pp. 110 – 112.

⁶⁸¹ TF1-371/Transcript, 28 July 2006, pp. 100, line 20 – pp. 102, line 25.

⁶⁸² TF1-371/Transcript, 28 July 2006, pp. 102, line 26 – pp. 103, line 22.

⁶⁸³ DIS-069/Transcript, 22 October 2007, pp. 108, lines 23 – 26.

⁶⁸⁴ DIS-069/Transcript, 25 October 2007, pp. 49, line 14 – pp. 50, line 28.

malevolence for Sesay for unconnected reasons – but as the Prosecutions investigators have discovered, as concerns Kailahun impossible to substantiate.

F. Unlawful Killings

324. It should be noted at the outset that the Prosecution did not provide the Defence with any notice regarding the allegations of extra-judicial killings that would subsequently materialise during the trial through witness statements, without any legal classification or definition. The Defence submits that these allegations should be dismissed for want of notice. The fact that the killings of Fonti Kanu and Foday Kallon, two ex – combatants, have played such a predominant role in the trial speaks volumes about the merits of case against Sesay for alleged involvement in a campaign of terror and collective punishments. This was not supposed to be what this case was about. All new allegations ought to be dismissed for want of notice.⁶⁸⁵

325. However, if the Trial Chamber is minded, nonetheless, to consider the merits of the allegations it is also clear that the Prosecution failed, in any event, to discharge their burden of proof.

326. As regards the criminal responsibility of Sesay, the policies and punishment put into operation both by the RUF as a whole and by the Mr. Sesay these are sufficient to establish reasonable doubt. Prosecution witness TF1-041, for example, was vehement in his agreement with the Defence that Sesay made it clear that killing civilians was unacceptable.⁶⁸⁶ Prosecution witness TF1-078 noted, likewise, that Sesay was against the killing and raping of civilians and wanted civilians to live peacefully within RUF controlled zones.⁶⁸⁷ TF1-078 stated that Mr. Sesay was “every day protecting the rights of the civilians.”⁶⁸⁸ Likewise, if the welfare of a civilian was violated, as was the case when Mr. Sesay allegedly heard that a civilian was shot in Makeni in early 1999, he was “absolutely furious” (TF1-041)⁶⁸⁹

⁶⁸⁵ Annex A.

⁶⁸⁶ TF1-041/Transcript, 10 July 2006, pp. 81, line 25 – pp. 84, line 12.

⁶⁸⁷ TF1-078/Transcript, 25 October 2004, pp. 82, line 18 – pp. 89, line 23.

⁶⁸⁸ TF1-078/Transcript, 25 October 2004, pp. 83, lines 8 – 9.

⁶⁸⁹ TF1-041/Transcript, 10 July 2006, pp. 82, lines 23 – 29.

1. Killing of the Kamajors

327. The Prosecution have failed to establish any means by which responsibility for the killing of the alleged Kamajors could be attributed to Sesay. It is undisputed that Sesay did not carry out any of the killings. To the contrary, the Prosecution has led evidence indicating that Sam Bockarie carried out the killing of the first eight⁶⁹⁰ and that the remainder of the victims (57 persons according to one witness) were then killed by 4 MPS (2 SLAs and 2 RUF) under Joe Fatoma.⁶⁹¹

328. Moreover, Sesay was not present during the killings either. While the Prosecution attempted to assert otherwise through two witnesses (TF1-366⁶⁹² and TF1-113⁶⁹³), the testimony concerned holds no value for several reasons.

329. First, it is inconsistent with the evidence provided by a further two witnesses called by the Prosecution,⁶⁹⁴ as well as a number of witnesses for the Defence.⁶⁹⁵ While one further Prosecution witness (TF1-045) also suggested, during an interview prior to trial, that Mr. Sesay was present at the killing of the Kamajors, he later admitted to having lied in an effort to shift blame to Mr. Sesay,⁶⁹⁶ perhaps as a result of having

⁶⁹⁰ TF1-113/Transcript, 2 March 2006, pp. 54, line 15 – pp. 57, line 17. The other big men who were there were Sesay, Mosquito, Gbao, MP commander and their bodyguards. They were all there. Civilians were there too, many of them.

⁶⁹¹ TF1-113/Transcript, 2 March 2006, pp. 62, lines 3 – 5.

⁶⁹² TF1-366/Transcript, 8 November 2005, pp. 55, line 6 – pp. 61, line 11.

⁶⁹³ TF1-113/Transcript, 2 March 2006, pp. 54, line 15 – pp. 57, line 17.

⁶⁹⁴ TF1-168 asked where Mr. Sesay was and heard he was in Kono. Mr. Kallon was also not present. Mr. Gbao was in Kailahun and the order for people to be taken to the roundabout came from Sam Bockarie through Mr. Gbao (TF1-168/Transcript, 31 March 2006, pp. 70, line 26 – pp. 71, line 14). TF1-371 heard that Kamajors had been killed in Kailahun and this happened before Mr. Sesay brought Johnny Paul Koroma to Kailahun. (TF1-371/Transcript, 28 July 2006, pp. 105, lines 8 – 21).

⁶⁹⁵ Mr. Sesay was in Freetown at the time of the executions (DIS-069/Transcript, 22 October 2007, pp. 108, line 27 – pp. 109, line 5). At this time Mr. Sesay was in Kono (DIS-177/Transcript, 4 October 2007, pp. 109, line 11 – pp. 110, line 18). Mr. Sesay was not present when the first ten persons were killed (DIS-157/Transcript, 28 January 2008, pp. 45, line 24 – pp. 46, line 10). By the time Mr. Sesay arrived to Kailahun, the executions had already taken place (DIS-188/Transcript, 26 October 2007, pp. 93, line 5 – pp. 97, line 12).

⁶⁹⁶ TF1-045 said that Mr. Sesay accused him of trying to derail disarmament in Tongo. He denies giving evidence in revenge. He agrees that in his January 2003 interview with the Prosecution that he said that Mr. Sesay was present at the killing of the Kamajors and of killing a Kamajor. He agrees that he later told the Prosecution that he lied about it and said that Mr. Sesay was not in fact present. TF1-045 said he lied because he was worried about being arrested so he shifted the blame to Mr. Sesay. TF1-045 said he chose Mr. Sesay to blame as the main

previously been accused by Mr. Sesay of attempting to derail the disarmament process and having been arrested and punished as a result.

330. Second, the evidence of the single witness (TF1-113) who did state that Mr. Sesay was present during the first eight killings (committed by Bockarie) must also be rejected as a result of numerous fatal flaws as regards credibility, which became apparent during Defence cross-examination. Throughout 2003 and 2004, during which time the witness gave statements pertaining to this incident in which she should have mentioned Mr. Sesay's presence, the witness failed to do so. This was a feature of her testimony which arose, inexplicably, for the first time in April 2005, shortly before she was expected to give evidence.⁶⁹⁷ Several other inconsistencies in her evidence appeared from cross-examination.⁶⁹⁸ This evidence must be rejected outright. It should be noted that not even witness TF1-113 asserts that Mr. Sesay was present during the killing of the remaining (much larger number) of alleged Kamajors.

331. The evidence of TF1-366 on the subject and its unreliability requires no further examination.

332. The ambivalence in the evidence adduced by the Prosecution on the issue of who gave the order to kill the Kamajors clearly indicates a failure to prove beyond doubt that Mr. Sesay did so. While one single witness suggested that Sesay and Sam Bockarie gave the order,⁶⁹⁹ two other Prosecution witnesses affirmed that Sam Bockarie was the source of the command.⁷⁰⁰

commanders were Mr. Sesay and Sam Bockarie and Sam Bockarie is now dead and Mike Lamin had not been arrested by the Special Court. TF1-045/Transcript, 24 November 2005, pp. 30, line 15 – pp. 34, line 25.

⁶⁹⁷ TF1-113/Transcript, 3 March 2006, pp. 41, line 21 – pp. 48, line 11.

⁶⁹⁸ *E.g.*, TF1-113/Transcript, 3 March 2006, pp. 50, line 26 – pp. 52, line 9.

⁶⁹⁹ TF1-366/Transcript, 8 November 2005, pp. 59, lines 4 – 26. Mr. Sesay told Mr. Gbao that he was going to Pendembu and that when he gets there, Mr. Gbao should kill the prisoners. Mr. Sesay and Sam Bockarie gave the order. Sam Bockarie was in Buedu and Mr. Sesay passed the order. Mr. Sesay gave the order in TF1-366's presence.

⁷⁰⁰ TF1-045/Transcript, 23 November 2005, pp. 40, line 23 – pp. 43, line 19; and TF-113/Transcript, 2 March 2006, pp. 58, line 24 – pp. 60, line 1.

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333. Notwithstanding the weakness of the Prosecution's evidence on this matter, it would also be inconsistent with cogent evidence relating to the RUF command structure, set out earlier, to suggest that anyone other than Sam Bockarie had effective control in the circumstances. As established key feature of the RUF's command structure was that high level commanders such as Bockarie would frequently give orders directly to those who would carry out the act concerned, thus bypassing individuals such as Sesay. This is rendered even more likely by Bockarie's physical presence at the scene of the killing.

2. Killing of Foday Kallon

334. In light of the paucity of evidence called, none of which is reliable, the Prosecution has failed to prove Mr. Sesay's responsibility for the killing of Foday Kallon. The sheer lack of evidence adduced by the Prosecution on this matter is but one of the reasons why the Court must reject the allegation that Mr. Sesay carried out this killing.

335. There is a complete lack of indication, even within the Prosecution evidence called, as to whether Mr. Sesay was indeed responsible for the death. Prosecution witness TF1-036 stated that "SB shot him in Buedu and Sesay shot him a second time".⁷⁰¹ TF1-168, who did not see the events that he described⁷⁰² simply stated that Sam Bockarie instructed the MPs to take Foday Kallon to the outskirts of Buedu and that he never came back. The witness further states that he understood from the MPs that he had been shot dead.⁷⁰³

336. In fact, the sole Prosecution witness who does assert Mr. Sesay's responsibility for the killing of Foday Kallon is witness TF1-366.⁷⁰⁴ At every turn, including this one,

⁷⁰¹ TF1-036/Transcript, 28 July 2005, pp. 66, lines 11 – 26. In Buedu, there was a SLA called CO Kallon who Sam Bockarie said had gone to Liberia and spoken to ECOMOG. Sam Bockarie shot him in Buedu and Mr. Sesay shot him a second time. The man fell to the ground and died. This was in January 1999.

⁷⁰² See TF1-168/Transcript, 31 March 2006, pp. 79, line 26 – pp. 80, line 28.

⁷⁰³ TF1-168/Transcript, 3 April 2006, pp. 35, line 12 – pp. 36, line 20.

⁷⁰⁴ TF1-366/Transcript, 10 November 2005, pp. 46, line 22 – pp. 49, line 25. Mr. Sesay shot Foday Kallon twice with a pistol in Buedu.

TF1-366 takes the opportunity to implicate Mr. Sesay. TF1-366's attempts are unworthy of consideration.

337. Notwithstanding the deficiencies in the Prosecution evidence, convincing and reliable testimony has been led by the Defence to show that Sesay was not responsible for this killing. DIS-085, for example, under cross-examination by the Prosecution, disagreed that Sesay took part in the killing of Foday Kallon and reaffirmed that the order to kill Kallon was given by Sam Bockarie (thereby precluding Sesay's direct responsibility and bypassing him in the command structure).⁷⁰⁵ Another states, not only that the killing had nothing to do with Sesay, but that he was in Pendembu when it occurred.⁷⁰⁶

338. It would appear, moreover, that the killing of Foday Kallon is yet another example of Sam Bockarie's over-zealous administration of justice – a characteristic of his behaviour that is outside of the purview of the standard RUF ideology, to which Sesay is an adherent. In many cases – such as this killing and likewise that of Dr. Kamara – Bockarie's actions stray into the realm of privately motivated acts, rather than justifiable punishment. As regards Foday Kallon, Bockarie accused him of “konaping”, or leaking secrets to enemy, and instructed that Kallon be killed.⁷⁰⁷ This had nothing to do with Sesay⁷⁰⁸ and for the reasons aforementioned nothing to do with a generalised attack on civilians.

339. Finally, in light of the fact that Foday Kallon was a member of Sesay's family, who he referred to as “uncle”, it is extremely unlikely that he would be responsible for his death.⁷⁰⁹ Sesay was extremely upset as a consequence.⁷¹⁰

⁷⁰⁵ DIS-085/Transcript, 14 February 2008, pp. 118, line 29 – pp. 119, line 23.

⁷⁰⁶ DIS-174/Transcript, 21 January 2008, pp. 117, line 11 – pp. 118, line 11.

⁷⁰⁷ DIS-174/Transcript, 21 January 2008, pp. 117, line 11 – pp. 118, line 11.

⁷⁰⁸ DIS-174/Transcript, 21 January 2008, pp. 117, line 11 – pp. 118, line 11.

⁷⁰⁹ DIS-085/Transcript, 14 February 2008, pp. 49, line 21 – pp. 50, line 4.

⁷¹⁰ DIS-085/Transcript, 14 February 2008, pp. 49, line 21 – pp. 50, line 4.

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3. Killing of Fonti Kanu

340. While insisting that Sesay was responsible for the killing of Fonti Kanu, the Prosecution have failed to establish this beyond doubt, having attempted to ground this allegation solely in the testimony of two witnesses of doubtful credibility. In addition, Fonti Kanu is alleged to have been killed in Pendembu, a location not pled on the Indictment. Accordingly, the allegation should be dismissed.

341. The Prosecution asserted, though the testimony of TF1-141, that Sesay captured and killed Fonti Kanu.⁷¹¹ The testimony of TF1-141 on this matter must be rejected in totality. As pointed out in cross examination, the same witness had attributed the very same actions to Sam Bockarie.⁷¹² Aside from the descriptions of the identity of the

⁷¹¹ TF1-141/Transcript, 12 April 2005, pp. 67, lin 8 – pp. 71, line 25: [REDACTED]

[REDACTED], they heard that Sesay had captured a senior officer who had gone to Liberia and had taken him to Buedu. The senior man's name was Fonti Kanu and he was an SLA. He was caught by NPFL rebels – Taylor's boys – as he tried to go over the border. They took him to Folima where Sesay and his men collected him and brought him back to Buedu. TF1-141 saw him in Buedu. Bockarie was not there and Sesay was in charge. He brought Kanu to a muster parade with combatants and MPs and read the charge sheet which was 'different intention' and 'FFI' and then Sesay shot Kanu twice. A doctor who was accused of embezzling drugs was also killed by Sesay.

⁷¹² TF1-141/Transcript, 15 April 2005, pp. 85, line 15 – pp. 90, line 25: On p 9701, it reads: "*Maada told me after Sam Bockarie had taken the other drugs the last step was to smoke the marijuana. After he had taken the drugs he did not joke. He did things like shoot people's legs for no reason, or send people to dojo for 72 hours. This meant you stayed in a hole underground for 72 hours. He killed a lot of people like this. For example he executed Fonti Kanu, after accusing him of plotting to escape to Liberia with diamonds. He, Sam Bockarie then took all of Fonti Kanu's property.. "I was present when Fonti Kanu was shot. Sam Bockarie called up what we called "information". This meant he rang a bell and the order was that we all assembled to be addressed. So we were all gathered when Sam Bockarie told us what the allegations against Fonti Kanu were.*" TF1-141 says this should read 'Povay' not Bockarie and that the woman taking the statement was having problems with the names. Statement goes on to read: "*He asked other senior commanders what to do with Fonti Kanu. The commanders present were General Issa Sesay, after that time, a major, Morris Kallon, Colonel Kaisuku and Colonel Leather Boot... So Sam Bockarie turned and shot Fonti Kanu four times in the chest.*" TF1-141 says that those taking the statement misunderstood him. Povay shot Kanu 4 times. When it is put to TF1-141 that he earlier said twice, TF1-141 says Sesay fired at Kanu twice and the doctor twice. TF1-141 says it is a lie that Dr Kamara was executed 3 months later by Bockarie and that Povay did it. It is put to TF1-141 that Kanu was shot by Dolo on the orders of Bockarie. Dolo was a security for Sankoh, a Liberian vanguard. TF1-141 denies that Kanu was shot in Pendembu by Dolo.

TF1-141/Transcript, 15 April 2005, pp. 79, line 7 – pp83, line 14. Kanu was a Colonel and SLA and he was caught by NPFL fighters at the border and collected by Sesay. This is what TF1-141 heard when he arrived at Pendembu. TF1-141 saw Kanu for the first time at the muster parade in Buedu when he was executed. Kanu was shot in the back and Sesay said if anyone did what Kanu did, he would do the same to them. After this TF1-141 did not see Sesay for some time. On p 9715, the statement reads: "*In my previous statement, I described how Fonti Kanu the SLA major who tried to escape was killed. It was Issa Sesay who shot Fonti Kanu and not Sam Bockarie as stated. Sam Bockarie was in France at the time. After he had killed Fonti, he called up a meeting and told us that he contacted Master that is Sam Bockarie also called*

victim there are no common facts asserted by the two Prosecution witnesses about how Fonti Kanu was killed⁷¹³ or indeed who killed him for reasons that become abundantly clear.

342. TF1-371 described [REDACTED] (uncorroborated) to watch Sesay torture Fonti Kanu (uncorroborated),⁷¹⁴ a man he knew to be close to Sesay.⁷¹⁵ In cross-examination he could not remember if Sesay's bodyguards were there or the names of any of the securities he *claimed* acted on Sesay's orders by beating Fonti Kanu. This witness [REDACTED]
[REDACTED]⁷¹⁶ and consequently felt free to fabricate an account to implicate Sesay, as is evidenced at various points in this brief.

343. Two witnesses for the Defence, DIS-085 and DIS-157 testified Mike Lamin killed Fonti Kanu himself on the orders of Sam Bockarie. DIS-085 actually saw the killing and DIS-157 arrived moments afterwards to see this witness over the body.⁷¹⁷ DIS-174 did not see who killed Fonti Kanu but he was aware that Lamin bypassed the IDU and investigated Fonti Kanu himself.⁷¹⁸ Fonti Kanu was suspected of trying to take RUF secrets out of the country but Sesay had tried to protect his friend and when

Skinny in France and that he was given the go ahead to kill him but he had already called him before he informed him". TF1-141 said this is correct and this is the propaganda that Sesay told them – that he had been ordered by Sesay. W says he was present and he said he was present to the prosecution. [79:7 – 83:14]
⁷¹³ TF1-141 asserts that Fonti Kanu was 4 times at a Muster Parade in Buedu contrary to TF1-371 who testified that Sesay whilst drunk at his own house in Pendembu shot Fonti Kanu in the hand but "he was already dead from the torture".

⁷¹⁴ TF1-371/Transcript 21 July 2006, pp.52, line 5 – pp. 54, line 20." [REDACTED]. There he saw FK naked lying on the ground in front of IS. IS was on a drinking bout. Some of the securities had long canes. FK was semi conscious as he had been tortured. W learnt the Liberian security had turned him over to IS. IS was not able to explain well because of his drunkenness. IS tried to shoot FK but his securities rushed to disarm him. IS started firing indiscriminately and people started running. W heard FS begging for mercy. FK's girlfriend was also present. Around midnight, FK asked IS to kill him as he could not stand the torture. IS shot the hands of FK who was dead anyway. IS told his security commander to take FK's body to the main road and the MP commander was told to take W back to detention."

⁷¹⁵ TF1-371/Transcript, 31 July 2006, pp.83, line 18 – 90, line 5. Fonti Kanu and Sesay were together a lot but this witness cannot say whether they were friends. They would eat and socialise together.

⁷¹⁶ TF1-371/Transcript, 24 July 2006, pp.52, line 20 – pp.56, line 25

⁷¹⁷ DIS-085/Transcript, 14 February 2008, pp. 45, line 15 – pp.48, line 10. Mike Lamin shot Fonti Kanu. DIS-085 was present when Mike Lamin shot Fonti Kanu; and DIS-157/Transcript 24 January 2008, pp.99 line 28 – pp.102, line 15. DIS-157 saw Mike Lamin standing on top of Font Kanu's body in the presence of other commanders. Lamin said it was an order from Bockarie.

⁷¹⁸ DIS-174/Transcript 21 January 2008, pp. 107, line 1-pp. 109, line 26.

he was told of the killing he was “so vexed with Mike” who told him that Bockarie gave the orders to kill Kanu. Sesay was “very angry” about the killing.⁷¹⁹

344. TF1-371 quite simply cannot be credible. Even disregarding the deficiencies in the Prosecution evidence, yet again convincing and reliable testimony has been adduced by the Defence to show that Sesay was not responsible for this killing. DIS-085 and DIS-174 disagreed that Sesay took part in the killing of Fonti Kanu and that the order to kill Fonti Kanu was given by Sam Bockarie, corroborated by both all three Defence witnesses⁷²⁰ thereby precluding Sesay’s direct responsibility and bypassing him in the command structure.

4. Killing of Dr. Kamara/Beating of Zainab

345. The Prosecution have not supplied any evidence to link either of these events to a more general attack. To the contrary, it is clear that the killing, by Sam Bockarie, of Dr. Kamara was committed by Bockarie for his own clumsy unlawful reasons, namely in response to Dr. Kamara’s theft of some medicines. Responsibility for the act cannot, therefore, be imputed to Sesay or any other person.

346. The killing of Dr. Kamara is, in fact, evidence of the RUF’s mechanisms of prevention and punishment in response to transgressions. DIS-129, for example describes how Dr. Kamara had been investigated and found guilty of stealing medicines.⁷²¹ She adds that, as a result, Dr. Kamara was executed by Sam Bockarie for this theft. Dr. Kamara was in charge of the dispensary at Buedu. This supports the Defence case as it clearly indicates the existence of a firm rule against stealing medicine due, in particular, to the importance thereof to both civilians and fighters. Wrong, excessive and plainly inexcusable, but explainable. And moreover, not Sesay’s fault.

⁷¹⁹ DIS-157/Transcript, 24 January 2008, pp.99 line 28 – pp.102, line 15.

⁷²⁰ DIS-174/Transcript, 21 January 2008, pp. 107, line 1-pp. 109, line 26; and DIS-157/Transcript, 24 January 2008, pp. 99 line 28 – pp. 102, line 15.

⁷²¹ DIS-129 – rule 92bis statement - Interview date: 4th – 6th March 2008, pp. 5.

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G. Alleged Crimes on the Bunumbu Training Base

1. “Forced” Training – No Pleading of Any Criminal Responsibility

347. The Prosecution case against Sesay for alleged crimes at the Bunumbu training base remains unclear. At no time have the Prosecution alleged that Sesay is liable for any forced training of recruits or forced recruitment as a separate and distinct crime. Conversely the Prosecution’s case against Sesay in relation to Count 13 [Enslavement] is limited to the “use of civilians as forced labour”⁷²² The Prosecution have particularised forced labour as “mining for diamonds”,⁷²³ “domestic labour”,⁷²⁴ “carry[ing] looted load[s]” or “ammunition”,⁷²⁵ and “pound[ing] rice”,⁷²⁶ “food finding missions from the Rosos camp”⁷²⁷ and “use of unpaid civilians to farm”.⁷²⁸ The only reference to training bases within the context of Count 13 pertains to the use of “forced civilian labour” at the “large AFRC/RUF training bases established at Koinadugu Town and Serekolia”.⁷²⁹ The Defence submits therefore that no criminal liability can therefore arise for any forced training of any adult at the Bunumbu or Yengema training base. In any event the Defence submits that a system of enforced military/ideological training *per se* would not be a breach of International Humanitarian Law. The Prosecution must prove that the occurrence of acts on the training base which amount to one or more of the enumerated crimes in the Statute. The Defence will limit its submissions to this issue.

2. Unlawful Killings or Physical or Sexual Violence

a) Complete lack of pleading

348. The Prosecution have failed to particularise in the Indictment or the Pre-Trial Brief the first Accused’s alleged criminal responsibility for crimes arising from the actions of others on the Bunumbu Training Base. First, the Prosecution have not alleged

⁷²² Consolidated Indictment, Para. 69 – 74.

⁷²³ For example, Ibid, Para. 70.

⁷²⁴ For example, Ibid, Para. 71.

⁷²⁵ Prosecution Pre-trial Brief, 21 April 2004, para. 199 and Para. 208(c).

⁷²⁶ Prosecution Pre-trial Brief, 21 April 2004, para. 207.

⁷²⁷ Prosecution Pre-trial Brief, 21 April 2004, para. 216(d).

⁷²⁸ Prosecution Pre-trial Brief, 21 April 2004, para. 228 (e).

⁷²⁹ Prosecution Pre-trial Brief, 21 April 2004, para. 208 (b).

that Sesay is liable for any Physical Violence in Kailahun. Second, the first Accused has not been provided with notice of the material facts (which underpin the alleged liability) or the alleged mode of responsibility for sexual violence at the Bunumbu training Camp. It is submitted that paragraph 58 of the Indictment providing notice that the accused bears responsibility for sexual violence “in various locations in the District” of Kailahun is inadequate notice. The Defence submits that the Trial Chamber ought not to consider any alleged crime alleged through the evidence.

b) Notwithstanding lack of notice, no evidence of crimes by Sesay

349. The Prosecution’s case against Sesay concerning his alleged criminal responsibility for crimes on the Bunumbu Training Base was adduced through witness: TF1-362, TF1-141 and TF1-263. This Prosecution case appears to be centred on the forced conscription of men, women and children, through the training base. The Prosecution allege that the conscripts were physically abused and unlawfully killed during the training regime. The Prosecution allege that the training base Commandant reported directly to Sesay and thus he is criminally responsible for the planning, instigating or ordering or otherwise aiding and abetting of the crimes and is further responsible as a superior pursuant to 6(3) to the Statute. The Defence submit that the Prosecution have failed to prove this case.

(1) No System of Maltreatment of Recruits

350. Bunumbu was located in Kailahun District. This fact is crucial for a proper consideration of the case against Sesay. The Prosecution have failed to prove that civilians were terrorised or collectively punished in Kailahun District during the indictment period for the reasons outlined above. The Prosecution case rests upon the notion of a brutal training camp, with frequent murders and horrific physical abuse, in the middle of a safety zone where civilian life, during the time of its existence, was relatively calm. The Prosecution’s failure to produce adult civilians (except TF1-263) who claim to have been captured and taken to the base is a striking illustration of a

deeply flawed case.⁷³⁰ This despite outlandish allegations purporting to confirm the forced “processing” of thousands of trainees.⁷³¹ The reliance upon suspect insiders, unable to provide any convincing details of named victims, can be usefully contrasted against the very many civilian witnesses, who testified on behalf of the first Accused, seemingly unaware of this system of brutality which existed on their door step for nearly one year.

***(2) TF1-141 and TF1-263 – Claims of Mistreatment
at Training Bases***

351. Direct evidence of a brutal system of forced training, in which recruits were routinely beaten and died, was given by TF1-141 and TF1-263. These witnesses are inherently unreliable and it is disputed that these witnesses ever attended a training base in Kailahun in 1998.

352. [REDACTED]⁷³²
The reliability of this account is addressed below. The witness claimed to have been forcibly taken to Bunumbu. The witness claimed that the instructors had canes which were used to beat the recruits. Live bullets would be used in training exercises. According to the witness most of the recruits died during the training from the bullets, from falling or from the “pain of falling on barbed wire” or from the beatings administered.⁷³³ TF1-141 claimed that one or two recruits would die everyday.⁷³⁴ This evidence was not reliable for the reasons below.

353. TF1-263 made similar allegations of brutal treatment on the base. TF1-263 claimed that he had been residing in Koidu at PC Ground in 1998 when a message came from Mosquito that the captured civilians should be taken to Kailahun to be trained. The witness falsely claimed that Sesay had been present at PC Ground, where

⁷³⁰ See below for submissions relating to the evidence of the witnesses, TF1-141 and TF1-263, two alleged child combatants.

⁷³¹ TF1-108/Transcript 8 March 2006, pp. 45, line 3 – 4.

⁷³² TF1-141/Transcript, 15 April 2005, pp. 71 – 76.

⁷³³ TF1-141/Transcript, 12 April 2005, pp. 23 – 26.

⁷³⁴ TF1-141/Transcript, 15 April 2005, pp. 90.

he had been frequently, and was present upon his return.⁷³⁵ The witness claimed to have been taken to the Beudu Camp Lion and was adamant that he had not gone to the Bunumbu base.⁷³⁶ The witness claims to have been beaten and deprived of food.⁷³⁷ The witness claimed that there was no doctor on the base.

(3) Reasons for joining the training: Insufficient evidence to prove force

354. TF1-362 stated that the purpose of the Bunumbu Training base 1998 was to provide training for combatants to deal with fighting in Kono and Daru and to provide advance training for a group of SLA who had been brought to the base.⁷³⁸ Aside from the SLA, the recruits were civilians “that [were] captured on the highway to Freetown, some were taken from Daru”.⁷³⁹ The witness claimed that after training – and upon the instruction of Sesay – the second-in-command to Bockarie – some of the recruits were taken to the frontline at Daru and Kono.⁷⁴⁰

355. TF1-362 also testified that upon arrival in Kono (after the intervention) the “discussion was given by General Issa that all women soldiers should go to Kailahun”⁷⁴¹ The witness also claimed that the order had come to take all the captured women from Kono to Kailahun to go to the training base.⁷⁴² The witness went on to further claim that all the captured women who were sent from Kono would be trained but would not fight. Instead the women would be sent back to their commander and become their “wives”.⁷⁴³ The witness was not telling the truth.

356. The evidence lacks any real specificity. TF1-362 was not asked the meaning of “capture” and was not asked to clarify the identity of the recruits, the means by which they allegedly travelled to Kailahun, what measures (if any) were taken to control their

⁷³⁵ TF1-263/Transcript, 6 April 2005, pp. 30 – 31; and 8 April 2005, pp. 32, lines 18 – 20.

⁷³⁶ TF1-263/Transcript, 6 April 2005, pp. 30 – 31; and 8 April 2005, pp. 32, lines 18 – 20.

⁷³⁷ TF1-263/Transcript, 6 April 2005, pp. 32-38.

⁷³⁸ TF1-362/Transcript, 20 April 2005, pp. 43, lines 18 – 29.

⁷³⁹ TF1-362/Transcript, 20 April 2005, pp. 43 lines 8 – 11.

⁷⁴⁰ TF1-362/Transcript, 20 April 2005, pp. 45 – 46.

⁷⁴¹ TF1-362/Transcript, 25 April 2005, pp. 5, lines 19 – 24.

⁷⁴² TF1-362/Transcript, 25 April 2005, pp. 18, lines 11 – 16.

⁷⁴³ TF1-362/Transcript, 22 April 2005, pp. 28, lines 19 – 25.

movement or exercise psychological control on the way to Kailahun, nor which commanders exercised control (or the nature of the control) after the completion of their training. The meaning of “capture” has been the subject of much dispute during the case and it cannot be presumed to imply a lack of consent or the existence of a crime. Capturing or being captured could connote being brutally detained, forcibly moved for a variety of reasons (including humanitarian), or simply being surrounded by combatants. The evidence of coercion cannot be inferred without proper indices, showing physical or psychological force upon individuals, which would allow the Trial Chamber to be satisfied of the occurrence of acts which amount to one or more of the enumerated crimes in the Statute.

357. The evidence is stereotyped and uncorroborated. DIS-297 confirmed that she had not encountered any recruits from Kono.⁷⁴⁴ There were many reasons for civilians from Kailahun or Kenema to volunteer for the training. The evidence suggests that there was a huge amount of support for the RUF. Many Kailahun citizens were related to the fighters. Logically many would have joined voluntarily.⁷⁴⁵ Many participated to be able to learn how to defend themselves.⁷⁴⁶ The same would logically be the case for those who had fled Kamjaor attacks in Kenema during the intervention. The population was generally agreed that the enemy were the Kamajors and ECOMOG and were united against them.⁷⁴⁷ This was confirmed by TF1-168 who stated that there had been a substantial influx of returnees and refugees (fearing being labelled as collaborators) into the Kailahun District during 1998. The witness confirmed that these persons – *not schooled in the ideology* – had made up most of the recruits in the Bunumbu training base.⁷⁴⁸ This was also attested to by TF1-360 who stated that the “reason number one” why civilians would go for training was as a quid pro quo for “protection [by the RUF] against the troop that was coming, either government or ECOMOG”.⁷⁴⁹ Many others

⁷⁴⁴ DIS-297/Transcript, 31 January 2008, pp. 85, line 22-23.

⁷⁴⁵ Examples included: DIS-157/Transcript, 25 January 2008, pp.30, lines 14 – 22.

⁷⁴⁶ Examples included: DIS-163/Transcript, 11 January 2008, pp.30, lines 14 – 22.

⁷⁴⁷ DIS-078/Transcript, 16 October 2007, pp. 89, lines 20 – 23; and pp. 92 – 94.

⁷⁴⁸ TF1-168/Transcript, 3 April 2006, pp. 11 – 13.

⁷⁴⁹ TF1-360/Transcript, 22 July 2005, pp. 69, lines 1 – 4.

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were admiring of the ideology of the RUF, which formed a large part of the training.⁷⁵⁰ There is a good deal of evidence that civilians were happy to train or at least chose to train as a means by which they might achieve status within RUF territory.⁷⁵¹

358. TF1-168, [REDACTED] confirmed there were many reasons for civilians agreeing or wanting to be trained. Civilians wanted to experience the training, even if they did not go onto fight. There would be others who would be gallant and want to fight. The witness explained that there were some people since the inception “of the war in 1991 up to the end of the war they remain as civilians. They were not forced to train. Neither did they volunteer to train. They are others who willingly offered to be trained in order to have a taste of these military exercises, this military training. There were others who, looking at their physical stature, being gallant and otherwise, they called upon them to train.... [I]n the RUF, training -- being a trained was by itself a status symbol”.⁷⁵²

359. This was also confirmed by several other Prosecution and Defence witnesses, who testified that despite being forced at the onset of the war to join the RUF became willing participants in the RUF once they heard and accepted the ideology and the aims of the revolution. TF1-071 testified to this fact, noting the undisputed fact that ideology was an important part of the teaching at the training bases.⁷⁵³ As explained by TF1-371 one of the purposes of this ideological teaching was to teach discipline, which meant not harming civilians.⁷⁵⁴ It would be a curious logic indeed to simultaneously be lecturing the recruits on the importance of protecting civilians whilst systematically killing them on a day-to-day basis. The excesses of some in the RUF in the field of combat can not automatically be imputed to the training base. There can be no blanket assertion that even those civilians unwillingly detained by RUF combatants were thereafter not willing participants in the training at Bunumbu or consensual participants in the combat activity thereafter.

⁷⁵⁰ DIS-187/Transcript, 26 November 2007, pp. 95 – 96.

⁷⁵¹ DIS-164/Transcript, 31 January 2008, pp. 9, lines 14 – 26.

⁷⁵² TF1-168/Transcript, 3 April 2005, pp.23, lines 22 – 29; and pp. 24, line 21

⁷⁵³ TF1-071/Transcript, 24 January 2005, pp. 24.

⁷⁵⁴ DIS-371/Transcript, 24 July 2006, pp. 68.

(4) Little or No Recruiting from Kono

360. There exists a reasonable doubt whether in fact any of the recruits were in fact from Kono, as alleged. For example DIS-297, [REDACTED], was asked by the Prosecution to agree that recruits would be brought by the RUF from Kono answered that she knew “nothing about that”. The witness knew however that some of the recruits came from the Kailahun villages, such as Mende Kaima and “opt to be trained”.⁷⁵⁵ The witness could not have known the significance of this question; her answer was spontaneous and detailed. Moreover this was tangentially confirmed by TF1-108 who confirmed that he knew some of those who had been trained, suggesting impliedly that they were natives of Kailahun.⁷⁵⁶

(5) Non-corroboration by TF1-366

361. TF1-366 claimed that civilians were captured in Koidu and sent for training on the order of Morris Kallon and Sesay. The witness claimed it was by force.⁷⁵⁷ The witness was not credible on the issue of these alleged civilians being sent to Kailahun.⁷⁵⁸ Prosecution were either unwilling or unable to adduce any corroborative details, concerning the civilians involved, the means by which they were taken to Kailahun, their attitude about training, whether they actually fought subsequent to the training or any other detail which would enable an inference of non-consent to any of the subsequent to be drawn. The evidence given by TF1-141 and TF1-263 will be dealt with below relating to Child Soldiers and Bunumbu.

(6) Care of the Recruits

⁷⁵⁵ DIS-297/Transcript, 31 January 2008, pp. 81 – 82.

⁷⁵⁶ TF1-108/Transcript, 8 March 2006, p.42, lines 22 – 28. (The ridiculous suggestion that TF1-108’s 6 year old niece was captured and raped on the base, before managing single-handedly to escape the five miles back to Talia, through checkpoints and other such impediments can safely be ignored. First the witness failed to mention this to the Prosecution during his pre court interview, instead observing that “One day a girl called Jannah who was coming from the village of Tali, escaped from the training base.” (9 March 2006/p 66 lines 16-19). The Witness was asked whether he told Prosecution about his relationship to the girl. Witness states that he did say that she was the daughter of his younger sister. (9 March 2006/p 66 lines 22-25 and Prosecution statement *Notes Nov/December 2005 p 17450*). Second, this witness was incapable of telling the truth on the most basic matters).

⁷⁵⁷ TF1-366/Transcript, 15 November 2005, pp. 59 – 60.

⁷⁵⁸ Please see Kono 1998 section for further submissions.

362. Conversely the evidence TF1-362, DIS-297, and DIS-164 appeared to suggest that the recruits had considerable freedoms whilst on the training base and the atmosphere was not intended to be nor was it coercive.

363. TF1-362 confirmed that the maintenance of the health of the recruits was important. At the outset the recruits' health status would be collated and reported to Bockarie.⁷⁵⁹ The witness testified that if a recruit complained of sickness they would be taken for medical treatment. It was an established procedure that upon arriving at the base anyone who complained of health problems and was not fit would not be trained,⁷⁶⁰ even if the recruit would be disciplined if they were pretending to be sick to avoid the training.⁷⁶¹ The witness did not explain the nature of the discipline nor can it be assumed. This evidence does not support the suggestion that the training base was a coercive environment.

364. Furthermore TF1-362 noted that "at times in the base a recruit died". The witness noted that some of the recruits would be sick and died during the training. On these occasions there would be a change in the system of weekly reporting by radio and these reports (along with reports of escapees) would be transmitted in person.⁷⁶² The implication was obvious: deaths were not frequent, were caused by sickness – not brutality – and would be required to be reported to Bockarie as a matter of some importance.⁷⁶³

365. DIS-297, [REDACTED], confirmed the truth of this analysis in her evidence. The witness confirmed that [REDACTED] [REDACTED].⁷⁶⁴ DIS-297 testified to [REDACTED] [REDACTED]. The witness noted that, "[w]hoever wanted to join, we send him to the training commanders and we send him to the hospital and we will question him

⁷⁵⁹ TF1-362/Transcript, 25 April 2005, pp. 84, lines 8 – 11.

⁷⁶⁰ TF1-362/Transcript, 20 April 2005, pp. 30, line 1.

⁷⁶¹ TF1-362/Transcript, 22 April 2005, pp. 21, lines 18 – 23.

⁷⁶² TF1-362/Transcript, 25 April 2005, pp. 84, lines 8 – 11.

⁷⁶³ TF1-362/Transcript, 25 April 2005, pp. 84

⁷⁶⁴ DIS-297/Transcript, 31 January 2008, pp. 65 – 67.

about what was wrong with him or her.”⁷⁶⁵ [REDACTED] would attend to some of the recruits who had suffered from “bruises” from falling down during the physical training.⁷⁶⁶ The witness confirmed that she had not received any reports of any deaths at the training base.⁷⁶⁷ Furthermore TF1-168 was able to observe the recruits assemble in the morning but did not pass any observation during his testimony which could support the suggestion of wholesale coercion.⁷⁶⁸

(7) *Freedoms of the Recruits*

366. Inadvertently, TF1-362 confirmed that there were *strict* rules which prevented the mistreatment of recruits. The witness confessed [REDACTED]
[REDACTED]
[REDACTED]⁷⁶⁹ The witness claimed that this was “according to the rules of the base”.⁷⁷⁰ [REDACTED]
[REDACTED]⁷⁷¹
[REDACTED]
[REDACTED]
[REDACTED]⁷⁷³

367. This version of events was partly disputed by Sesay and a number of defence witnesses, [REDACTED]
[REDACTED]. DIS-297 confirmed that the recruit had to be carried to Beudu on a hammock for treatment.⁷⁷⁴

368. Whichever account is true the incident is hugely significant and probative. The evidence confirmed a number of crucial issues. First, that there was a way in which

⁷⁶⁵ DIS-297/Transcript, 31 January 2008, pp. 67.

⁷⁶⁶ DIS-297/Transcript, 31 January 2008, pp. 73, lines 17 – 20.

⁷⁶⁷ DIS-297/Transcript, 31 January 2008, pp. 75, line 9-11.

⁷⁶⁸ TF1-168/Transcript, 3 April 2006, pp. 20.

⁷⁶⁹ TF1-362/Transcript, 25 April 2005, pp. 123, lines 12 – 14.

⁷⁷⁰ TF1-362/Transcript, 25 April 2005, pp. 122, lines 9 – 10.

⁷⁷¹ TF1-362/Transcript, 25 April 2005, pp. 124, lines 4 – 7.

⁷⁷² TF1-362/Transcript, 25 April 2005, pp. 124, lines 6 – 7.

⁷⁷³ TF1-362/Transcript, 25 April 2005, pp. 125, lines 4 – 9.

⁷⁷⁴ DIS-297/Transcript, 31 January 2008, pp.80, lines 9 – 16.

recruits could complain about mistreatment on the base. TF1-362 confirmed that it was the recruit herself who had made the initial complaint, even though the recruit had waited “after one week” before making the report.⁷⁷⁵ DIS-297 stated that she supposed recruits would be frightened about complaining (“Maybe they are afraid to tell me because if they tell me I will go and report to their commander that there is a problem involving the women. That is why they may be afraid to tell me”⁷⁷⁶) but the fact that DIS-297 [REDACTED] would and did act upon a complaint is indicative of a non-coercive environment - and not the converse. The recruits were in a subordinate position to the personnel on the base as would be expected on a military training base. It would be reasonable to assume that recruits would, without any coercion whatsoever, be reticent about reporting senior staff. This is consistent with consensual military training.

369. This is consistent with the freedom of movement described by DIS-297 – who confirmed that recruits were permitted to leave the base – providing they obtained a pass from the Training Commandant.⁷⁷⁷ DIS-297 testified that, despite attending to recruits on a regular basis, she had not been provided with any reports about either forced training or instructors maltreating civilians at the base.⁷⁷⁸ Given the freedom of movement and the real possibility to report maltreatment, this is significant.

370. Second, if TF1-362 was telling the truth, there was an expectation amongst some of the commanders, at least Sesay and Lamin, that even relatively mild mistreatment [REDACTED] would be acted upon and would lead to dismissal – even for the Training Commander. Third, that the recruits had a degree of freedom which enabled the female recruits to exercise a choice over their sexual partners and to associate freely – even with the instructors [REDACTED]. This is consistent with the evidence of DIS-297 who, when asked about the truth of the allegation that the recruit had been engaged in an affair [REDACTED], noted that she had seen

⁷⁷⁵ TF1-362/Transcript, 25 April 2005, pp. 126, line 1.

⁷⁷⁶ DIS-297/Transcript, 31 January 2008, pp.101, line 1 – 4.

⁷⁷⁷ DIS-297/Transcript, 31 January 2008, pp. 74, line 20 – 23.

⁷⁷⁸ DIS-297/Transcript, 31 January 2008, pp. 78, line 2 – 7.

them “playing together”.⁷⁷⁹ [REDACTED]

[REDACTED] “[r]ecruits were loving each other. That used to happen. Instructors used to love recruits”.⁷⁸⁰ The offence committed by the first recruit was therefore not the *fact* of having a sexual relationship on the base, but the fact that there was a standing order on the base (and in the RUF) that “[t]wo women should not love to a man”.⁷⁸¹

371. [REDACTED]

[REDACTED] A report would be sent to the High Command who would provide the authority for any action.⁷⁸² In other words, there was no action, draconian or otherwise, for escaping the base, *unless* the High Command received the report and thereafter authorised it (see below for submissions concerning Bockarie). This is not consistent with a casual system of brutality.

c) Sesay’s Alleged Criminal Responsibility

372. The principal allegation would appear to revolve around i) the 6(1) thesis advanced by TF1-362 that Sesay, as the second-in-command, was integrally involved in the running of the base; and ii) the 6(3) thesis that Sesay had effective control over the base or the personnel on the base and failed to intervene to prevent or punish crimes committed therein.

(1) Reporting bypasses Sesay

373. The Prosecution case is demonstrably flawed. The evidence proves convincingly that Sesay had no involvement in the organisation of the base or its day-to-day activities. This was confirmed by a number of Prosecution witnesses who gave evidence which confirmed that Sesay was not, and could not, have participated in any aspect of the running of the base. The evidence proves that Bockarie and others were the men

⁷⁷⁹ DIS-297/Transcript, 31 January 2008, pp. 81, line 8 – 9.

⁷⁸⁰ TF1-362/Transcript, 26 April 2005, pp. 94, lines 1 – 3.

⁷⁸¹ TF1-362/Transcript, 26 April 2005, pp. 91, lines 10-11.

⁷⁸² TF1-362/Transcript, 26 April 2005, pp. 94, lines 11-17; and pp. 96, lines 26 – 29.

responsible for the recruitment of civilians, the day-to-day running of the base and the eventual passing of the recruits after training.

374. TF1-036 observed that from the outset Bockarie was the commander who was in charge of the base. Bockarie approved the manual for the training: “he called the commandant who was at the base and he handed them [Exhibit 38 – the training manual] over to him, so that they will go and use them and make use of all the things there, so that all the fighters will be aware that that was how things were to go on”.⁷⁸³ There is nothing in the manual which would suggest that the training was intended to permit or encourage the commission of crimes on the base. TF1-168 testified that the G1 was directly answerable to the Leader. This was the system set up by Sankoh.⁷⁸⁴

375. It is not disputed that the G1 was the unit which was responsible for recruitment and training.⁷⁸⁵ TF1-036 confirmed that the G1 and the G5 would have direct control over the training base. G5 would send recruits to the base where they would be trained.⁷⁸⁶ TF1-036 confirmed that the G1 would compile reports concerning training and deliver them to Bockarie;⁷⁸⁷ the G5 would compile reports from information concerning civilian welfare supplied by sub-G5’s and deliver them to Bockarie.⁷⁸⁸ TF1-0371 confirmed that Bockarie would speak to Prince Taylor everyday.⁷⁸⁹ [REDACTED] sub-adjutants on the training base would compile the pertinent information and send it directly to the G1, who was the head of the training and then send it the Headquarters at Buedu. It would be addressed directly to Bockarie.⁷⁹⁰ This was confirmed by TF1-361 who, at least in this regard, was prepared to admit the role played by Bockarie. The witness confirmed that it was Bockarie who would issue instructions to Kono for training.⁷⁹¹

⁷⁸³ TF1-036/Transcript, 28 July 2005, p.13, lines 28 – 29; and pp. 14, lines 1 – 4.

⁷⁸⁴ TF1-168/Transcript, 31 March 2006, p. 90.

⁷⁸⁵ TF1-168/Transcript, 3 April 2006, pp. 46 – 47; and TF1-036/Transcript, 28 July 2005, p.15, lines 7 – 9.

⁷⁸⁶ TF1-036/Transcript, 27 July 2005, pp. 40 – 41.

⁷⁸⁷ TF1-036/Transcript, 29 July 2005, pp. 77 – 82.

⁷⁸⁸ TF1-036/Transcript, 1 August 2005, pp. 34 – 35.

⁷⁸⁹ TF1-371/Transcript, 28 July 2006, pp. 31 – 32.

⁷⁹⁰ TF1-036/Transcript, 29 July 2005, p.82, lines 16 – 18.

⁷⁹¹ TF1-361/Transcript, 15 July 2005, pp. 76, lines 5 – 10.

376. It was also apparent from one particular verbal contortion by TF1-362. TF1-362 [REDACTED] second witness statement (covering interviews on the 25th, 27th-30th May 2004, page 10718, paragraph 3) the following “*I remained in Kono for a short while until a message came from Mosquito ordering that all women and children should be sent to Kailahun...Superman informed me of this order. I remained in Kono for a short while until a message came from Mosquito. Superman informed me of this order.*” The witness later claimed in a curiously convoluted explanation that it was Sesay who had passed on the instruction. The witness was clearly moulding [REDACTED] [REDACTED] to implicate Sesay, claiming [REDACTED] failed to mention him previously because [REDACTED] may not have been asked the question!⁷⁹²

377. Those who were not fit would be sent to the civilian zones and those who were fit would be sent to the base. This was screening.⁷⁹³ TF1-036 testified that the “commander who goes with the mission” [which captured the civilians] would send them to the base.⁷⁹⁴ TF1-114 also confirmed that reports about captives would go straight to Bockarie, through the particular commander.⁷⁹⁵

378. TF1-141, who appears to have been based somewhere around Bockarie at the HQ, observed that Bockarie would instruct the unit commanders who were at the HQ, including Kaisuku (the overall MP) Commander and Monica Pearson (from the training base), and they would send messages to the Brigade Battalion Commanders.⁷⁹⁶ TF1-141 claimed that civilians were screened in Kailahun Town by the G5. The screening involved health checks. Those who were fit to be trained were sent to the Bunumbu base.⁷⁹⁷ There was no suggestion that this procedure involved the intervention of anyone but these essential staff.

⁷⁹² TF1-362/Transcript, 25 April 2005, pp. 55 – 56.

⁷⁹³ TF1-036/Transcript, 27 July 2005, pp. 40 – 41.

⁷⁹⁴ TF1-036/Transcript, 27 July 2005, pp. 3 – 10.

⁷⁹⁵ TF1-114/Transcript, 28 April 2005, p.80, lines 23 – 27.

⁷⁹⁶ TF1-141/Transcript, 11 April 2005, pp. 53 – 54; and pp. 60 – 61.

⁷⁹⁷ TF1-141/Transcript, 12 April 2005, pp. 20 – 22.

379. TF1-113 also testified to the MP and G5 Commander being responsible for the “capture” of civilians (the alleged Kamajors). The witness confirmed that “It was the G5s who went for those people and the MPs. They had their agents in those villages. They sent to them to bring those people along”.⁷⁹⁸

380. It is submitted that it is this significant that these units reported directly to Bockarie and equally significant that there is little or no evidence of any functional role for Sesay with the overall unit commanders. The hands-on approach taken by Bockarie, to the exclusion of all others, is further demonstrated by various (Prosecution) exhibits, which show that without a shadow of a doubt, Bockarie was in complete control of the happenings at the base.

381. The above mentioned evidence demonstrates the likely recruitment procedure. It did not envisage a role for Sesay. The evidence given by TF1-362 that Sesay was involved in the procedure is demonstrably unreliable.

(2) TF1-362’s Thesis – It’s All Sesay’s Responsibility?

382. TF1-362’s convoluted thesis that Sesay passed on all of Bockarie’s orders and instructions, including the order to open the base and orders to supply recruits to the front lines, as well as being responsible for all the reporting to and from the base does not stand up to reasoned scrutiny. The Prosecution ought not to have called this manifestly false testimony. The witness was admittedly hostile to Sesay. [REDACTED] and was also admittedly of the view that Sesay (and Bockarie) had ruined (“hijacked” and “spoiled”) Sankoh’s revolution. [REDACTED] clearly embittered about the fact that Sankoh had been allowed to languish in prison, whilst Sesay became Interim Leader.⁷⁹⁹

⁷⁹⁸ TF1-141/Transcript, 6 March 2006, pp. 84, lines 16 – 18.

⁷⁹⁹ TF1-362/Transcript, 22 April 2005, pp. 73 – 76.

383. Apart from contradicting more sensible evidence (see above) there were a number of “problems” with TF1-362’s evidence. First, the theory was manifestly absurd. The notion that the training base always reported via the second-in-command was clearly cooked up by the witness as a means by which ■ could attempt to implicate Sesay. The fact that this immovable reporting structure apparently only lasted until the release of Foday Sankoh in 1999, at which point the reporting continued to Sesay, despite him now being the BGC and the de jure third-in-command, is proof of this fabrication. The witness was unwilling or unable to explain this apparent anomaly.⁸⁰⁰ Second, the witness was clearly lacking in the type of details which would allow the Trial Chamber to be satisfied that Sesay played the role alleged. The witness did not even know Sesay’s call sign, claiming he never used it.⁸⁰¹ There were many contradictions between ■ statements to the Prosecution and ■ court testimony. The later accounts always implicated Sesay whereas the witness’s out of courts statements implicated Bockarie. For example: the witness claimed in ■ statements to the Prosecution that she set up the training camp at Bunumbu on the instruction of Bockarie but then in court recalled that this instruction was passed onto ■ in person by Sesay.⁸⁰²

384. The witness, like TF1-366, alleged constant communication with Sesay but was remarkably ill-informed about Sesay’s whereabouts during the relevant period. The witness “could not tell” if Sesay was residing in Kailahun Town immediately after the intervention and appeared to believe that Sesay was based in Buedu throughout the time that Bunumbu was operating (where, “all of them were. These were the top commanders”).⁸⁰³ This was true for March and part of April 1998 but not so for the remainder of the year. The alternative explanation is that the witness was placing Sesay at the seat of power in Beudu in order to implicate him in the so-called reporting structure of the base. In any event, it is inconceivable that the witness could be regularly communicating with Sesay and have not known his location in Pendembu.

⁸⁰⁰ TF1-362/Transcript, 26 April 2005, pp. 10.

⁸⁰¹ TF1-362/Transcript, 26 April 2005, pp. 11– 12.

⁸⁰² TF1-362/Transcript, 25 April 2005, pp. 58 – 60; referring to statement 25th, 27th, and 30th May 2004 (ERN.10718).

⁸⁰³ TF1-362/Transcript, 25 April 2005, pp. 59.

d) Conclusions:***(1) Non-Coercive Environment***

385. The Prosecution have not proven that Bunumbu was a coercive environment or that civilians were forced to be trained on the base. It is impossible to infer that a camp which has freedoms which allow its “detainees” the freedom to have consensual sexual relations with each other and the camp staff is a long, long way from any notion of brutality or coerciveness. The allegations are somewhat ridiculous when seen in this light. According to the Prosecution mythology – as propounded by TF1-362 and TF1-366 – women were being captured in Kono, enslaved, brutally dragged across the country by armed men and forced to be trained, before being sent back to Kono to be “forced wives”. The Trial Chamber is being asked to believe that notwithstanding the women would engage in sexual affairs during training, with recruits and instructors alike. It simply defies common sense.

(2) No 6(1) or 6(3) Participation by Sesay

386. The evidence adduced by the Prosecution does not prove that Sesay was involved in the day-to-day running of Bunumbu or had the ability to intervene in its activities, except in the absence of Bockarie. Apart from TF1-366 and TF1-362 there is little or no evidence of his involvement at all. As noted by Trial Chamber II “the evidentiary burden required to establish effective control is high. For example in *Kordic*, the court failed to find “control” despite the fact that the defendant, a civilian, wore a military uniform, held the title “colonel” issued orders for military equipment and supplies, managed personnel, represented the Croatian forces in UN negotiations, exercised control over roads, road blocks, and prisoners, participated in planning, was physically present during military operations and provided “political authorization for ethnic cleansing campaigns”.⁸⁰⁴ Thus, it would be unprecedented to find that Sesay had material ability to prevent and punish crime on the evidence adduced.

⁸⁰⁴ AFRC Trial Brief, Para. 1660.

387. The evidence that he played any role in the base comes from few witnesses, namely TF1-362 and TF1-366. For the reasons aforementioned these are not reliable witnesses. TF1-141 claims that Sesay came to the base on one occasion but did not participate with any training or any other aspect of the running of the base.⁸⁰⁵ TF1-263 claims that Sesay passed on the message for 200 civilians, including him, to be taken to the base. This cannot be true since the witness claimed that Sesay was at PC Ground in 1998 during the reign of Superman.⁸⁰⁶ The Prosecution have failed to prove any participation or any evidence which would allow an inference of effective control.

388. It is accepted that in the third week in November 1998, when Bockarie left Sesay and Lamin in charge of Beudu, he had the material ability to intervene in the base. This ability was exercised [REDACTED]

3. Children at Bunumbu Training Base?

389. The Prosecution have not proven there was a policy or practice of training children at Bunumbu for combat. The evidence given by Prosecution and Defence witness is hugely contradictory and leaves the matter in some doubt. It is submitted that the benefit of doubt must go to the Accused. The evidence falls into three categories: training of children for combat, training children for ideological/defence purposes and no training of children. It is submitted that the evidence which suggests that there was no training of children is to be preferred for the following reasons.

a) No Small Boy or Small Girl Units and Not Training to Fight

390. The evidence does not support a finding that there were actual *units* being formed at Bunumbu or as a result of training at Bunumbu or that any of the alleged training was designed to produce child combatants. There is not a single piece of documentation which records a fully (or partially) constituted unit during neither the indictment period nor any indication that there was any role or function envisaged in the RUF ideology.

⁸⁰⁵ TF1-141/Transcript, 12 April 2005, pp. 28 – 32.

⁸⁰⁶ TF1-263/Transcript, 6 April 2005, pp. 27 – 29.

⁸⁰⁷ Sesay/17 May 2007, pp. 29 – 40.

This contrasts with the clear proscription in the various ideological literature produced by the RUF which purport to outline the purpose and the functions of the various units (*see*, for example, Exhibit 38). This is not to argue that some commanders in some localities did not form ad hoc units but this self evidently was not the policy or the practice arising from any formalised training at Bunumbu. The preponderance of evidence, from witnesses who claim that there was training of children at Bunumbu obliquely, but soundly corroborates this submission.

391. TF1-036 claimed that SBU's were trained at Bunumbu but confirmed that the children were not trained to fight. The witness testified that the children did not undertake the same type of intensive training as intensive as the adults, although they were taught discipline, ideology and also how to dismantle AK's. The witness stated that, "██████ teach them discipline and courtesy at least for them to have knowledge on these issues. But it is not on their part to learn the hard part of the training because they are not like the mature soldiers who do go to the front line, although some people took them to the front line".⁸⁰⁸ The witness repeated this refrain when he also testified that most of the SBU's helped the commander's wives with domestic chores.⁸⁰⁹

392. There were various senior RUF commanders who in a variety of ways confirmed this evidence. The evidence which they omitted was often more probative than the allegations levied against Sesay.

393. The failure to prove either the presence of children for the purpose of training at Bunumbu, or the formation of SBUs or SGUs at Bunumbu, or indeed anywhere else in Kailahun, is illustrative of wider deficiencies throughout the Prosecution's allegations of use of child soldiers.

IV. Child Soldiers: count 12

394. The Prosecution have alleged as follows:

⁸⁰⁸ TF1-036/Transcript, 29 July 2005, pp. 22, lines 5 – 12.

⁸⁰⁹ TF1-036/Transcript, 29 July 2005, pp. 16 – 17.

- a. The RUF “routinely conscripted, enlisted and/or used boys and girls under the age 8of [sic.] 15 to participate in active hostilities” in Small Boys Units (SBU) and Small Girls Units (SGU);⁸¹⁰
- b. The RUF abducted thousands of children from all over Sierra Leone the purpose of such conscription, enlistment or use in combat;⁸¹¹
- c. Such conscription, enlistment or use entailed military training of thousands of children at “camps in various locations throughout the country”;⁸¹²
- d. The children concerned were actually used in combat and were armed;⁸¹³
- e. Sesay is responsible for these acts by virtue of his own conduct;⁸¹⁴ and
- f. Sesay is responsible for these acts by virtue of his association with the RUF or other members thereof.⁸¹⁵ In this regard, the Prosecution rely in particular upon the overall conduct of the RUF as routinely involving the above-described acts.⁸¹⁶

395. The Prosecution’s case fails throughout to surmount reasonable doubt. Equivocation and ambivalence are pervasive throughout their evidence, notably as regards

- a. whether the acts they allege are subject to the prohibition of conscription, enlistment or use of individuals under the age of 15, an “other serious violation of international humanitarian law”;
- b. whether the acts they allege actually occurred; and finally,
- c. whether Sesay is legally responsible for those acts, if they did indeed occur.

396. Doubt as to any one of these issues would preclude conviction of Sesay under Count 12 of the indictment.

⁸¹⁰ Indictment, Para. 68; OTP Supplemental Pre-Trial Brief, Paras. 181 and 182(c).

⁸¹¹ Indictment, Para. 68; OTP Supplemental Pre-Trial Brief, Paras. 182(a) and 183(d).

⁸¹² Indictment, Para. 68; OTP Supplemental Pre-Trial Brief, Paras. 182(b) and 183(e).

⁸¹³ OTP Supplemental Pre-Trial Brief, Para. 182(d).

⁸¹⁴ Indictment, Para. 68.

⁸¹⁵ Indictment, Para. 68.

⁸¹⁶ OTP Supplemental Pre-Trial Brief, Para. 83(a).

A. Irrelevance of Prosecution allegations to article 4(c) of the SCSL Statute

397. As set out, the Prosecution have failed to prove any part of their case pertaining to child soldiers beyond reasonable doubt. However, many of their accusations are not only equivocal, but also irrelevant to the question of whether a violation of Article 4(c) of the SCSL Statute or any rule of international humanitarian law occurred at all. Thus, they betray the Prosecution's misunderstanding of the rules of international law pertaining to children in armed forces.

398. Insufficient evidence was provided to assert that children were present in the midst of battle, as soldiers. Consequently, in an attempt to prove its theory regarding the conscription, enlistment or use of child soldiers by the RUF and Sesay, the Prosecution has adduced evidence of children being involved in or undertaking activities such as domestic tasks,⁸¹⁷ carrying material⁸¹⁸ and training (located away from the front lines).⁸¹⁹

399. It is submitted, for the reasons that follow, that the abovementioned activities are not among those prohibited by Article 4(c). The result is that a large part of the Prosecution's case is irrelevant to the count to which it is addressed, as well as unproven, as shown above.⁸²⁰

400. The Special Court for Sierra Leone is the first international criminal tribunal to address the issue referred to as "child soldiers". It is inevitable that in such situations, myriad aspects of the law will be left unaddressed by the basic texts. Specifically, the kinds of roles fulfilled by children that give rise to liability have not been the subject of conclusive judgment.

401. Of the language used in Article 4(c), only "to participate actively in hostilities" has been subject to any clarification as to the necessary level of involvement with

⁸¹⁷ TF1-036/Transcript, 28 July 2005, pp. 16, line 28 – pp. 18, line 7.

⁸¹⁸ TF1-114/Transcript, 28 April 2005, pp. 62, lines 3 – 13.

⁸¹⁹ TF1-263/Transcript, 6 April 2005, pp.27, line 1 – pp. 29, line 27.

⁸²⁰ REF TO RELEVANT SECTION

military combat. It does not only involve fighting, but any “military activities linked to combat”,⁸²¹ “such as spying, sabotage, use as human shields.”

402. It is clear that this language indicates two requirements: one as to the basic nature of the activity – it must be “military” – and another as to the proximity of that act to conflict in the circumstances. In other words, while many activities (such as those listed) *could* fall under the prohibition, they must also be *linked to combat*. Not all “military” activities are within the prohibition (otherwise the words “linked to combat” would be superfluous). The Trial Chamber clarified the necessary level of proximity as being that the children concerned are “putting their lives directly at risk in combat”.⁸²²

403. Both requirements must be fulfilled. In practice, this means that the RUF would not be held criminally responsible under Article 4(c), for example, if there were an under-16 working on the care of patients in an RUF hospital, even if that hospital was situated near the front line (and therefore arguably putting the child’s life at risk) The activity would not be military in nature. Equally, the RUF would not be criminally responsible for an under-16 who is used for a military-type activity, but in a way which does not get close to actual fighting and is not putting his/her life at risk in combat.

404. As well as being the result of the most appropriate interpretation of the scant jurisprudence to date, the latter is also common sense and prevents liability in the case of branches of the armed forces such as the “army cadets” who engage in military type activities, such as shooting, skill at arms, drill and turnout and field craft, often from the age of 12 years. The latter is an accurate description of the British Army Cadet Force, branch of the British Army.⁸²³

⁸²¹ Prep comm. Quoted in AFRC TC para 736.

⁸²² AFRC TC para. 736, citing Dissenting Opinion of Justice Robertson to Appeals Chamber Decision on Child Recruitment, para. 5

⁸²³ See <http://www.armycadets.com/about/activities.aspx>

405. The Appeals Chamber has held that Article 4(c) of the Statute entails three modes by which liability can be imposed for a child's activity in the armed forces,⁸²⁴ which are "distinct from each other and liability for one form does not necessarily preclude liability for the other".⁸²⁵ These are conscription, enlistment and use of children. The qualifier "to participate actively in hostilities" (with its accompanying interpretation) must apply to all three.⁸²⁶

406. This is so in order to ensure that international law's response to the issue of children in armed forces is specifically directed to attempting to inhibit their role in combat, for the following two reasons. First, such a view is concomitant with other provisions of international law on the matter.⁸²⁷ For example, Article 1 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict⁸²⁸ states that "States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities". Second, in light of the widespread practice and acceptance throughout the world, of children taking part in military activities in a branch of the armed forces, where such activity does not involve actual combat,⁸²⁹ any other interpretation would be "absurd or unreasonable".⁸³⁰

⁸²⁴ "Conscripting", "enlisting", or "using".

⁸²⁵ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgment (Appeals Chamber), 28 May 2008, para. 139.

⁸²⁶ This possibility is left open by the language of the SCSL Statute, which could be interpreted as prohibiting the acts of "conscripting", "enlisting" and "using [children] to participate actively in hostilities" or, equally could be interpreted as prohibiting "conscripting", "enlisting" and "using" where any of these aim for the children concerned to "participate actively in hostilities"

⁸²⁷ Such reliance on supplementary means of interpretation of the Statute is necessary pursuant to Article 32 of the Vienna Convention on the Law of Treaties 1969 ("VCLT"). The VCLT expresses rules of treaty interpretation that are already part of customary international law and is, therefore, the primary source of guidance for any tribunal charged with the interpretation of treaties, outside of that court's own jurisprudence.

⁸²⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000; entered into force on 12 February 2002

⁸²⁹ The point is different from that argued by the Kanu Defence that some armies sometimes recruited under 15s (described in AFRC Trial Judgment, para. 730). The latter asserted state practice as the sole reason against criminalisation of the act concerned. The present submission, in contrast, relies upon the sources of treaty interpretation mandate by the VCLT, and uses state practice as *evidence* to support the claim. While cogent even in the absence of such practice, the submission is undoubtedly strengthened by the number of states who would be in violation of the law if the Trial Chamber were to accept the Prosecution's allegations as potentially constituting a crime under article 4(c).

⁸³⁰ Article 32(b) of the Vienna Convention on the Law of Treaties 1969

407. In order to inhibit the placement of children in places of in which combat is occurring, it may be prudent, nevertheless, to direct criminalisation at enlistment or conscription – acts which clearly occur before any participation in combat can occur. However, the Court must not lose sight of the overall concern: to prevent participation of children in combat. In this sense, there will be situations, such as the present, in which children may be enlisted or recruited without the purpose thereof being for them “to participate actively in hostilities”. The only appropriate response is a case-by-case approach.

408. In light of the above, case-by-case analysis would take into account, *inter alia*, evidence of other reasons for which under-15’s become members of the armed group. Of particular relevance would be evidence of non-military activities of the organisation concerned as well as general evidence of people’s motivation for joining.

409. Cogent evidence of both has been heard as regards the RUF. For example, as to the former, recruitment for the RUF could plausibly occur for the purposes of providing manpower for the G5 – a unit which dealt only with interactions with the civilian population. It is also of relevance for these purposes that the RUF provided many non-military services to the civilian population of Kailahun and other areas, such as healthcare and education.

410. The expert witness called by the Prosecution, TF1-296, supported this proposition. In highlighting the key factual matters from her report, at the invitation of the Presiding Judge, the witness asserted that children were used in various capacities within the ranks of the RUF and the majority of those were not to become combatants.⁸³¹

411. The similarity between the activities of children in the RUF and the abovementioned “cadet” branches of the armed forces in many countries was clear from

⁸³¹ TF1-296/Transcript, 14 July 2006, pp. 113, lines 22 – 29.

the testimony of a Prosecution witness. TF1-036 stated that SBUs did not get the same training as adults.⁸³² In particular, they did not do hard tactics like ambush but rather learnt ideology, courtesy and discipline and how to dismantle weapons.⁸³³ Moreover, most SBUs were placed with commanders in their houses assisting their wives with domestic work.⁸³⁴ TF1-036 repeated this distinction – which was essentially that children never took part in activities which were both military in nature *and* proximate to the conflict – under cross-examination.⁸³⁵

412. As to the motives of persons for joining the RUF, it has been established that many persons joined the RUF, not for purposes of joining in combat, but due to perceived social advantages of doing so. For example, one Prosecution witness stated that some trained in order to have a taste of military training but they would not take part in combat.⁸³⁶ Some people, according to this witness, trained not to fight but to get respect for the other soldiers so they would not be molested – being trained was a status symbol.⁸³⁷

B. Factual Rebuttal of the Prosecution Case

413. Even notwithstanding the above, the Prosecution have failed to substantiate their allegations to a level sufficient to overcome the presumption of reasonable doubt as to the RUF's enlistment, conscription or use of child soldiers. Specifically, the Defence makes the following submissions, each of which, alone, suffices to demonstrate reasonable doubt:

- a. Analysis of the credibility of the evidence supplied by each of the witnesses for the Prosecution reveals that a large proportion thereof must be discounted entirely. While some provide testimony which is contradictory, unsubstantiated, unreliable and even erratic or

⁸³² TF1-036/Transcript, 28 July 2005, pp. 13, line 9 – pp. 17, line 2.

⁸³³ TF1-036/Transcript, 28 July 2005, pp. 13, line 9 – pp. 17, line 2.

⁸³⁴ TF1-036/Transcript, 28 July 2005, pp. 13, line 9 – pp. 17, line 2.

⁸³⁵ TF1-036/ Transcript, 29 July 2005, pp. 20, line 20 – pp. 22, line 20.

⁸³⁶ TF1-168/ Transcript, 3 March 2006, pp. 23, line 1 – pp. 25, line 13.

⁸³⁷ TF1-168/ Transcript, 3 March 2006, pp. 23, line 1 – pp. 25, line 13.

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- incomprehensible, others must not be relied upon as a result of their probable personal motives to the detriment of Sesay;
- b. Notwithstanding the above shortcomings in the testimony of each witness taken individually, across the Prosecution evidence as a whole is exhibited an extremely high level of variation in accounts of the same events or situations. This alone is sufficient to engender reasonable doubt as to all aspects of the Prosecution case;
 - c. As well as the abovementioned evidentiary issues, a number of key substantive aspects of the Prosecution's theory are especially doubtful. Such is the Prosecution's reliance upon the existence of camps, the occurrence of abductions⁸³⁸ and the ages of those allegedly involved in RUF activities, that the lack of proof thereof leaves the Prosecution without a credible theory to explain their allegations under Count 12.

1. Determination of ages: the Prosecution's Expert testimony

414. Prosecution witness TF1-296 gave evidence regarding the Prosecution's allegations relating to the RUF and child soldiers as an "expert in the recruitment of child soldiers in fighting forces in SL during the war in the 90s and in the determination of age of children".⁸³⁹ However, her evidence only provided further indication of the doubts that proliferate throughout the Prosecution's case in this area. Furthermore, significant shortcomings regarding the methodology and content of her evidence render it unhelpful to any attempt to corroborate the Prosecution's allegations.

415. First, the nature of the evidence provided by TF1-296 is such that it would be difficult for the report to assist the Court in knowing the percentage of children associated with the fighting forces who were below the age of 15. As the witness stated herself, there was not, overall, a breakdown of age per group.⁸⁴⁰ Under cross-examination, she conceded that the report did not state the number of children

⁸³⁸ On abductions and camps, see above, section III.C

⁸³⁹ TF1-296/Transcript, 11 July 2006, pp. 73, lines 14 – 22.

⁸⁴⁰ TF1-296/Transcript, 13 July 2006, pp. 135, lines 8 – 16.

associated with the fighting forces who were under 15.⁸⁴¹ This factor alone renders her evidence too imprecise to contribute to the Prosecution's attempt to discharge the burden of proof.

416. Moreover, the witness also confirmed that she used no research methodology in preparing her report,⁸⁴² had no hypothesis, and had insufficient time at her disposal.⁸⁴³

417. Aside of these methodological shortcomings, the witness provided a considerable level of information that supports the Defence case. For example, when asked whether the precise determination of a person's age plays less of a role in Sierra Leone culture than in Western culture, the witness stated it depends on various contexts because in Sierra Leone some events are more important for one gender or the other. She also stated that the effect is differences in the definition or understanding of time.⁸⁴⁴

418. Furthermore, the witness gave inconsistent evidence as to the difficulties with assessing the age of alleged child soldiers. She stated that in Zaire and the DRC they used to determine age through extensive interviews, followed up with a medical examination.⁸⁴⁵ With specific reference to people in Kailahun in a situation of poverty, and lack of education, she agreed that such persons may have even more difficulty than you or I in identifying the precise age of a child. In this regard, she stated that most members of the Kailahun civilian population would be unable to assess the age of a child just by looking at them, particularly if the child was not otherwise known to them.⁸⁴⁶

419. As to the content of her report in particular, the witness agreed that the age verification was effectively dependent upon accurate information about what was

⁸⁴¹ TF1-296/Transcript, 13 July 2006, pp. 138, lines 28 – 29; pp. 139, lines 1 – 5.

⁸⁴² TF1-296/Transcript, 14 July 2006, pp. 38, lines 7 – 13.

⁸⁴³ TF1-296/Transcript, 14 July 2006, pp. 38, lines 20 – 26.

⁸⁴⁴ TF1-296/Transcript, 14 July 2006, pp. 58, lines 1 – 16.

⁸⁴⁵ TF1-296/Transcript, 11 July 2006, pp. 89, lines 7 – 10.

⁸⁴⁶ TF1-296/Transcript, 14 July 2006, pp. 59, lines 7 – 12.

happening in a particular village at a particular time.⁸⁴⁷ The witness confirmed that in 1997 and 1998 social workers were not operating in the RUF territory of Kono and Kailahun.⁸⁴⁸

2. Variations Across the Prosecution Evidence

420. Evidence presented by the Prosecution has advanced virtually every possible permutation of these highly generalised allegations. There was variation, in particular, as regards the nature of the acts required of alleged child soldiers and their location. While some Prosecution witnesses have stated that child soldiers were located on training camps, others stated the opposite;⁸⁴⁹ while some were convinced that children were deployed on the front lines, others were equally sure that they performed only domestic tasks;⁸⁵⁰ and as regards the allegations that Sesay himself used child soldiers, there was an enormous variation in the accounts of their ages.⁸⁵¹

3. The RUF's Policy Against Using Child Soldiers

421. The evidence clearly demonstrates that there was a policy against sending children to the front lines, that – after the Peyama base closed in 1995⁸⁵² – children were no longer trained,⁸⁵³ and that children weren't engaged in active hostilities.

422. The Defence evidence clearly demonstrates that this is the case:

Q. Was it permitted to use them in combat, according to RUF law?

⁸⁴⁷ TF1-296/Transcript, 12 July 2006, pp. 106, lines 21 – 24.

⁸⁴⁸ TF1-296/Transcript, 13 July 2006, pp. 106, lines 25 – pp. 107, line 8.

⁸⁴⁹ TF1-113/Transcript, 2 March 2006, pp. 68, line 22 – pp. 70, line 7 (the job of the SBUs was to launder clothes, sweep, and cook).

⁸⁵⁰ TF1-036/Transcript, 29 July 2005, pp. 22, line 21 – pp. 23, line 2.

⁸⁵¹ TF1-045/Transcript, 19 November 2005, pp. 38, line 6 – pp. 39, line 28 (SBUs with Sesay were 13 – 16yrs). TF1-108/Transcript, 7 March 2006, pp. 110, line 11 – pp. 116, line 3 (SBUs at Sesay's swamp were 9-11 and 12). TF1-113/Transcript, 2 March 2006, pp. 64, line 24 – pp. 65, line 15 (some were not up to ten years). TF1-371/Transcript, 21 July 2006, pp. 62, line 15 – pp. 64, line 22 (Sesay's SBUs were 15 and 16yrs).

⁸⁵² DIS-164/Transcript, 22 January 2008, pp. 72, line 23 – pp. 74, line 7.

⁸⁵³ Children were trained at the Peyama base to teach the children to hide and escape on their own in case of an attack. They were not taught how to use weapons or given any specific military training (DIS-164/Transcript, 28 January 2008, pp. 93, line 9 – pp. 94, line 14). After the Peyama base closed, the Baima base opened. Children were not trained in Baima (DIS-164/Transcript, 28 January 2008, pp. 105, lines 3 – 7).

You are not allowed to use them, according to that law.⁸⁵⁴

423. The only times a person under the age of 15 would engage themselves in combat is:

[I]f you experience any attack, early in the morning, you are not going to call any formation. Everybody have to run for it. If you are going to exchange fire you will stay and exchange fire with the enemies, even so the SBUs themselves are there. So you all combat together.⁸⁵⁵

424. DIS-174 confirmed that this means an SBU would fight out of self-defence or necessity.⁸⁵⁶

425. To protect the children from such situations, there was a general prohibition on allowing children from getting close to the front line. If a child was found at the front line, or even near the front line, the local commander would be punished.⁸⁵⁷

426. These general propositions were buttressed by the remainder of the insider Defence witnesses and supported by the civilian Defence witnesses.

427. So strong was the policy against the use of child soldiers that if a combatant was seen with a child soldier that combatant would be punished. One such incident was with Momoh Rogers. For having been caught with a child carrying an arm, Rogers was arrested and found guilty of defying orders. The Military Police were reinforced by Sesay in the arrest of Rogers. As punishment, Rogers was sent to the front line.⁸⁵⁸

⁸⁵⁴ DIS-174/Transcript, 21 January 2008, pp. 122, line 26 – pp. 123, line 15. The rule against using small soldiers fighting came into force after Tap Final (1993, 1994) (DIS-174/Transcript, 22 January 2008, pp. 21, lines 16 – 29).

⁸⁵⁵ DIS-174/Transcript, 21 January 2007, pp. 122, lines 14 – 25.

⁸⁵⁶ DIS-174/Transcript, 22 January 2007, pp. 19, lines 7 – 13.

⁸⁵⁷ DIS-157/Transcript, 25 January 2008, pp. 78, line 20 – pp. 79, line 17.

⁸⁵⁸ DIS-188/Transcript, 25 October 2007, pp. 91, line 26 – pp. 94, line 5. *See also*, DIS-157/Transcript, 24 January 2008, pp. 110, line 4 – 16 for the proposition that children were not allowed to go to the front lines.

428. The evidence is clear that, instead of sending children to fight at the front-lines, they were sent to schools to learn. Throughout the RUF controlled zones, schools were established. Children of both civilians and combatants attended these schools free of charge. Laws against the training of children were clearly established.⁸⁵⁹

429. Turning to the Prosecution evidence, a policy does not emerge from Prosecution witnesses to actively use children in hostilities. Although the Defence submits that providing military training to children, without more, is not a crime, the Prosecution evidence fails to establish that there was a policy of providing military training to children (forced or otherwise) during the Indictment period. The Prosecution's evidence in this regard is inconsistent and has already been addressed above.

430. The Prosecution evidence concerning children varies from children being trained at training bases in 1998, to not being trained; to being present at the front line, to not being allowed to go to the front line; from securing commanders, to fetching wood and water for those commanders' wives. In addition to a policy of not using child soldiers, or a general prohibition, which slowly emerges from the Prosecution witnesses, the Prosecution witnesses who testified suffered huge credibility problems.

4. Children Were Not Trained to Fight

431. Among other witnesses, the Prosecution bases its case that children were trained on TF1-108, TF1-113, TF1-114, and TF1-314. The Defence accepts that this is not an exhaustive list. However whilst there are many Prosecution witnesses who make such allegations, the evidence was lacking in credibility throughout, for the following reasons:

432. First, the Prosecution rely heavily upon witness TF1-108, both in order to demonstrate the presence of child soldiers in Kailahun and to suggest that Sesay bears responsibility for the concomitant violation of Article 4(c) of the Statute. TF1-108 alleged that a girl as young as 6yrs was forcibly taken to Bunumbu to be trained. Other

⁸⁵⁹ See generally DIS-164 and DIS-297. For the specific proposition, see DIS-157/Transcript, 24 January 2008, pp. 110, line 4 – 16

recruits were as young as 8yrs including TF1-108's niece. After the training, the recruits would be sent to the front line.⁸⁶⁰ In TF1-108's March 2003 statement⁸⁶¹ however, he was uncertain whether children under 15 were trained at the base.⁸⁶²

433. To suggest that this testimony bears no probative value and must be rejected outright is an understatement. The pervasive shortcomings of this evidence have been described below. Not only is it clear that a criminal court should reject such testimony, but in fact, the malevolence felt by this witness towards Sesay is such as to render his account actually suggestive of the contrary to what he actually stated.

434. Second, there is a more general bias against Sesay, leading to a conflation of actual events. TF1-113 testified that she heard that children as young as 9 and 10yrs would be screened by the G5 and taken to the training base (circa 1998).⁸⁶³ TF1-113 made it appear as though this included her 9yr old son who she has not seen since.⁸⁶⁴ On cross-examination, it was revealed that TF1-113's son was abducted by the Gios in 1991-1992.⁸⁶⁵

435. Third, the Prosecution's case contains many shortcoming, which become apparent on closer examination. In the three years TF1-114 alleges he was at the Bunumbu training base, 100-500 people were trained. Of those, 45% were under the age of 15,⁸⁶⁶ thus limiting the Prosecution's case to 45 persons under the age of 15 being trained at Bunumbu over three years. However, Bunumbu was only open for something approaching 6 – 7 months. TF1-114 was clearly lying. Nevertheless the numbers proffered put the matter in some perspective.

⁸⁶⁰ TF1-108/Transcript, 8 March 2006, pp. 41, line 5 – pp. 48, line 12.

⁸⁶¹ ERN 10763.

⁸⁶² ERN 10763 and TF1-108/Transcript, 10 March 2006, pp. 8, line 9 – pp. 11, line 6.

⁸⁶³ TF1-113/Transcript, 2 March 2006, pp. 53, line 3 – pp. 54, line 14; and pp. 64, lines 10 – 23.

⁸⁶⁴ TF1-113/Transcript, 2 March 2006, pp. 65, line 24 – pp. 66, line 5.

⁸⁶⁵ TF1-113/Transcript, 2 March 2006, pp. 79, lines 22 – 29. TF1-113's evidence concerning child soldiers is flawed beyond repair. TF1-113 alleged that SBUs were behind Sesay, Gbao, and Sam Bockarie. SBUs were following the Vanguard (TF1-113/Transcript, 2 March 2006, pp. 64, line 24 – pp. 65, line 15). TF1-113 did not provide any further details on the SBUs that were purported to have been with Sesay. However, in her November 2005 statement to the Prosecution (November 2005; ERN 1697) TF1-113 stated that Sesay had two SBUs named Musa (14yrs) and Joseph (12yrs).

⁸⁶⁶ TF1-114/Transcript, 28 April 2005, pp. 66, line 2 – pp. 67, line 27.

436. Notably, TF1-114 himself interviewed the children (he knew how to allocate ages) because: “I knew that one day an international court would be brought.”⁸⁶⁷

437. Fourth, a lack of credibility. Many accounts were simply nonsensical; *inter alia*, TF1-314. Although other Prosecution witnesses were equally non-creditworthy, TF1-314’s allegations are so ridiculous that they don’t warrant analysis. Among other things, although purportedly trained, TF1-314 did not know how to dismantle a gun. TF1-314 also stated that in order to lay an ambush, you lie on the ground with your head on the ground so you don’t get shot.⁸⁶⁸

5. Children Did Not Go to the Front Line

438. It is submitted that it is clear that children were not supposed to go to the frontline. This was clear from the Prosecution’s own witnesses. TF1-036 testified that SBUs were not like gallant men that went to the front line. Though some did go to the frontline. Some commanders took the child soldiers to domestic work in their houses.⁸⁶⁹

439. The testimony of witness TF1-036 is to be rejected. Having claimed to have *seen* many (unspecified) Small Boys Units on the front line, including some with Sesay,⁸⁷⁰ it later became apparent that the witness concerned was not on the front line at all.⁸⁷¹ The only logical conclusion is that the witness was lying. The confusion and ambivalence in the evidence of TF1-036 is compounded by the statement that “most SBUs were with commanders in their houses assisting their wives with domestic work.”⁸⁷² In this regard the witness confirms a main plank of the defence case: a clear policy not to train children for the front line.

⁸⁶⁷ TF1-114/Transcript, 28 April 2005, pp. 62, liens 22 – 25.

⁸⁶⁸ TF1-314/Transcript, 4 November 2005, pp. 23, line 22 – pp. 25, line 11.

⁸⁶⁹ TF1-036/Transcript, 29 July 2005, pp. 20, line 20 – pp. 22, line 20.

⁸⁷⁰ TF1-036/Transcript, 28 July 2005, pp. 16, line 28 – pp. 18, line 7.

⁸⁷¹ TF1-036/Transcript, 29 July 2005, pp. 2, lines 25 – 28.

⁸⁷² TF1-036/Transcript, 29 July 2005, pp. 22, line 21 – pp. 23, line 2.

440. Although TF1-036 was not at any training base from 1997 onwards, he speculates from Camp Lion in Zogoda and the base in Kangari Hills that children were being trained at Bunumbu in 1998. However, the children were not receiving the same training as the adults. They did not do hard tactics like ambush but they learnt ideology, courtesy and discipline and how to dismantle AKs. Most SBUs were with commanders in their houses assisting their wives with domestic work. Some were taken to the front line with their commanders.⁸⁷³

441. TF1-371 alleged that the RUF contained SBUs as young as 12yrs with duties ranging from personal security to combat missions. TF1-371 saw Sesay, Kallon, Bockarie, and Mungo with SBUs. However, the SBUs that TF1-371 knew were attached to Sesay were 15yrs and 16yrs.⁸⁷⁴

6. Children Did Not Fight

442. TF1-141 alleged that, from Baima, TF1-141 was sent to a combat camp at Benduma. SBUs didn't go on ambushes but acted as security for the camp. The SBUs carried guns and alerted if enemies were coming. They would shout "We seen you! We seen you!" when they saw an enemy. The SBUs would also fetch wood and water. The SBUs didn't have any other activities "except that we took an active part at the battlefields. That was what I saw."⁸⁷⁵ The Prosecution failed to follow up with TF1-141 on the significance of "an active part at the battlefields." It was clear that this was a late addition to the testimony.

443. TF1-263 alleged that in the mango season of 1998 in Buedu, children were given AK-47s and ammunition while adults were given bigger weapons.⁸⁷⁶ In connection with being given these weapons, TF1-263 – in a prior statement to the Prosecution⁸⁷⁷ – alleged that the weapons were distributed at a passing out parade in anticipation of the attack on Kono. In that statement, TF1-263 said that Sesay was at the parade; TF1-263

⁸⁷³ TF1-036/Transcript, 28 July 2005, pp. 13, line 19 – pp. 17, line 2.

⁸⁷⁴ TF1-371/Transcript, 21 July 2006, pp. 62, line 15 – pp. 64, line 22.

⁸⁷⁵ TF1-141/Transcript, 12 April 2005, pp. 38, line 13 – pp. 40, line 3.

⁸⁷⁶ TF1-263/Transcript, 6 April 2005, pp. 38, line 20 – pp. 40, line 5.

⁸⁷⁷ ERN 9812.

disputes that he said this to the Prosecution. In his testimony, TF1-263 said that Bockarie said that Sesay was in Kono at the time of the parade. TF1-263's statement was corrected in an October 2004 interview.⁸⁷⁸ Attempts of Prosecution witnesses to suggest that children engaged in fighting would often emerge confused and suggestive of a much more nuanced state of affairs than the mythology suggests.

444. TF1-366 alleged that he started seeing SBUs; most of them came from Liberia. Some would stay with wives, some were bodyguards, and some went to fight. The children would fight more than the elders. Sesay, Kallon, Gbao, et al., had SBUs.⁸⁷⁹ TF1-366's allegations here concerning child are either not criminal in nature or unsubstantiated. In any event, it reveals that SBUs were engaged in activities other than hostilities. Interestingly again the allegation that they went to fight emerged last in the list of activities.

7. Allegations in relation to Kenema Town

445. TF1-122 and TF1-129 testified to the presence of child soldiers in Kenema Town during the junta. TF1-129's evidence was dismissed above for being unreliable. His allegation of the presence of an armed 7yr old guard is one of the most unreliable elements of his testimony.

446. TF1-122 alleged the presence of child soldiers in the compound where Sesay stayed when he visited Kenema Town. No substantive allegation was made in connection with these boys. TF1-122 also alleged that girl soldiers would carry their weapons to the market. These allegations are patently false. If these allegations were true, surely another witness – Prosecution or Defence (including TF1-129) – could have testified to their presence. Such evidence wasn't elicited. The Prosecution had the opportunity to do so through TF1-036, TF1-041, TF1-045, TF1-060, TF1-366, TF1-367, and TF1-371 – all of whom were in Kenema Town during the junta when these child soldiers are purported to have been present.

⁸⁷⁸ TF1-263/Transcript, 8 April 2005, pp. 31, line 3 – pp. 35, line 14.

⁸⁷⁹ TF1-366/Transcript, 8 November 2005, pp. 68, line 8 – pp. 69, line 10.

8. Allegations in relation to Tongo Fields

447. TF1-035, TF1-045, and TF1-060 each testified to the presence of child soldiers near Cyborg Pit. As has been demonstrated above, these witnesses' accounts differ so widely that it is abundantly clear that each of these witnesses were concerning themselves with implicating the Accused rather than concerning themselves with the truth. Indeed, the other Prosecution witnesses that purported to have passed through or had some connection to Tongo Fields (TF1-036, TF1-041, TF1-122, TF1-125, TF1-344, TF1-366, TF1-367, or TF1-371) do not refer to these so-called child soldiers.

9. Allegations in relation to Kono District

448. TF1-141 places himself on both the attack on Koidu in December 1998 and the attack on Segbwema at approximately the same time. Clearly, TF1-141 couldn't have been in two places at once.⁸⁸⁰ As TF1-141 was the only witness that testified to the presence of child soldiers on the attack,⁸⁸¹ the notion that there child soldiers on the December 1998 attack must be dismissed.⁸⁸² The witness's knowledge of the December 1998 attack was shockingly inaccurate.

449. That no child soldiers were used on the attack of Koidu in December 1998 is indicative of how Sesay ran his operations. There is no cogent evidence from the Prosecution that demonstrates that when Sesay is present as the commander in an area with effective control over that area that there are child soldiers.

450. TF1-367's testimony to the presence of armed 12yr olds guarding mining sites near Koakoyima in early 1999 is a mere fabrication. First, this isn't corroborated by any other witness. Second, there is no suggestion that there were child soldiers guarding the mining sites or the mining camp near Guinea Highway in 1998. Why would child soldiers be brought in to guard the sites in 1999? As demonstrated below with respect to enslavement as it pertains to forced mining in Kono District, TF1-367 made all

⁸⁸⁰ TF1-141/Transcript, 15 April 2005, pp. 110, line 28 – pp. 111, line 9.

⁸⁸¹ TF1-141/Transcript, 13 April 2005, pp. 13, line 23 – pp. 18, line 4.

⁸⁸² Taking it the other way, the proposition that TF1-141 was on the attack to Segbwema must also be disregarded. This claim was met by DIS-157 who testified that there were no SBUs on the attack to Segbwema (DIS-157/Transcript, 24 January 2008, pp.120, lne 16 – 18).

efforts to implicate Sesay. His evidence of the presence of armed child soldiers should be dismissed as one of these efforts.

10. Allegations in relation to Tonkolili & Bo Districts

451. The Prosecution did not lead evidence of child soldiers in Bo or Tonkolili Districts. The Trial Chamber determined, during the Rule 98 proceedings, that allegations of child soldiers in Bo and Tonkolili Districts no longer forms a part of the Prosecution's case.

11. Use of Child Soldiers Outside the RUF

452. The Defence readily accepts that factions during the conflict used – and possibly sought out the use of – child soldiers. The RUF, especially under Sesay, was not one of these factions.

453. The AFRC's growing use of child soldiers in Koinadugu and Bombali Districts as they approached the Western Area in 1998 will not be addressed.

12. Bombali District

454. The only area of import to Sesay that has not yet been addressed is in Bombali District in 1999.

455. It is readily apparent that there were child soldiers present in Bombali District in 1999. However, these child soldiers were not a static fixture in particular locations. The evidence is clear that their frequency in particular areas waxed and waned pending the presence of particular commanders. One of the most notable is Superman.⁸⁸³

⁸⁸³ The Defence concedes that child soldiers were used in the jungles (e.g., Western and Northern Jungles circa 1995-1996) in contravention to the standing principles of the RUF (DIS-163/Transcript, 14 January 2008, pp. 77, line 6 – pp. 78, line 14). However, during that same period, the prohibition on the use of child soldiers was not flouted in Kailahun District where Sesay was based (DIS-163/Transcript, 10 January 2008, pp. 41, line 17 – pp. 42, line 20). The use of the child soldiers under commander operating in isolated areas, as was Superman, is an artefact from the earlier stages of the war the reared its head again in 1999 in Makeni.

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456. It is clear that child soldiers were not attached to Sesay. Rather, they belonged to other factions: Superman, Brigadier Mani, and General Bropleh. That Sesay was actively against the use of child soldiers is evident from the evidence presented. First, the residents of Bombali District knew when Superman was present; there were child soldiers around.⁸⁸⁴ This lays bare the fact that a distinction could be made. This is because Sesay proscribed the use of child soldiers by his men. In a near 180-degree distinction, when Sesay was in Makeni, the children attended school.⁸⁸⁵ Indeed, Sesay brought with him to Makeni a peaceful administration that the civilians enjoyed. Child soldiers would be totally foreign in this context.

457. As disarmament was approaching, Sesay catered for the release of “child combatants” so that they may return to their families.⁸⁸⁶ Sesay ordered their release.⁸⁸⁷ Indeed, under Sesay, the RUF organised for the release of the children to Caritas and the IRC.⁸⁸⁸ The children were handed over in a ceremony at Makeni Town Hall.⁸⁸⁹

458. That the RUF under Sesay assisted in the reunification of children prior to and upon disarmament is significant. The evidence proves that Sesay was genuinely interested in the welfare of the children. That Sesay, himself a father of a 6- or 7-yr old son,⁸⁹⁰ would have wantonly place children in harm’s way – especially considering the body of evidence that supports Sesay’s interests in civilian welfare (e.g., feeling at ease

⁸⁸⁴ Superman was a commander to himself (DIS-018/Transcript, 3 February 2006, pp. 62, lines 19 – 25). Superman had child soldiers with him (9 – 10yrs) (DIS-018/Transcript, 3 February, pp. 70, line 19 – pp. 71, line 6). When Sesay left Makeni, the child soldiers remained (DIS-015/Transcript, 15 February, pp. 45, lines 1 – 29). Those child soldiers were with Superman and not Sesay (DIS-015/Transcript, 15 February, pp. 45, lines 1 – 29). Superman had little child soldiers with him (DIS-031/Transcript, 22 February 2008, pp. 120, line 2 – 25). In contrast, Sesay had big bodyguards (not children) with him (DIS-031/Transcript, 22 February 2008, pp 121, line 4 – pp. 122, line 7).

⁸⁸⁵ DIS-018/Transcript, 3 February, pp. 71, line 19 – pp. 72, line 13. When Sesay was present, children attended school.

⁸⁸⁶ Opande/Transcript, 11 March 2008, pp. 62, line 23 – pp. 64, line 11. The “child combatants,” as termed by UNAMSIL, were not involved in military activities. The term child combatant or child soldier came from the Cape Town principles which expands the definition of a child soldier beyond a child that carries or has carried arms. Pp. 72 – 73.

⁸⁸⁷ DIS-018/Transcript, 3 February, pp. 79, lines 11 – 23.

⁸⁸⁸ Opande/Transcript, 11 March 2008, pp. 59, lines 10 – 22.

⁸⁸⁹ Ali Hasan/Transcript, 11 March 2008, pp. 158.

⁸⁹⁰ TF1-371/Transcript, 31 July 2006, pp. 75, lines 14 - 18. Sesay’s son was 4 or 5yrs old in 1998.

in their environment, having a body to which complaints could be made, schooling, medical care, feeding, etc.) – is unconvincing.

C. Sesay cannot be held responsible

459. The evidence is clear that there was a policy against the use of child soldiers. Indeed the evidence is also clear that Sesay didn't believe or find himself to be above this policy. Numerous witnesses testified that Sesay's securities were grown men and not small children as alleged. This was confirmed by TF1-371 who stated that, on one occasion that TF1-371 saw Sesay in 1998, he was accompanied by his securities Tommy (who TF1-371 has as 20yrs), Isiaka (in his 20s), and Intelligent (17-18yrs).⁸⁹¹ Not only were Sesay's securities grown men, but Sesay didn't have armed children at his home.⁸⁹² It is significant that despite a four-year trial there has not emerged any clear contenders to prove exactly who Sesay's team of underage securities were. Their identities remain unknown. The reason for this is obvious.

460. Sesay did not use child soldiers to actively participate in hostilities. The only suggestion that he did was from biased Prosecution witnesses. Notwithstanding, these witnesses, by and large, place the use of those soldiers in Kailahun District which, for the purposes of the Indictment period was a safety zone in which there was no "attack" against the civilian population. Indeed, senior ranking members of the peacekeeping force, such as DIS-310, observed that Sesay did not have child soldiers:

⁸⁹¹ TF1-371, 20 July 2006, pp. 103, line 23 – pp. 105, line 7. DIS-069 also testified to the age of Sesay's securities: in 1995 Sesay's securities were Boy George (23 or 24yrs), Mohammed James (23yrs), Musa Vandi (19, 20yrs in 1993), Bolopio (30yrs in 1995), Ishiaka (19, 20yrs). DIS-069/Transcript, 19 October 2007, pp. 88, line 1 – pp. 91, line 10. All of Sesay's bodyguards were adults (DIS-078/Transcript, 16 October 2007, pp. 64, line 25 – pp. 65, line 14). Sesay's bodyguards were 25 to 30yrs (DIS-128/Transcript, 27 November 2007, pp. 10, line 6 – 12). In 1996, Sesay's bodyguards were Isiaka (approximately 25yrs), Alhaji (approximately 20yrs), and Boy George (approximately 20) (DIS-149/Transcript, 5 November 2007, pp. 68, line 29 – pp. 69, line 18). In 1995, DIS-281 met Sesay with Bob George, Spring Jay, Tommy, Isiaka, Boyce, Victor, and Mohamed James as his securities. They were all 25yrs and up (DIS-281/Transcript, 6 November 2007, pp. 88, line 10 – pp. 89, line 7). These Defence witnesses testify to Sesay's securities in Giema. These and other Defence witnesses further confirm that Sesay's securities were grown men throughout the rest of the conflict.

⁸⁹² *E.g.*, DIS-074/Transcript, 4 October 2007, pp. 36, line 27 – pp. 38, line 9; DIS-077/Transcript, 8 October 2007, pp. 73, line 16 – pp. 74, line 6; DIS-078/Transcript, 18 October 2007, pp. 49, line 13 – pp. 50, line 4; and DIS-128/Transcript, 27 November 2007, pp. 47, line 15 – pp. 50, line 27.

Q. And how old were his security from what you -- well, let me ask: Did you see his security?

A. Briefly, yes.

Q. Do you recall how old they were, approximately?

A. From my recollection they were all grown-ups really, they were over 18.

Q. Did you -- was that the only time you saw him in Yengema?

A. I saw him twice at Yengema.

PRESIDING JUDGE: What you mean to say that they were all grown-up, Mr Witness.

Let's explore that further. What do you mean when you say that his securities were all grown-up.

THE WITNESS: Yes, My Lord, from my observation, they were grown-up people, certainly over 18, not below.⁸⁹³

461. General Opande testified that the one or two kids that he saw that were under 15 and totting AKs “were just hanging around on the roadblocks or eing used like -- or they were pretending to be in charge of that particular roadblock carrying or they have a rope in across the road.”⁸⁹⁴

462. The sum total is that, apart from the ubiquitous allegations from the Prosecution witnesses that all commanders that they can name (especially the Accused) had child soldiers, there is a dearth of evidence concerning the existence of child soldiers. That child soldiers existed in the way and number as proffered by the Prosecution is based on historical artefacts. It is self-evident that the Gios were using SBUs in Kailahun District in the early stages of the war – thus spawning the notoriety associated with the name. Although the (Gio) SBUs themselves left with the Gios back to Liberia by 1992, the name didn't.

⁸⁹³ DIS-310/Transcript, 6 March 2008, pp. 41, line 22 – pp. 42, line 10.

⁸⁹⁴ DIS-249/Transcript, 11 March 2008, pp. 124, lines 10 – 13.

V. The Alleged Crimes during the Junta

A. *The Prosecution's allegations*

463. According to the Prosecution, from the outset of the 25th May 1997 coup the RUF and AFRC were supposedly engaged in a joint criminal enterprise.⁸⁹⁵ In this light, it is astounding that the only crimes pleaded during the junta period (other than the “all times relevant” crimes of sexual violence and abductions and forced labour in Kailahun District, similarly the crime of child soldiers) are as follows:

- a. Unlawful killings in Kenema Town: 25 May 1997 – 19 February 1998;⁸⁹⁶
- b. Physical violence in Kenema Town: 25 May 1997 – 19 February 1998;⁸⁹⁷
and
- c. Abductions and forced labour to mine at Cyborg Pit: 25 May 1997 – 19 February 1998.⁸⁹⁸

464. Sesay's liability for the alleged crimes in Bo District will not be examined. It is submitted that there is no evidence upon which any criminal responsibility could be based. The Defence will briefly: (i) examine the command and purposes which existed during the junta, (ii) examine the notion that there was a joint criminal enterprise, or a policy of forced diamond mining, which encompassed the Kono District during the junta period (iii) examine allegations of enslavement and related crimes at Cyborg Pit in Tongo during the junta period and (iv) examine Sesay's liability for the alleged crimes in Kenema Town during the junta.

B. *An Agreement to end the war: the AFRC and RUF's common purpose*

465. The Prosecution allege that the AFRC and RUF combined to terrorise and collectively punish the civilian population. The evidence shows that the AFRC and the RUF agreed to work together with every expectation that there would be a lasting peace in Sierra Leone. The RUF joined with the AFRC to work together – as brothers not

⁸⁹⁵ This was not the case: see section II.E.5.e

⁸⁹⁶ Indictment, Para. 47 (excluding locations dismissed during the Rule 98 proceedings).

⁸⁹⁷ Indictment, Para. 63 (excluding locations dismissed during the Rule 98 proceedings).

⁸⁹⁸ Indictment, Para. 70 (excluding locations dismissed during the Rule 98 proceedings).

enemies⁸⁹⁹ – to defend the motherland of Sierra Leone⁹⁰⁰ against their joint enemy, the politicians.⁹⁰¹ In his 1st June 1997 address, Johnny Paul Koroma stated that the main objective of the AFRC seizing power was to “restore lasting peace and political stability in this country, which has been ravaged and continues to be shattered by a senseless war.”⁹⁰² Johnny Paul invited the RUF to join the revolution “so as to bring about lasting peace and to arrest the unmerited and unwarranted sufferings of our people.”⁹⁰³ The “priority of priorities today is peace.”⁹⁰⁴

466. The expectation of peace was so deep among combatants that it was difficult to gather men for military operations;⁹⁰⁵ everyone thought the war was over. Commanders had to take their own soldiers by force on future military operations.⁹⁰⁶ Military communications via radios were no longer effective as there was no fighting going on. Instead, the radios were used to reach out to speak to families.⁹⁰⁷ Everyone was going about their normal business.⁹⁰⁸

467. This aforementioned illustrates that the plan was to take over the territory of Sierra Leone but not by the use of criminal means. The plan was to take over Sierra Leone by a bloodless coup. Crimes were not in the contemplation of the coup-makers or the RUF who took the opportunity to stop fighting and achieve peace. The AFRC invited the RUF to join them in order to prevent more carnage and to stop the war. There is little or no evidence that this overall shared objective changed, even if crimes were committed by some individuals in the AFRC and RUF during the junta period. There was no campaign to terrorise or collectively punish the population by the vast majority of the combatants during the junta period. The crimes that were committed in this period were the result of the fragmentation of the groups as differing objectives

⁸⁹⁹ TF1-334/Transcript 16 May 2005, pp. 44, lines 2 – pp. 45, line 5.

⁹⁰⁰ TF1-334/Transcript 16 May 2005, pp. 54, lines 17-25.

⁹⁰¹ TF1-071/Transcript 18 January 2005, pp. 111, line 1 – pp. 117, line 17.

⁹⁰² Court Exhibit 151, Address by JPK as Chairman of AFRC, Freetown, 1 June 1997

⁹⁰³ Court Exhibit 151, Address by JPK as Chairman of AFRC, Freetown, 1 June 1997

⁹⁰⁴ Court Exhibit 151, Address by JPK as Chairman of AFRC, Freetown, 1 June 1997

⁹⁰⁵ TF1-361/Transcript 14 July 2005, pp. 76, line 11 – pp. 81, line 17 (operation mosquito spray).

⁹⁰⁶ TF1-361/Transcript 14 July 2005, pp. 76, line 11 – pp. 81, line 17 (operation mosquito spray).

⁹⁰⁷ TF1-361/Transcript 11 July 2005, pp. 62, line 16 – pp. 63, line 4.

⁹⁰⁸ TF1-361/Transcript 11 July 2005, pp. 62, line 16 – pp. 63, line 4..

emerged. Thus, some of groups formed had criminal objectives and others did not, but there was no overarching enterprise to terrorise or collectively punish.

C. Tracing and locating criminal responsibility: AFRC and RUF power structure

1. Fragmentation

468. The AFRC dominated the power hierarchy⁹⁰⁹ and were reluctant partners. The RUF had expected to be equal but the reality was different. This led to the RUF slowly withdrawing its cooperation,⁹¹⁰ as well as general complaints⁹¹¹ and frustration⁹¹² from RUF commanders about how much power was vested with the AFRC. The AFRC thought of the RUF as bush rebels. Johnny Paul and Sam Bockarie didn't get along well and these mixed feelings travelled down the ranks.

2. Separate chains of command

469. Furthermore, the two previously separate military command structures of the RUF and AFRC never fused. With some limited exceptions, and notwithstanding the fact the two groups were cooperating, there existed two separate command structures. The RUF continued to take commands from the RUF and the AFRC continued to take commands from the AFRC.⁹¹³ The RUF considered itself autonomous.⁹¹⁴ Clear enclaves of RUF and AFRC remained.⁹¹⁵

470. In addition, the RUF and SLAs didn't share their radio frequencies or their radio sets. Moreover, the AFRC used Morse code which the RUF didn't know. The RUF used sub-frequencies for more private messages, which the AFRC were not aware of, during the junta.⁹¹⁶

⁹⁰⁹ TF1-071/Transcript 24 January 2005, pp. 60, line 1 – 68, line 19. (unequal partners)

⁹¹⁰ TF1-045/Transcript 22 November 2005, pp. 69, line 1 – pp 72, line 12.

⁹¹¹ TF1-371/Transcript 31 July 2006, pp. 19, lines 1 – 18.

⁹¹² TF1-036/Transcript 29 July 2005, pp. 37, line 10 – pp. 38, line 17.

⁹¹³ Johnson/Transcript 18 October 2004, pp. 108, line 5 – pp. 112, line 21; TF1-361/Transcript 14 July 2005, pp. 68, line 3 – pp. 70, line 28; TF1-371/Transcript 31 July 2006, pp. 20, line 1 – pp. 25, line 14.

⁹¹⁴ TF1-371/Transcript 31 July 2006, pp. 20, line 1 – pp. 25, line 14.

⁹¹⁵ TF1-371/Transcript 28 July 2006, pp. 51, lines 3-19.

⁹¹⁶ TF1-361/Transcript 14 July 2005, pp. 68, line 3 – pp. 70, line 28.

471. The chain of command and the hierarchy was significant. The chain of command in the AFRC structure flowed from the Chairman, to Vice-Chairman, to Defence Minister, to Chief of Defence Staff, to Army Chief of Staff.⁹¹⁷ Notably, commands passed through at least five tiers of the AFRC hierarchy, and no commands passed through any position held by the RUF. Brigadier Mani, the AFRC Director of Defence, believed the RUF were blood-thirsty bush colonels and would not have accepted orders from them.⁹¹⁸ SAJ Musa would not lower himself to taking instructions from the RUF.⁹¹⁹ The Chief of Defence Staff, FSY Koroma, would not accept Sam Bockarie as his deputy.⁹²⁰ The junta rule was not a homogenous composition.... “[T]he AFRC and the RUF ... were uneasy bed fellows.”⁹²¹ The RUF were just being used as tools.⁹²² This was not a single group but two different and independent groups who happened to share an identical objective, namely to be the government of the day. It was the *lack* of acting together in concert throughout the junta period and beyond which led to the commission of the crimes. There was no generalised policy to commit crimes in order to regain power. This is obvious from the evidence but is also common sense.

472. George Johnson speculated that the junta fell because of the breakdown of trust between AFRC and RUF and the lack of effective command of the RUF by the AFRC.⁹²³ Indeed, towards the end of the junta Sam Bockarie sent the order for the RUF to withdraw from Freetown because he did not think the AFRC was a legitimate government or JPK the lawful president.⁹²⁴ This marked the onset of the commission of large scale crimes by some in the RUF and many in the AFRC. It was the disagreement of the whole which led to the crimes. The collapse of the whole led to the formation of smaller military groupings. Some of the smaller groupings had criminal

⁹¹⁷ TF1-371/Transcript 24 July 2006, pp. 101, line 8 – pp. 105, line 11.

⁹¹⁸ TF1-371/Transcript 28 July 2006, pp. 51, lines 3-19.

⁹¹⁹ Johnson/Transcript 18 October 2004, pp 103, line 25 – pp 107, line 1.

⁹²⁰ TF1-371/Transcript 31 July 2006, pp. 20, line 1 – pp. 25, line 14.

⁹²¹ TF1-371/Transcript 20 July 2006, pp. 37, line 25 – pp. 38, line 19.

⁹²² TF1-360/Transcript 22 July 2005, pp. 37, line 6 – pp. 38, line 9. (AFRC had all the control of important areas)

⁹²³ Johnson/Transcript 18 October 2004, pp. 108, line 5 – pp. 112, line 21.

⁹²⁴ TF1-071/Transcript 19 January 2005, pp. 21, line 23 – pp. 23, line 25. (in November)

plans common to them, some undoubtedly did not. This is the basis of the First Accused's defence. Sesay was part of a group, the Kailahun RUF group who, at the collapse of the junta, returned to Kailahun. There were other groups who went their own way. The evidence does not support an inference that Sesay participated in a plan which involved terror or collective punishments. It was the breakdown of the agreement for peace which caused outbreaks of terror and brutality. The breakdown was caused by the following factors.

3. The AFRC Structure – Minimizing the RUF

473. Upon the coup, the AFRC created a multi-layered hybrid political-military structure⁹²⁵ with various reporting and supervising schemes. From the outset, Sankoh ordered the RUF to subordinate themselves to the AFRC.⁹²⁶

474. Important positions in the new regime were handed out on the basis of nepotism.⁹²⁷ The Chairman, Ministers, Public Liaison Officers (PLOs), Resident Ministers, Chief of Defence Staff, Army Chief of Staff, Director of Defence, Brigade Commanders, Deputy Defence Minister, Military Assistant, Chief Security Officer, Aide-de-Camp, Secretary General, and Spokesman were all AFRC.

475. Although the RUF had several seats on the Supreme Council, those RUF didn't have the right to vote and were excluded from any decision-making positions. Ostensibly, in a power-sharing bid, the Vice-Chairmanship was left to Sankoh sitting en absentia. As soon as SAJ Musa came to Sierra Leone he took over the Vice-Chairmanship.⁹²⁸

⁹²⁵ TF1-360/Transcript 22 July 2005, pp. 29, line 5 – pp. 31, line 6.

⁹²⁶ TF1-041/Transcript 11 July 2006, pp. 40, line 18 – pp. 41, line 24. (Sankoh himself ordered the RUF to take orders from the AFRC after the overthrow); TF1-334/Transcript 16 May 2005, pp. 44, lines 2 – pp. 45, line 5. (In efforts to foster the cooperation between the RUF and SLA, FS ordered the RUF to take orders from JPK).

⁹²⁷ TF1-360/Transcript 22 July 2005, pp. 29, line 5 – pp. 31, line 6.

⁹²⁸ TF1-334/Transcript 16 May 2005, pp. 99, line 4 – pp. 102, line 19.

476. Thus, almost immediately, the RUF were relegated to a few voiceless positions on the Supreme Council and unimportant ministries.^{929 930 931} Important ministries were reserved for the AFRC (e.g., SAJ Musa was the Secretary for Mineral Resources).⁹³² The RUF were also left out of consultations on military operations.⁹³³ It is clear that, from the outset, the presence of the RUF in the AFRC structure was purposefully minimised.

477. It is clear that Johnny Paul Koroma was the Chairman with SAJ Musa as his Vice-Chairman.⁹³⁴ It is also clear that no member of the RUF, including Bockarie, had the ability to control any SLAs. Johnson's assertion that Bockarie or Sesay ever assumed the vice-chairmanship in Sankoh's absence^{935 936} must be dismissed as fancy. It was not possible for Bockarie to be the Vice-Chairman (or Sesay in Bockarie's absence) as SAJ Musa was the Vice-Chairman.⁹³⁷ Bockarie was not encouraged to take Sankoh's place as this would have made him the second-in-command of the junta.⁹³⁸ Bockarie was therefore unable to effectively command the SLAs.⁹³⁹

4. AFRC Hoarding Logistics

478. In addition to being dissatisfied with the way the AFRC were conducting themselves in Freetown and the threats on his life, Bockarie had motive to leave Freetown because his ability to command was stifled. The AFRC was keeping all the weapons from the RUF because they believed that the RUF were playing tricks or were attempting to deceive them.⁹⁴⁰

⁹²⁹ Peter Vandi was the Deputy Minister of Country Planning. Senior RUF weren't given government assignments. TF1-071/Transcript 24 January 2005, pp. 60, line 1 – 68, line 19.

⁹³⁰ In any event, the ministries were under the supervision of the Public Liaison Officers. Johnson/Transcript 14 October 2004, pp. 26, line 10- pp. 32, line 5.

⁹³¹ TF1-361/Transcript 14 July 2005, pp. 74, line 29 – pp. 76, line 10.

⁹³² TF1-360/Transcript 22 July 2005, pp. 29, line 5 – pp. 31, line 6.

⁹³³ TF1-036/Transcript 29 July 2005, pp. 56, line 3 – 62, line 14.

⁹³⁴ TF1-371/Transcript 24 July 2006, pp. 102, lines 6-9.

⁹³⁵ Johnson/Transcript 18 October 2004, pp 103, line 25 – pp 107, line 1.

⁹³⁶ Johnson/Transcript 14 October 2004, pp. 26, line 10- pp. 32, line 5.

⁹³⁷ TF1-036/Transcript 29 July 2005, pp. 38, line 18 – pp. 43, line 18.

⁹³⁸ TF1-371/Transcript 28 July 2006, pp. 46, line 8 – pp. 49, line 24.

⁹³⁹ TF1-371/Transcript 28 July 2006, pp. 46, line 8 – pp. 49, line 24.

⁹⁴⁰ TF1-361/Transcript 14 July 2005, pp. 74, line 29 – pp. 76, line 10.

479. The AFRC maintained a tight grip⁹⁴¹ on its arms and ammunition. The AFRC had the upper-hand in choosing whether to distribute weapons,⁹⁴² money,⁹⁴³ or food⁹⁴⁴ to the RUF. In this regard, the RUF were treated like civilians⁹⁴⁵, and second – class ones at that. JPK kept the weapons at his house and distributed them to Army Chief of Staff SO Williams. In turn, Williams would distribute weapons to Superman, Sesay, Morris Kallon, Gibril Massquoi, and RUF Rambo.⁹⁴⁶

480. The AFRC's tight grip on arms and ammunition also applied in Kenema. In order for Bockarie to be issued arms and ammunition for operations, he would first meet with the Eddie Kanneh, AFRC Secretary of State East and the Brigade Commander.⁹⁴⁷ There was no G4 in Kenema during the junta because the Brigade HQ (AFRC) was responsible for the arms and ammo.⁹⁴⁸ Bockarie's only source of supplies in Kenema was via the AFRC.⁹⁴⁹

481. Things were not shared equally with RUF leading to the RUF slowly withdrawing its cooperation.⁹⁵⁰

5. Threats to Bockarie's Life – Departure from Freetown

482. The mistrust between the AFRC and RUF led Bockarie to believe, after a motor vehicle accident, that the SLAs wanted to assassinate him.⁹⁵¹ TF1-360, for example, was aware of three attempts on Bockarie's life. No action was taken by the authorities to stem these attempts.⁹⁵² To add insult to injury, Bockarie – annoyed about his lack of

⁹⁴¹ TF1-036/Transcript 29 July 2005, pp. 35, line 7 – pp. 36, line 26. (Freetown reference) (SB would write to logistics commander to release supplies to troops); TF1-036/Transcript 29 July 2005, pp. 25, line 14 – pp. 29, line 5.

⁹⁴² TF1-045/Transcript 22 November 2005, pp. 69, line 1 – pp 72, line 12.

⁹⁴³ TF1-367/Transcript 21 June 2006, pp. 48, line 13 – pp. 56, line 13; TF1-360/Transcript 22 July 2005, pp. 41, line 10 – pp. 42, line 7.

⁹⁴⁴ TF1-367/Transcript 21 June 2006, pp. 48, line 13 – pp. 56, line 13.

⁹⁴⁵ TF1-045/Transcript 22 November 2005, pp. 69, line 1 – pp 72, line 12.

⁹⁴⁶ Johnson/Transcript 14 October 2004, pp. 38, line 1 – pp. 40, line 17. (Kennedy was logistics officer for RUF. Exhibit 35. Le50M was given by AFRC to RUF).

⁹⁴⁷ TF1-036/Transcript 29 July 2005, pp. 30, line 8 – pp. 32, line 18.

⁹⁴⁸ TF1-036/Transcript 29 July 2005, pp. 35, lines 1-6.

⁹⁴⁹ TF1-036/Transcript 29 July 2005, pp. 35, line 7 – pp. 36, line 26.

⁹⁵⁰ TF1-045/Transcript 22 November 2005, pp. 69, line 1 – pp 72, line 12.

⁹⁵¹ TF1-334/Transcript 6 July 2006, pp. 95, lines 10-25.

⁹⁵² TF1-360/Transcript 22 July 2005, pp. 39, line 7 – pp. 41, line 19.

command in Freetown⁹⁵³ – felt he was being disrespected by the coup-makers.⁹⁵⁴ Consequently, Bockarie left Freetown for Kenema.⁹⁵⁵ Bockarie left to establish his own regime in Kenema.⁹⁵⁶ It cannot sensibly be argued that Bockarie was in a governing or superior command position in Freetown. It is logical that a commander who leaves a location and a group for fear of his life is not participating in the same plan, design or purpose as the offending group. This is the fallacy of the Prosecution thesis. A common objective is not always sufficient to determine a group. It is the interaction or cooperation among persons – their joint action – in addition to their common objective that forges a group out of a mere plurality.⁹⁵⁷

6. The Supreme Council

483. The military decision-making power was vested principally with Johnny Paul, SAJ Musa, and the PLOs.⁹⁵⁸ PLOs were responsible for coordinating, supervising, and monitoring operations of the departments of state and government business.⁹⁵⁹ There is no dispute that Sesay did attend some Supreme Council meetings. This does not equate to more than minimal participation in the junta government. It does not equate to participation in a joint criminal enterprise.

484. The main topics of discussion at the Supreme Council were the security of the junta,⁹⁶⁰ revenue generation, resolving disputes between the AFRC and RUF, and harassment of civilians by fighters – in particular looting.⁹⁶¹ The Supreme Council also, tangentially, spoke about diamond mining as a means to procure logistics and pay salaries.⁹⁶² Thus Sesay's attendance does not equate to participation in any agreement

⁹⁵³ TF1-360/Transcript 22 July 2005, pp. 39, line 7 – pp. 41, line 19.

⁹⁵⁴ TF1-045/Transcript 22 November 2005, pp. 62, line 16 – pp. 63, line 26; TF1-071/Transcript 14 October 2004, pp. 33, line 25 – pp. 34, line 5. (SB left because there were problems between SLAs and RUF)

⁹⁵⁵ TF1-168/Transcript 3 April 2006, pp. 15, lines 1-17.

⁹⁵⁶ TF1-361/Transcript 14 July 2005, pp. 74, line 29 – pp. 76, line 10.

⁹⁵⁷ Krajisnik Trial Judgement, Para. 884.

⁹⁵⁸ TF1-371/Transcript 28 July 2006, pp. 61, lines 4-22.

⁹⁵⁹ TF1-334/Transcript 16 May 2005, pp. 72, lines 20 – pp. 75, line 20. [Reference to Decree No. 3]; TF1-334/Transcript 16 May 2005, pp. 99, line 4 – pp. 102, line 19. (PLOs reporting directly to Vice Chairman (PLO1 also reported to JPK)).

⁹⁶⁰ TF1-371/Transcript 20 July 2006, pp. 38, line 20 – pp. 39, line 6.

⁹⁶¹ TF1-371/Transcript 20 July 2006, pp. 30, line 27 – pp. 37, line 24.

⁹⁶² TF1-371/Transcript 20 July 2006, pp. 30, line 27 – pp. 37, line 24.

to commit crimes. Even if there were plans to commit crimes, which is disputed (see junta diamond), the attendance at meetings, without more would be evidence of knowledge, nothing more. This is particularly so given the marginalisation of the RUF and the chain of command which vested power in the hands of a few SLA commanders.

485. The evidence does not support the proposition that the Supreme Council was a forum for planning or arranging criminal activities. Quite the contrary, the leadership of the AFRC regime – and correspondingly the Supreme Council – was concerned with its reputation internationally.⁹⁶³ As such, the junta was making efforts to prevent the looting in Freetown. An anti-looting decree was passed⁹⁶⁴ and Isaac Mungo appointed as anti-looting commander.⁹⁶⁵ In addition, JPK and SAJ Musa held a court-martial for soldiers that robbed and murdered; ten soldiers were executed.⁹⁶⁶ The Prosecution will allege that the evidence supports the inference that forced mining was discussed in the Council. As will be made clear – see Kono section – upon close inspection it does not. There is no evidence that Sesay could have intervened in these crime prevention measures, to increase their effectiveness or ensure there was a more comprehensive plan to protect the civilians. There is little or no evidence that he had any decision making power as regards the AFRC. As noted by TF1-371, the laws and control mechanisms for the punishment of AFRC troops lay in the hands of JPK and SAJ Musa.⁹⁶⁷

486. The criminal activity of some members of the AFRC in Freetown gave rise to RUF commanders having ill-feelings towards the AFRC.⁹⁶⁸ One such incident that particularly caused a great deal of consternation among the RUF was the looting of the Iranian Embassy, in which Sesay was wrongly implicated by the culprit, Gborie.⁹⁶⁹ It is difficult - on the Prosecution case – to understand why this incident appears to have

⁹⁶³ Johnson/Transcript 18 October 2004, pp 103, line 25 – pp 107, line 1. (Tension from international groups after the coup).

⁹⁶⁴ TF1-334/Transcript 17 May 2005, pp. 57, line 17 – pp. 59, line 1.

⁹⁶⁵ TF1-371/Transcript 31 July 2006, pp. 17, line 4 – pp. 18, line 19.

⁹⁶⁶ TF1-371/Transcript 28 July 2006, pp. 56, line 5 – pp. 61, line 3.

⁹⁶⁷ TF1-371/Transcript 28 July 2006, pp. 56, line 5 – pp. 61, line 3.

⁹⁶⁸ TF1-361/Transcript 14 July 2005, pp. 68, line 3 – pp. 70, line 28.

⁹⁶⁹ TF1-371/Transcript, 20 July 2006, pp. 37, line 25 – pp. 38, line 19.

caused such a commotion amongst the RUF and SLA Commanders. Obviously had the Senior Command, including Sesay, agreed to terrorise and collectively punish the population and to commit the crimes within the Statute, these matters would have been irrelevant, would not have been discussed and certainly would not have led to the arrest of a senior member of the “JCE”.

487. The looting of the Embassy by Gborie and other members of the AFRC occurred after the anti-looting decree was passed. It led to the expulsion of Gborie et al., from the AFRC.⁹⁷⁰ Sesay was wrongly implicated in the incident and from then on his so-called participation in the AFRC dwindled. He stopped attending Supreme Council meetings.⁹⁷¹

488. And so the fragile coalition crumbled. As did the notion of working together for peace. This left an inevitable vacuum for the different groups to form new and distinct plans, some lawful and some not. The more the cracks began to appear, the greater the fragmentation and the more the groups took on their own character and own purposes. This is obvious.

7. Sam Bockarie Acting on his own while in Kenema

489. When Bockarie moved to Kenema, he was not reporting to JPK. Bockarie was doing his own thing.⁹⁷² While in Kenema, Bockarie maintained a separate command with his own men, arms, and ammunition. He was there with a strong force.⁹⁷³ Separate command structures continued to be employed with the RUF commanders reporting to Bockarie and the SLAs reporting through their own channels.⁹⁷⁴ Similar to Freetown, the RUF maintained a separate radio structure to the SLAs in Kenema.⁹⁷⁵ It cannot

⁹⁷⁰ TF1-334/Transcript 17 May 2005, pp. 57, line 17 – pp. 59, line 1; TF1-371/Transcript 28 July 2006, pp. 56, line 5 – pp. 61, line 3.

⁹⁷¹ TF1-371/Transcript 28 July 2006, pp. 56, line 5 – pp. 61, line 3; Johnson/Transcript 18 October 2004, pp. 112, line 22 – pp. 119, line 14; Johnson/Transcript 19 October 2004, pp. 8, line 9 – pp. 10, line 1.

⁹⁷² Johnson/Transcript 18 October 2004, pp. 108, line 5 – pp. 112, line 21.

⁹⁷³ Johnson/Transcript 18 October 2004, pp. 108, line 5 – pp. 112, line 21.

⁹⁷⁴ TF1-036/Transcript 29 July 2005, pp. 30, line 8 – pp. 32, line 18; TF1-036/Transcript 3 August 2005, pp. 66, line 17 – pp. 70, line 11.

⁹⁷⁵ TF1-036/Transcript 3 August 2005, pp. 66, line 17 – pp. 70, line 11. (Although some RUF were incorporated into the Brigade).

reasonably be argued that all the SLAs and all the RUF were in a single enterprise. However, as in Freetown, Bockarie had to depend on the AFRC for the supply of weapons to his men in Kenema.⁹⁷⁶ This was a significant blow to Bockarie's ability to run his own operations.⁹⁷⁷ It meant that he had to collaborate but this collaboration is not evidence of any common plan to commit crime. Bockarie might have his own plan but Eddie Kanneh almost certainly had his own, or rather one which was shared with JPK and his SLA comrades.

8. Material Ability to control the whole of the RUF?

490. As above, the underlying premise of the Prosecution case is misconceived. The underlying premise of the Prosecution's case is that Sesay had the material ability to command and control all the personnel in the whole of Sierra Leone who referred to themselves as the RUF. The Prosecution hence allege that from the time of the junta Sesay not only shared the common plan to terrorise and punish but also used his command to issue criminal orders to the whole of the RUF. It is not difficult to reject this thesis. It is not based on common sense nor is it intended to be. It is based upon a desire to individualise the crimes of many and blame them on the First Accused.

491. It is not disputed that on entering Freetown from the Western Jungle, Superman arrived with about 1000 troops,⁹⁷⁸ possibly more,⁹⁷⁹ of men that were loyal to him.⁹⁸⁰ Superman's group was a force to be reckoned with. Johnny Paul would, at times, specifically call upon military assistance from Superman.⁹⁸¹ It is undisputed that Sesay didn't have the force of men in Freetown that Superman had.⁹⁸² Sesay was

⁹⁷⁶ TF1-036/Transcript 3 August 2005, pp. 66, line 17 – pp. 70, line 11. (Both RUF and AFRC got ammo from ordinance unit).

⁹⁷⁷ TF1-371/Transcript 28 July 2006, pp. 49, line 25 – pp. 51, line 1.

⁹⁷⁸ Johnson/Transcript 19 October 2004, pp. 5, line 12 – pp. 8, line 8.

⁹⁷⁹ TF1-360/Transcript 22 July 2005, pp. 35, line 22 – pp. 37, line 5. [however, W doesn't know about Superman refusing to submit himself to an investigation]

⁹⁸⁰ TF1-045/Transcript 22 November 2005, pp. 57, line 19 – pp. 58, line 10. (Superman had his own men in Freetown that were loyal to him; IS and Superman were not close).

⁹⁸¹ TF1-361/Transcript 14 July 2005, pp. 81, line 18 – pp. 83, line 5; TF1-361/Transcript 14 July 2005, pp. 76, line 11 – pp. 81, line 17 (operation mosquito spray).

⁹⁸² TF1-071/Transcript 24 January 2005, pp. 80, line 23 – pp. 86, line 13.

accompanied in Freetown only by his securities.⁹⁸³ No serious evidence has been led to suggest otherwise. Senior RUF insiders didn't hear of Sesay carrying troops in Freetown.⁹⁸⁴

492. It is not disputed that during the junta, Mike Lamin,⁹⁸⁵ Isaac Mungo,⁹⁸⁶ and Superman⁹⁸⁷ were all Colonels. This was also true of Bockarie.⁹⁸⁸ It is also not disputed that Sesay was a Lt. Col. during the Junta⁹⁸⁹ (Peter Vandi and Gibril Massaquoi were also Lt. Colonels.)⁹⁹⁰ It is not disputed that Sesay was the Battle Group Commander during the junta.⁹⁹¹

493. However, for the RUF combatants on the ground during the junta, it made every difference on who promoted him to Battle Group. In one camp, it was believed that – prior to the coup – Sankoh appointed Sam Bockarie as the Battle Field Commander and Sesay as the Battle Group Commander.⁹⁹²

494. In the opposing camp, it was claimed that Sesay was promoted to BGC by Sam Bockarie in Freetown.⁹⁹³ This led some, especially those under Superman's influence, to believe that Superman was more senior than Sesay as it was also claimed that Sankoh had promoted Superman to Battle Group Commander over Sesay [prior to

⁹⁸³ TF1-071/Transcript 24 January 2005, pp. 80, line 23 – pp. 86, line 13; TF1-334/Transcript 6 July 2006, pp. 98, line 13 – pp. 99, line 29.

⁹⁸⁴ TF1-071/Transcript 24 January 2005, pp. 80, line 23 – pp. 86, line 13.

⁹⁸⁵ TF1-036/Transcript 29 July 2005, pp. 38, line 18 – pp. 43, line 18; TF1-168/Transcript 3 April 2006, pp. 3, line 18 – pp. 5, line 12.

⁹⁸⁶ TF1-036/Transcript 29 July 2005, pp. 38, line 18 – pp. 43, line 18; TF1-168/Transcript 3 April 2006, pp. 3, line 18 – pp. 5, line 12.

⁹⁸⁷ TF1-168/Transcript 3 April 2006, pp. 3, line 18 – pp. 5, line 12.

⁹⁸⁸ TF1-168/Transcript 3 April 2006, pp. 3, line 18 – pp. 5, line 12.

⁹⁸⁹ TF1-036/Transcript 29 July 2005, pp. 37, line 10 – pp. 38, line 17; TF1-168/Transcript 3 April 2006, pp. 3, line 18 – pp. 5, line 12.

⁹⁹⁰ TF1-168/Transcript 3 April 2006, pp. 3, line 18 – pp. 5, line 12.

⁹⁹¹ TF1-360/Transcript 22 July 2005, pp. 29, line 5 – pp. 31, line 6.

⁹⁹² TF1-371. Transcript 31 July 2006, pp. 25, line 15 – pp. 27, line 23.

⁹⁹³ TF1-071/Transcript 24 January 2005, pp. 74, line 9 – pp. 80, line 22. (IS not a colleague to FS as much as IM, ML, or Superman had been).

arriving to Hastings].⁹⁹⁴ Superman's claimed promotion by Sankoh was considered a more credible than a promotion of Bockarie.⁹⁹⁵

495. It cannot sensibly be disputed that the RUF was not an unconventional military organisation. The chain of command was not clear. For some, assignment superseded rank⁹⁹⁶ as rank mattered above all else.⁹⁹⁷ Some RUF insiders testified that, prior to the coup (in March 1997), Sankoh said he wanted ranks to be respected instead of assignments taking preference.⁹⁹⁸ However, senior RUF commanders, such as TF1-371, never heard Sankoh say that rank was more important than assignment.⁹⁹⁹ TF1-371 believed that ranks were given to commanders simply as encouragement,¹⁰⁰⁰ but could offer no explanation how a promotion could be an encouragement if such a promotion didn't carry increased responsibility to command.¹⁰⁰¹

496. For those that believed that rank was more important than assignment, e.g., TF1-041, the RUF were to take orders from Mike Lamin, as he was the top-ranking RUF officer in Freetown.¹⁰⁰² In addition, Sesay was expected to show respect to Mike Lamin, Isaac Mungo, and Superman as they had higher ranks than he.¹⁰⁰³ Therefore, Superman, as a ranking officer to Sesay, may have felt comfortable disobeying Sesay because of his higher rank.¹⁰⁰⁴ As such, Superman failed to subordinate himself to

⁹⁹⁴ TF1-361/Transcript 14 July 2005, pp. 72, line 12 – pp. 74, line 28; TF1-361/Transcript 11 July 2005, pp. 52, line 23 – pp. 53, line 26.

⁹⁹⁵ This is notwithstanding TF1-371's claim that the purported promotion of Sesay from Lt. Colonel to Colonel by Bockarie was considered legitimate as Bockarie was considered the High Command. (TF1-371/Transcript 24 July 2006, pp. 93, line 3 – pp. 96, line 2).

⁹⁹⁶ TF1-036/Transcript 29 July 2005, pp. 52, line 8 – 53, line 15; TF1-371/ Transcript 1 July 2006, pp. 28, line 10 – pp. 33, line 13.

⁹⁹⁷ TF1-071/Transcript 24 January 2005, pp. 41, line 24 – pp. 51, line 15.

⁹⁹⁸ TF1-168/Transcript 3 April 2006, pp. 3, line 18 – pp. 5, line 12.

⁹⁹⁹ TF1-371/ Transcript 1 July 2006, pp. 28, line 10 – pp. 33, line 13.

¹⁰⁰⁰ TF1-371/ Transcript 1 July 2006, pp. 28, line 10 – pp. 33, line 13.

¹⁰⁰¹ TF1-371/ Transcript 1 July 2006, pp. 28, line 10 – pp. 33, line 13.

¹⁰⁰² TF1-041/Transcript 11 July 2006, pp. 40, line 18 – pp. 41, line 24.

¹⁰⁰³ TF1-036/Transcript 29 July 2005, pp. 38, line 18 – pp. 43, line 18.

¹⁰⁰⁴ TF1-036/Transcript 29 July 2005, pp. 56, line 3 – 62, line 14; TF1-371/Transcript 24 July 2006, pp. 96, lines 3-23. (Sesay would complain about Superman's behaviour; Superman would sometimes refuse to take orders from IS); TF1-036/Transcript 29 July 2005, pp. 53, line 16 – pp. 56, line 2. (Superman was undisciplined and didn't take orders from IS or SB (initially Superman took orders) (pre SB departure).

Sesay in handing over a weapon; the situation was resolved only with Bockarie's intervention.¹⁰⁰⁵

497. However, according to even those within this camp, Sesay had higher responsibility as Battle Group Commander (e.g., TF1-103).¹⁰⁰⁶ The end result was individual commanders of the RUF interpreted the rank v. assignment interplay to their advantage, leaving the rest of the RUF confused in a muddled disarray. For example, TF1-071 said that Sesay was the Battle Field Commander in Freetown during the junta¹⁰⁰⁷ and five days later said that Sesay was not the Battle Field Commander in Freetown during the junta.¹⁰⁰⁸ TF1-041 believed Mike Lamin to be the most senior RUF in Freetown,¹⁰⁰⁹ TF1-036 believed Sesay to be the most senior.¹⁰¹⁰ In the midst of this confusion, no ordered command structure can now, in hindsight, be determined nor could it be during the junta. In large part military power was fluctuating, based ultimately on loyalty.¹⁰¹¹

498. In this context, Superman and his men, found themselves immune from charges of insubordination. It is undisputed that Superman embezzled 9 million Leones. Bockarie invited Superman to an investigation but Superman refused to submit.¹⁰¹² TF1-371 confirmed that to attempt to put Superman under control would have resulted in a huge fight:

Q. I mean, to put Superman into order, would have taken a huge mission from the Sam Bockarie side and a fight, no doubt, with Superman's men?

¹⁰⁰⁵ TF1-361/Transcript 14 July 2005, pp. 70, line 29 – pp. 72, line 11 and pp. 74, lines 4-18.

¹⁰⁰⁶ TF1-036/Transcript 29 July 2005, pp. 38, line 18 – pp. 43, line 18.

¹⁰⁰⁷ TF1-071/Transcript 19 January 2005, pp. 23, line 26 – pp. 24, line 5.

¹⁰⁰⁸ TF1-071/Transcript 24 January 2005, pp. 91, lines 5-18.

¹⁰⁰⁹ TF1-041/Transcript 11 July 2006, pp. 40, line 18 – pp. 41, line 24.

¹⁰¹⁰ TF1-036/Transcript 29 July 2005, pp. 32, line 19 – pp. 33, line 23.

¹⁰¹¹ TF1-371/Transcript 24 July 2006, pp. 86, line 6 – pp. 88, line 7; TF1-360/Transcript 22 July 2005, pp. 35, line 22 – pp. 37, line 5. (Loyalties base on who trained you. SB and IM got along well as SB trained IM); TF1-361/Transcript 14 July 2005, pp. 81, line 18 – pp. 83, line 5; TF1-045/Transcript 22 November 2005, pp. 57, line 19 – pp. 58, line 10. (Superman had his own men in Freetown that were loyal to him; IS and Superman were not close).

¹⁰¹² TF1-036/Transcript 29 July 2005, pp. 56, line 3 – 62, line 14; TF1-036/Transcript 29 July 2005, pp. 53, line 16 – pp. 56, line 2. (Superman was indisciplined and didn't take orders from IS or SB (initially Superman took orders) (pre SB departure)).

Yes, yes, of course.

Q. I mean, Superman had hundreds of men and Sam Bockarie had hundreds of men; an uneasy standoff, in a way?

Yes, of course, that would have been.¹⁰¹³

499. In the absence of Sankoh as a stabilising force, day-to-day control of individual commanders was complicated.¹⁰¹⁴ The risks of individual commanders taking advantage of the situation were greater after Sam Bockarie's departure.

500. There can be little doubt that the Prosecution's thesis is wrong. There can be little doubt that Sesay was not the second in command in Freetown during the junta. There can be little doubt that in terms of de facto power there was little which enable effective command. Unsurprisingly, Mike Lamin was appointed the Security Director under Johnny Paul,¹⁰¹⁵ and Isaac Mungo the anti-looting commander.¹⁰¹⁶ No such assignment or responsibility was given to Sesay. It should therefore come as no surprise that Johnny Paul didn't refer to Sesay when citing the four most influential members of the RUF.¹⁰¹⁷

501. As suggested by TF1-360, if Sam Bockarie didn't have any command in Freetown,¹⁰¹⁸ and had to leave in fear of his life; how could Sesay have had any effective command in Freetown or elsewhere? Sesay was the de jure Battle Group Commander but there are many examples of when he could not command. For example he couldn't order soldiers to gather together,¹⁰¹⁹ nor could individual commanders under Sesay.¹⁰²⁰ Sesay was left as an empty figurehead to "represent" Sam Bockarie in Freetown.¹⁰²¹

¹⁰¹³ TF1-371/Transcript 24 July 2006, pp. 83, line 12 – pp. 86, line 5.

¹⁰¹⁴ TF1-371/Transcript 24 July 2006, pp. 86, line 6 – pp. 88, line 7. (Superman and SB did have an uneasy relationship).

¹⁰¹⁵ TF1-041/Transcript 11 July 2006, pp. 40, line 18 – pp. 41, line 24.

¹⁰¹⁶ TF1-371/Transcript 31 July 2006, pp. 17, line 4 – pp. 18, line 19.

¹⁰¹⁷ TF1-071/Transcript 24 January 2005, pp. 41, line 24 – pp. 51, line 15. The four cited were Sam Bockarie, Superman, Colonel Dennis, and Isaac Mungo.

¹⁰¹⁸ TF1-360/Transcript 22 July 2005, pp. 39, line 7 – pp. 41, line 19.

¹⁰¹⁹ TF1-361/Transcript 14 July 2005, pp. 76, line 11 – pp. 81, line 17 (operation mosquito spray).

¹⁰²⁰ TF1-361/Transcript 14 July 2005, pp. 76, line 11 – pp. 81, line 17 (operation mosquito spray).

¹⁰²¹ TF1-071/Transcript 24 January 2005, pp. 74, line 9 – pp. 80, line 22.

9. Sam Bockarie's Radio Communications

502. When Sam Bockarie was in Freetown, he was communicating by radio to the area commanders¹⁰²² (e.g., Superman¹⁰²³). It is of note that Sesay is excluded from this chain of command. There can be no suggestion that Sesay was communicating all Bockarie's messages to these area commanders or that orders or communications would pass through Sesay; there was no need as Sam Bockarie was present in Freetown.

503. At best – according to the Prosecution evidence – when Sam Bockarie was in Kenema, Sesay was simply his messenger with commands simply passing through Sesay.¹⁰²⁴ There is little, if any, evidence to show that Sesay gave orders during the junta period.¹⁰²⁵ A close examination of the evidence shows that the Prosecution was able to adduce many examples of *de jure* status and, surprisingly, few actual examples of orders or actual retained military functions. For example, George Johnson cannot recall any orders given by Sesay to Superman or Isaac Mungo or Gibril Massaquoi.¹⁰²⁶ In addition, Mike Lamin was communicating with and receiving orders directly from Bockarie.¹⁰²⁷ At best, Sesay was only acting upon orders,¹⁰²⁸ not giving them. Sesay was “the eyes and ears for Bockarie” while Bockarie was in Kenema¹⁰²⁹ but this does not equate to real authority and the Prosecution have not proven otherwise.

¹⁰²² TF1-036/Transcript 29 July 2005, pp. 27, lines 8-12; TF1-071/Transcript 24 January 2005, pp. 60, line 1 – 68, line 19. (During the junta, chain of command was from SB to battalion commanders).

¹⁰²³ TF1-371/Transcript 20 July 2006, pp. 27, line 19 – pp. 30, line 24. (There were various area commanders like Superman); TF1-371/Transcript 31 July 2006, pp. 17, line 4 – pp. 18, line 19. (There were no area commanders in the junta though RUF structure was intact. Superman didn't have an assignment in the junta but was still an AC in the RUF).

¹⁰²⁴ For example, a message from Bockarie's station to Sesay's station that Morris Kallon was coming to collect manpower. (TF1-361/Transcript 14 July 2005, pp. 76, line 11 – pp. 81, line 17 (operation mosquito spray).; TF1-361/Transcript 11 July 2005, pp. 63, line 5 – pp. 6, line 26 (operation mosquito spray).) TF1-036/Transcript 29 July 2005, pp. 32, line 19 – pp. 33, line 23. (While in Kenema, Bockarie would communicate over the radio to Sesay as the most senior commander in Freetown. IS would reply to Bockarie).

¹⁰²⁵ TF1-361/Transcript 14 July 2005, pp. 64, line 10 – pp. 68, line 2. Arguably, the evidence closest to Sesay giving an order is, according to TF1-361's evidence, Bockarie and Sesay giving an order to a commander to stay in Benguema to serve another commander. Note however that this “order” comes from Sam Bockarie *and* Sesay; the reality is that the order came from Bockarie and was simply transmitted through Sesay.

¹⁰²⁶ Johnson/Transcript 19 October 2004, pp. 14, line 27 – pp. 15, line 25.

¹⁰²⁷ TF1-334/Transcript 16 May 2005, pp. 44, lines 2 – pp. 45, line 5.

¹⁰²⁸ TF1-371/Transcript 20 July 2006, pp. 45, line 25 – pp. 48, line 6. (For example, Sesay went to Magburaka to collect an arms shipment (spoken about in SC meeting prior to shipment)).

¹⁰²⁹ Johnson/Transcript 18 October 2004, pp. 108, line 5 – pp. 112, line 21.

D. Sesay's Purported Liabilities for Crimes during the Junta

504. The Prosecution's case against Sesay during the Junta is, oddly, more about what Sesay *wasn't* doing rather than what he *was* doing. The Prosecution haven't clearly established where Sesay fell in the command structure of the AFRC hierarchy. The Prosecution have failed to establish what orders, if any, Sesay could dictate, and to whom, and whether these would be acted upon. The only person that the Prosecution has Sesay communicating with is Bockarie, and then, only to transmit messages.

VI. Kenema: counts 3-5, 10 and 11

A. The Prosecution's allegations

505. Only unlawful killings¹⁰³⁰ and physical violence¹⁰³¹ were pled in Kenema Town between 25 May 1997 and 19 February 1998. Sexual violence, abductions and forced labour, and looting and burning were not pled.

506. The Prosecution allege that that Sesay is criminally responsible on the following basis:

- a. that he communicated with Bockarie in the field;¹⁰³²
- b. that he was responsible for sending ammunition to the RUF in the field;
- c. that he was a frequent visitor to the AFRC Secretariat and Sam Bockarie, the then *de facto* commander of the RUF, in Kenema Town;¹⁰³³
- d. that he committed an assault in October 1997 on a civilian after the civilian was arrested by him on the instruction of Sam Bockarie;¹⁰³⁴ and
- e. that his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes.¹⁰³⁵

¹⁰³⁰ Indictment, Para. 47.

¹⁰³¹ Indictment, Para. 63.

¹⁰³² Prosecution Supplemental Pre-Trial Brief, Para 30(b).

¹⁰³³ Prosecution Supplemental Pre-Trial Brief, Para 30(c).

¹⁰³⁴ Prosecution Supplemental Pre-Trial Brief, Para 144(b).

¹⁰³⁵ Prosecution Supplemental Pre-Trial Brief, Para 33(c).

507. The Prosecution's evidence concerning alleged crimes in Kenema failed in most instances to rise above generalities, providing little by way of probative detail and often without indicating when those crimes are alleged to have occurred or who the perpetrators or victims were.¹⁰³⁶ It is submitted that there was no attack directed against a civilian population in Kenema Town. The Accused was rarely present in the Town during the indictment period and was not aware of any attack. The crimes committed in Kenema during the between 25 May 1997 and 19 February 1998 were isolated and few and were committed by others for personal or security reasons unconnected to any generalized attack. Mr. Sesay's presence in Kenema Town was connected to legitimate military operations, e.g., the October 1997 attack on ECOMOG troops.¹⁰³⁷

B. Civilian Life in Kenema Under the RUF and AFRC

508. Upon the 25th May 1997 coup, there was an expectation throughout large parts of the Republic of Sierra Leone that the war had finally come to a conclusion. During the junta civilians were returning to their homes.¹⁰³⁸ The Prosecution and Defence evidence confirm the fact that, during the junta, civilians chose to stay in Kenema (TF1-122)¹⁰³⁹ (TF1-129),¹⁰⁴⁰ civilians were living in Kenema Town (TF1-045),¹⁰⁴¹ working in (TF1-122),¹⁰⁴² and free to walk about Kenema Town (TF1-122).¹⁰⁴³ Generally speaking, civilians were going about their daily business (TF1-045)¹⁰⁴⁴ and there was a peaceful atmosphere.¹⁰⁴⁵ It is submitted that the cooperation between the combatants and soldiers was successful. The Prosecution's evidence discloses nothing more than this fact. The "collaboration" with the AFRC/RUF was the basis for the subsequent attacks launched by Kamajors on the civilians of Kenema at the intervention in early 1998.

¹⁰³⁶ E.g., TF1-129/Transcript, 10 May 2005, pp. 86, lines 20 – 24. Gunshots were heard every night with somebody reported killed.

¹⁰³⁷ Sesay/Transcript, 22 May 2007, pp. 22-23.

¹⁰³⁸ DIS-174/Transcript, 21 January 2008 pp. 84, line 20 – pp. 85, line 26.

¹⁰³⁹ TF1-122/Transcript, 7 July 2005, pp. 116.

¹⁰⁴⁰ TF1-129/Transcript, 10 May 2005, pp. 86, lines 1-4.

¹⁰⁴¹ TF1-045/Transcript, 23 November 2005, pp. 8, lines 19-20.

¹⁰⁴² TF1-122/Transcript, 8 July 2005, pp. 9, lines 1-19.

¹⁰⁴³ TF1-122/Transcript, 8 July 2005, pp. 9, lines 1-19.

¹⁰⁴⁴ TF1-045/Transcript, 23 November 2005, pp. 9, lines 4-7.

¹⁰⁴⁵ DIS-188/Transcript, 26 October 2007, pp. 64, line 9 – pp. 67, line 27 and DIS-124/Transcript, 22 November 2005, pp. 119, lines 9-15.

509. Upon the coup, the new AFRC and RUF administration held meetings chaired by prominent citizens of Kenema. These prominent people, including the Chairman of the Town Council, BS Massaquoi (TF1-129),¹⁰⁴⁶ wherein it was requested that the civilian populace cooperate in the interests of peace (TF1-129).¹⁰⁴⁷ Some civilians were in favour of the new administration (TF1-129).¹⁰⁴⁸

510. The Prosecution failed to establish that the new administration did not allow for the continuation of normal peacetime activities in Kenema Town during the junta: shops (TF1-045)¹⁰⁴⁹ markets (TF1-122),¹⁰⁵⁰ diamond traders (TF1-060),¹⁰⁵¹ pharmacies (TF1-122),¹⁰⁵² hospitals (TF1-045)¹⁰⁵³ (TF1-129)¹⁰⁵⁴ (TF1-122)¹⁰⁵⁵, private medical clinics (TF1-129),¹⁰⁵⁶ the police (TF1-045),¹⁰⁵⁷ bars (TF1-122),¹⁰⁵⁸ nightclubs (e.g., La Bamba) (TF1-045),¹⁰⁵⁹ the women's society Bondo Bush (TF1-129)¹⁰⁶⁰ (TF1-045)¹⁰⁶¹ (TF1-122),¹⁰⁶² banks (TF1-125)¹⁰⁶³ (TF1-122),¹⁰⁶⁴ schools,¹⁰⁶⁵ and NGOs (TF1-122)¹⁰⁶⁶ (e.g., Caritas,¹⁰⁶⁷ ICRC¹⁰⁶⁸) were all operating. Civilians operating in administrative functions continued to receive their regular salaries. For example, staff members at the

¹⁰⁴⁶ TF1-129/Transcript, 11 May 2005, pp. 98, lines 12-27.

¹⁰⁴⁷ TF1-129/Transcript, 11 May 2005, pp. 97, lines 9-27; DIS-124/Transcript, 22 November 2005, pp. 100, line 9 – pp. 101, line 11.

¹⁰⁴⁸ TF1-129/Transcript, 11 May 2005, pp. 98, lines 28-pp.12; and pp. 100-22-23.

¹⁰⁴⁹ TF1-045/Transcript, 23 November 2005, pp. 9, lines 8-9; DIS-281/Transcript, 9 November 2007, pp. 13, line 20-23.

¹⁰⁵⁰ TF1-122/Transcript, 8 July 2005, pp. 83, lines 3-23.

¹⁰⁵¹ TF1-060/Transcript, 29 April 2005, pp. 47, line 1-14.

¹⁰⁵² TF1-122/Transcript, 7 July 2005, pp. 134, line 22 – pp. 138, line 3.

¹⁰⁵³ TF1-045/Transcript, 23 November 2005, pp. 9, lines 10-11.

¹⁰⁵⁴ TF1-129/Transcript, 10 May 2005, pp. 49, lines 3-6.

¹⁰⁵⁵ TF1-122/Transcript, 7 July 2005, pp. 134, line 22 – pp. 138, line 3.

¹⁰⁵⁶ TF1-129/Transcript, 10 May 2005, pp. 49, lines 3-6.

¹⁰⁵⁷ TF1-045/Transcript, 23 November 2005, pp. 9, lines 12-14.

¹⁰⁵⁸ TF1-122/Transcript, 7 July 2005, pp. 134, line 22 – pp. 138, line 3.

¹⁰⁵⁹ TF1-045/Transcript, 23 November 2005, pp. 10, lines 17-23.

¹⁰⁶⁰ TF1-129/Transcript, 12 May 2005, pp. 4, lines 8 – 22; DIS-069/Transcript, 22 October 2007, pp. 93, line 17 – pp. 94, line 9.

¹⁰⁶¹ TF1-045/Transcript, 23 November 2005, pp. 40, lines 5-12.

¹⁰⁶² TF1-122/Transcript, 8 July 2005, pp. 26, line 27 – pp. 27, line 10.

¹⁰⁶³ TF1-125/Transcript, 13 May 2005, pp. 59, line 20- pp. 60, line 13.

¹⁰⁶⁴ TF1-122/Transcript, 7 July 2005, pp. 134, line 22 – pp. 138, line 3.

¹⁰⁶⁵ DIS-124/Transcript, 22 November 2005, pp. 119, lines 16-18.

¹⁰⁶⁶ TF1-129/Transcript, 10 May 2005, pp. 89, lines 15-26. NGOs were operating in Kenema Town before Sam Bockarie arrived; the NGOs did not need Sam Bockarie's authorisation to operate in Kenema Town. The NGOs brought deliveries to the hospital.

¹⁰⁶⁷ DIS-124/Transcript, 22 November 2005, pp. 119, line 19 – pp. 120, line 1.

¹⁰⁶⁸ TF1-122/Transcript, 7 July 2005, pp. 79, line 21-29.

hospital (TF1-129)¹⁰⁶⁹ and the police continued to receive their salary (TF1-122).¹⁰⁷⁰ Things got better over the course of the junta under the administration of the RUF and AFRC (TF1-122).¹⁰⁷¹ Food was readily available (TF1-122).¹⁰⁷² There was no attack directed at civilians. If there had been the residents would not have been attending nightclubs and sending their children to school.

511. The civilians would also not have remained in Kenema. There was also freedom of movement from Kenema to other parts of Sierra Leone. For example, people were traveling between Kenema and Tongo (TF1-122)¹⁰⁷³ ¹⁰⁷⁴ (TF1-060)¹⁰⁷⁵ ¹⁰⁷⁶ (TF1-060)¹⁰⁷⁷; between Kenema and Kailahun¹⁰⁷⁸ ¹⁰⁷⁹; between Kenema and Daru.¹⁰⁸⁰ This brought, correspondingly, trade between these various locations (e.g., between Kenema and Kailahun).¹⁰⁸¹ This is not to suggest that town did not have its problems. War brings with it security concerns and correspondingly opportunities for excess and crime.

512. A Secretariat was established as a place where civilians could seek redress (TF1-122)¹⁰⁸² (TF1-125)¹⁰⁸³ The Secretariat in Kenema was established by the end of May (TF1-060)¹⁰⁸⁴ (TF1-125)¹⁰⁸⁵ and operated throughout the junta. Civilians from areas outside Kenema (e.g., Tongo) were free to visit the Secretariat (TF1-060).¹⁰⁸⁶ The

¹⁰⁶⁹ TF1-129/Transcript, 10 May 2005, pp. 56, line 8-13.

¹⁰⁷⁰ TF1-122/Transcript, 8 July 2005, pp. 87, lines 1-8.

¹⁰⁷¹ TF1-122/Transcript, 7 July 2005, pp. 134, line 22 – pp. 138, line 3.

¹⁰⁷² TF1-122/Transcript, 7 July 2005, pp. 134, line 22 – pp. 138, line 3.

¹⁰⁷³ TF1-122/Transcript, 8 July 2005, pp. 83, lines 3-23.

¹⁰⁷⁴ DIS-188/Transcript, 26 October 2007, pp. 68, line 17 – pp. 70, line 27.

¹⁰⁷⁵ TF1-060/Transcript, 29 April 2005, pp. 47, line 1-14. TF1-060 traveled from Tongo to Kenema in June and July.

¹⁰⁷⁶ DIS-281/Transcript, 9 November 2007, pp. 20, lines 20-27. When the travel between Kenema and Tongo was dangerous because of possible Kamajor attacks, persons traveling would be escorted by armed men.

¹⁰⁷⁷ TF1-060/Transcript, 29 April 2005, pp. 60, line 19-28.

¹⁰⁷⁸ DIS-174/Transcript, 21 January 2008, pp. 84, line 20 – pp. 85, line 26.

¹⁰⁷⁹ DIS-174/Transcript, 21 January 2008 pp. 85, line 27 – pp. 86, line 9. Trucks were traveling between Kenema and Kailahun.

¹⁰⁸⁰ DIS-069/Transcript, 22 October 2007, pp. 93, line 17 – pp. 94, line 9.

¹⁰⁸¹ DIS-174/Transcript, 21 January 2008 pp. 85, line 27 – pp. 86, line 9.

¹⁰⁸² TF1-122/Transcript, 8 July 2005, pp. 5, lines 1-17; and 8 July 2005, pp. 86, lines 5-24.

¹⁰⁸³ TF1-125/Transcript, 12 May 2005, pp. 98, lines 1-3.

¹⁰⁸⁴ TF1-060/Transcript, 29 April 2005, pp. 47, line 1-25.

¹⁰⁸⁵ TF1-125/Transcript, 12 May 2005, pp. 97, lines 7-29.

¹⁰⁸⁶ TF1-060/Transcript, 29 April 2005, pp. 60, line 19-28.

Secretariat included a discipline officer – Lt. Kanneh (TF1-125)¹⁰⁸⁷ – to keep the soldiers in check. The military police were also functioning to ensure that combatants remained disciplined.¹⁰⁸⁸ The Joint Security Unit was also operating in Kenema.¹⁰⁸⁹

513. Significantly, the presence of the police operating in Kenema before the coup continued to be felt throughout the junta (TF1-125)¹⁰⁹⁰ (TF1-129).¹⁰⁹¹ The police were neutral (TF1-122)¹⁰⁹², acting effectively throughout the junta (TF1-122),¹⁰⁹³ and continued to receive their monthly salary (TF1-122).¹⁰⁹⁴ Civilians felt free (TF1-125)¹⁰⁹⁵ to – and did – report whatever crimes were committed against them (TF1-122)¹⁰⁹⁶ including, not only offences committed by other civilians (TF1-122),¹⁰⁹⁷ but also offences committed by armed men (TF1-122).¹⁰⁹⁸ The police received reports of looting (TF1-122),¹⁰⁹⁹ assaults (TF1-122),¹¹⁰⁰ sexual offences (TF1-122),¹¹⁰¹ fraud (TF1-122),¹¹⁰² fraudulent conversion (TF1-125),¹¹⁰³ missing persons (TF1-125),¹¹⁰⁴ dog bites (TF1-125),¹¹⁰⁵ car theft (TF1-125),¹¹⁰⁶ the theft of mining equipment (TF1-

¹⁰⁸⁷ TF1-125/Transcript, 12 May 2005, pp. 97, line 7-pp.99, line 14.

¹⁰⁸⁸ DIS-124/Transcript, 22 November 2005, pp. 101, lines 12-14.

¹⁰⁸⁹ DIS-124/Transcript, 22 November 2005, pp. 102, line 26 – pp. 103, line 7.

¹⁰⁹⁰ The police structures remained in force throughout the junta (TF1-125/Transcript, 13 May 2005, pp. 11, lines 4-10). A police diary was opened in January 1998. Exhibit 28 (TF1-125/Transcript, 12 May 2005, pp. 109, line 28-pp. 111, line 15). Police diaries similar to Exhibit 28 would have existed throughout 1997. Those diaries were burned or removed from the police station when the Kamajors ransacked the officer on the Intervention. Police diaries were written during peace times. (TF1-125/Transcript, 13 May 2005, pp. 62, line 7 – pp. 64, line 6).

¹⁰⁹¹ TF1-129/Transcript, 10 May 2005, pp. 90, lines 9-15.

¹⁰⁹² TF1-122/Transcript, 7 July 2005, pp. 55, lines 17-22.

¹⁰⁹³ TF1-122/Transcript, 8 July 2005, pp. 20, lines 3-14.

¹⁰⁹⁴ TF1-122/Transcript, 8 July 2005, pp. 87, lines 1-8.

¹⁰⁹⁵ TF1-125/Transcript, 13 May 2005, pp. 61, line 29 – pp. 62, line 3.

¹⁰⁹⁶ TF1-122/Transcript, 8 July 2005, pp. 23, lines 1-18.

¹⁰⁹⁷ TF1-122/Transcript, 8 July 2005, pp. 20, lines 3-22.

¹⁰⁹⁸ TF1-122/Transcript, 8 July 2005, pp. 20, lines 3-22.

¹⁰⁹⁹ TF1-122/Transcript, 8 July 2005, pp. 20, lines 3-22.

¹¹⁰⁰ TF1-122/Transcript, 8 July 2005, pp. 23, lines 1-18.

¹¹⁰¹ TF1-122/Transcript, 8 July 2005, pp. 23, lines 1-18.

¹¹⁰² TF1-122/Transcript, 8 July 2005, pp. 23, lines 1-18.

¹¹⁰³ TF1-125/Transcript, 13 May 2005, pp. 50, lines 3-7.

¹¹⁰⁴ TF1-125/Transcript, 13 May 2005, pp. 53, lines 16-pp.54, line 11.

¹¹⁰⁵ TF1-125/Transcript, 13 May 2005, pp. 60, lines 14 – 29.

¹¹⁰⁶ TF1-125/Transcript, 13 May 2005, pp. 44, lines 16- pp. 45, lines 17-28

125),¹¹⁰⁷ burglary (TF1-125),¹¹⁰⁸ petty theft (TF1-125),¹¹⁰⁹ and domestic disputes (TF1-125).¹¹¹⁰

514. The police acted in conjunction with the new administration. Policemen were promoted by the junta (TF1-122),¹¹¹¹ continued to receive their monthly salary (TF1-122),¹¹¹² investigated diamond thefts in conjunction with the Minister of Mines (TF1-125),¹¹¹³ and investigated reports of crime by armed men with the consent of the military authority (TF1-125).¹¹¹⁴ It is significant that the police also investigated persons suspected of being Kamajors (TF1-125).¹¹¹⁵

515. The police also had cases handed over to them by military police; the military police checked on those cases daily (TF1-122).¹¹¹⁶ Contact with the People's Army that concerned the security of the civilian populace was recorded in the police diary (TF1-122).¹¹¹⁷ The police were not biased in their reporting or investigations. If reports were made against the People's Army (TF1-122)¹¹¹⁸ or unidentified armed men it would be recorded (TF1-122)¹¹¹⁹ (TF1-125).¹¹²⁰

516. The Kenema Police Station was composed of a CID (Criminal Investigations Department), a Special Branch, and a General Duties department (licenses, immigration, prosecutions, police officers, uniform police, finance department, vehicle license department) (TF1-125).¹¹²¹ The CID was responsible for investigating serious

¹¹⁰⁷ TF1-125/Transcript, 13 May 2005, pp. 46, line 9 – pp. 48, line 10. The theft occurred in November 1997.

¹¹⁰⁸ TF1-125/Transcript, 13 May 2005, pp. 50, line 14 – pp. 52, line 20.

¹¹⁰⁹ TF1-125/Transcript, 13 May 2005, pp. 57, line 22 – pp. 58, line 7.

¹¹¹⁰ TF1-125/Transcript, 13 May 2005, pp. 61, lines 1-4.

¹¹¹¹ TF1-122/Transcript, 8 July 2005, pp. 87, lines 1-8.

¹¹¹² TF1-122/Transcript, 8 July 2005, pp. 87, lines 1-8.

¹¹¹³ TF1-125/Transcript, 13 May 2005, pp. 54, lines 12 – pp. 55, line 23.

¹¹¹⁴ TF1-125/Transcript, 13 May 2005, pp. 50, line 14 – pp. 52, line 20.

¹¹¹⁵ TF1-125/Transcript, 13 May 2005, pp. 60, lines 14-29.

¹¹¹⁶ TF1-122/Transcript, 8 July 2005, pp. 75, lines 1-7.

¹¹¹⁷ TF1-122/Transcript, 8 July 2005, pp. 76, lines 8-12.

¹¹¹⁸ TF1-122/Transcript, 8 July 2005, pp. 89, line 4 – pp. 92, line 9.

¹¹¹⁹ TF1-122/Transcript, 8 July 2005, pp. 87, lines 23-pp. 98, line 3.

¹¹²⁰ TF1-125/Transcript, 13 May 2005, pp. 52, line 21 – pp. 53, line 12.

¹¹²¹ TF1-125/Transcript, 13 May 2005, pp. 6 – 7.

crimes such as felonies (TF1-122)¹¹²² (TF1-125).¹¹²³ Felonious offences were investigated (TF1-125).¹¹²⁴ General Duties included crowd control and the parade at High Court sittings (TF1-125).¹¹²⁵ Each department had a command officer and a second-in-command (TF1-125).¹¹²⁶ All criminal matters (even if the perpetrator was an armed combatant) were investigated (TF1-125).¹¹²⁷ The police recorded the movement of personnel, police vehicles, important events, and movement of important dignitaries (TF1-122).¹¹²⁸

517. The Kenema Police Station also received daily (TF1-122)¹¹²⁹ situation reports from the Tongo Police Station which was under the jurisdictional control of the Kenema Police Station (TF1-125).¹¹³⁰ No reports of forced mining were received from Tongo.

518. In light of the above the Prosecution has failed to establish any attack directed at a civilian population. In light of this normal activity and crime detection the only reasonable inference is that there was an acceptance of the junta, even if it was not overtly supported or democratically elected.

C. Sesay's Absence from Kenema Town

519. DIS-124 testified to Bockarie's presence as a commander in Kenema Town.¹¹³¹

[REDACTED]

[REDACTED]

520. DIS-124 testified that while Mr. Sesay was in Freetown, DIS-124 did not have dealings with Mr. Sesay as "Sam Bockarie was on the ground."¹¹³² Although DIS-124

¹¹²² TF1-122/Transcript, 7 July 2005, pp. 102, lines 11-18; and 103, lines 1-16.

¹¹²³ TF1-125/Transcript, 13 May 2005, pp. 9, lines 18- pp. 10, line 4..

¹¹²⁴ TF1-125/Transcript, 16 May 2005, pp. 55, lines 25-28.

¹¹²⁵ TF1-125/Transcript, 13 May 2005, pp. 9, lines 8-17.

¹¹²⁶ TF1-125/Transcript, 13 May 2005, pp. 6, line 24 – pp. 7, line 27.

¹¹²⁷ TF1-125/Transcript, 16 May 2005, pp. 35, line 27 – pp. 36, line 4 and pp 37, lines 6-21.

¹¹²⁸ TF1-122/Transcript, 7 July 2005, pp. 102, lines 1-7.

¹¹²⁹ TF1-122/Transcript 8 July 2005, pp. 71, lines 1 – 7.

¹¹³⁰ TF1-125/Transcript, 13 May 2005, pp. 38, lines 8-13.

¹¹³¹ DIS-124/Transcript, 22 November 2007, pp. 30, line 3 – pp. 31, line 29.

¹¹³² DIS-124/Transcript, 22 November 2007, pp. 104, lines 1 – 13.

himself had a radio, he did not communicate with Mr. Sesay in Freetown. DIS-124 monitored Mr. Sesay when he was communicating over the radio.¹¹³⁴ It is readily apparent that Mr. Sesay was living in Freetown¹¹³⁵ and only came to Kenema Town on visits or discrete military operations (e.g., October 1997 attack on the ECOMOG based at the Lebanese School¹¹³⁶). Indeed, TF1-122, in his 25 November 2004 statement to the Prosecution, stated that he only saw Mr. Sesay in Kenema Town twice.¹¹³⁷

521. Although the Prosecution was given an opportunity, through cross-examination of DIS-124, to buttress their case that Mr. Sesay had effective control over combatants in Kenema Town via radio communications,¹¹³⁸ the Prosecution failed to do so. DIS-124 was not cross-examined on any aspect of the command structures or Mr. Sesay's presence in Kenema Town. The Prosecution failed to establish that Sesay had any de facto functions in relation to any subordinate, or group of subordinates. The Prosecution attempt to prove that Sesay's infrequent visits to Kenema imbued him with sufficient de facto command to have the material ability to prevent and punish did not establish anything more than his de jure status and his infrequent visits. Clearly, if he were present, this would give him some influence over men who were engaged in similar military activities but this is not enough to give rise to 6(3) liability.

522. Mr. Sesay testified that, apart from receiving communications about supplies,¹¹³⁹ the only person with whom he communicated with in Kenema (over the military radio) during the junta period was Sam Bockarie¹¹⁴⁰ because there was no fighting going on.¹¹⁴¹ Mr. Sesay was not challenged on this testimony.

¹¹³³ DIS-124/Transcript, 22 November 2007, pp. 104, lines 14 – 19.

¹¹³⁴ DIS-124/Transcript, 22 November 2007, pp. 33, line 10 – pp. 35, line 4.

¹¹³⁵ TF1-168/Transcript, 3 April 2006, pp. 15, lines 5 – 17. Note that Mr. Sesay is bunched in, under the heading of "other top RUF commanders" with Gibril Massaquoi, Eldred Collins, Mike Lamin, and Lawrence Womandia.

¹¹³⁶ Sesay/Transcript, 8 May 2007, pp. 23, lines 8 – 17.

¹¹³⁷ TF1-122/Transcript, 8 July 2005, pp. 40, line 1 – pp. 43, line 27.

¹¹³⁸ Prosecution Supplemental Pre-Trial Brief, Para 33(c).

¹¹³⁹ Sesay/Transcript, 8 May 2007, pp. 6, lines 5 – 10.

¹¹⁴⁰ Sesay/Transcript, 8 May 2007, pp. 6, lines 2 – 3.

¹¹⁴¹ Sesay/Transcript, 8 May 2007, pp. 6, lines 16 – 20.

523. Although TF1-371 testified that he saw Mr. Sesay in Kenema Town in July 1997, the Prosecution failed to elicit any evidence about what Mr. Sesay was doing there, to whom he was reporting, who was reporting to him, and over which subordinates – if any – Mr. Sesay had military command.¹¹⁴² Although DIS-281 was present in Kenema Town with Sam Bockarie, he was not cross-examined on Mr. Sesay's presence or whether Mr. Sesay had any effective control over any subordinates in Kenema Town.¹¹⁴³

524. Thus, the Prosecution, although given multiple opportunities to do so, failed to establish over whom Mr. Sesay had control. The Defence evidence demonstrated that Mr. Sesay's effective control was limited to functioning bodyguards or those under his command on discrete military operations (e.g., October 1997 attack on the ECOMOG based at the Lebanese School¹¹⁴⁴), that is those who were with him and reported to him. No evidence was elicited that any command lasted beyond these military attacks or these parameters.

525. Prosecution witnesses did not place him within the de jure Kenema chain of command. TF1-122 originally told the Prosecution that he had seen Mr. Sesay in Kenema Town twice,¹¹⁴⁵ and TF1-125 originally testified that he had seen Mr. Sesay in Kenema Town once.¹¹⁴⁶ It is submitted that his presence in the township was benign.

D. Efforts to implement Law and Order

526. It is feasible that at the initial stages of the junta Kenema was chaotic and it was possible for renegade commanders or opportune criminals to misbehave. TF1-129

¹¹⁴² TF1-371/Transcript, 20 July 2006, pp. 26, lines 5 – 11. Other references made by TF1-371 concerning command structures in Kenema Town fail to mention Mr. Sesay. *See, e.g.*, TF1-371/Transcript, 31 July 2006, pp. 52, line 1 – pp. 57, line 14.

¹¹⁴³ DIS-281/Transcript, 9 November 2007, pp. 11, line 27 – pp. 12, line 8.

¹¹⁴⁴ Sesay/Transcript, 8 May 2007, pp. 23, lines 8 – 17.

¹¹⁴⁵ TF1-122/Transcript, 8 July 2005, pp. 40, line 1 – pp. 43, line 27.

¹¹⁴⁶ TF1-125/Transcript, 16 May 2005, pp. 9, lines 27 – pp. 10, line 8. According to TF1-125, this is when Mr. Sesay was with the CPO and Assistant Commissioner of Police. TF1-125 later retracted this and testified that he had seen Mr. Sesay residing in the same compound in which he lived. However, despite living in the compound where Mr. Sesay resided, and despite seeing 20 combatants in that compound every day, TF1-125 not once saw Mr. Sesay giving orders to anyone in that compound. TF1-125/Transcript, 16 May 2005, pp. 17, line 17 – pp. 18, line 3.

confirmed that after the coup there was pandemonium in Kenema Town and its surroundings.¹¹⁴⁷ The Kamajors also put up some resistance to the new administration.¹¹⁴⁸ After a shoot-out with Kamajors combatants both the SLA and the RUF, were seen carrying property, including mattresses, electric fans away from the premises.¹¹⁴⁹

527. These random opportune attacks were not directed against a civilian population. In any event, legitimate efforts were undertaken to ensure that a sense of law and order would be instilled in Kenema Town. The enforcement of law was seen as a necessary objective to safeguard the civilian populace. Rape would not be tolerated;¹¹⁵⁰ looting would not be tolerated.¹¹⁵¹ Sam Bockarie's clumsy and excessive – yet isolated – attempts to *protect* civilians are enumerated below. They served a legitimate non – criminal aim, were not arbitrary, and were not part of a policy of terror or collective punishment. They were not directed against the population. Indeed, legitimate efforts were taken by the police to enforce the law, even if the system was not perfect. TF1-125 testified that investigators were directed by the CID to investigate matters and, if there was enough, to charge the cases to court and prosecute the offender (TF1-125)¹¹⁵² (TF1-122)¹¹⁵³ Bockarie made his own laws and they were excessive, but nevertheless were intended to protect life and limb.

1. Punishment of RUF Commander AB

528. At the early stages of the junta, an RUF commander AB was harassing and looting in Kenema Town. As punishment for acting contrary to the principles of the RUF movement, Sam Bockarie shot AB in the leg. This was done in the presence of civilians. This form of discipline was instituted because Sam Bockarie was concerned

¹¹⁴⁷ TF1-129/Transcript, 11 May 2005, pp. 94, lines 14-16.

¹¹⁴⁸ TF1-125/Transcript, 12 May 2005, pp. 100, lines 1-13.

¹¹⁴⁹ TF1-125/Transcript, 12 May 2005, pp. 100, lines 22 – 25.

¹¹⁵⁰ DIS-281/Transcript, 9 November 2007, pp. 13, line 24 – pp. 14, line 29. Sam Bockarie executed a man for raping (the crime was investigated).

¹¹⁵¹ DIS-281/Transcript, 9 November 2007, pp. 13, line 24 – pp. 14, line 29. Sam Bockarie executed a man for raping (the crime was investigated).

¹¹⁵² TF1-125/Transcript, 12 May 2005, pp. 13, lines 11 – 16.

¹¹⁵³ TF1-122/Transcript., 7 July 2005, pp. 71, lines 6 – 14. According to the police constitution, if there is a crime, the standard procedure is to properly investigate the crime. If there is evidence against the alleged perpetrator, that person is charged to court. The police then leave the matter with the court to decide.

that the image of the RUF would be tarnished and also for concern for the welfare of the civilians.¹¹⁵⁴ AB was not a protected person and could not benefit from protected status. No criminal responsibility arises.

2. Execution of Bunnie Wailer, Sydney Cole & Bangura

529. Bunnie Wailer, Sydney Cole, and Bangura were executed for looting properties from a civilians' home while wearing military fatigues.¹¹⁵⁵ The burglary happened shortly after the coup. It is not altogether clear from the Prosecution evidence when Wailer was executed. TF1-125 placed the execution within a week of coup¹¹⁵⁶ while TF1-122 placed it after June 5th.¹¹⁵⁷ The Prosecution evidence points to these men being killed by or on the instructions of Sam Bockarie. The Defence concedes that this might have been the case.

530. The evidence does not support a finding that Bunnie Wailer et al. were killed as part of a policy of terror or collective punishment. The death of these men, whilst undoubtedly excessive, was directly attributable to the clumsy efforts implemented by Bockarie to instill law and order. These executions cannot be considered part of an attack on the population. The strategy was successful: prior to the end of the junta period, apart from the criminal activity in Kenema Town enumerated below, only ordinary thefts and other offences were committed as they would have been done during peacetime.¹¹⁵⁸

531. The Prosecution have failed to prove that Sesay is criminally liable for these executions. There is no evidence that Mr. Sesay was present at the time of the

¹¹⁵⁴ DIS-124/Transcript, 22 November 2005, pp. 120, lines 2-23. DIS-124/Transcript, 22 November 2005, pp. 122, lines 6-15. Sam Bockarie "was so adamant, more especially for those who go contrary to the laws of the RUF. His sense was that if you are trying in order to give a bad image to the RUF movement and, as for him, he cannot encourage any person as such. So, in the other way round, we [RUF combatants] used to become afraid of him because, when you commit, definitely he will not spare you, he have to discipline you." TF1-125/Transcript, 12 May 2005, pp. 103, lines 18-25. (AFRC wants popularity).

¹¹⁵⁵ TF1-125/Transcript, 13 May 2005, pp. 13, lines 21 – 28.

¹¹⁵⁶ TF1-125/Transcript, 13 May 2005, pp. 42, line 23 – pp. 44, line 15.

¹¹⁵⁷ TF1-122/Transcript, 7 July 2005, pp. 55.

¹¹⁵⁸ TF1-125/Transcript, 13 May 2005, pp. 64, lines 1-6. [REDACTED]

executions, knew about the killing or participated in them. Simply being associated with the RUF and subordinate to Sam Bockarie is plainly not sufficient.

3. Execution of an RUF Rapist

532. DIS-281 testified that he heard a report in Kenema that one of Foday Sankoh's bodyguards was responsible for rape. This RUF combatant's crime was investigated and he was found guilty. Civilians were summoned and the man was killed before the people. It was explained to the people that the RUF did not allow these kinds of activities.¹¹⁵⁹ DIS-281 also testified that, at the same time he heard the report about the rapist being executed, he heard a report of two RUF men looting. They were investigated, found guilty and shot in their legs as punishment.¹¹⁶⁰ The purpose was to stop crimes against civilians, not to punish them for any alleged support for Kabbah's government.

4. Punishment of Bondo Bush Looters

533. Another example: Sam Bockarie disciplined three men for having looted the women's society Bondo Bush. After the looting, RUF authorities sent by Sam Bockarie set up a tribunal to try those that invaded the Bondo Bush.¹¹⁶¹

534. According to DIS-069's hearsay account, three men were executed;¹¹⁶² according to TF1-045, Sam Bockarie fired at three RUF soldiers legs (breaking them) for having looted in the Bondo Bush;¹¹⁶³ according to TF1-122, RUF fighters were "of course" disciplined for having gone to the Bondo Bush because, per custom, men are not allowed to go into the women's society;¹¹⁶⁴ and, according to TF1-129, some RUF shot the legs of those that invaded the Bondo Bush (Sam Bockarie didn't do the firing as he was not there that night).¹¹⁶⁵

¹¹⁵⁹ DIS-281/Transcript, 9 November 2007, pp. 14, lines 5 – 29.

¹¹⁶⁰ DIS-281/Transcript, 9 November 2007, pp. 14, lines 5 – 29.

¹¹⁶¹ TF1-129/Transcript, 12 May 2005, pp. 8, lines 3 – 22.

¹¹⁶² DIS-069/Transcript, 22 October 2007, pp. 93, line 17 – pp. 94, line 9.

¹¹⁶³ TF1-045/Transcript, 23 November 2005, pp. 40, lines 5-12.

¹¹⁶⁴ TF1-122/Transcript, 8 July 2005, pp. 26, line 27 – pp. 27, line 10.

¹¹⁶⁵ TF1-129/Transcript, 12 May 2005, pp. 4, lines 8 – 22; pp. 7, lines 9-13.

535. The evidence is not clear that the perpetrators of the Bondo Bush lootings were protected persons. In all likelihood they were members of the RUF. Moreover, these persons were investigated and then found to be guilty for their crime. In any event no liability arises for these crimes and none have been pleaded in the RUF indictment.

5. Execution of Santos et al.

536. Santos and his colleague were executed by Sam Bockarie because they allegedly stole medicines from either the ICRC or Medecins Sans Frontieres. Sam Bockarie said he would assist the police in capturing the culprits. It was rumoured that Sam Bockarie had captured the alleged thieves. Shortly thereafter, TF1-122 saw the bodies of the two men.¹¹⁶⁶

537. The Defence disputes the truth of TF1-122's uncorroborated evidence of a thief "Santos" and his colleague having been executed by Sam Bockarie. In any event, the evidence shows that Sam Bockarie was acting unilaterally, and was continuing in his haphazard and excessive fashion, to send warnings to would be criminals and thereby protect the civilians of Kenema.

E. Kamajor Tensions

1. Execution of Purported Kamajor Collaborators – BS Massaquoi et al.

538. Towards the end of the junta, in a fit of panic and hysteria, Sam Bockarie was intent on dealing with threats to his grip on power. Sam Bockarie was acting alone and not taking orders from anyone.¹¹⁶⁷ In this capacity, Bockarie had BS Massaquoi, et al. arrested as suspected of having provided assistance to the Kamajors. A police investigation at BS Massaquoi's residence revealed that BS Massaquoi had two pistols, and letters re: Kamajor contributions.¹¹⁶⁸ At this stage of the junta, things were

¹¹⁶⁶ TF1-122/Transcript, 7 July 2005, pp. 80 – pp. 81, line 7.

¹¹⁶⁷ TF1-125/Transcript, 16 May 2005, pp. 96, lines 10-18.

¹¹⁶⁸ TF1-125/Transcript, 16 May 2005, pp. 4, lines 22 – pp. 5, line 12. TF1-122/Transcript, 8 July 2005, pp. 29, lines 16- pp. 31, line 3. (BSM as Kamajor collaborator). F1-125/Transcript, 16 May 2005, pp. 5, lines 18-22. (There was evidence of them being associated with Kamajors). TF1-125/Transcript, 12 May 2005, pp. 104, line 13-28. (BSM et al. as suspected Kamajors)

becoming chaotic¹¹⁶⁹ with the Kamajors at the doorstep.¹¹⁷⁰ Indeed, the Kamajors entered Kenema on 8th February 1998.

539. The evidence clearly shows that Sam Bockarie, in the execution of these men, was acting alone. The evidence also shows that Bockarie executed them for, perhaps in his mind, a legitimate military reason: prevention of Kamajors infiltrating Kenema Town or even as a punishment for his belief that he was a collaborator. They were not executed as part of a policy of terror or collective punishment. It is significant that the death of Massaquoi appears to have shocked many within the RUF, demonstrating widespread disapproval of Bockarie's excessive acts.

2. Allegations made by TF1-122

540. TF1-122 made a plethora of unsubstantiated and uncorroborated allegations. The evidence does not make much sense. On the one hand the witness wanted to claim that [REDACTED] was working hard to protect civilians and on the other he wanted to accuse the RUF of failing civilians. TF1-122 admitted that he supported the Kamajors and wanted to save the Kamajors in Kenema from the RUF and AFRC.¹¹⁷¹ TF1-122's bias against the RUF led him to make broad assertions that RUF and AFRC arbitrarily arrested and punished civilians.¹¹⁷²

a) Allegations of Intervention-era Killings Attributed to the RUF

541. On the entry into Kenema, the Kamajors burnt alleged collaborators, by a variety of imaginative cruelties, including placing burning objects onto people, such as tyres or mattresses.¹¹⁷³ The Kamajors also killed police officers,¹¹⁷⁴ including one officer who

¹¹⁶⁹ TF1-125/Transcript, 13 May 2005, pp. 63, lines 27-29.

¹¹⁷⁰ TF1-129/Transcript, 12 May 2005, pp. 58, line 29-pp. 59, line 3; DIS-281/Transcript, 9 November 2007, pp. 11, line 27 – pp. 13, line 19; TF1-122/Transcript, 7 July 2005, pp. 61, lines 2 – pp. 67, line 15.

¹¹⁷¹ TF1-122/Transcript, 7 July 2005, pp. 119, lines 13-22.

¹¹⁷² TF1-122/Transcript, 7 July 2005, pp. 121.

¹¹⁷³ TF1-125/Transcript, 16 May 2005, pp. 93, line 20 – pp. 94, line 14. TF1-129/Transcript, 12 May 2005, pp. 47, lines 21-29. TF1-129 heard of two or three incidents of Kamajors burning (with tyres) people as RUF collaborators. DIS-281/Transcript, 12 November 2007, pp. 32, line 5 – pp. 33, line 20. (Kamajors setting fire on people).

¹¹⁷⁴ TF1-125/Transcript, 12 May 2005, pp. 143, lines 8 – 18. TF1-122/Transcript, 8 July 2005, pp. 60, lines 17 – pp. 61, line 21. TF1-125/Transcript, 16 May 2005, pp. 84, lines 6-24.

was disemboweled.¹¹⁷⁵ There is no credible evidence to suggest that the RUF was responsible for killing civilians or police officers or, worse, disemboweling them. TF1-122 is the only witness that suggests such a thing.¹¹⁷⁶ The police officer that was disemboweled by the Kamajors, as testified to by TF1-125,¹¹⁷⁷ is the “very big man” that TF1-122 purports was killed by the RUF.¹¹⁷⁸ TF1-122 shamelessly blamed the RUF for disemboweling this man and stringing his intestines up as a checkpoint.¹¹⁷⁹ Through cross-examination, although TF1-122 was initially staunchly opposed to admitting that Kamajors killed police officers when they came into Kenema Town, he eventually conceded.¹¹⁸⁰ In addition, the Defence witnesses were not examined on this evidence and it is unclear whether these allegations remain part of the Prosecution’s case.

b) Operation No Living Thing & Operation Pay Yourself

542. TF1-122 testified about the RUF conducting Operation No Living Thing when the Kamajors were coming to attack them;¹¹⁸¹ TF1-122 did testify about Operation Pay Yourself. However, when referenced to his 25 November 2004 statement to the Prosecution, TF1-122 conceded that there was no mention of Operation No Living Thing in that statement, only Operation Pay Yourself.¹¹⁸² TF1-122 conceded it was a big thing to have missed out mentioning Operation No Living Thing.¹¹⁸³ The Defence submits it was also a big thing to have not testified about Operation Pay Yourself. Both appear not to have happened.

543. TF1-125 did not mention Operation No Living Thing and only briefly made mention of Operation Pay Yourself. The Operation occurred after the junta had been thrown out of Freetown. TF1-125 testified that he did not hear about Operation Pay

¹¹⁷⁵ TF1-125/Transcript, 12 May 2005, pp. 143, lines 23-27.

¹¹⁷⁶ TF1-122/Transcript, 7 July 2005, pp. 82, lines 20 – pp. 83, lines 22.

¹¹⁷⁷ TF1-125/Transcript, 12 May 2005, pp. 143, lines 23-27.

¹¹⁷⁸ TF1-122/Transcript, 7 July 2005, pp. 82, lines 20 – pp. 83, lines 22.

¹¹⁷⁹ TF1-122/Transcript, 7 July 2005, pp. 82, lines 20 – pp. 83, lines 22.

¹¹⁸⁰ TF1-122/Transcript, 8 July 2005, pp. 60, lines 17 – pp. 61, line 19.

¹¹⁸¹ TF1-122/Transcript, 7 July 2005, pp. 81, lines 17 – 19.

¹¹⁸² TF1-122/Transcript, 8 July 2005, pp. 36, line 9 – pp. 37, line 29.

¹¹⁸³ TF1-122/Transcript, 7 July 2005, pp. 36, line 9 – pp. 37, line 29.

Yourself from any RUF but only heard about the purported operation through rumour.¹¹⁸⁴

544. The Defence disputes that these Operations took place. TF1-122's evidence is uncorroborated by TF1-125 and the other Kenema Town Prosecution witnesses. These Operations were purported to have taken place upon the Intervention as the RUF were pulling out from Kenema Town. There is no evidence that Mr. Sesay was present in Kenema Town at the time of the Intervention nor is there any suggestion that there was any participation by Mr. Sesay. It is submitted that this evidence does not prove the existence of these operations.

1. The "Flag Trick"

545. TF1-122 gave a comical account of this so-called practice.¹¹⁸⁵ Incredibly, although people knew that they would likely be robbed at the scene people continued to walk in front of the Secretariat on a daily basis. No other witness spoke about this flag trick. TF1-122's uncorroborated and account should be disregarded.

F. Child Soldiers in Kenema Town

546. TF1-122 makes further allegations which remain uncorroborated and unconvincing. As regards the "flag trick" the witness claimed that a 12yr old soldier in Kenema Town had accosted a woman.¹¹⁸⁶ TF1-122 also testified that teenagers carried weapons including the child soldiers he saw everyday carrying AK-47s. Apparently when they went to the market, they always carried their rifles.¹¹⁸⁷ These assertions are not worthy of belief. As indicated previously, the "flag trick" is entirely unsubstantiated and nonsensical. Both the "flag trick" and children carrying weapons on their way to the market is contrary to all the other evidence elicited (mostly from Prosecution witnesses) about daily life in Kenema Town.

¹¹⁸⁴ TF1-125/Transcript, 16 May 2005, pp. 78, lines 15 – 27.

¹¹⁸⁵ TF1-122/Transcript, 7 July 2005, pp. 61, lines 2 – pp. 67, lines 15; and 8 July 2005, pp. 5, line 19 – pp. 17, line 7. TF1-122 first made mention of the Flag Trick after 2 statements to the Prosecution. The first mention of it was in his 24 November 2004 statement. See Transcript, 8 July 2005, pp. 13.

¹¹⁸⁶ TF1-122/Transcript, 8 July 2005, pp. 13.

¹¹⁸⁷ TF1-122/Transcript, 7 July 2005, pp. 97 – 98.

547. TF1-122 and TF1-█ both testified to Mr. Sesay having stayed at a house on Hangha Road in Kenema Town when Mr. Sesay visited Kenema Town. TF1-122 testified that Mr. Sesay was staying at this house with his “boys” (i.e., his fighters) aged 12, 14, 15, and up.¹¹⁸⁸ In contrast, although TF1-█ had an apartment in the same compound as Mr. Sesay,¹¹⁸⁹ was not aware of child soldiers being present in the compound.

548. Strangely, although Mr. Sesay testified about the house where he stayed when he visited Kenema Town and its occupants,¹¹⁹⁰ the Prosecution did not cross-examine him. Mr. Sesay denied that he was living with child soldiers as alleged by TF1-122 and stated that he only lived in the house on visits. Mr. Sesay testified that he did not bring child soldiers with him from Freetown.¹¹⁹¹ Moreover it is significant that when describing other crimes and other day to day activities TF1-122 omits references to child soldiers. It is only when seeking to implicate the first Accused in direct activities that they suddenly appear. TF1-122 could not sensibly implicate Sesay in any other way.

549. If these incidents were true, certainly the Prosecution would have asked their other witnesses about these events. TF1-060 did not mention the presence of child soldiers in Kenema Town when he visited from Tongo.¹¹⁹² No evidence was elicited from the Prosecution insider witnesses that were in Kenema Town during the junta: TF1-036, TF1-041, TF1-045, TF1-366, TF1-367, and TF1-371.¹¹⁹³ These witnesses should have known about the casual presence of child soldiers, either with Sesay or in Kenema. No evidence of child soldiers made their way into police reports, including any of their alleged excesses. It would be odd indeed if the only combatants immune from being reported were children. No evidence was elicited about child soldiers in

¹¹⁸⁸ TF1-122/Transcript 7 July 2005, pp. 58, line 25– pp. 60, lines 13.

¹¹⁸⁹ TF1-█/Transcript █

¹¹⁹⁰ Sesay/Transcript, 8 May 2007, pp. 42 – 44.

¹¹⁹¹ Sesay/Transcript, 8 May 2007, pp. 44, lines 21 – 24.

¹¹⁹² TF1-060/Transcript, 29 April 2005, pp. 47, line 1-14.

¹¹⁹³ Apart from TF1-036, these insider witnesses testified to having visited the Tongo Fields area. They would have gone through Kenema Town to arrive at Tongo Fields. There was no mention by these witnesses of child soldiers in Kenema Town.

Kenema Town from the Defence witnesses either. DIS-124, for example, rejected¹¹⁹⁴ the allegation that child soldiers were present in Kenema Town. He was not cross-examined on the subject. As such, it is unclear whether allegations of child soldiers in Kenema Town remain part of the Prosecution's case.

G. Physical Violence

1. Purported Assault of TF1-129, October 1997

550. The Pre-Trial Brief particularises Mr. Sesay's 6(1) liability of the purported physical violence stemming from the October 1997 assault of TF1-129 from "planning, instigating, ordering or committing, ... or aiding and abetting," to merely committing.¹¹⁹⁵ The Prosecution Pre-Trial Brief states that the assault was committed *after* the civilian was arrested by Mr. Sesay on the instruction of Sam Bockarie.¹¹⁹⁶ The Defence submits that Mr. Sesay's 6(1) liability in connection with this purported assault is limited to whether he committed the crime. TF1-129 alleges that, in the course of arresting TF1-129 and prior to taking him to the Secretariat, Mr. Sesay assaulted TF1-129 inside TF1-129's office or assaulted him outside in the compound of TF1-129's office.

551. TF1-129 was a staunch supporter of the Kamajors in their efforts to remove the rebels from Kenema.¹¹⁹⁷ He was reluctant to concede that the Kamajors were responsible for any atrocities in Kenema upon the Intervention.¹¹⁹⁸ [REDACTED] he opposed the rebel authorities in Kenema.¹²⁰⁰ In the numerous instances where TF1-129 could not get his story straight he blamed his age and memory loss.¹²⁰¹ [REDACTED]

¹¹⁹⁴ DIS-124/Transcript, 22 November 2005, pp. 25, line 23 – pp. 26, line 6.

¹¹⁹⁵ Supplement Pre-Trial Brief, Para. 144(b).

¹¹⁹⁶ Prosecution Supplemental Pre-Trial Brief, Para 144(b).

¹¹⁹⁷ TF1-129/Transcript, 10 May 2005, pp. 82, lines 8-15.

¹¹⁹⁸ TF1-129/Transcript, 12 May 2005, pp. 39, line 6-pp. 41, line 23. TF1-129 later conceded that the Kamajors were responsible for several atrocities: TF1-129/Transcript, 12 May 2005, pp. 45, lines 21-29.

¹¹⁹⁹ TF1-129/Transcript, 10 May 2005, pp. 48, lines 26-29.

¹²⁰⁰ TF1-129/Transcript, 10 May 2005, pp. 84, lines 2-8.

¹²⁰¹ TF1-129/Transcript, 11 May 2005, pp. 43, lines 8-1; pp. 47, lines 16-20.

552. One would have thought that a Prosecution that alleged the direct commission of an assault by an accused would have cross-examined the accused on those allegations. However, for unstated reasons, the Prosecution opted not to cross-examine Mr. Sesay on his account of TF1-129's October 1997 arrest in which TF1-129 was not assaulted. It is submitted that the Prosecution knew that Sesay would firmly rebut the allegation.

553. The Defence does not dispute that TF1-129 may have been assaulted in January or February 1998 by Sam Bockarie. The Defence submits that TF1-129, in an effort to cast aspersion and blame, and in an effort to appear more credible, has purposefully conflated some of the happenings from the 1998 assault with the purported 1997 assault. The witness blamed Sesay for the conduct of Bockarie. This is the crux of much of the Prosecution case against the first Accused.

a) Credibility of TF1-129

554. TF1-129's testimony regarding the purported October 1997 assault is replete with inconsistency. TF1-129 was prone to exaggeration, claiming for instance, that there were gunshots every night with reports of someone being killed every day in Kenema Town - notwithstanding all the other Prosecution witnesses testifying to a more peaceful environment in Kenema Town with no gunshots.¹²⁰² Bizarrely, when TF1-129 was detained in the Secretariat after his purported October 1997 assault, he claimed that he was asked to be a judge on the tribunal investigating [REDACTED] [REDACTED] TF1-129 declined the invitation because he was being detained.¹²⁰³

555. Concerning the inconsistencies in TF1-129's testimony on the purported October 1997 assault, TF1-129 said he didn't really mind; he was content with missing one or two dates or one or two facts as long as the skeleton of his statement was correct! TF1-129 testified that he was assaulted by Mr. Sesay at his office in October 1997 around the time the RUF were celebrating their victory against the ECOMOG at the Lebanese

¹²⁰² TF1-129/Transcript, 10 May 2005, pp. 86, line 20 – 24.

¹²⁰³ TF1-129/Transcript, 12 May 2005, pp. 9, 20 – 27.

School.¹²⁰⁴ At first, TF1-129 testified that Sesay met him inside the office.¹²⁰⁵ Mr. Sesay allegedly said “molest them” inside the office and then threw TF1-129 to the ground¹²⁰⁶ whereupon TF1-129 was shot between the legs (on the ground).¹²⁰⁷ After having stood up, TF1-129 was told by Mr. Sesay that Mr. Sesay had come to kill TF1-129¹²⁰⁸ and then pointed a gun at TF1-129’s head.¹²⁰⁹ Because of the gun shot, a soldier [REDACTED] came into the office.¹²¹⁰ Whereupon six rebels fell on him.¹²¹¹ TF1-129, [REDACTED], and two others were put in the boot of a vehicle to later be driven to the Secretariat.¹²¹²

556. On cross-examination, [REDACTED] came to the scene but not because of the gun shot; Mr. Sesay’s gun didn’t fire.¹²¹³ The purported statement, “molest them” and being thrown to the floor turned into Mr. Sesay not having said anything to TF1-129. TF1-129 claimed that he told the Prosecution that Sesay had said this because this was what he was told – it was a rumour.¹²¹⁴

557. His account changed once more. The witness claimed that when Sesay came they had a conversation before TF1-129 was thrown to the floor of the office.¹²¹⁵ TF1-129 then retreated from this account and claimed that this conversation happened outside the office or even when TF1-129 reached the secretariat.¹²¹⁶ Eventually TF1-129 conceded that the conversation most likely happened when TF1-129 met Sam Bockarie at the Secretariat on the second day of his arrest.¹²¹⁷ On cross-examination, TF1-129 testified that he, [REDACTED], someone inside his office, and a fourth person who was “just

¹²⁰⁴ TF1-129/Transcript, 10 May 2005, pp. 57, lines 16 – 18.

¹²⁰⁵ TF1-129/Transcript, 10 May 2005, pp. 58, lines 8 -19.

¹²⁰⁶ TF1-129/Transcript, 10 May 2005, pp. 57, lines 9 – 13.

¹²⁰⁷ TF1-129/Transcript 10 May 2005, pp. 59, lines 20-29.

¹²⁰⁸ TF1-129/Transcript 10 May 2005, pp. 60, lines 7-9.

¹²⁰⁹ TF1-129/Transcript 10 May 2005, pp. 60, lines 11-12.

¹²¹⁰ TF1-129/Transcript 10 May 2005, pp. 60, lines 14-17.

¹²¹¹ TF1-129/Transcript 10 May 2005, pp. 61, lines 13-15.

¹²¹² TF1-129/Transcript 10 May 2005, pp. 61.

¹²¹³ TF1-129/Transcript 11 May 2005, pp. 76, lines 12 – 20.

¹²¹⁴ TF1-129/Transcript 11 May 2005, pp. 43, lines 20-27.

¹²¹⁵ TF1-129/Transcript 11 May 2005, pp. 45, line 28, pp. 46, line 4.

¹²¹⁶ TF1-129/Transcript 11 May 2005, pp. 46, lines 15-17.

¹²¹⁷ TF1-129/Transcript 11 May 2005, pp. 46, lines 23-27.

caught around”¹²¹⁸ were thrown into the boot of a vehicle.¹²¹⁹ Prior to this, all of TF1-129’s testimony concerning the alleged assault placed the assault inside the office. To compensate how the fourth person – a lady – was “just caught around,” TF1-129 – unilaterally – placed the assault outside of the office.¹²²⁰ This allowed a further fabrication, namely that there were about 40 (not just six) rebels around the compound.¹²²¹

558. The account was somewhat unrealistic. TF1-129 claimed that the reason he escaped being shot by Sesay was because when Sesay pointed the gun at his head he able to push the gun away which then went off behind him.¹²²² When referred to another purported struggle that TF1-129 told the Prosecution - where Mr. Sesay tried to shoot TF1-129 in the chest – the witness fabricated two answers. First, Mr. Sesay was very drunk;¹²²³ second, in even more desperation, TF1-129 bizarrely claimed that the reason he was able to thwart the attack of a hardened rebel such as Sesay, was that Sesay may have recognized TF1-129 from when TF1-129 ██████ Mr. Sesay over the course of five years in ██████ (1989-1994).¹²²⁴ This obvious obfuscation could not be true since undisputed evidence shows that Mr. Sesay was in Cote d’Ivoire, Liberia, or Kailahun District during these years.¹²²⁵ The witness then went on to claim, when challenged as to why he had not told the court in his direct examination that Sesay had tried to kill him, that he had been in a hurry to get away from the court.¹²²⁶

H. How Many in the Boot? – Allegations made by TF1-129

559. On direct examination, TF1-129 testified that the four people were driven to the Secretariat. Halfway to the Secretariat, the vehicle stopped whereupon TF1-129 was hit

¹²¹⁸ TF1-129/Transcript 11 May 2005, pp. 4, lines 4 -10.

¹²¹⁹ TF1-129/Transcript 11 May 2005, pp. 3, lines 12 – pp. 4, line 10.

¹²²⁰ TF1-129/Transcript 11 May 2005, pp. 4, lines 21 – 25.

¹²²¹ TF1-129/Transcript 11 May 2005, pp. 4, lines 21 – 25.

¹²²² TF1-129/Transcript 11 May 2005, pp. 49, lines 12 -24; TF1-129/Transcript 11 May 2005, pp. 50, lines 10-15.

¹²²³ TF1-129/Transcript 11 May 2005, pp. 49, line 25 – pp. 50, line 6.

¹²²⁴ TF1-129/Transcript 11 May 2005, pp. 51, line 16 – pp. 52, line 13; and pp. 53, line 15- pp. 57, line 18.

¹²²⁵ For references to Mr. Sesay being in Cote d’Ivoire and Liberia, *see*, e.g., his testimony at Sesay/Transcript, 3 May 2007, pp. 33, pp. 38.

¹²²⁶ TF1-129/Transcript 11 May 2005, pp. 50, line 23 – pp. 51, line 7.

with a bottle and had money taken from him.¹²²⁷ The witness claimed that he had subsequently been guarded by a 7yr old boy with a rifle.¹²²⁸ TF1-129 also conceded that he had not mentioned this before,

Q. When you first gave your statement to [the Prosecution], you also didn't mention a small boy guarding you while you were in the boot?

A. Didn't I?

Q. You mention that only in [your statement to the Prosecution in] March of this year [2005].

A. Didn't I? That must have been a serious mistake.¹²²⁹

560. Apart from TF1-122, whose testimony is unreliable in this regard, TF1-129 is the only other witness that testifies to a child carrying a weapon – and a 7yr old no less. In all of the other allegations of crime, and in all the efforts to enforce law and order in Kenema Town, no child soldiers appear. Suddenly, when TF1-129 is arrested, there is a 7yr old boy with a weapon guarding him. After arrival at the Secretariat, TF1-129 testified that he was led upstairs; on the way going up the stairs he was kicked and beaten.¹²³⁰ When he got upstairs, TF1-129 learned that Mr. Sesay had instructions to kill TF1-129.¹²³¹ TF1-129 allegedly had a conversation with Sam Bockarie upstairs at the Secretariat about having been beaten.¹²³²

561. When referred to his 31 March 2005 statement (less than two months before TF1-129 testified), TF1-129 testified that this statement did not include beatings at his office, the beating mid-way to the Secretariat, or the beating on the way up the stairs in his statement.¹²³³ TF1-129 also conceded that his statement didn't mention Sam Bockarie having said anything to TF1-129, or Sam Bockarie having said anything to

¹²²⁷ TF1-129/Transcript 10 May 2005, pp. 61, lines 11-19.

¹²²⁸ TF1-129/Transcript 10 May 2005, pp. 64, lines 10-12.

¹²²⁹ TF1-129/Transcript 11 May 2005, pp. 87, lines 17 – 22.

¹²³⁰ TF1-129/Transcript 10 May 2005, pp. 66, lines 1-4.

¹²³¹ TF1-129/Transcript 10 May 2005, pp. 65, lines 18 – 26.

¹²³² TF1-129/Transcript 10 May 2005, pp. 66, lines 14 – 17.

¹²³³ TF1-129/Transcript 11 May 2005, pp. 82, lines 2 – 10.

Mr. Sesay. TF1-129 concedes that he may have omitted from his statement the conversation with Sam Bockarie about having been beaten by Mr. Sesay.¹²³⁴

562. Notably, no other Prosecution witness testifies to these events. No witness from the party at the Secretariat or any other person present at TF1-129's purported October beatings was called; no witness was called to testify that they saw TF1-129 being guarded by a 7yr old boy outside the Secretariat; no witness was called to testify that TF1-129 was urinated on outside the Secretariat. In the face of the many inconsistencies and obvious fabrications it is submitted that corroboration is essential. Again, Mr. Sesay was not cross-examined on the account he gave to the Trial Chamber. No explanation was provided for the Prosecution's failure to cross-examine Mr. Sesay on one of the few episodes in which Mr. Sesay is purported to have directly committed a crime.

1. Liabilities in Connection with TF1-129

563. The Defence submits that no liability attaches to the purported October 1997 assault of TF1-129. The event was an isolated incident and does not give rise to a breach of international humanitarian law. As demonstrated above, there was no "attack" on the civilian population; in October 1997, things were almost as normal in Kenema Town as it would have been in peacetime. The police actively engaged in investigating and punishing ordinary crime. The only times that things were abnormal in Kenema Town during the junta was right at the beginning of the junta and as Kamajor tensions were increasing as the Intervention was approaching.

VII. Kono Diamonds in the Junta Period: count 13

A. The Prosecution's allegations

564. The Prosecution's high-reaching and overly-broad assertion that the RUF and AFRC were ready to engage in criminal activity to exercise power over diamond mining areas¹²³⁵ has not been proven. It is difficult to know the Prosecution's case

¹²³⁴ TF1-129/Transcript 11 May 2005, pp. 80, lines 18-28.

¹²³⁵ Indictment, Para. 36.

concerning the alleged role of diamonds in the conflict, it having been redefined a number of times in the revolving JCE (see liabilities section).

565. The Prosecution allege, *inter alia*, within their Supplemental Pre-trial Brief that during the junta period Sesay was the “chief of mining for the RUF”¹²³⁶ who would make “frequent visits to Tongo fields to collect diamonds” and who had “knowledge of the forced civilian mining labour used in (sic) Kono District”.¹²³⁷ Significantly however the Prosecution failed to plead any crime in the Kono District during the junta period, except Count 12 (Child Soldiers).¹²³⁸ The Prosecution also failed to plead unlawful killings and physical violence in the Tongo Fields area (including, most notably, Cyborg Pit) during the junta period. The Prosecution’s inability to collate any convincing evidence of these crimes, most notably in the Kono District, illustrates the fallacy in the Prosecution’s thesis that the junta government implemented a nationwide policy of forced mining and, conspicuously, the Prosecution’s theory that civilian miners would be punished by death or physical violence if they refused to mine.¹²³⁹ This is a significant omission given the premise of the Prosecution case which in one form or another alleges that the pillage of diamonds was one of the common criminal purposes of the AFRC/RUF (latterly pleaded through the “Prosecution Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment”¹²⁴⁰). The frailty of the Prosecution case, as belatedly led through the usual suspect insiders, is further evidence of the falsity of this allegation. In marked contrast, the Defence case and the rebuttal of this purported case was clear and corroborated.

¹²³⁶ Prosecution Supplemental Pre-Trial Brief, Para. 193(b).

¹²³⁷ Prosecution Supplemental Pre-Trial Brief, Para. 193(c).

¹²³⁸ The Indictment does not plead unlawful killings, sexual violence physical violence, or abductions and forced labour in Kono District during the junta. Only the ubiquitous “all times relevant” count of child soldiers was pled for Kono District. There is also a wholesale absence of allegations of crime in Kono District during the junta period in the Prosecution Supplemental Pre-Trial Brief.

¹²³⁹ If this were the case, wouldn’t the Prosecution have discovered an overwhelming body of evidence in their investigations that would warrant pleading unlawful killings, physical violence, and abductions and forced labour in Kono District during the junta period; unlawful killings and physical violence in Kono District from 1998-2000; abductions and forced labour in Kono District in locations other than Tombodu; unlawful killings and physical violence in the Tongo fields area during the junta period; abductions and forced labour in the Tongo fields area besides Cyborg Pit during the junta period; and unlawful killings, physical violence, and forced labour and abductions in the Tongo fields area from the end of 1998 or beginning of 1999 through to disarmament?

¹²⁴⁰ Prosecutor v. Sesay, SCSL-04-15-T, 3 August 2007, Para. 6: “to pillage the resources in Sierra Leone, particularly diamonds...”.

B. Forced Mining: No Policy

566. The Prosecution failed to elicit any substance in connection with Kono District and the purported country-wide policy of gaining geographic control of Sierra Leone, in particular, the diamond mining areas.¹²⁴¹ This is because they could not. Barely a victim was identified.

1. Insiders

567. There are few insiders who purport to testify about forced mining in Kono during the junta period. The evidence given is surprisingly equivocal and consequently unconvincing. TF1-371 testified that in late August 1997 he went to Kono. TF1-371 gave the following description. The miners were “similarly treated in an inhumane way [referring back to the description of mining in Tongo at that time wherein he stated that the miners “were compelled to do the mining with armed men supervising them”¹²⁴²]. On the field where I went to visit, I saw hundreds of them again and they were shabbily dressed, disheveled, and you can see that the atmosphere they were working within was not to their pleasure and that they were coerced to do what they were supposed to be doing having been supervised by armed men”.¹²⁴³ This is a curiously understated description for an English speaker as articulate and knowledgeable as TF1-371, especially given the subject matter. The witness appeared to struggle under the weight of his own fabrication.

568. TF1-371 should have known about the full gamut of shocking offences, concerning the policy and practice of forced mining in Kono and yet was unable to fully commit himself to the Prosecution’s version of events. The witness’ description lacked the kind of detail which would enable the Trial Chamber to be sure that those involved really were enslaved. TF1-371 makes no mention of any overt violence; neither did he testify to deaths or physical violence at the mining sites. The references to the workers being “shabbily dressed” and “disheveled” is equally ambivalent and does not evoke the notion of slavery. Instead the witness uses language which implies

¹²⁴¹ Indictment, Para. 36.

¹²⁴² TF1-371/Transcript, 20 July 2006, pp. 53, lines 10 – 12.

¹²⁴³ TF1-371/Transcript, 20 July 2006, pp. 19-25.

dissatisfied employees, rather than victims facing death or serious injury. The Prosecution failed to adduce evidence of how this alleged system worked, how the workers were captured, which towns the workers came from, the number of workers, the nature of the coercion, the remuneration if any, the way in which the workers were secured. This is not evidence. It is generalized assertion devoid of truth or details which could confirm its reliability.

569. As TF1-371 warmed to his theme the Prosecution's case was further undermined. TF1-371 confirmed that Honourable Sammy had been in charge of the AFRC mining. The Supreme Council decided to replace him because he "sometimes disrupted the proceedings of the programmes, that is the mining and there was frequent report of they harassing and shooting in the mining district. That somehow jeopardised these smooth operations".¹²⁴⁴ This point needs to be examined with care. TF1-371 was attempting to suggest that civilians would be rounded up every morning from their homes and forced to the pits at gun point, before spending the day staring down the barrel of a gun. There could be no escape. The alternative scenario, that miners were kept under lock and key at the sites from dusk until dawn, before being hauled out to begin the daily grind of forced mining. The whole point about this so-called forced mining was that the civilians would be harassed. Shooting would have been a necessary part of it. It makes no sense to remove an Honourable in these circumstances. It is difficult to reconcile the removal of Sammy for this *specific reason* with the suggestion that civilians were enslaved.

2. Forced Mining Not Discussed at the Supreme Council

570. TF1-371's evidence was inadvertently illuminating. The witness stated that

people knew, I mean, the council members knew that mining was going on, they knew about that, but they did not discuss the forced mining. I mean, how you operated and what and what, what it -- the people that were doing the mining there. That was never a discussion. All the council were concerned about was the product.¹²⁴⁵

¹²⁴⁴ TF1-371/Transcript, 20 July 2006, pp. 36, line 24 – pp. 37, line 6.

¹²⁴⁵ TF1-371/Transcript, 31 July 2006, pp. 37, line 24 – pp. 38, line 7 and pp. 39, line 27 – pp. 40, line 23.

571. Notwithstanding, the witness claimed that everyone knew about the forced mining.¹²⁴⁶ This evidence confirms, at a minimum, that forced mining was not planned at the Supreme Council meetings. The witness' assertion that everyone "knew" about it must therefore be approached with a degree of caution. The witness confirmed that "[B]esides the presence of Morris Kallon there [Kono] there was not a huge presence of the RUF in the Kono District during the junta rule.. [t]here was an AFRC Secretariat at Kono that supervised the eluvial mining at that point in time".¹²⁴⁷ The witness further confirmed that "[S]pecifically, the Supreme Council appointed, and that *appointment was arbitrarily done by the chairman of the council, Johnny Paul Koroma*, senior members to supervise the mining of alluvial diamonds, in traditional areas of mining for diamonds in Sierra Leone that is Kono District and Kenema District, and periodically, they updated the council on products - that is diamond products - and issues that were relating to why, in fact, those products were not coming as the council was expecting, looking at the most problems, financial problems, that constrained the proper functioning of the junta" [emphasis added].¹²⁴⁸ In other words, whilst mining had been discussed at the Supreme Council, including problems with the flow of the diamonds, the issue of forced mining had not been discussed. This is significant. If there had been a policy, or even an implicit acceptance or acquiescence in the enslavement in Kono by ruling members of the junta, including Sesay, the details of the forced mining and how to maximise its efficiency, whether by increasing the captives or by some other forcible means, would have been a natural topic for discussion.

572. TF1-371's assertion that everyone knew must be viewed with caution. First, [REDACTED] the witness was remarkably ill informed about the mining trade being conducted by the AFRC. The witness claimed that, "the council members knew that mining was going on, they knew about that, but they did not discuss the forced mining. I mean, *how you operated* and what and what, *what it – the people that were doing the*

¹²⁴⁶ TF1-371/Transcript, 31 July 2006, pp. 37, line 24 – pp. 38, line 7 and pp. pp. 39, line 27 – pp. 40, line 23.

¹²⁴⁷ TF1-371/Transcript, 20 July 2006, pp. 55, line 12-19.

¹²⁴⁸ TF1-371/Transcript, 20 July 2006, pp. 36, line 14-23.

mining there. That was never a discussion. All the council was concerned about was the product".¹²⁴⁹ These discussions about product, if indeed they happened, must have been extremely limited given the state of the witnesses own knowledge. During cross examination the witness was asked to clarify what was the process by which the diamonds were turned into cash. TF1-371 responded that that "[M]ost of the product from the AFRC, we were -- were given to the chairman of the council. And SAJ Musa, and whatever they traded some with the Lebanese in Freetown, I don't have an idea. I knew that there was a request to increase the use of the product, to pay for consignment of arms".¹²⁵⁰ This should also be viewed alongside TF1-371's testimony that "[S]pecifically, the Supreme Council appointed, and that appointment was arbitrarily done by the chairman of the council, Johnny Paul Koroma, senior members to supervise the mining of alluvial diamonds, in traditional areas of mining for diamonds in Sierra Leone that is Kono District and Kenema District, and periodically, they updated the council on products - that is diamond products - and issues that were relating to why, in fact, those products were not coming as the council was expecting, looking at the most problems, financial problems, that constrained the proper functioning of the junta".¹²⁵¹ The implication is clear. It was JPK who decided key posts in the mining operations *arbitrarily* and who organized the men to supervise the Kono and Tongo mining. These men obtained the diamonds and TF1-371 had little, if any idea of how the diamonds were obtained or where they went. And *this* witness was both the Director of Intelligence, responsible for collating intelligence from the "Special Branch of the Sierra Leone Police, the Military Intelligence Branch, MIB of Sierra Leone Army, CID, as Criminal Investigation Department of Sierra Leone police, and the National Security Agency, NASA".¹²⁵² It is difficult to reconcile the Prosecution case (that it was the Supreme Council (and not JPK) who organized the Junta mining and everyone on the Council knew about the mining arrangements) with this evidence.

¹²⁴⁹ TF1-371/Transcript, 31 July 2006, pp. 14, line 18-23.

¹²⁵⁰ TF1-371/Transcript, 31 July 2006, pp. 41, line 28-29 and pp. 42, line 1-4.

¹²⁵¹ TF1-371/Transcript, 20 July 2006, pp. 55, line 12-19.

¹²⁵² TF1-371/Transcript, 20 July 2006, pp. 30-31.

573. If everyone knew that civilians were being forced to mine as TF1-371 suggests this would have been corroborated by other witnesses, especially the insiders who were close to the top AFRC/RUF commanders. TF1-036, George Johnson, TF1-334, and TF1-360 each testified about mining but omitted this important well known fact. TF1-036, [REDACTED], testified that a mining unit in Kono District supervised the mining activities but failed to mention the “policy”.¹²⁵³ George Johnson (TF1-167) testified that Gullit was posted to Kono by Johnny Paul Koroma to take care of the diamond mining areas; George Johnson did not know if Gullit obtained diamonds or what the purpose of the mining was.¹²⁵⁴ Force was not mentioned in connection with Gullit’s new post. TF1-334, a senior AFRC insider who purported to know what was spoken about inside the Supreme Council meetings, neglected to mention any force in connection with the mining in the Kono District.¹²⁵⁵

3. A Resort to Alluvial Mining

574. Of course, the new regime wanted to sustain¹²⁵⁶ itself. In order to do so it needed to create revenue to pay salaries, purchase food, medicines, and logistics.¹²⁵⁷ However, because the private sector was non-operational the junta was unable to raise revenue through taxes.¹²⁵⁸ Therefore, “[t]he only alternative, at that point in time, was a resort to alluvial [by hand] mining in order to support the junta.”¹²⁵⁹ The preference was mechanized mining but the mining machines were no longer operational.¹²⁶⁰ It is not a crime for the government of the day, whether in power through military coup or otherwise, to raise funds through the exploitation of a natural resource. The Prosecution claims this is pillage but the state cannot pillage its own resources. The Prosecution have failed to prove that the diamonds mined were not so owned.

¹²⁵³ TF1-036/Transcript, 28 July 2005, pp. 52, line 26 – pp. 55, line 5.

¹²⁵⁴ Johnson/Transcript, 14 October 2004, pp. 41, lines 1 – 16.

¹²⁵⁵ For lack of force in Kono District, *see* TF1-334/Transcript, 17 May 2005, pp. 52, line 27 – pp. 54, line 2. For lack of force in the Tongo Fields area, *see* TF1-334/Transcript, 17 May 2005, pp. 54, line 18 – pp. 55, line 12.

¹²⁵⁶ TF1-371/Transcript, 20 July 2006, pp. 34, lines 2 – 10.

¹²⁵⁷ TF1-371/Transcript, 20 July 2006, pp. 34, lines 2 – 10; pp. 35, lines 11 – 22; and pp. 36, lines 3 – 10.

¹²⁵⁸ TF1-371/Transcript, 20 July 2006, pp. 35, lines 11 – 22.

¹²⁵⁹ TF1-371/Transcript, 20 July 2006, pp. 35, lines 11 – 22; emphasis added.

¹²⁶⁰ TF1-371/Transcript, 20 July 2006, pp. 35, lines 23 – pp. 36, line 2.

4. Voluntary Mining Makes Good Economic Sense

575. It is clear that the new AFRC regime needed miners to extract diamonds. It is also evident that the new regime wanted to prevent force in mining. It is clear from the replacement of Honourable Sammy¹²⁶¹ that the policy was *against* the use of force in mining.

576. Apart from the new regime wanting popular support, this made good economic sense. In this regard the Prosecution's whole thesis concerning forced mining in the Tongo or Kono District at any time during the indictment period is fundamentally flawed for the following reasons. The mining pits at Kono and Tongo are spread over many, many miles. The notion that it would make good economic or military sense to be "chain ganging" hundreds of miners over this vast space is nonsense and unworkable. It makes much more sense to control the trade, rather than the person. It was not militarily practicable or economically sensible to control a few hundred slaves, whose labour would be motivated by fear, rather than personal gain, rather than allow thousands to freely mine. In other words in order to maximise profits it makes more sense to allow anyone to mine, but take half the profits. This explains the failure of the Prosecution to find civilians who were forced to mine in Kono (or even civilians who observed any AFRC/RUF unit forcing civilians), during the junta period. It was a "free for all" with people living in their homes, roaming over large spaces, finding their own living whilst being compelled to hand over one pile. This did not preclude instances of forced mining¹²⁶² but it militates against a policy of forced mining.

577. This is how it was that TF1-360, an RUF insider, went to Kono District to do private mining with permission. Other people from the AFRC/RUF did the same.¹²⁶³ This is the reason why reports of harassment were made and acted upon (e.g., the Supreme Council removing mining commanders that harassed civilians). This is the

¹²⁶¹ Discussion during a Supreme Council meeting. TF1-371/Transcript, 20 July 2006, pp. 36, line 24 – pp. 37, line 6; emphasis added.

¹²⁶² See Section on Tongo.

¹²⁶³ TF1-360/Transcript, 22 July 2005, pp. 46, lines 24 – 27.

reason why TF1-366 claimed that he was told that “the soldiers have abandoned the front line and they were now busy mining diamonds”.¹²⁶⁴

5. Prosecution Civilians – no support for alleged policy

578. TF1-012 testified that there was forced mining in 1997 at Number 11 (a mining site between Koidu and Tombodu).¹²⁶⁵ This purported forced mining at Number 11 was testified to by TF1-012 whose testimony is unworthy of belief. First, the witness was actually referring to a time immediately after the intervention, almost certainly in 1998. The witness testified to a time when Staff Alhaji and Savage were committing atrocities in Tombodu, Superman was resident in Kono, Bockarie was based in Kailahun and JPK had retreated.¹²⁶⁶ Second the witness claimed that Bockarie had also been in Tombodu on a daily basis for three months in Koidu and had eventually left to take JPK to Kailahun, which clearly is not true.¹²⁶⁷ Third, the witness was almost certainly not a civilian but one of the perpetrators of gross crimes in Tombodu. This might explain his trauma and the bizarre nature of his evidence.¹²⁶⁸ The witness confirmed that he lived in Tombodu at that time¹²⁶⁹ and had known Alhaji before the overthrow. [REDACTED]

[REDACTED],¹²⁷⁰

579. TF1-217, a civilian, testified that he stopped working as a diamond miner when the rebels entered Kono District in 1997. TF1-217 states that the reason why he stopped mining is because when gravel was extracted, it would be taken by the rebels.¹²⁷¹ TF1-217 did not claim that he was forced to (or even at risk of being forced to) extract

¹²⁶⁴ TF1-366/Transcript, 11 November 2005, pp. 52, lines 4-9.

¹²⁶⁵ TF1-012/Transcript, 3 February 2005, pp. 74.

¹²⁶⁶ TF1-012/Transcript 3 February 2005, pp. 15 and pp. 69 – 70.

¹²⁶⁷ TF1-012/Transcript 3 February 2005, pp. 58 and 65.

¹²⁶⁸ For example, TF1-012 purports that Mr. Sesay was at a meeting at the community centre in Koidu shortly after the coup (TF1-012/Transcript 2 February 2005, pp. 3, line 28 – pp. 6, line 16). TF1-012 is the only witness in the trial that stated that Mr. Sesay set foot in Kono District during the junta period. This includes all other Prosecution witnesses including the insider witnesses. TF1-012 was deliberately trying to inculcate Mr. Sesay. His testimony concerning Mr. Sesay’s presence in Kono District should be seen as such. TF1-012 also places Superman at this meeting although no other witness testified that Superman was resident in Kono at that time.

¹²⁶⁹ TF1-012/Transcript, 2 February 2005, pp. 2, lines 27-29.

¹²⁷⁰ TF1-012/Transcript, 3 February 2005, pp. 21, lines 17 and 24 -25.

¹²⁷¹ TF1-217/Transcript, 22 July 2004, pp. 7, lines 30 – 36.

gravel, nor was he forced to wash gravel, nor was he beaten or killed for refusing to extract or wash gravel. TF1-217 simply stopped mining when the rebels entered Kono. At its highest the Prosecution evidence demonstrates petty thieving at the mines but implicitly undermines the notion that there was a policy of forced mining or that there was even a risk of being forced to mine or work. The fact that TF1-217 chose to remain in the Kono District is further proof of the absurdity of the allegation of an overarching criminal enterprise to terrorise or punish the population through the commission of crimes in Counts 3-14.

580. Similarly, TF1-078, a civilian, testified that he was in Koidu at the time of the overthrow and remained in Koidu with the AFRC and RUF throughout the junta. TF1-078 chose to remain in Koidu but ceased mining because the security situation was unstable. However, no one mined in TF1-078's mining pit because he did not authorise it.¹²⁷² TF1-078 was not forced to labour for the RUF or AFRC nor was he forced to relinquish control over his personal mining site.

C. The Defence Evidence: Voluntary Mining

581. The evidence elicited through the Defence clearly demonstrates that civilians were mining of their own accord in various locations throughout Kono District. The evidence was detailed and unshaken by cross examination. There was no force;¹²⁷³ no force was necessary. Civilian miners had a cordial,¹²⁷⁴ symbiotic, relationship with the RUF and AFRC in Kono District and the mining operations during the junta were much the same as they were prior to the overthrow.¹²⁷⁵

¹²⁷² TF1-078/Transcript 22 October 2004, pp. 39, line 27 – pp. 41, line 22.

¹²⁷³ E.g., DIS-066/Transcript, 29 February 2008, pp. 33, lines 22-26; pp. 111, line 12 – 122, line 4; DIS-063/Transcript, 28 February 2008, pp. 5, line 4 – pp. 6, line 9; pp. 10 – 12; and pp. 53, lines 1 – 4; DIS-065/Transcript, 26 February 2008, pp. 54, lines 3 – 14; pp. 56, line 7 – pp. 57, line 1; pp. 59, lines 17 – 24; DIS-089/Transcript, 29 February 2008, pp. 86, lines 1 – 6; and DIS-307/Transcript, 19 February 2008, pp. 19, lines 19 – 26; pp. 21, lines 1 – 3; pp. 43, lines 11 – 18; pp. 46, lines 12 – 14; Transcript, 21 February 2008, pp. 6, lines 7 – 12; pp. 13, lines 6 – 14, line 1; and Transcript, 22 February 2008, pp. 20, lines 25 – 21, line 2; and pp. 38, line 21 – pp. 47, line 27.

¹²⁷⁴ DIS-065/Transcript, 26 February 2008, pp. 50, lines 19 – 22.

¹²⁷⁵ DIS-063/Transcript, 28 February 2008, pp. 12, line 20 – pp. 13, line 27; and DIS-307/Transcript, 19 February 2008, pp. 6, lines 18 – 25.

582. Civilians were largely free to mine of their own volition at, *inter alia*, the following locations testified to by Defence witnesses: Kaisambo,¹²⁷⁶ Bakondo/Batkandu,¹²⁷⁷ Joe Bush,¹²⁷⁸ Number 6 area,¹²⁷⁹ Number 11,¹²⁸⁰ Congo Bridge,¹²⁸¹ Bongoyama Swamp,¹²⁸² Prospecting Junction,¹²⁸³ Small Makeni,¹²⁸⁴ Yengema,¹²⁸⁵ Gieya,¹²⁸⁶ Motema,¹²⁸⁷ Kaokoyima,¹²⁸⁸ Tombodu,¹²⁸⁹ Sukudu,¹²⁹⁰ Boroma,¹²⁹¹ Yardu,¹²⁹² Ngekor,¹²⁹³ and Bendu Three.¹²⁹⁴ As is customary, many of the miners weren't paid to mine; when a diamond was found in their portion of gravel, the miners would negotiate the price of the diamond with their supporter or bossman.¹²⁹⁵ In turn the supporter would sell the diamond to "Jula/Yula men" in the town.¹²⁹⁶

583. Apart from a freedom to mine in Kono District, civilians were able to manage normal lives notwithstanding the threat of Kamajor attacks and their attempt to prevent food from reaching the inhabitants of Kono.¹²⁹⁷ There were many civilians in Koidu Town after the overthrow; business was being transacted; people were free to go where

¹²⁷⁶ DIS-066/Transcript, 29 February 2008, pp. 108, line 4 – pp. 109, line 18.

¹²⁷⁷ DIS-063/Transcript, 28 February 2008, pp. 5, line 4 – pp. 6, line 9; and DIS-066/Transcript, 29 February 2008, pp. 110:7-111, line 5.

¹²⁷⁸ Near Bakondo/Batkandu. DIS-066/Transcript, 29 February 2008, pp. 110:7-111, line 5.

¹²⁷⁹ DIS-065/Transcript, 26 February 2008, pp. 53, lines 18 – 28.

¹²⁸⁰ DIS-063/Transcript, 28 February 2008, pp. 10, lines 15 – 20; and DIS-065/Transcript, 26 February 2008, pp. 50, lines 19 – 22; and DIS-307/Transcript, 19 February 2008, pp. 21, lines 6 – 15.

¹²⁸¹ DIS-063/Transcript, 28 February 2008, pp. 118, lines 17-24.

¹²⁸² DIS-307/Transcript, 19 February 2008, pp. 9, lines 23 – 26.

¹²⁸³ DIS-065/Transcript, 26 February 2008, pp. 58, line 8 – pp. 59, line 5.

¹²⁸⁴ DIS-065/Transcript, 26 February 2008, pp. 58, line 8 – pp. 59, line 5.

¹²⁸⁵ DIS-065/Transcript, 26 February 2008, pp. 58, line 8 – pp. 59, line 5.

¹²⁸⁶ DIS-065/Transcript, 26 February 2008, pp. 58, line 8 – pp. 59, line 5; and DIS-307/Transcript, 19 February 2008, pp.3 – 4.

¹²⁸⁷ DIS-065/Transcript, 26 February 2008, pp. 58, line 8 – pp. 59, line 5.

¹²⁸⁸ DIS-065/Transcript, 26 February 2008, pp. 58, line 8 – pp. 59, line 5.

¹²⁸⁹ DIS-063/Transcript, 28 February 2008, pp. 10, line 28 – pp. 11, line 4.

¹²⁹⁰ DIS-063/Transcript, 28 February 2008, pp. 11, lines 5 – 12.

¹²⁹¹ DIS-063/Transcript, 28 February 2008, pp. 12, lines 5 – 9.

¹²⁹² DIS-063/Transcript, 28 February 2008, pp. 12, lines 10 – 11.

¹²⁹³ DIS-307/Transcript, 19 February 2008, pp. 42, lines 12 – 22.

¹²⁹⁴ DIS-307/Transcript, 19 February 2008, pp. 44, line 28 – pp. 45, line 26.

¹²⁹⁵ E.g., DIS-065/Transcript, 26 February 2008, pp. 53, lines 2 – 9; pp. 94, lines 3 – 7; DIS-066/Transcript, 29 February 2008, pp.28, line 27 – pp. 30, line 21; and DIS-307/Transcript, 19 February 2008, pp. 24, lines 1 – 25; and Transcript, 21 February 2008, pp. 13, lines 27 – 14, line 1.

¹²⁹⁶ Some of these Yula men during the junta period were Marakas from Mali or Lebanese DIS-307/Transcript, 19 February 2008, pp. 13, line 28 – pp. 17, line 26. *See also*, DIS-065/Transcript, 26 February 2008, pp. 59, line 25 – pp. 60, line 2 (Marakas).

¹²⁹⁷ DIS-063/Transcript, 28 February 2008, pp. 6, line 10 – pp. 7, line 10.

they want; nightclubs were operating as a source of entertainment, there was movement between Kono and Tongo, etc.¹²⁹⁸ The only reason why Kono District was an unsafe place was because of the jets¹²⁹⁹ or harassment by Kamajors.¹³⁰⁰

D. Some Fortune Seekers Took Advantage

584. Kono District was not without its problems.¹³⁰¹ It is very likely that some individuals took advantage of the fact that there was little or no central organization to the mining. For example, DIS-307 testified to a sometimes chaotic situation in which armed SLAs stole gravel from miners when they returned from the front lines.¹³⁰² It is clear however that this is a long way away from any AFRC/RUF policy, which could give rise to any criminal responsibility for the first Accused.

E. Sesay Never Saw Diamonds From Kono District

585. The Prosecution Pre-Trial Briefs (RUF or AFRC) do not state to whom the diamonds from Kono District would go to. However, the Prosecution's Final AFRC Trial Brief suggests that diamonds from Kono District and the Tongo Fields area would ultimately be handed over to Eddie Kanneh, the Resident Minister East (presiding over both Kono and Kenema Districts), or sent to Freetown.¹³⁰³

586. This is confirmed by TF1-371 who states that most of the diamonds were making their way to Johnny Paul Koroma and SAJ Musa (Secretary of Mineral Resources) in Freetown.¹³⁰⁴ This would make sense as Eddie Kanneh reported directly to SAJ Musa and Johnny Paul Koroma.¹³⁰⁵

¹²⁹⁸ DIS-063/Transcript, 26 February 2008, pp 120, lines 8 – 15; DIS-065/Transcript, 26 February 2008, pp. 57, line 22 – pp. 58 line 4.; and pp. 60, line 13 – pp. 61, line 4; and DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27.

¹²⁹⁹ DIS-063/Transcript, 28 February 2008, pp. 53, lines 5 – 18.

¹³⁰⁰ DIS-065/Transcript, 26 February 2008, pp. 48, lines 8 – 24; DIS-281/Transcript, 12 November 2007, pp. 45, lines 21 – 29.

¹³⁰¹ There was some looting in Kono District during the junta. DIS-188/Transcript 2 November 2007, pp. 98, line 19 – pp. 101, line 11.

¹³⁰² DIS-307/Transcript, 19 February 2008, pp. 34, line 13 – pp. 38, line 13.

¹³⁰³ AFRC Final Trial Brief, Paras. 526 and 538.

¹³⁰⁴ DIS-371/Transcript, 31 July 2006, pp. 40, line 24 – pp. 41, line 6.

¹³⁰⁵ TF1-371/Transcript, 28 July 2006, pp. 49, line 25 – pp. 51, line 2.

587. Although Bockarie went to Kenema to have joint control with Eddie Kanneh in Kenema, Bockarie did not have authority over the SLAs¹³⁰⁶ and correspondingly the Secretariat of the Eastern Provinces (including Kono and Kenema Districts). Thus, TF1-371 did not testify that Bockarie received diamonds from the Kono District. TF-041 confirmed that the diamonds were given to Eddie Kanneh.¹³⁰⁷ Only TF1-036 claimed that diamonds from the Kono District went to Sam Bockarie.¹³⁰⁸ In any event, despite it being alleged that Sesay was so instrumental in the policy of forced mining, not one witness alleged that the Kono diamonds were given to him. There is consequently no reliable evidence of a forced mining policy, no reliable evidence of any forced mining *per se* in the Kono District, no reliable evidence that Sesay was aware of any enslavement, or contributed to it in any way and finally no reliable evidence that he had a Superior/Subordinate relationship to any alleged perpetrator.

VIII. Tongo: count 13

A. *Enslavement in general*

1. **Freedoms within Tongo: total lack of forced mining policy**

588. It is the Prosecution's case that civilians were systematically forced to mine in Tongo throughout the junta, facing the threat of death if they refused. Prosecution witnesses that testified about abductions and forced labour at Cyborg Pit – and Tongo Fields generally – can be broken down into three categories, those who testified provided:

- a. no evidence of force or abductions elicited;
- b. sweeping general allegations of force, lacking in corroborative detail; and

¹³⁰⁶ TF1-371/Transcript, 28 July 2006, pp. 49, line 25 – pp. 51, line 2. Note that TF1-371 retreats from this position as it leads to the RUF being less culpable for alleged forced mining in the Tongo Fields area. TF1-371 abandons the notion that Bockarie didn't have authority of the SLAs in Tongo, that the operation was a joint operation between the RUF and AFRC, and that the RUF was more dominant. TF1-371 rounds this off by saying that the AFRC secretariat only had administrative functions but did not control any of the RUF mining. TF1-371/Transcript, 28 July 2006, pp. 52, line 1 – pp. 57, line 14. This is contradictory to the Prosecution's case for enslavement at Cyborg Pit which suggests that the Secretariat controlled the mining in Tongo and was the focal point for organizing the force of civilians in mining. See below [cite to Tongo Section – and Mining Committee].

¹³⁰⁷ TF1-041/Transcript, 10 July 2006, pp. 21, lines 10 – 13.

¹³⁰⁸ TF1-036/Transcript, 28 July 2005, pp. 53, line 10 – pp. 55, line 5. Note that TF1-036 also has diamonds mine in Kono District during the junta going to Sam Bockarie.

- c. substantial allegations that are riddled with internal consistencies and lacking in commonsense

589. A reasoned analysis of the Prosecution evidence requires that the sweeping allegations be dismissed as unsubstantiated; these allegations cannot support themselves and cannot support the allegations of the Prosecution's more substantive witnesses. A glimmer of truth can be gleaned from the witnesses proffering the more substantial allegations but this truth is obscured by stereotype and exaggeration.

590. The Prosecution case invites the Trial Chamber to shut its eyes to the obvious. Proof of enslavement requires evidence of the exercise of powers such as the purchasing, selling, lending or bartering of a person, or some other similar deprivation of liberty.¹³⁰⁹ The Prosecution have failed to prove that persons within Tongo at the relevant time did not have considerable freedoms akin to peace time, curtailed only by the exigencies of war and attacks by Kamajors. A market was operating in Tongo;¹³¹⁰ as were schools¹³¹¹ and people were free to move about Tongo and travel to areas outside Tongo;¹³¹² civilians had private lives, with normal family and domestic family lives, civilians could – and did – complain to authorities in Tongo such as the police as they ordinarily would;¹³¹³ a caretaker committee was formed in the absence of the chiefs and civilians made complaints to that committee; the RUF and AFRC did not intentionally direct attacks against civilians; the RUF and AFRC were welcome in Tongo as the Kamajors were harassing civilians prior to the RUF and AFRC's arrival.¹³¹⁴ There was no systematic forced mining at Cyborg Pit and if there were even incidents it was short lived, lasted for not more than four days and was roundly condemned by combatants and civilians alike.¹³¹⁵ The civilians and combatants mined and lived cooperatively. This was the principal reason for the terror and collective punishments metered out by the Kamajors when they entered Tongo in January 1998

¹³⁰⁹ Kunarac, Appeals Chamber Judgment, Para. 119.

¹³¹⁰ DIS-188/ Transcript 26 October 2007, pp. 68 – 70.

¹³¹¹ DIS-293/ Transcript 13 November 2007, pp. 70, line 3 – 19.

¹³¹² DIS-188/ Transcript 26 October 2007, pp. 68 – 70.

¹³¹³ DIS-293/ Transcript 13 November 2007, pp. 69, line 10 – 29 and pp. 70, lines 21-25.

¹³¹⁴ DIS-293/ Transcript 13 November 2007, pp 58, line 7 – pp. 62, line 24.

¹³¹⁵ TF1-035/ Transcript 5 July 2005, pp. 102, lines 6-9 and pp. 104, lines 14-20.

and brutalised those who had not fled to the *safety* of the RUF in Kenema and thereafter with the junta towards Kailahun.¹³¹⁶

B. The Tongo Field Environment in Context

591. The only crime alleged in the Tongo Fields area is forced labour and abduction at the Cyborg Pit.¹³¹⁷

592. The Prosecution's failure to plead any allegation of unlawful killings or physical violence at Cyborg Pit within the Indictment is a material defect. The failure to specify these crimes or the alleged criminal responsibility of the first Accused has prejudiced the defence. It is accepted that the "[shooting] of civilians while mining ... in Cyborg Pit" and "beating and physical punishment of civilians at Cyborg Pit" were listed in the Pre-Trial Brief,¹³¹⁸ they didn't make their way into the Indictment. The Defence submits that this is inadequate notice and these additional charges should be dismissed.

593. The Prosecution's Pre-Trial Brief gives notice that Sesay's Article 6(1) and 6(3) criminal responsibility for the purported abductions and forced labour at Cyborg Pit arises because Mr. Sesay was the "chief of mining for the RUF",¹³¹⁹ because Mr. Sesay knew that there was "forced civilian mining labour used in Kono District", and "his frequent visits to Tongo Fields to collect diamonds"¹³²⁰ It is crystal clear that this case has not been proven. Any other case must be dismissed for lack of notice.¹³²¹ First, there is no evidence that Sesay was the so called chief of mining or that his de facto role encompassed the mining operations in either Kono or more specifically Tongo. No evidence, by any witness or in any submissions from the Prosecution apart from the Pre-Trial Brief, was ever introduced to suggest that Mr. Sesay had command authority over the mining operations at Cyborg Pit. Second, there was no evidence of organised

¹³¹⁶ Corrected Amended Consolidated Indictment, Para. 70.

¹³¹⁷ Unlawful killings was not pled with respect to any mining area in Kenema District including Cyborg Pit. This is surprising given the Prosecution's theory that the civilians would be beaten to death or outright killed if they refused to mine. The all times relevant allegation of child soldiers was also pled for Kenema District.

¹³¹⁸ Prosecution Supplemental Pre-Trial Brief, Para. 28 and Para. 142 respectively.

¹³¹⁹ Supplemental Pre-Trial Brief, Para. 193(b).

¹³²⁰ Supplemental Pre-Trial Brief, Para. 193(d) and (d).

¹³²¹ See Annex A.

forced labour in Kono during the junta period and no reliable evidence which would allow for an inference that Sesay knew of any isolated instances. Moreover knowledge of instances would not have provided any constructive knowledge of a policy of forced mining in Tongo between 1 August 1997 and 31 January 1998. Third, there is insufficient evidence to infer that Sesay visited Tongo on a frequent basis, or in fact more than the one time which he admitted he attended, which had nothing whatsoever to do with the diamond business being conducted by others.¹³²²

594. TF1-035's testimony also provides a clear explanation for the generalised and unrealistic accounts proffered by TF1-041, TF1-122, TF1-366, TF1-367, and TF1-371. Their testimony is devoid of real substance and real description. TF1-041's claim that "civilians were not treated well" is typical of a description which does not come close to proof of enslavement.¹³²³ (As is the contraction between his court testimony and his previous statement to the Prosecution in which he failed to mention any force *and* stated that civilians kept some of the profits from the mining).¹³²⁴ TF1-122, although hearing that people were forced and people were not forced nonetheless wanted to "believe" that a lot of able-bodied men were captured to do mining.¹³²⁵ TF1-371 claimed to have visited Tongo during the junta period, claiming to have seen civilians being treated inhumanely "to the best of [his] knowledge they were treated inhumanely... doing the job grudgingly against their will from their disposition. The mining was organised and they were compelled to do the mining with armed men supervising them to do the job".¹³²⁶ This is a witness who claims to have been at the heart of the forced mining arrangements *from the inside* and yet offers this rather flimsy observation.

595. This is not about cultural or linguistic issues. The Prosecution's witnesses were simply rehearsing what the Prosecution wanted to hear and could not supply the corroborative details. It was easy for TF1-366's to suggest that civilians were being

¹³²² Sesay/Transcript 8 May 2007, pp. 52.

¹³²³ TF1-041, 10/07/06, 19:9-21:9

¹³²⁴ DIS-041/Transcript, 10 July 2006, pp. 37 – 40, referring to Statement February 2006 at pp. 17837.

¹³²⁵ TF1-122, 08/07/05

¹³²⁶ TF1-371/Transcript, 20 July 2006, pp.53.

captured in the towns and villages and forced to mine¹³²⁷ and for TF1-367 to claim 200-300 people were captured every morning to mine but apparently impossible to support this with realistic detail. This was echoed time and time again in the Prosecution case.

C. Non-identification of alleged victims

596. The Prosecution's case is that hundreds¹³²⁸ of civilians were forced to mine at Cyborg and scores of people were killed (either randomly or as punishment). The Prosecution's failure to produce a single ordinary civilian miner forced to mine at Cyborg Pit or any other mining site within the Tongo field area is astonishing. Apart from TF1-035 – whose testimony is so incredible that it doesn't warrant belief – the Prosecution failed to produce a single relative, friend or associate of the purported dozens and scores of civilians that were killed at Cyborg Pit. TF1-035 is the only named person that was purportedly beaten – and then only for instigating others not to mine for the rebels.¹³²⁹ The Prosecution cannot demonstrate wholesale enslavement. The Prosecution's approach to lead generalised and stereotyped evidence, without ever descending into detail, is an appeal to emotion, rather than commonsense or truth.

D. RUF and AFRC Entry Into the Tongo Fields Area

597. It is submitted that the evidence suggests the following occurred at Tongo Fields. The combined forces of the RUF and AFRC entered Tongo on 11th August 1997. There was no fighting on their entry and no civilians were targeted on their entry.¹³³⁰ There is no evidence of an attack on civilians, characterized by terror or otherwise. Conversely it was a military attack on the CDF resistance – an ambush – on the way to Tongo.¹³³¹ On entering into Tongo, the entering forces fired up into the air.¹³³²

¹³²⁷ TF1-366 07/11/05, 93:25-94:23. Notably, TF1-366 did not refer to Cyborg Pit as a location where mining occurred.

¹³²⁸ E.g., TF1-371/Transcript, 20 July 2006, pp. 52, line 28 – pp. 53, line 12.

¹³²⁹ TF1-035/ Transcript 5 July 2005, pp. 87, line 24 – pp. 88, line 7.

¹³³⁰ TF1-035/Transcript 5 July 2005, pp. 78, lines 16 – pp. 79, line 6; and TF1-060/Transcript 29 April 2005, pp. 50, lines 1 – 6. DIS-069/Transcript 22 October 2007, 82:29-83, line 28; DIS-157/Transcript 28 January 2008, pp. 26:29-27:24; and DIS-124/Transcript, 22 November 2007, pp. 105, line 26 – pp. 106, line 5.

¹³³¹ DIS-124/Transcript, 22 November 2007, pp. 32, lines 17 – 28. Prior to the movement to Tongo, the RUF and SLAs were strongly asked not to do anything unlawful; this included not harassing or intimidating civilians.

¹³³² TF1-060/Transcript 29 April 2005 pp. 49, lines 12 – 14. Unfortunately, some of these bullets may have unintentionally struck civilians. See, TF1-060/Transcript pp. 55, lines 19 – 25; and pp. 60, lines 9 – 15.

1. RUF Welcomed to Tongo: no attack on civilians

598. According to the Prosecution, many civilians left Tongo when the RUF and AFRC arrived.¹³³³ Contrary to this case, and consistent with the case against the CDF accused, the Defence evidence shows that prior to the arrival of the RUF and AFRC into Tongo in August 1997, Kamajors were killing civilians, suspecting them of being soldiers, or collaborating with soldiers.¹³³⁴ The Kamajors were also harassing civilians, intimidating them, and forcing them to do labour.¹³³⁵ The Kamajors were very violent.¹³³⁶ Resultantly, many civilians were happy that the RUF and SLA pushed the Kamajors out of Tongo.¹³³⁷ The evidence does not support a finding that the AFRC/RUF were terrorising or punishing the population, conversely for the reasons set out below it is submitted there can be no finding of an attack on civilians.

2. RUF and AFRC Setting Up Administration

a) Police

599. During the junta, police officers – CID personnel – were deployed in Tongo. Situation reports about activities in Tongo were made and received by the CID in Kenema.¹³³⁸ Civilians reported to the police that other civilians stole their diamonds and diamond-mining equipment. Civilians had the right to make any report including incidents from the diamond mines.¹³³⁹ The police often investigated diamond cases in collaboration with the Ministry of Mines.¹³⁴⁰ The freedom of movement, possession of

¹³³³ TF1-045/Transcript, 23 November 2005, pp. 24, lines 5-13 and 21-24.

¹³³⁴ DIS-293/Transcript 13 November 2007, pp. 58, lines 13-23; and pp. 59, lines 2-28. Pp. 61, line 26 – pp. 62, line 9.

¹³³⁵ DIS-124/Transcript, 22 November 2007, pp. 104, line 20 – pp. 105, line 16; DIS-293/Transcript, 13 November 2007, pp. 58, lines 13 – 23.

¹³³⁶ DIS-293/Transcript, 13 November 2007, pp. 59, lines 14 – 21.

¹³³⁷ DIS-157/Transcript 24 January 2008, pp. 76:8-28; DIS-157/Transcript 28 January 2008, pp. 26:29-27:24; and DIS-293/Transcript, 13 November 2007, pp. 62, lines 10 – 24.

¹³³⁸ TF1-125/Transcript 13 May 2005, pp. 38, lines 8-13.

¹³³⁹ TF1-125/Transcript 13 May 2005, pp. 46, line 9 – pp. 48, line 10, and pp. 54, line 12 – pp. 55, line 23; and TF1-122/Transcript 8 July 2005, pp. 56, lines 1 – 17, and pp. 58, lines 2 – 22.

¹³⁴⁰ TF1-125/Transcript 13 May 2005, pp. 55, lines 17 – 21. The police would investigate and prosecute on behalf of the Ministry of Mines who have the authority to allow police to prosecute (TF1-125, Transcript 13 May 2005, pp. 56, lines 8 – 14).

property, ownership of ones own labour and lack of any terror, threat, coercion or force is manifest.

b) Secretariat: reporting crimes

600. A Secretariat was also formed to deal with all administrative matters concerning civilians.¹³⁴¹ The Secretariat was responsible for dealing with customs duties, commissions to trucks or motor vehicles that came to Tongo, as well as settling any problem that arose between civilians and soldiers.¹³⁴² Any crime committed against civilians by soldiers could be reported to the Secretariat.¹³⁴³ Although looting and assault were reported to the Secretariat,¹³⁴⁴ inexplicably, forced mining was not.¹³⁴⁵ The lack of complaint about forced mining is instructive.

601. TF1-045 testified that a Limba man was killed on Lamin Street by an AFRC soldier.¹³⁴⁶ TF1-045 also testified that the AFRC soldier that shot the civilian for his palm wine was shot in the hand by the Secretariat as punishment.¹³⁴⁷ Although the veracity of this uncorroborated account is disputed, it nonetheless demonstrates that action was taken by the Secretariat in punishing crime. TF1-45 also confirmed the existence of public relation officers at the Secretariat responsible for liaising between the civilians and soldiers and investigating offences. If the perpetrators of wrong-doings against civilians were caught, they would be punished.¹³⁴⁸

c) Treatment of Women & Looting

602. Women in Tongo Fields were not sexually assaulted or violated; civilians' properties were left undisturbed by the combatants.¹³⁴⁹ No reports of rape were received

¹³⁴¹ TF1-045/Transcript 18 November 2005, pp. 68, lines 18-26.

¹³⁴² TF1-045/Transcript 18 November 2005, pp. 68, lines 18-26

¹³⁴³ TF1-045/Transcript 23 November 2005, pp. 25, lines 2-29.

¹³⁴⁴ TF1-045/Transcript 23 November 2005, pp. 26, lines 1-18.

¹³⁴⁵ TF1-045/Transcript 23 November 2005, pp. 26, lines 1-18.

¹³⁴⁶ TF1-045/Transcript, pp. 75, line 21 – pp. 77, line 19.

¹³⁴⁷ TF1-045/Transcript, 23 November 2005, pp. 39, lines 9 – 28.

¹³⁴⁸ TF1-045/Transcript 23 November 2005, pp. 26, line 29 – pp. 27, line 1.

¹³⁴⁹ The Prosecution's evidence of looting and raping out to be dismissed as circumspect and unsubstantiated. No victims are named, no perpetrators are named, no locations where items are looted or women raped are given, and no specific time frames of when these alleged crimes are purported to happen are given. TF1-035 makes no allegations of sexual violence or looting; TF1-045 and TF1-060 make only

at the Secretariat.¹³⁵⁰ In addition, the police were expected to investigate and prosecute crimes including rape, the criminal law on which they were lectured.¹³⁵¹ No reports of rape or sexual violence were received. No incidents of beating or death reported to the police. The presence of child soldiers was not reported to the police.¹³⁵²

d) Things Put Under Control - action taken on looting and other crimes discovered on entry

603. TF1-060 testifies to the RUF and AFRC looting, burning and killing etc (pp63 line 14-17), on their entry into Tongo Fields¹³⁵³ on 11th August.¹³⁵⁴ TF1-060 testified that he saw Sam Bockarie leading the troop of RUF and AFRC combatants dressed in red from head to foot and carrying rod-like staff.¹³⁵⁵ This curious description, reminiscent of the Kamajors, is uncorroborated. Furthermore, even if true, the evidence does not show who was responsible for these crimes, members of the AFRC or the RUF or opportune criminals. Nonetheless, within three days TF1-060 was told that the market was in full swing and so he travelled from his village to the market in Tongo.¹³⁵⁶ This would appear to suggest that the crimes did not happen, were localised or were quickly brought under control. It is submitted that this is significant. The AFRC/RUF had taken over a strategically important location. The troops had entered in force and yet 3 days later civilian life was able to resume.

sweeping statements re: sexual violence: TF1-045/Transcript 18 November 2005 pp. 75, line 13 – pp. 76, line 9; and pp. 76, line 20 – pp. 77, line 5; and TF1-060/Transcript 29 April 2005, pp. 74, line 13 – pp. 75, line 17. Again, TF1-045 and TF1-060 make only sweeping statements re: looting: TF1-045/Transcript 18 November 2005 pp. 76, lines 20 – 29; and TF1-060/Transcript 29 April 2005, pp. 74, line 29 – pp. 75, line 17.

¹³⁵⁰ Although TF1-045 alleges that reports came to the Secretariat every day that women were raped, TF1-045 cannot identify one perpetrator or one victim. This includes the incident when TF1-045's alleged that he was present at the Secretariat when civilians came to the Secretariat to report that a woman was raped. TF1-045 could not identify the civilians that entered because "there were a lot of peoples that when they entered I was afraid." TF1-045/Transcript 18 November 2005 pp. 75, lines 23 – 27.

¹³⁵¹ TF1-125/Transcript 13 May 2005, pp. 48, line 21 – pp. 49, line 26.

¹³⁵² The presence of child soldiers was also not adduced in the testimony of DIS-036, DIS-041, DIS-366, DIS-367, or DIS-371.

¹³⁵³ TF1-060/Transcript, 29 April 2005, pp. 53, line 14 – pp. 54, line 5 and pp. 63.

¹³⁵⁴ TF1-060/Transcript, 29 April 2005, pp. 48, lines 6 – 7.

¹³⁵⁵ TF1-060/Transcript, 29 April 2005, pp. 49, lines 6 – 12.

¹³⁵⁶ TF1-060/Transcript, 29 April 2005, pp. 54, lines 10 – 17.

e) No forced Mining

604. The first days of entry of the RUF and AFRC into the Tongo Fields area mining was going on at random with everyone – civilians and combatants – mining for himself¹³⁵⁷ without restriction.¹³⁵⁸ The civilians and combatants alike were eager to resume or commence individual mining activities.¹³⁵⁹ Any forced mining, which is not accepted, would have taken place within this context. This would explain why TF-035 placed the forced mining at the beginning of the entry of the AFRC/RUF into Tongo. TF1-035's strike within three days comports with the body of evidence that the mining was halted within a few days of the RUF and AFRC entering Tongo.

(1) Mining halted

605. Within a week however of the entry of the RUF and AFRC entering into Tongo, the mining was halted by Sam Bockarie.¹³⁶⁰ Sam Bockarie didn't allow mining for security reasons as the CDF were still in the surrounding areas. Sam Bockarie wanted the combatants to keep a defensive instead of concentrating on mining.¹³⁶¹

(2) Mining Resumes – An Opportunity You Can Refuse

606. Within the first two weeks of their entry to the Tongo Fields area, after Sam Bockarie halted the mining, the mining resumed. Sam Bockarie called a meeting to establish mining “in such a way that everybody will benefit from it”.¹³⁶² Bockarie advised that a mining committee would be formed¹³⁶³ to be responsible for gravel that was extracted for the RUF and AFRC. Prominent civilians were in attendance at this meeting such as Chief Kini One.¹³⁶⁴

¹³⁵⁷ DIS-124/Transcript 22 November 2005, pp. 115, lines 4-pp. 116, line 28.

¹³⁵⁸ DIS-124/Transcript, 22 November 2007, pp. 115, lines 4 – 25. DIS-157/Transcript 24 January 2008, pp. 77:3-29 (no laws in beginning).

¹³⁵⁹ DIS-124, 22 November 2007, pp. 116, lines 17 – 28. (“Everyone was mining for his own pocket.”)

¹³⁶⁰ DIS-124, 22 November 2007, pp. 116, lines 17 – 28. DIS-124 was present in Tongo when the mining was stopped within the first week. See also DIS-124/Transcript, 22 November 2007, pp. 110, line 14 – pp. 111, line 25.

¹³⁶¹ DIS-124/Transcript, 22 November 2007, pp. 110, line 14 – pp. 111, line 25.

¹³⁶² DIS-069/Transcript 22/10/07, 84:28- 85:22.

¹³⁶³ DIS-069/Transcript 22/10/07, 85:23-86:27.

¹³⁶⁴ DIS-069/Transcript 22/10/07, 85:23-86:27 and DIS-069/Transcript 22/10/07, 85:23-86:27.

607. The mining was to operate on a three-pile system¹³⁶⁵ or a two-pile system.¹³⁶⁶ For either arrangement, the miners were informed about the conditions attached to the mining prior to their engagement with the mining.¹³⁶⁷ The miners were on notice that days would be set aside each week for the miners to transport gravel from the RUF and AFRC security pile to the waterside and then to wash that gravel.¹³⁶⁸

608. At the meeting, the civilians were also advised not to unleash violence upon one another and to take complaints to the Military Police.¹³⁶⁹

(3) Establishment of Mining Committee

609. According to TF1-045, the intention behind the formation of the Mining Committee was to help the AFRC identify diamond mining sites, and help them value diamonds when they were found. Purportedly, civilians on the mining committee would go with armed men to bring civilians to the Secretariat. The committee then abdicated the responsibility of bringing civilians to mine because the civilians on the Committee didn't approve of identifying fellow civilians to work for the soldiers.¹³⁷⁰ Members of the Committee told the civilians to hide.¹³⁷¹ According to TF1-045, because the civilians were no longer respecting the Committee in helping them identify fellow civilians to mine, the Committee's role was reduced to identifying mining sites and valuing diamonds.¹³⁷²

610. It is implausible that the Mining Committee was complicit in a system of forced mining. According to TF1-045 himself the Committee was mainly formed as a device

¹³⁶⁵ DIS-124/Transcript, 22 November 2007, pp. 126, line 26 – pp. 128, line 20 and pp. 140, lines 25 – 27.

¹³⁶⁶ DIS-293/Transcript, 13 November 2007, pp. 62, line 25 – pp. 63, line 25; DIS-124/Transcript, 22 November 2007, pp. 128, lines 23 – 26.

¹³⁶⁷ DIS-124/Transcript, 22 November 2007, pp. 38, line 15 – pp. 39, line 17 DIS-293/Transcript, 13 November 2007, pp. 75, line 14 – pp. 76, line 13. Thursday and Friday were government working days. People were on notice that government work days were Thursday and Friday. Committee communicated this to civilians.

¹³⁶⁸ DIS-293/Transcript, 13 November 2007, pp. 74, line 10 – pp. 75, line 13. Thursday and Friday was government washing.

¹³⁶⁹ DIS-293/Transcript, 13 November 2007, pp. 62, line 25 – pp. 63, line 25.

¹³⁷⁰ TF1-045/18 November 2005, pp. 70, line – pp. 71, line 7.

¹³⁷¹ TF1-045/23 November 2005, pp. 36, lines 11 – 14.

¹³⁷² TF1-045/Transcript, 23 November 2005, pp. 36, lines 15 – 18.

to prevent harassment of civilians by troops.¹³⁷³ This is proof that the system of mining, whilst a long way from perfect, was not enslaving civilians.

611. This is also clear from the Defence evidence. The Committee was not engaged in ensuring that civilians were forced to work at the mines or to assist RUF and SLA soldiers in capturing civilians for forced mining.¹³⁷⁴ The Committee resolved boundary disputes at mining sites¹³⁷⁵ as fights over stolen gravel and disagreements over boundaries are not unusual in diamond mining,¹³⁷⁶ and also ensured that the pile system operated. The Mining Committee did not receive complaints about being forced to mine¹³⁷⁷ because there weren't any.

612. When gravel was extracted, the Committee would be informed. Labourers would choose their own pile and wash it.¹³⁷⁸ When men were needed to wash the gravel from the RUF and AFRC security pile, the Committee would inform the G5 who would assemble miners.¹³⁷⁹ The civilians had no objections to washing the government gravel because they knew it was how the mining was arranged. When washing the government gravel, the miners were given food and encouraged.¹³⁸⁰ If miners didn't wash the government gravel, nothing bad would happen to them.¹³⁸¹

f) Meetings to prevent and punish crimes

613. After the mining had been halted, meetings were called. According to TF1-060, within five days of their entry, the RUF and AFRC held two public meetings in the Tongo township.¹³⁸² No force was used to garner the attendance of civilians at the

¹³⁷³ TF1-045/Transcript, 23 November 2005, pp. 40, lines 13-16.

¹³⁷⁴ DIS-124/Transcript, 23 November 2007, pp. 29, lines 1 – 14.

¹³⁷⁵ DIS-124/Transcript, 22 November 2007, pp. 141, line 26 – pp. 142, line 25 and pp. 143, line 26 – pp. 144, line 9. Everyone was treated according to the law.

¹³⁷⁶ DIS-293/Transcript, 13 November 2007, pp. 94, lines 4 – 15; DIS-124/Transcript, 22 November 2007, pp. 141, line 26 – pp. 142, line 25

¹³⁷⁷ DIS-293/Transcript, 13 November 2007, pp. 79, lines 5 – 25.

¹³⁷⁸ DIS-124/Transcript, 22 November 2007, pp. 129, line 27 – pp. 131, line 13.

¹³⁷⁹ DIS-124/Transcript, 22 November 2007, pp. 144, line 25 – pp. 145, line 17.

¹³⁸⁰ DIS-124/Transcript, 22 November 2007, pp. 144, line 25 – pp. 145, line 17; DIS-293/Transcript, 13 November 2007, pp. 77, lines 1 – 16.

¹³⁸¹ DIS-293/Transcript, 13 November 2007, pp. 77, lines 17 – 23.

¹³⁸² TF1-060/Transcript, 29 April 2005, pp. 55, line 27 – pp. 56, line 13.

meeting.¹³⁸³ The Defence submits that around this time Sam Bockarie addressed the SLAs at a muster parade to stop the harassment of civilians. Bockarie advised the SLAs that if they continued to harass he would take action against them citing the examples of his punishment of those that raped and harassed in Kenema.¹³⁸⁴ At this meeting, Bockarie also informed the civilians that they would not be harmed. He passed an order that civilians were not to be harassed or intimidated and gave the Military Police the power to bring persons caught harassing to him. The civilian authorities – e.g., chiefs – were also asked to resume their duties.¹³⁸⁵

614. TF1-060 claimed that he was told that Bockarie was annoyed with the non-cooperation of the Mendes of Lower Bambara.¹³⁸⁶ Notwithstanding, [REDACTED] [REDACTED]¹³⁸⁷ by Sam Bockarie, TF1-060 – a Mende himself – went from Tongo to Kenema [REDACTED] [REDACTED] to inform them that the civilians inside the township were not being bullied by the RUF or the SLAs.¹³⁸⁸ TF1-060 then returned to Tongo.

615. The witness confirmed that prior to meeting with the Chief he had travelled from village to village in the District to gather information about what had been going on so that this information could be given to the Chief.¹³⁸⁹ In other words Bockarie, in his usual clumsy way, was seeking the cooperation of the civilians. And the civilians were attempting to organise themselves to cooperate. The Prosecution case, that the RUF/AFRC were terrorising the population is wholly misconceived. The fact that Bockarie personalised the issue against the Mendes does not advance the Prosecution's

¹³⁸³ TF1-060/Transcript, 29 April 2005, pp. 55, line 27 – pp. 56, line 13; this contradicts TF1-035's account wherein he states that all of the thousand-plus civilians in Tongo were taken at gunpoint by 300 combatants to a meeting at the NDMC football field. See TF1-035/Transcript, 5 July 2005, pp. 79, lines 19-29. In his initial interviews, TF1-035 stated that Sam Bockarie said that "they were no there to disturb or hurt anybody" and that the Sam Bockarie was seeking the cooperation of the people of Tongo in mining. See TF1-035/Transcript, 5 July 2005, pp. 111, line 1 – pp. 120, line 29.

¹³⁸⁴ DIS-281/Transcript, 9 November 2007, pp. 22, line 7 – pp. 24, line 9. See also, DIS-281/Transcript, 12 November 2007, pp. 12, line 23 – pp. 13, line 23.

¹³⁸⁵ DIS-124/Transcript, 22 November 2007, pp. 106, line 6 – pp. 110, line 13.

¹³⁸⁶ TF1-060/Transcript 29 April 2005, pp. 56, line 23 – pp. 59, line 9.

¹³⁸⁷ TF1-060/Transcript 29 April 2005, pp. 60, lines 19-28.

¹³⁸⁸ TF1-060/Transcript 29 April 2005, pp. 63, line 12 – pp. 65, line 11.

¹³⁸⁹ TF1-060/Transcript 29 April 2005, pp. 63, line 12 – pp. 60.

case, conversely it illustrates the lack of targeting of the civilian population as a whole. Moreover there is no suggestion that any Mendes were in fact killed, forced to mine, or otherwise targeted by Bockarie.

g) Caretaker Committee

616. After this meeting, Sam Bockarie facilitated the formation of a Caretaker Committee to allow for the inclusion of all ethnic groups in the affairs of Tongo¹³⁹⁰ and to encourage the community to come out from hiding and into the towns; anyone could have made reports to the Caretaker Committee.¹³⁹¹ Complaints of rape and looting were taken to the Caretaker Committee.¹³⁹² The Caretaker Committee would inform the civilians outside of the Tongo township that the civilians inside the township were not being bullied by the RUF or the SLAs.¹³⁹³ TF1-060 worked hard to suggest that the Caretaker Committee was unable to work effectively but his account betrays the truth. The authorities, including the Paramount Chief and other stake holders of Lower Bambara were encouraged to – and were able to – meet; *they* were able to select and form a civilian body to enable complaints to be received and to protect the inhabitants.¹³⁹⁴ Kanneh endorsed the selection of the committee and afterwards they went and met with Bockarie.¹³⁹⁵ The witness unconvincingly claimed that it was not safe to write reports but nevertheless confirmed that he passed verbal complaints to the OC Secretariat who he presumed would pass them on to Bockarie.¹³⁹⁶ The mere existence of the Caretaker Committee, as a body of civilian authorities for receiving complaints from civilians, undermines the notion that the system was intended to terrorise, punish, enslave, or commit crimes.

¹³⁹⁰ TF1-060/Transcript, pp. 56, lines 9 – 22.

¹³⁹¹ TF1-060/Transcript 29 April 2005, pp. 63, line 12 – pp. 65, line 11.

¹³⁹² TF1-060 testified that through October 1997, the Committee received reports of raping and looting. In November 1997, the reports were so rampant that they were “above” the Caretaker Committee. Commensurate with the reports are punishments – “they fire into your feet.” TF1-060/Transcript 29 April 2005, pp. 74, line 26 – pp. 75, line 14. Again, as indicated above, there are no victims or perpetrators named; just broad, sweeping unverifiable allegations.

¹³⁹³ TF1-060/Transcript 29 April 2005, pp. 63, line 12 – pp. 65, line 11.

¹³⁹⁴ TF1-060/Transcript 29 April 2005, pp. 63, line 12 – pp. 63 – 65.

¹³⁹⁵ TF1-060/Transcript 29 April 2005, pp. 63, line 12 – pp. 65.

¹³⁹⁶ TF1-060/Transcript 29 April 2005, pp. 101.

617. The witness claimed that the committee received many reports from civilians, including the killing of civilians, which were then passed onto the OC Secretariat but no action was taken.¹³⁹⁷ The witness conceded however that he only “believed” that the culprits were RUF/SLA.¹³⁹⁸ The witness conceded that even Bockarie would not have known who the culprits were.¹³⁹⁹ It is submitted that Sesay could not be held liable pursuant to Article 6(1) or 6(3) for these crimes. The chain of command was clear and it went directly to Kanneh and Bockarie and no-one else. The first Accused could not have intervened.

618. In any event all of these alleged killings should be dismissed in their entirety. First, TF1-060’s evidence is not credible nor worthy of belief; second, as each of these events is only spoken to by one Prosecution witness, they all remain uncorroborated;¹⁴⁰⁰ third, the Defence witnesses were not cross-examined on these events;¹⁴⁰¹ and fourth, generally, the substantial corpus of evidence¹⁴⁰² demonstrates an environment that wouldn’t allow for these crimes to be committed in the Tongo Fields area.

E. Purported Enslavement in Context

619. The Defence led evidence from a civilian miner that mined in Cyborg Pit during the junta period. This is DIS-293; he testified that he mined voluntarily of his own free will and without coercion. The witness was not shaken on cross examination. Furthermore his evidence corroborates that of TF1-035, who as mentioned previously

¹³⁹⁷ TF1-060/Transcript 29 April 2005, pp. 63,

¹³⁹⁸ TF1-060/Transcript 29 April 2005, pp. 67, 68, 93, 94 and 95.

¹³⁹⁹ TF1-060/Transcript 29 April 2005, pp. 75.

¹⁴⁰⁰ TF1-060’s purported Pendembu killing happened 300 yards away from the Secretariat. No one else heard about it. TF1-060/Transcript, 29 April 2005, pp. 72, lines 25 – 26. Also concerning the mining underneath the church, TF1-122 testified that he heard a story that his cousin worked together with the rebels to burn down the family house to mine underneath. TF1-122’s cousin told TF1-122 that it wasn’t true. TF1-122/Transcript, 8 July 2005, pp. 59 and 60, lines 1-13 (referring to November 2004 statement).

¹⁴⁰¹ Even given the perfect opportunity. E.g., TF1-045 testified to a man being killed on Lamin St. TF1-045/Transcript, pp. 75, line 21 – pp. 77, line 19. When DIS-127 came to Tongo, he lived on Lamin Street. DIS-127 was not cross-examined about this purported killing. DIS-127/Transcript, 12 February 2008, pp. 34, line 27 – pp. 35, line 1.

¹⁴⁰² None of these alleged killings made their way into police reports. Also, for those alleged killings that involved mining, consider that there is credible evidence that Kamajors were forcing and killing miners prior to the arrival of the RUF and AFRC to Tongo.

confirmed that mining throughout the period of the junta (except for his alleged four days of being forced) was consensual.

620. The Defence evidence confirms that, when placing Cyborg Pit in the context of the daily life of civilians, it is implausible that there was wide scale forced labour. Within the first two weeks of the RUF and AFRC entry into Tongo, businesses¹⁴⁰³ were operating and there was a large civilian population.¹⁴⁰⁴ Within those first two weeks, mining was going on smoothly.¹⁴⁰⁵ Civilians at Cyborg would sell cigarettes and food.¹⁴⁰⁶ There was no restriction on travel¹⁴⁰⁷ apart from not being allowed to go to Kamajor controlled territory.¹⁴⁰⁸ Civilians were free to move about including going to Kenema.¹⁴⁰⁹ Civilians went to Kenema and conducted business.¹⁴¹⁰ There was movement between Tongo and Kenema,¹⁴¹¹ Tongo and Segbwema,¹⁴¹² and Tongo and Kono.¹⁴¹³ The market was full;¹⁴¹⁴ football matches were organised;¹⁴¹⁵ people went to nightclubs (e.g., Amaulomaa, Omumatic);¹⁴¹⁶ cinemas were operating.¹⁴¹⁷

621. Hospitals and pharmacies were operating; they were funded by the RUF and treatment was free.¹⁴¹⁸ Schools were also in operation. The education, including stationeries, was provided by the RUF.¹⁴¹⁹ The children of civilians and fighters

¹⁴⁰³ DIS-281/Transcript, 9 November 2007, pp. 13, lines 2 – 19.

¹⁴⁰⁴ DIS-069/Transcript, 22 October 2007, pp. 93, lines 8 – 12.

¹⁴⁰⁵ DIS-069/Transcript, 22 October 2007, pp. 91, 1 – 11; DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27. People were doing their own mining.

¹⁴⁰⁶ DIS-293/Transcript, 13 November 2007, pp. 83, line 27 – pp. 84, line 6.

¹⁴⁰⁷ DIS-124/Transcript, 22 November 2007, pp. 118, lines 16 – 26 .

¹⁴⁰⁸ DIS-124/Transcript, 22 November 2007, pp. 133, lines 3 – 23.

¹⁴⁰⁹ DIS-124/Transcript, 22 November 2007, pp. 118, lines 16 – 26.

¹⁴¹⁰ DIS-124/Transcript, 22 November 2007, pp. 118, lines 16 – 26 .

¹⁴¹¹ DIS-124/Transcript, 22 November 2007, pp. 118, lines 16 – 26. This includes vehicles moving between Tongo and Kenema; DIS-293/Transcript, 13 November 2007, pp. 88, line 25 – pp. 89, line 8. This includes vehicles moving between Tongo and Kenema; DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27.

¹⁴¹² DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27.

¹⁴¹³ DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27.

¹⁴¹⁴ DIS-124/Transcript, 22 November 2007, pp. 125, line 17 – pp. 126, line 12; DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27.

¹⁴¹⁵ DIS-124/Transcript, 22 November 2007, pp. 12, lines 13 – 17.

¹⁴¹⁶ DIS-124/Transcript, 22 November 2007, pp. 125, line 17 – pp. 126, line 12.

¹⁴¹⁷ DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27.

¹⁴¹⁸ DIS-124/Transcript, 22 November 2007, pp. 145, line 25 – pp. 146, line 11.

¹⁴¹⁹ DIS-124/Transcript, 22 November 2007, pp. 146, lines 12 – 28.

attended the school.¹⁴²⁰ Children that didn't attend school were looked after by the RUF; there were laws preventing children being treated like a slave at the home.¹⁴²¹ The police were also operating. They handled theft cases; for example, DIS-293 refers to someone stealing chickens at night.¹⁴²²

622. In short, people were living peacefully in the town¹⁴²³ and going about their own business.¹⁴²⁴

F. Purported Morning Raids

623. The Prosecution thesis is wholly lacking in credibility. According to TF1-060 miners were purportedly captured during morning raids of the Town and surrounding villages to mine under force. 200-300 civilians, *each morning*, were captured and forcibly taken to mine.¹⁴²⁵ Apparently, the raids happened every morning and the civilians knew this¹⁴²⁶ and yet they remained in their houses waiting for the morning raids. This is plainly absurd. Quite significantly, TF1-035 doesn't speak about these morning raids. Also significant is that TF1-060 is the only witness that speaks about SBU's being involved in the morning raids. This is hugely significant given that TF1-060 testified that the SBUs beat civilians when they went on the morning raids.¹⁴²⁷

624. TF1-045 explained that there were two types of mining in Tongo: centralised mining for the AFRC and private mining which had nothing do with the centralised mining for the ARFC.¹⁴²⁸ In response to being why people would stay in Tongo in the midst of a forced labour system, TF1-045 provides three alternatives: i) the chance they

¹⁴²⁰ DIS-124/Transcript, 22 November 2007, pp. 146, lines 12 – 28; DIS-293/Transcript, 13 November 2007, pp. 70, lines 1 – 19.

¹⁴²¹ DIS-124/Transcript, 22 November 2007, pp. 149, line 14, pp. 151, line 1.

¹⁴²² DIS-293/Transcript, 13 November 2007, pp. 69, line 10 – pp. 70, line 25.

¹⁴²³ DIS-124/Transcript, 22 November 2007, pp. 125, line 17 – pp. 126, line 12; DIS-293/Transcript, 13 November 2007, pp. 88, line 25 – pp. 89, line 8.

¹⁴²⁴ DIS-188/Transcript, 26 October 2007, pp. 68, line 16 – pp. 70, line 27.

¹⁴²⁵ TF1-060/Transcript 29 April 2005, pp. 69, line 18 – pp. 70, line 3. TF1-367/Transcript 21 June 2006, pp. 59, line 26 – pp. 61, line 1. TF1-045 estimates that 300, 400, or 500 civilians mined every day in Tongo. TF1-045/Transcript, 18 November 2005, pp. 68, line 27 – pp. 69, line 2.

¹⁴²⁶ TF1-045/Transcript, 23 November 2005, pp. 27, line 2 – pp. 29, line 17.

¹⁴²⁷ TF1-060/Transcript, 29 April 2005, pp. 74, lines 23 – 25.

¹⁴²⁸ TF1-045/Transcript, 23 November 2005, pp. 59, lines 17 – 22.

could steal diamonds;¹⁴²⁹ ii) on a hope that they wouldn't be caught by a soldier on a morning raid so they could do their own personal mining;¹⁴³⁰ or iii) so that they could mine willingly with soldiers.¹⁴³¹

625. In fact, TF1-045 testified that civilians stayed in Tongo and agreed to work for soldiers in exchange for food. According to TF1-045, although harassment was continuing, it was better to stay with an armed man.¹⁴³² Again, according to TF1-045, it was easier to work for the soldiers than to go elsewhere and try to earn a living.¹⁴³³ Also according to TF1-045, civilians did private mining every day. This was because "Tongo is a very big town and it has a large population of [over 700] civilians.... So it was not that all of the [civilians that would be captured]. Many of them would hide and go on their own personal mining."¹⁴³⁴ According to DIS-281, who spoke to TF1-045 while in Tongo, TF1-045 said that if the civilians working for TF1-045 found a diamond TF1-045 would negotiate on the price of the diamond with those civilians.¹⁴³⁵

626. TF1-045's evidence does not describe enslavement. It is a biased account of the true situation given by the Defence witnesses who confirm that civilians were doing private mining voluntarily on their own or with combatants as their supporters. Indeed, both civilians and fighters were supporters.¹⁴³⁶ The supporters were responsible for purchasing mining tools, feeding the workers, and lodging the workers.^{1437 1438 1439} The supporters were responsible for finding food for the workers unless it was a government working day. On government working days, the RUF and AFRC would be responsible

¹⁴²⁹ TF1-045/Transcript, 23 November 2005, pp. 27, line 17-27.

¹⁴³⁰ TF1-045/Transcript, 23 November 2005, pp. 28, line 14 – pp. 29, line 8.

¹⁴³¹ TF1-045/Transcript, 23 November 2005, pp. 30, lines 15-17.

¹⁴³² TF1-045/Transcript, 23 November 2005, pp. 33, line 5 – pp. 34, line 9.

¹⁴³³ TF1-045/Transcript, 23 November 2005, pp. 35, lines 1-6.

¹⁴³⁴ TF1-045/Transcript, 23 November 2005, pp. 29, line 26 – pp. 30, line 4.

¹⁴³⁵ DIS-281/Transcript, 9 November 2007, pp. 20, line 28 – pp. 22, line 6.

¹⁴³⁶ DIS-124/Transcript, 22 November 2007, pp. 132, lines 3 – 9.

¹⁴³⁷ DIS-293/Transcript, 13 November 2007, pp. 73, lines 18 – 22.

¹⁴³⁸ DIS-124/Transcript, 22 November 2007, pp. 134, line 2 – pp. 135, line 18. Five civilians approached DIS-124, a combatant, and said that they wanted to mine with DIS-124 as their supporter.

¹⁴³⁹ DIS-281, 9 November 2007, pp. 18, line 14 – pp. 20, line 18. DIS-281 had a friend, a combatant, that was supporting civilians.

for providing food to the workers.¹⁴⁴⁰ That miners were fed by their supporters comports with the evidence of the Defence witnesses that were mining in Kono District during the junta period.¹⁴⁴¹

627. In the two-pile mining system, the RUF and AFRC security pile was given to the RUF and AFRC because that was the working condition.¹⁴⁴² As indicated above, prior to engaging in the mining, the miners were on notice of the mining arrangements. If a diamond was found in the supporter/labourer pile (not the RUF and AFRC security pile), the labourers would negotiate with the supporter over the price of the diamond.¹⁴⁴³ The supporter would then sell the diamond (in town).¹⁴⁴⁴ With those proceeds, the supporter would then give the agreed price to the labourers; any difference would be pocketed by the supporter.¹⁴⁴⁵ This was the choice made by civilians, subject themselves to the terms set by the Government of the day or not. The conditions may not have been ideal but this was a free choice with benefits for all. While negotiating, if the labourers and supporter can't agree upon a price, they would go the diamond office to the sell the diamond; half of the proceeds would go to the supporter and half to the labourers.¹⁴⁴⁶

¹⁴⁴⁰ DIS-293/Transcript, 13 November 2007, pp. 23, line 9 – pp. 24, line 7.

¹⁴⁴¹ See, e.g., DIS-089/Transcript, 29 February 2008, pp. 85, lines 22 – 29; DIS-307/Transcript, 19 February 2008, pp. 8, line 23 – pp. 9, line 17; and DIS-307/Transcript, 19 February 2008, pp. 21, lines 6 – 15. It is customary for supporters to provide for the labourers. DIS-307 testified to some mining conditions prior to the overthrow. DIS-307/Transcript, 19 February 2008, pp. 3, line 9 – pp. 4, line 15.

¹⁴⁴² DIS-293/Transcript, 13 November 2007, pp. 22, line 21 – pp. 23, line 6; DIS-066/Transcript, 29 February 2008, pp. 106, line 19 – pp. 107, line 3. DIS-066 was able to mine freely; conditions were established between he and his civilian supporter.

¹⁴⁴³ DIS-124/Transcript, 22 November 2007, pp. 135, line 19 – pp. 138, line 21; DIS-124/Transcript, 22 November 2007, pp. 131, line 14 – pp. 132, line 2; DIS-293/Transcript, 20 November 2007, pp. 19, line 24 – pp. 20, line 15; DIS-293/Transcript, 13 November 2007, pp. 20, line 24 – pp. 21, line 7; DIS-281/Transcript, 12 November 2007, pp. 57, line 12 – pp. 58, line 3.

¹⁴⁴⁴ DIS-124/Transcript, 22 November 2007, pp. 135, line 19 – pp. 138, line 21.

¹⁴⁴⁵ DIS-124/Transcript, 22 November 2007, pp. 135, line 19 – pp. 138, line 21.

¹⁴⁴⁶ DIS-124/Transcript, 22 November 2007, pp. 131, line 14 – pp. 132, line 2; and DIS-124/Transcript, 22 November 2007, pp. 141, lines 1 – 10. To maximize his profit, the supporter would try to negotiate the lowest price possible with his labourers: DIS-124/Transcript, 23 November 2007, pp. 34, line 9 – pp. 38, line 11.

628. DIS-293 testified that because of the laws¹⁴⁴⁷ applied to mining during the junta, and the presence of RUF security, gravel wasn't stolen.¹⁴⁴⁸ In fact, DIS-293 states the mining at Cyborg Pit during the junta period was more prosperous than present day.¹⁴⁴⁹

G. Deaths at Cyborg Pit?

629. The Prosecution called TF1-035, TF1-045, and TF1-060 in an effort to demonstrate the crimes at Cyborg Pit. The evidence is in large part nonsensical and appears to reflect a prosecutorial confidence that the Trial Chamber will accept anything as long as it is about the RUF and diamonds.

630. For example, the Prosecution's allege case that civilians were threatened with physical beatings or death if they refused to mine.¹⁴⁵⁰ Indeed TF1-035 claims that civilians were fired upon and killed in Cyborg Pit on three separate incidents while mining.¹⁴⁵¹ Putting aside the fact that none of the other insiders (not TF1-045, TF1-060, TF1-334, TF1-366, TF1-367, and TF1-371), corroborated this account this so called horror was supposed to have preceded the civilians going on strike. It is simply not believable. Slaves do not go on strike and return and wait at home,¹⁴⁵² especially when they can leave and go to Kenema.

631. Strangely, the civilians were not forced to mine while on strike and no one was killed for striking. Also, again quite oddly, according to TF1-035, after shootings at Cyborg Pit where civilians were killed (including TF1-035's own nephew), the civilians that ran away from Cyborg returned to the pit once the firing had subsided knowing full

¹⁴⁴⁷ DIS-293/Transcript, 13 November 2007, pp. 84, line 23 – pp. 85, line 3. E.g., no stealing, no fighting, soldiers should not disadvantage civilians.

¹⁴⁴⁸ DIS-293/Transcript, 13 November 2007, pp. 94, lines 16 – 27. The RUF and civilians wouldn't steal gravel.

¹⁴⁴⁹ DIS-293/Transcript, 13 November 2007, pp. 86, lines 23 – 29. "Well, it was when the RUF were there, that was the time I was able to get a lot of money."

¹⁴⁵⁰ Prosecution Supplemental Pre-Trial Brief, Para. 192 (c).

¹⁴⁵¹ Immediate contradictions emerge. In each of TF1-035's three shootings, SBUs fire upon miners killing them. Notably, when being questioned about child soldiers and killings attributed to them, TF1-060 referred to two instances when child soldiers killed – neither one of them being at Cyborg Pit. *See*, TF1-060/Transcript, 29 April 2005, pp. 71, line 24 – pp. 77, line 20.

¹⁴⁵² TF1-035/Transcript, 5 July 2005, pp. 84 – 93.

well, not only the likelihood of being forced again but what must have appeared like certain death.¹⁴⁵³

632. TF1-060 makes no mention of anyone dying at Cyborg in contrast to his testimony that civilians would be beaten to death if they refused to mine.¹⁴⁵⁴ At best, TF1-060 has Sam Bockarie giving SBUs an order to shoot anyone that tried to hide a bag of gravel or steal a diamond. No evidence was elicited that this order was acted upon.¹⁴⁵⁵

633. TF1-045 also doesn't testify that anyone was shot while mining in Cyborg Pit. To the contrary, TF1-045 testified that soldiers guarding Cyborg Pit fired upon civilians and soldiers for coming to the mining site *too early*. The people that were allegedly shot hadn't even started mining yet.¹⁴⁵⁶

1. The Reality: Sands Collapsing

634. Cyborg Pit is approximately 100 yards long and 50 yards wide.¹⁴⁵⁷ During the NDMC-era, the NDMC deposited sands into the site¹⁴⁵⁸ full of small, leftover diamonds of little value to the NDMC.¹⁴⁵⁹ These sands are presumably waste from sites that were being mined during the NDMC days. Mining was easier at Cyborg Pit than other locations because it was unnecessary to bail water out of the mining site.¹⁴⁶⁰ The sand was simply carried to the waterside for washing.¹⁴⁶¹ Mining at Cyborg Pit was operating on a two-pile system.¹⁴⁶²

¹⁴⁵³ TF1-035/ Transcript 5 July 2005, pp. 92:, line 22- pp. 93, line 1.

¹⁴⁵⁴ TF1-060/ Transcript 29 April 2005, pp. 69, line 22- pp. 70:, line 10.

¹⁴⁵⁵ TF1-060/ Transcript 29 April 2005, pp 74, lines 3-20

¹⁴⁵⁶ TF1-045/Transcript, 18 November 2005, pp. 74, lines 8-19 through pp. 75, line 1.

¹⁴⁵⁷ TF1-060/Transcript, 29 April 2005, pp. 69, lines 14 – 15.

¹⁴⁵⁸ DIS-124/Transcript, 22 November 2007, pp. 128, line 27 – pp. 129, line 18.

¹⁴⁵⁹ DIS-124/Transcript, 22 November 2007, pp. 139, line 6 – pp. 140, line 24.

¹⁴⁶⁰ DIS-124/Transcript, 22 November 2007, pp. 128, line 27 – pp. 129, line 18.

¹⁴⁶¹ DIS-124/Transcript, 22 November 2007, pp. 129, lines 19 – 21.

¹⁴⁶² DIS-124/Transcript, 22 November 2007, pp. 128, lines 1 – 22; DIS-293/Transcript, 13 November 2007, pp. 63, line 26 – pp. 71, line 14. (Although DIS-069 testifies to a three-pile system at Cyborg Pit, this mistake is understandable as the three-pile system was used in other mining locations. The point is illustrated that a voluntary system of mining was in operation at Cyborg Pit with the corresponding lack of force. The witness was not shaken during cross examination. (DIS-069/Transcript, 25 October 2007, pp. 31, line 7 – pp. 33, line 1)).

635. Notably, TF1-035 testified that – in an incident in which he claims 20 people were killed when child soldiers fired upon miners in Cyborg Pit – “some [miners] were ... covered by the sand. Some were killed by the bullet. That is what I saw that particular day.”¹⁴⁶³

636. It is clear that shots were fired around Cyborg Pit. It is also clear that gunshots were fired around Cyborg pit at approximately the same time as sands collapsing at the site, burying miners. For example: TF1-035 stated that prior to the child soldiers allegedly firing upon miners in the pit, Manawa, an RUF combatant, fired an RPG into the air because Sam Bockarie wanted everyone to get out of the pit.¹⁴⁶⁴ Thus, it is clear, even from the Prosecution evidence, that shots were fired to warn miners at the pit of danger. Thus spawned the myth, and the want to believe,¹⁴⁶⁵ that the RUF and AFRC were firing to terrorise, causing death and destruction.

637. The Defence evidence makes it clear, that civilians were not fired upon while mining at Cyborg Pit.¹⁴⁶⁶ The only time anyone died at Cyborg Pit when sands

¹⁴⁶³ TF1-035/Transcript 5 July 2005, pp. 87, lines 15 – 21; emphasis added.

¹⁴⁶⁴ TF1-035 – Warning to tell people to get out. 5 July 2005, 86:3-6 and 86:27-87:4 (Manowa fired RPG into the air).

¹⁴⁶⁵ TF1-122/Transcript 8 July 2005, pp. 59, line 2 – pp. 60, line 13. TF1-122 wants to believe, from the rumours that he heard, that people were forced to mine in Togo. This is notwithstanding hearing the other side of the story: that people were not forced to mine. TF1-122 testified that he wanted to keep some facts to himself.

¹⁴⁶⁶ DIS-069/Transcript, 23 October 2007, pp. 25, line 26 – pp. 26, line 13; and DIS-069/Transcript, 25 October 2007 pp. 33, lines 2 – 9. Had people been killed from being fired upon at Cyborg Pit, people as far as Daru and Kenema Town would know about the killing. People would speak about this if it happened. DIS-281/Transcript, 12 November 2007, pp. 16, line 10 – pp. 17, line 9. DIS-281 didn't receive any reports about civilians being killed by fighters in Togo. DIS-124/Transcript, 22 November 2007, pp. 167, lines 13 – 23. DIS-124 is not aware of anyone else having been killed at Cyborg. DIS-293/Transcript, 13 November 2007, pp. 26, lines 10 – 16. Nobody was shot at Cyborg. DIS-293/Transcript, 13 November 2007, pp. 88, lines 13 – 24. Nobody was shot at Cyborg. DIS-293 didn't hear of any killings in Togo by soldiers. DIS-293 didn't even see anyone being beaten. DIS-293/Transcript, 13 November 2007, pp. 89, lines 12 – 18. DIS-293 didn't hear of 45 people being killed by RUF at Cyborg. DIS-293/Transcript, 13 November 2007, pp. 97, lines 24 – 29. There would not be open firing on civilians if they refused to take orders. DIS-157/Transcript, 25 January 2008, pp. 21, line 27 – pp. 22, line 12. DIS-157 is unaware of killings committed by Morris Kallon. Sometimes DIS-157 got information from radio operators; however, he didn't receive any information to this effect.

collapsed burying the miners underneath.¹⁴⁶⁷ As explained more fully by DIS-124, an independent witness, who has absolutely no reason to deny such killings :

Q. So you did not hear of any killings?

A. Killing took place, but it was not by gun. You see, when the mining was going on, you see, Cyborg is a very big pit. So when people understood that, you know, the sand gravel is going towards the playing [sic; plane] field, people started to undermine it. And very unfortunately there was a time when the dirt cut and it was destroyed some people there.

Q. So what you're saying is that there were no killings of civilians by RUF forces?

A. Yes.¹⁴⁶⁸

638. Indeed, although there were armed guards at Cyborg Pit to ensure the miners didn't destroy the plane field,¹⁴⁶⁹ there was no force used at Cyborg Pit¹⁴⁷⁰ nor were civilians beaten and killed by the guards if they refused to mine.¹⁴⁷¹ Indeed, throughout Tongo – a large area in which hundreds of people were mining¹⁴⁷² – there was no force¹⁴⁷³ and no fear of punishment for refusing to mine.¹⁴⁷⁴ Indeed, to protect miners

¹⁴⁶⁷ DIS-188/Transcript, 1 November 2007, pp. 8, line 24 – pp. 11, line 29. DIS-188 didn't hear or see people being killed at Cyborg. People only died from sand falling on them; the mining wasn't organized. DIS-188 wasn't cross-examined on sands falling on miners. DIS-293/Transcript, 13 November 2007, pp. 81, lines 20 – 28. There was firing at Cyborg Pit because there were too many people mining in the pit. A gunshot was fired as a warning to prevent deaths from sand collapsing on miners. As a result of sand collapsing on miners, some miners died at Cyborg Pit. DIS-293/Transcript, 13 November 2007, pp. 82, lines 20 – 27. Sand formed into dunes at Cyborg Pit. The Mining Committee informed the miners that sand would fall in the pit; the Committee therefore told people to stop mining. DIS-293/Transcript, 13 November 2007, pp. 82, line 28 – pp. 83, line 10. Gunshots were fired at the pit to tell people to stop mining.

¹⁴⁶⁸ DIS-124/Transcript, 22 November 2007, pp. 166, lines 20 – 29.

¹⁴⁶⁹ DIS-124/Transcript, 22 November 2007, pp. 142, line 28 – pp. 143, line 25. Cyborg Pit was the only location where there were armed guards.

¹⁴⁷⁰ DIS-124/Transcript, 23 November 2007, pp. 29, line 29 – pp. 30, line 19.

¹⁴⁷¹ DIS-124/Transcript, 23 November 2007, pp. 30, line 21 – 24.

¹⁴⁷² DIS-124/Transcript, 22 November 2007, pp. 132, lines 10 – 16.

¹⁴⁷³ DIS-127/Transcript, 12 February 2008, pp. 36, lines 1 – 11. DIS-127 didn't witness people being forced to mine. DIS-069/Transcript, 25 October 2007, pp. 33, line 27 – pp. 36, line 3. Throughout Tongo, those with weapons didn't force people to mine. DIS-293/Transcript, 13 November 2007, pp. 88, lines 3 -12. DIS-293 wasn't forced and didn't see anyone else forced. DIS-127/Transcript, 12 February 2008, pp. 41, line 20 – pp. 42, 15. Under the two-pile system, no force was used.

¹⁴⁷⁴ DIS-127/Transcript, 18 February 2008, pp. 11, line 8 – pp. 12, line 24 and pp. 13, line 6 – pp. 14 line, 13. Civilians wouldn't be beaten or killed if they refused to mine; nor were miners forced to give gravel to the soldiers; DIS-124/Transcript, 23 November 2007, pp. 29, lines 15 – 28. If a civilians didn't want to mine, he wouldn't be forced. There was no fear of punishment.

from having sand collapsing on them, a law was instituted to prevent miners from mining at Cyborg at night.¹⁴⁷⁵ This is corroborated by TF1-035.¹⁴⁷⁶

H. Absence of Child Soldiers

639. None of the Prosecution witnesses testified that there were child soldiers on the initial RUF and AFRC attack to gain control of Tongo Field. However, TF1-060 testified that the SBUs carried out most of the killings in the Tongo Field area. Notably, TF1-060 doesn't state that SBUs killed anyone at Cyborg Pit.¹⁴⁷⁷ The witnesses suggest that somewhere between 15 and 100 SBUs were at Cyborg Pit.¹⁴⁷⁸

640. If it were indeed the case that SBUs were at Cyborg, how did the child soldiers get there? If these child soldiers were in fact under the auspices of the RUF and AFRC, they clearly would have come to Tongo after Tongo was captured by the RUF and AFRC. None of the Prosecution witnesses testified to child soldiers being on the RUF and AFRC attack on Tongo.

641. Why, in contrast to TF1-035's testimony that SBUs were guarding Cyborg Pit and involved in all three shooting incidents that TF1-035 alleges, does TF1-045 have soldiers (not child soldiers) involved in the shooting incident he testified to when the miners came too early to Cyborg Pit?¹⁴⁷⁹

642. If there were as many child soldiers in the Tongo Fields area as TF1-035, TF1-045, and TF1-060 contend, why weren't they mentioned by TF1-036, TF1-041, TF1-

¹⁴⁷⁵ DIS-293/Transcript, 13 November 2007, pp. 92, line 20 – pp. 93, line 1.

¹⁴⁷⁶ TF1-035/Transcript, 7 July 2005, pp. 39, lines 1 – 10. Junior officers that had taken civilians to mine with them at Cyborg Pit at night got into a fracas with SBUs that were guarding the Pit.

¹⁴⁷⁷ TF1-060/Transcript, 29 April 2005, pp. 74, lines 3-20.

¹⁴⁷⁸ TF1-060/Transcript, 29 April 2005, pp. 71, line 24 – 26. The Defence disputes that these child soldiers were in fact present when the RUF and AFRC were present in Tongo. *See*, TF1-060/Transcript, 29 April 2005, pp. 71, lines 5 – 17, where TF1-060 states that he knew of two child soldiers with whom he was mining after the 25th of May and prior to the RUF forcing the Kamajors out of the Tongo Field area. After the RUF gained control of the Tongo area, TF1-060 still interacted with these *same* child combatants. It is very unlikely that this is the case. All actions of purported child soldiers that TF1-060 attributes to the RUF are a fabrication.

¹⁴⁷⁹ TF1-045/Transcript, 18 November 2005, pp. 79, lines 1-6.

344, TF1-366, TF1-367, or TF1-371? Why only three¹⁴⁸⁰ out of eight witnesses listed in the Prosecution's Pre-Trial Brief that were to testify about the Tongo Fields area state that SBUs were present in Tongo. Notably, TF1-035 and 045 are not among these three. If TF1-045 and TF1-367 knew about the morning raids, why wasn't it adduced through their evidence that SBUs were involved in those raids as TF1-060 suggests? If the presence of the SBUs on the morning raids was so conspicuous, why did TF1-035 not know about the raids?

643. The simple reason is that SBUs were not present. Indeed, DIS-069,¹⁴⁸¹ DIS-124,¹⁴⁸² DIS-127,¹⁴⁸³ DIS-188,¹⁴⁸⁴ and DIS-293¹⁴⁸⁵ categorically deny the presence of child soldiers in the Tongo Field area.

I. Criminal Responsibility pursuant to 6(1) and 6(3)

644. There is little, if any evidence that Sesay had any real involvement or ability to intervene in the Tongo Township, even less in the mining. The Prosecution have not proven any participation in the military structures based in this location or participation in any crimes.

645. The Defence disputes that there was a policy of forced mining occurred during the junta period. At its highest the Prosecution evidence relating to Tongo demonstrates that shows that, when the RUF and AFRC gained control of the Tongo Fields area, there was a short period of chaos, wherein civilians and combatants descended into chaotic mining for a period of less than two weeks – and, according to TF1-035, there was forced mining for less than four days. It is possible that during this short period

¹⁴⁸⁰ TF1-035, TF1-045, TF1-060.

¹⁴⁸¹ DIS-069/Transcript, 25 October 2007, pp 33, lines 10 – 26. There were no armed guards at Cyborg Pit. There were no children as armed guards.

¹⁴⁸² DIS-124/Transcript, 23 November 2007, pp. 29, line 29 – pp. 30, line 19. There were no child soldiers at the mining sites.

¹⁴⁸³ DIS-127/Transcript, 12 February 2008, pp. 36, line 12 – pp. 37, line 11. There were no children with guns in town or in the pits; DIS-127/Transcript, 18 February 2008, pp. 12, line 25 – pp. 13, line 5. There were no child soldiers as guards at the mines.

¹⁴⁸⁴ DIS-188/Transcript, 26 October 2007, pp. 72, line 13 – pp. 74, line 6. It was common to see armed men at mining sites; however there were no armed children.

¹⁴⁸⁵ DIS-293/Transcript, 13 November 2007, pp. 78, line 19 – pp. 79, line 4. DIS-293 saw men with arms around vicinity of Cyborg. They were mature men.

individuals took advantage of the situation and coerced people to mine. However, these practices were immediately brought to a halt by Sam Bockarie. There is thus no evidence of a policy of terror or collective punishments or enslavement. There is consequently little or no evidence that the first Accused would have been put on notice of any crimes in this location.

1. Chain of command

646. There is no reliable evidence that Sesay had any authority in Tongo, notwithstanding his occasional presence in Kenema and his admitted presence in Tongo on one occasion.¹⁴⁸⁶ This lack of de jure and de facto command means that that no criminal liability arises. The preponderance of evidence shows that the whole of the military operations in the Tongo district were first and foremost under the direct command of Bockarie and Kanneh. They were in control of the mining area. They had the control, such that it was, of the combatants' station in that locality. The Prosecution attempted to implicate Sesay in the diamond mining operation but the assertions were not convincing. Instead it led to a huge amount of inconsistent evidence, little of it pointing in any direction but away from Sesay. The following are examples only.

647. TF1-045 testified that Captain Yamao Kati was the overall commander in Tongo who reported to Bockarie. Kati was being deputised by Co Eagle. There was also Captain Junior who was the OC at the Secretariat. He was he was in charge of all the administration and dealt with the civilian matters which arose in Tongo. The witness confirmed that if there were problems between the junta and civilians Junior would deal with customs duties. If there were problems between AFRC and civilians, they would go there. PLO2 was the head of mining for the AFRC in Tongo.¹⁴⁸⁷

648. TF1-045 claimed that the committee reported to Junior at the Secretariat, from there they would go to the OC Secretariat Yamao Kati, Captain Eagle, PLO 2 and other officials.¹⁴⁸⁸ TF1-45 confirmed that he sought and was granted permission to mine

¹⁴⁸⁶ Sesay/Transcript 8 May 2007, pp. 52.

¹⁴⁸⁷ TF1-045/Transcript, 18 November 2005, pp. 66 – 68.

¹⁴⁸⁸ TF1-045/Transcript, 18 November 2005, pp.69 -71.

from Kati and Eagle. Kati reported to the Brigade Commander in Kenema, who reported to the Army Chief of Staff, who reported to the Defence Chief of Staff, who reported to JPK. Eagle took orders from both Bockarie and Kati.¹⁴⁸⁹

649. TF1-036 testified that the unit in charge of supervising the mining activities in the Tongo Fields area reported the diamonds from the mining to the mining commander and then to the commander in the area. The diamonds would go to the HQ and they would be reported to Sam Bockarie.¹⁴⁹⁰ TF-041 testified that the diamonds were given to Eddie Kanneh to lobby abroad.¹⁴⁹¹

650. TF1-060 testified that Sam Bockarie's bodyguards brought diamonds to the Secretariat in Tongo Field and recorded them. The diamonds were then handed over to Sam Bockarie.¹⁴⁹²

651. TF1-371 changed his version of events and was unable to decide what the true situation was but nevertheless implicated Sesay in the chain of command, but noting eventually that most of the diamonds were destined for Johnny Paul Koroma and SAJ Musa (Secretary of Mineral Resources) in Freetown.¹⁴⁹³ Notwithstanding the implication TF1-371 rather contradictorily also stated that "[S]pecifically, the Supreme Council appointed, and that appointment was arbitrarily done by the chairman of the council, Johnny Paul Koroma, senior members to supervise the mining of alluvial diamonds, in traditional areas of mining for diamonds in Sierra Leone that is Kono

¹⁴⁸⁹ TF1-045/Transcript, 23 November 2005, pp.19 – 23.

¹⁴⁹⁰ TF1-036/Transcript, 28 July 2005, pp. 53, line 10 – pp. 55, line 5.

¹⁴⁹¹ TF1-041/Transcript, 10 July 2006, pp. 21, lines 10 – 13.

¹⁴⁹² TF1-060/Transcript, 29 April 2005, pp. 70, lines 9 – 22.

¹⁴⁹³ DIS-371/Transcript, 31 July 2006, pp. 40, line 24 – pp. 41, line 6. According to TF1-371, Sam Bockarie went to Kenema to have joint control with Eddie Kanneh in Kenema, Sam Bockarie did not have authority over the SLAs (TF1-371/Transcript, 28 July 2006, pp. 49, line 25 – pp. 51, line 2). TF1-371 retreated from this position as it led to the RUF accused being more remote from the alleged forced mining in the Tongo Fields area. TF1-371 thus abandoned the notion that Bockarie did not have authority over the SLAs in Tongo (having previously told the Prosecution that Coporal Gborie, Gullit, Sammy, 5-5 and Adams controlled Tongo – at pp. 23791/see 31 July 2006, pp. 55) and instead alleged that the operation was a joint operation between the RUF and AFRC, and that the RUF was more dominant. TF1-371 went on to state that the AFRC secretariat only had administrative functions and did not control any of the RUF mining (TF1-371/Transcript, 28 July 2006, pp. 52, line 1 – pp. 57, line 14). This would appear to contradict the Prosecution's case for enslavement at Cyborg Pit which suggests that the Secretariat controlled the mining in Tongo and was the focal point for organizing the enslavement of civilians in the mining.

District and Kenema District, and periodically, they updated the council on products - that is diamond products - and issues that were relating to why, in fact, those products were not coming as the council was expecting, looking at the most problems, financial problems, that constrained the proper functioning of the junta".¹⁴⁹⁴ The implication is clear the diamonds were controlled and went to others. The obvious lie the witness then told, that all the RUF diamonds went to Bockarie, Sesay and Kallon, must be seen in this context. As must the witnesses claim that Sesay was the BFC during the junta and Kallon the BGC.¹⁴⁹⁵

652. The Defence witnesses confirm that Mr. Sesay had nothing to do with the diamonds¹⁴⁹⁶ including nothing to do with their transfer.¹⁴⁹⁷

653. Indeed, on the one and only visit Mr. Sesay made to Tongo Fields, he witnesses the [markets, etc.] operating. There was no reason for him to believe, and no cause for him to inquire, whether there were any large-scale forced labour practices. It did not appear to Mr. Sesay that any person was being deprived of any liberties or freedom of movement associated with enslavement. This was a reasonable conclusion in the midst of all these civilians freedoms.

654. Moreover, the Prosecution hasn't proven that Mr. Sesay had the requisite *mens rea* to be culpable for these crimes. Mr. Sesay is not directly implicated in any of the alleged enslavement.

¹⁴⁹⁴ TF1-371/Transcript, 20 July 2006, pp. 55, line 12-19.

¹⁴⁹⁵ TF1-371/Transcript, 20 July 2006, pp. 54, line 19 -20.

¹⁴⁹⁶ DIS-124/Transcript, 22 November 2007, pp. 146, line 29 – pp. 147, line 5; and pp. 147, lines 12 – 27. Diamonds from the security pile went to Eddie Kanneh, Secretary of State East, and then to Sam Bockarie; DIS-069/Transcript, 22 October 2007, pp. 93, lines 1 – 7. According the arrangement, the Mining Committee was to hand over the diamonds to Sam Bockarie when Bockarie visited Tongo. In turn, Bockarie would hand the diamonds over to Johnny Paul Koroma. See also, DIS-069/Transcript, 25 October 2007, pp. 34, line 22 – pp. 36, line 3. The Mining Committee handed the diamonds to Sam Bockarie when he came to Tongo.

¹⁴⁹⁷ DIS-124/Transcript, 22 November 2007, pp. 148, line 12 – pp. 149, line 12.

2. Should Sesay Have Known What Didn't Happen?

655. There is no suggestion that Mr. Sesay should have known that there was large-scale forced mining in the Tongo Fields area. As discussed in the section dealing with mining in Kono district, below, the use of force in the mining areas was not discussed at Supreme Council meetings. Rather, the prevention of the use of force was discussed as well as removing mining commanders that were harassing civilians.
656. There is also no proof that Mr. Sesay received any information about the labour practices in the Tongo Fields area through the radio. The only person that Mr. Sesay was communicating with over the radio during the junta was Sam Bockarie. However, the Prosecution did not elicit any evidence that Sam Bockarie, in Kenema Town, communicated to Mr. Sesay, in Freetown, about any forced labour. There is no evidence of radio communications to Mr. Sesay from other commanders while he was in Freetown. For example, when DIS-124 was a commander in Kenema Town,¹⁴⁹⁸ he didn't have any dealings with Mr. Sesay while Mr. Sesay was in Freetown. Sam Bockarie was on the ground. Although DIS-124 had a radio, he didn't have any contact with Mr. Sesay.¹⁴⁹⁹ While Sam Bockarie was in Kenema Town, Sesay was completely, if not almost wholly, out of the picture.
657. The Prosecution will try to tie in Mr. Sesay knowledge to forced labour practices at the Tongo Fields area to the presence of his bodyguard, Boys:¹⁵⁰⁰
- a. TF1-045 testified that he saw Boys in Tongo. Civilians were given to Boys in the morning at the Secretariat.¹⁵⁰¹ Although TF1-045 didn't see how the civilians mining with Boys were treated, TF1-045 states globally that all the civilians were forced.

¹⁴⁹⁸ DIS-124/Transcript, 22 November 2007, pp. 30, line 3 – pp. 31, line 29.

¹⁴⁹⁹ DIS-124/Transcript, 22 November 2007, pp. 104, lines 1 – 19.

¹⁵⁰⁰ TF1-367 testified that Boys was the only person mining for IS in Tongo. TF1-367/Transcript, 22 June 2006, pp. 94, lines 5 – 10. Therefore, the only connection that Mr. Sesay purportedly has to any force in Tongo is through Boys. Connections to Pelleto as a bodyguard reporting force to Mr. Sesay are misconceived. According to TF1-367, Pelleto was just a bodyguard to Mr. Sesay in name only during the junta period. Pelleto was initially – 1991, 1992, 1993 – a bodyguard to Mr. Sesay. After that, Pelleto's reporting functions as a bodyguard ceased. TF1-367/Transcript, 21 June 2006, pp. 94 – 97.

¹⁵⁰¹ TF1-045/Transcript, 18 November 2005, pp. 77 - 78.

- b. TF1-366 testified that Boys was a bodyguard to Mr. Sesay, was mining for Mr. Sesay, and used force in that mining.¹⁵⁰²
- c. TF1-367 testified that Boys captured civilians to send them to mine.¹⁵⁰³
- d. On his tour to Tongo in late August 1997,¹⁵⁰⁴ TF1-371 saw Boys present in Tongo. Boys captured people to mine.¹⁵⁰⁵

658. This attempt should be dismissed. First, the attempt was made late with new allegations of Boys' presence being made by subsequent Prosecution insiders that testified after TF1-366 – the first such witness to make the allegation. The Prosecution then unfairly sought corroboration. It goes without saying that the questions would indicate the answers to hostile insiders, such as TF1-045.

659. Second, the accounts are not consistent. Foremost, TF1-045 – who was purportedly present in Tongo for a more substantial period of time than these other witnesses – didn't actually see Boys force anyone to mine.¹⁵⁰⁶ TF1-045 bases Boys' forcing people to mine on speculation and a global premise. In addition, TF1-045 only places Boys in Tongo on his first visit to Tongo (around June).¹⁵⁰⁷ Of course, the Defence disputes TF1-045's presence in Tongo that early (as Tongo wasn't captured until August) and also disputes that TF1-045 was present in Tongo within the first few days upon its capture¹⁵⁰⁸ (within which TF1-035 testified that the forced mining stopped). TF1-371's late August 1997 tour would also be after the forced mining stopped.¹⁵⁰⁹ That he saw Boys force anyone to mine is a fabrication.

¹⁵⁰² TF1-366/Transcript, 7 November 2005, pp. 91 – 94.

¹⁵⁰³ TF1-367/Transcript, 21 June 2006, pp. 58 – 60.

¹⁵⁰⁴ TF1-371/Transcript, 20 July 2006, pp. 57, lines 7 – 9

¹⁵⁰⁵ TF1-371/Transcript, 20 July 2006, pp. 52, and pp. 77 – 78.

¹⁵⁰⁶ 23 November 2005, pp. 20, lines 12-21.

¹⁵⁰⁷ TF1-045 only saw Boys in Tongo in June 1997 on his first trip to Tongo. TF1-045 didn't see Boys in Tongo in December ("not at all"). TF1-045/Transcript, 23 November 2005, pp. 17 lines 16 – 21.

¹⁵⁰⁸ TF1-045 didn't testify that he was on the attack on Tongo. In addition, see DIS-157/Transcript, 25 January 2008, pp. 21, lines 10 – 16, for the suggestion that TF1-045 came to Tongo after the capture of Tongo; 23 November 2005, pp. 20, lines 12-21. After Tongo was captured by the RUF and AFRC, TF1-045 requested permission to mine there.

¹⁵⁰⁹ TF1-371/Transcript, 20 July 2006, pp. 57, lines 7 – 9

660. TF1-367 doesn't even know when he was in Tongo. On direct examination, TF1-367 testified that he went to Tongo in dry season of 1997.¹⁵¹⁰ However, on cross-examination, TF1-367 testified that he went to Tongo in the middle of 1997.¹⁵¹¹ When asked if it were in May or June of 1997, TF1-367 simply stated that he knew that he went to Tongo.¹⁵¹² The Defence disputes that TF1-367 went to Tongo as TF1-367 suggests. First, the dry season doesn't occur in the middle of the year. Second, Tongo was captured by the RUF and AFRC in August which is the rainy season. In addition, had he gone, he would have provided a better answer on when he went when he were asked if he had gone in May or June 1997.

661. Third, apart from the assertion that Boys was Mr. Sesay's bodyguard during the junta and therefore accordingly reported to Mr. Sesay, there is no proof that Boys was under Mr. Sesay's effective control at this time. It is obvious that Boys would have sought consent from the usual authorities and would have been under their command. There is no proof that Mr. Sesay knew Boys was present in Tongo mining. Mr. Sesay testified that Boys sought permission to leave Mr. Sesay in Freetown to see his family in Kailahun District.¹⁵¹³ Mr. Sesay was not cross-examined on the point of his knowledge of Boys' presence at this time. There is also no suggestion that Mr. Sesay knew that Boys was engaged in these purportedly wide-scale forced labour practices.

662. Fourth, and lastly, it is instructive that the Prosecution, when given the opportunity to do so, retreated from asking Defence witnesses about the presence of TF1-045, Pelleto, or Boys,¹⁵¹⁴ and their purported use of force.

663. The Prosecution failed to establish its claim that Mr. Sesay knew about forced labour in the Tongo Field area because he was the "chief of mining for the RUF".¹⁵¹⁵

¹⁵¹⁰ TF1-367/Transcript, 22 June 2006, pp. 3, lines 15 – 19.

¹⁵¹¹ TF1-367/Transcript, 23 June 2006, pp. 94, line 24 – pp. 95, line 6.

¹⁵¹² TF1-367/Transcript, 23 June 2006, pp. 94, line 24 – pp. 95, line 6.

¹⁵¹³ Sesay/Transcript, 8 May 2007, pp. 62, lines 14 – 22. Boys was not reporting Mr. Sesay at this time. Sesay/Transcript, 8 May 2007, pp. 64, lines 21 – 22.

¹⁵¹⁴ Each of DIS-069, DIS-124, DIS-127, DIS-157, DIS-188, DIS-281, and DIS-293 were not cross-examined on the presence of TF1-045, Pelleto, or Boys or whether any of them were engaged in forcing civilians to mine.

There is no evidence whatsoever to warrant this claim. The Prosecution has failed to prove that any 6(1) or 6(3) liability attaches to Mr. Sesay for enslavement in connection with mining at Cyborg Pit.¹⁵¹⁶

IX. The Retreat: counts 3-5, 6-9, 10-11, 13, 14

A. Crimes alleged in Bombali district during the ‘intervention period’

1. Pillage

664. The Prosecution, in Count 14 of the Indictment, alleges that Issa Sesay is responsible for looting and burning, constituting pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute. The Prosecution pleaded pillage in the following locations in Bombali district between 1 March 1998 and 31 November 1998: Karina and Mateboi.¹⁵¹⁷

a) Defects in pleading

(1) Allegations of crimes fall outside the temporal limits of Count 14

665. The Prosecution has pleaded pillage in Bombali from 1 March 1998 to 31 November 1998. This pleading was intended to encompass the alleged crimes committed by the AFRC in the Bombali district *post* intervention, and following Gullit’s departure from Koidu. The Defence were provided notice of these alleged crimes through paragraph 81 of the Indictment and latterly by the Supplemental Pre-trial Brief which, *inter alia*, makes reference to events which are alleged to have occurred after the majority of the SLA’s parted company with the RUF forces at Koidu and advanced towards Rosos, including the burning of Karina by the SLA, food finding missions by Brima, Kamara and Kanu, attacks on “Mandaha, Lohondi, Mateboi,

¹⁵¹⁵ Supplemental Pre-Trial Brief, Para. 193(b).

¹⁵¹⁶ Unlawful killings was not pleaded with respect to any mining area in Kenema District including Cyborg Pit. This is surprising given the Prosecution’s theory that the civilians would be beaten to death or outright killed if they refused to mine. The all times relevant allegation of child soldiers was also pleaded for Kenema District.

¹⁵¹⁷ Para. 81, Corrected Amended Consolidated Indictment.

Mafabu and Malama *en route to Rosos*” [emphasis added] and the sending of “an audio cassette with a civilian who had been amputated to Makeni warning the civilians of Makeni that they would meet a similar fate if they failed to rise up against ECOMOG and cooperate with the AFRC/RUF group”.¹⁵¹⁸

666. Self evidently this pleading was not intended to incorporate the period commonly known as ‘the intervention’ which commenced when the ECOMOG forces pushed the AFRC and RUF out of Freetown on 14 February 1998¹⁵¹⁹ and continued as the AFRC and RUF forces moved out of Freetown and East, through Bombali and into the Kono District along the Tonkolili highway. The forces arrived into the Kono District in late February/ early March 1998.¹⁵²⁰ It is submitted that any pillage which may have occurred in locations in Bombali during the movement of Brima through Northern Bombali, as alleged in Paragraph 81 of the Indictment, occurred several months after the intervention, was perpetrated by different groups with differently constituted chains of command and for different reasons.

667. As noted in the case of *Liddy*¹⁵²¹ an accused, “is entitled to be appraised not only of the legal nature of the offence with which he is charged but also of the particular act, matter or thing alleged as the foundation of the charge... there may be cases where even though the particulars of an offence is alleged to have been committed is not an element of the offence, it may be material to the integrity of the criminal process... the circumstances of the case, including the forensic issues raised at the trial such as alibi or lack of opportunity, may make the date vital”. Any defence to these two vastly different events is consequently significantly different. The first Accused was not present during the Gullit movement towards Freetown but was present during the intervention. The

¹⁵¹⁸ Supplemental Pre-trial Brief, Para. 271 -278.

¹⁵¹⁹ *Prosecutor v. Sesay et al.*, Consequential Order regarding Decision on Prosecution Motion for Judicial Notice and Admission of Evidence, Annex 1, para. V, 24th May 2005, SCSL-15-T-04-392. See also TF1-071/ Transcript 19 January 2005, pp. 24, lines 15-21 which puts the date of the intervention as 12th February 1998. It has been judicially noted at the ECOMOG intervention occurs in Freetown on about 14 February 1998.

¹⁵²⁰ TF1-071/ Transcript 19 January 2005, pp. 41, lines 14-26; TF1-360/ Transcript 20 July 2005, pp. 17 lines 8-15.

¹⁵²¹ *R v. Liddy* pp. 69.

Defence has accepted that some pillage occurred on the intervention. This has not been defended. The first Accused has not been given notice that the Prosecution alleged that any criminal responsibility for pillage in Bombali.

668. It is submitted that the alleged crimes of pillage occur either specifically prior to 1 March 1998 or in an undefined period likely to be prior to the start of the temporal jurisdiction of the court. This will be addressed in more detail in reference to specific allegations. It is submitted however that where (i) there is clear evidence that the allegation falls outside of the temporal jurisdiction of the charge or (ii) where it is unclear whether the allegation falls within the Indictment's temporal jurisdiction, the Trial Chamber should not make a finding of guilt in respect of the relevant allegation for the crime of pillage.

(2) Inadequate Notice

669. The Prosecution led evidence of pillage in the following locations which were not specified in the Indictment: between Masiaka and Makeni¹⁵²², Makeni¹⁵²³, Gbendembu¹⁵²⁴ and between Makeni and Koidu.¹⁵²⁵ The Prosecution failed to provide adequate notice, in the Indictment, the Pre-Trial Brief or the Supplemental Pre-Trial Brief of any of the allegations of pillage listed above. The allegations must be dismissed. In the event that the Trial Chamber permits the Prosecution to use evidence of pillage during the intervention to support Count 14 the Defence submits the following:

2. Karina

670. The only evidence of looting or burning occurring in Karina at the time of the retreat following the February 1998 intervention comes from TF1-117, in a highly

¹⁵²² Johnson/ Transcript 14 October 2004, pp. 56, lines 6-21; TF1-334/ AFRC Transcript 17 May 2005, pp. 80, lines 25-28; TF1-361/ Transcript 11 July 2005, pp. 71, line 25 – pp. 72, line 22.

¹⁵²³ Johnson/ Transcript 14 October 2004, pp. 54, line 13 – pp. 55, line 20; TF1-041/ Transcript 18 January 2005, pp. 40, line 1-25; TF1-174/ Transcript 20 March 2006, pp. 101, line 21 – pp. 103, line 14 and Transcript/ 24 March 2006, pp. 64, line 23 – pp. 66, line 10; TF1-334/ AFRC Transcript 17 May 2005, pp. 81, lines 2-13; TF1-360/ Transcript 20 July 2005, pp. 10, line 19 – pp. 12, line 2; TF1-367/ Transcript 22 June 2006, pp. 13, line 4-25.

¹⁵²⁴ TF1-174/ Transcript 20 March 2006, pp. 107, lines 18-27.

¹⁵²⁵ TF1-360/ Transcript 20 July 2005, pp. 12, line 23 – pp. 14, line 10.

unreliable account. TF1-117 testified that among other things, he left Makeni for Kabala in a group led by SAJ Musa, Gullit, 55 and CO Adama were also said to be present. He stated that the group moved through Karina. At Karina, they were told that the village was the hometown of President Kabbah and they should 'cut hands' there. TF1-117 went on to describe an attack on Karina in which the group burnt house, amputated hands and captured people before moving on to base in Kabala.

671. It is clear that this account cannot be credible. No other witness describes an attack on Karina during the time of the intervention. Gullit is in Kailahun having fled from Kono eastwards. The description of the attack on Karina is that of the attack that takes place when Gullit's group leaves Mansofinia and moves towards Rosos in May/June 1998.¹⁵²⁶

672. It is submitted therefore that there is no reliable evidence of the crime of pillage being committed in Karina during the period of the movement of the AFRC and RUF during the intervention.

3. Mateboi

673. The Prosecution adduced no evidence of looting in Mateboi during the retreat following the ECOMOG intervention in Freetown on about 14th February 1998.

4. How retreating forces were entitled to act vis-à-vis property

674. The Prosecution's case is misconceived and based on a fundamental misunderstanding of IHL. The notion that the junta forces (AFRC/RUF) were not entitled to appropriate public and private property in certain circumstances is not supported by IHL. Whilst not viewed as the legitimate government internationally, the junta was the government of Sierra Leone from 25 May 1997 until the time of the intervention in February 1998. As the government, they controlled the domestic administration of the country as well as negotiating with other countries, most notably during the Conakry Accords.

¹⁵²⁶ See Section on the Movement of SLA groups across Bombali towards the Western Area.

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675. As the government and/or a belligerent occupying force, the AFRC/ RUF were entitled to use public or private property where the appropriation was justified by military necessity or which constitute the legal rights and duties which apply to a belligerent occupying force.¹⁵²⁷ It is therefore submitted that the use of some types of property – including all government property, including residences, businesses, offices, vehicles, aircraft and all that belonged to the state, including all the countries natural resources. Members of the junta were permitted to appropriate both public and private property for governmental use in accordance with the IHL obligations, which arose as a result of being the government of the day. In accordance with its role as an occupying force, the junta had rights and obligations which it was required to fulfil towards the civilians which were impossible without the lawful appropriation of property. Furthermore the junta government and its allied troops were permitted to use public and private property, provided this was militarily necessary and did not constitute an attack on civilians or civilian objects. For the avoidance of doubt it is submitted that Sesay's use of vehicles to move on the retreat was permissible in law since it was government property and, given the nature of the retreat, militarily necessary. His encampment in various abandoned properties on the way to Koidu was similarly permissible, given the abandonment of those premises, the need for shelter for himself and his family. The use thereof offered a distinct military advantage, enabling escape and regroup.

(1) Legitimate use of property during the retreat

676. The bulk of the evidence adduced by the Prosecution shows the fighters taking vehicles for use in effecting a military retreat eastwards ahead of the advancing ECOMOG forces. Where the Prosecution has failed to detail the property that was taken, it is submitted that no criminal responsibility for pillage could arise. Many of the objects which were seized or destroyed by the fleeing troops would have provided a distinct military advantage to either side of the conflict. It was permissible to seize or destroy these items. Moreover the appropriation of items which could supply the basic needs of the civilian population which was travelling with the Junta east was, under

¹⁵²⁷ See Section 1, *supra*, on the law.

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limited conditions, not only permissible but required. The Junta had an active responsibility to provide necessary food stuffs and medical supplies to ensure the health and wellbeing of its civilians.¹⁵²⁸ The burden rests upon the Prosecution to prove that the items taken were not of the aforementioned nature or where not for these purposes. In the absence of information concerning the nature of the items the doubt must go to the Accused. The following evidence is pertinent to this argument.

- a. George Johnson described the taking of properties as he moved between Freetown and Makeni and describes the taking of vehicles and fuel in Makeni. He also describes the looting of businesses in Makeni but does not describe the properties taken or the type of stores entered.¹⁵²⁹ The Prosecution has failed to prove that the items were civilian objects.
- b. TF1-041 describes “heavy looting” taking place in Makeni but does not detail, in his evidence, which properties (aside from vehicles) were being taken.¹⁵³⁰ It is submitted given his description of taking of arms and ammunition from Teko barracks as well as vehicles from Makeni town, the Prosecution have failed to prove that the items were civilian object
- c. TF1-334, a SLA fighter, describes looting starting and Masiaka and proceeding on to Makeni following on from JPK announcing Operation Pay Yourself over the BBC. He did not specify which items were looted.¹⁵³¹
- d. TF1-360 describes the taking of vehicle en route to Makeni and the taking of munitions from Teko barracks.¹⁵³²
- e. TF1-366 states that he saw looting on the way to Masiaka and in Masiaka but does not specify the goods taken.¹⁵³³ He goes on to say Sesay ordered vehicles to be brought from Makeni to transport those in Masiaka to

¹⁵²⁸ AP1 Art 14 and GC IV, Art 55 – 57.

¹⁵²⁹ Johnson/ Transcript 14 October 2004, pp. 54, line 28 – pp. 55, line 8.

¹⁵³⁰ TF1-041/ Transcript 10 July 2006, pp. 39 line 29 – pp. 40 line 8.

¹⁵³¹ TF1-334/ AFRC Transcript 17 May 2005, pp. 74, lines 10-20. (Exh 119C)

¹⁵³² TF1-360/ Transcript 22 July 2005, pp. 51, line 16 – pp. 51, line 7.

¹⁵³³ TF1-361/ Transcript 7 November 2005, pp. 100 lines 9- 17, and pp. 103 lines 5-10.

Makeni that that this was done and he saw looting en route to Makeni.¹⁵³⁴

As detailed in paras X-Y below, TF1-366 describes Sesay shooting fighters who were deserting the frontline and looting during the retreat from Freetown to Makeni.¹⁵³⁵

- f. TF1-117 described taking property such as cars and money from people as he moved from Lunsar to Makeni through Port Loko¹⁵³⁶ as well as the looting of shops on Rogbaneh road and the taking of cutlasses from the agriculture store.¹⁵³⁷ It is submitted that the evidence given by TF1-117 is highly unreliable and should not be used to sustain a conviction on any count.

(2) Illegitimate use of property

677. It is accepted that some of the fighters committed crimes by taking property which could have had no military use. The illegitimate taking of property can be seen in the evidence of TF1-174 who describes fighters breaking doors of houses in Makeni and looting properties.¹⁵³⁸ Similarly TF1-371 describes the looting of homes in Makeni.¹⁵³⁹ In Makeni itself, TF1-334 describes shops and banks being broken into and his own participating together with ‘Bazzy’ in the looting of bank.¹⁵⁴⁰ Sesay confirmed in his own testimony that when he arrived in Makeni from the attack on Bo, he saw that some of the Lebanese shops in Makeni had been looted.¹⁵⁴¹

678. It is accepted that there was some looting in locations unspecified in the Indictment but it is submitted that the unlawful appropriation of property was on a far smaller scale than that alleged by the Prosecution.

¹⁵³⁴ TF1-361/ Transcript 7 November 2005, pp. 102 line 29- pp. 104, line 10.

¹⁵³⁵ TF1-366/ Transcript 7 November 2005, pp. 97 lines 1 – 26; Transcript 10 November 2005, pp. 82, lines 2-27; and TF1-366/ Transcript 14 November 2005, pp. 8, lines 22-25.

¹⁵³⁶ TF1-117/ Transcript 29 June 2006, pp. 101, line 13 – pp. 102, line 15.

¹⁵³⁷ TF1-117/ Transcript 29 June 2006, pp. 104, line – pp. 105, line 3.

¹⁵³⁸ TF1-174/ Transcript 20 March 2006, pp. 102, lines 1-16.

¹⁵³⁹ TF1-371/ Transcript of 20 June 2006, pp. 64, lines 4-24.

¹⁵⁴⁰ TF1-334/ AFRC Transcript 17 May 2005, pp. 81, lines 8-13. (Exh 119C)

¹⁵⁴¹ Sesay/ Transcript 9 May 2007, pp. 9, lines 10-11.

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679. Though the Prosecution sought to adduce evidence of retreating forces committing various crimes as they moved out of Freetown towards Kono, the evidence does not sustain the suggestion that the crimes were widespread or systematic. While it is accepted that there were fighters who committed crimes, such as looting of civilian property during the retreat, the evidence from the Prosecution and Defence suggests that these incidents were relatively few. Logic and the evidence show that the civilians left their villages and hid in the bushes whilst the thousands of troops and civilians made their chaotic retreat to the Kono District. This left many of the villages empty and the civilians safe. The fact that civilians left their premises does not support the suggestion that this was an attack directed at civilians, or a campaign of terror.¹⁵⁴² The fact that the Defence was able to adduce unshaken testimony from civilians who lived on the route of the intervention who confirmed that their villages remained safe is significant.

680. DIS-046, for example, was living in Makali during the time of the retreat [REDACTED]. He testified that they fled the town when they heard sporadic firing but when they returned, they found that nothing in the town had been damaged and no civilian complained to him about being mistreated by the fighters in the intervention period. No one complained to him about being abducted or knowing anyone who had been abducted.¹⁵⁴³ DIS-031 was in Makeni at the time of the intervention and stated that though he heard that fighters were stealing property, he did not see it himself. Aside from rumours about stealing he did not hear about or witness the fighters commit any crimes.¹⁵⁴⁴

681. In the event that the Trial Chamber disagrees with the aforementioned the Defence submit that the first Accused is not criminally liable pursuant to 6(1) and 6(3) for the following reasons.

¹⁵⁴² See *Prosecutor v. Haradinaj, Balaj and Brahimaj*, IT-04-84-T, Judgement (Trial Chamber I), 3 April 2008, para. 118.

¹⁵⁴³ DIS-046/ 15 February 2008, pp. 74, line 18 – pp. 78, line 9 and Transcript/ 18 February 2008, pp 27, lines 1- 28.

¹⁵⁴⁴ DIS-031/ Transcript 22 February 2008, pp. 115, line 18 – pp. 118, line 8.

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5. Sesay's lack of command responsibility

a) Absence of command and control of fighters coming out of Freetown

682. There was little or no command and control on the retreat. The evidence points overwhelmingly to this conclusion. The loss of control was first and foremost a natural result of the military situation. It is submitted that the ECOMOG intervention in Freetown in February 1998 precipitated mass panic amongst the AFRC and RUF fighters and amongst their families and other civilians likely to be held as collaborators by the returning Kabbah government. ECOMOG had trapped the junta within Freetown.

683. Additionally, that command structures quickly broke down at the time of the intervention was a direct result of the weak military structures in place in the last few months of the junta governments. As detailed above in the Section on Freetown during the junta period, there had been a growing distrust between the RUF and AFRC commanders and fighters in Freetown which, it is submitted, contributed, not only to the instant fall of the government but also the loss of command and control over the lower ranks when ECOMOG began to take control of Freetown.

684. Additionally, it is clear that the convoy of troops moving eastwards was several thousand strong. While there may have been pockets of command it is submitted that it is impossible that such a large group of people, whose mass movement was as a result of an unforeseen attack, could move in an organized and controlled manner. There is no evidence for example of a widespread system of communications in place that would link the thousands of fighters on the move to low, mid and high level commanders. That, as outlined below, fighters had such inconsistent accounts of who was actually in control during the movement underscores the lack of command and control of this large and sudden movement of persons.

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685. Fighters and civilians fearing the label of ‘collaborator’ sought to move eastwards as quickly as possible to avoid the advancing ECOMOG forces. As noted by TF1-071 the flight from Freetown as chaotic: “we are disorganised because of the panic and everybody was just trying to survive for his life.... we were not in any position to fight and we are not even having any plan to fight except to retreat, that's all.”¹⁵⁴⁵

686. TF1-361 agreed that there was “general panic” as everyone tried to get out of Freetown and everyone was looking out for themselves.¹⁵⁴⁶ TF1-360 describes thousands of people pouring into Makeni at the time of the intervention within fighters running with their families away from the attacking ECOMOG forces. He states that while some units such as bodyguards units retained some structure, “to say everything was well organised like this was a brigade in Makeni, that was not what was obtained during that period”.¹⁵⁴⁷

687. TF1-174 describes the looting commencing when a jet dropped a bomb on the police station before the intervention, sending the whole town into confusion as people believed the bombing heralded the ECOMOG advance into Makeni.¹⁵⁴⁸ TF1-334 stated that following a BBC interview in which JPK ordered Operation Pay Yourself, there was no longer a strong command structure as people sought to get items to take with them as they left. TF1-334 goes on to say that while the Honourables maintained control over their bodyguards, command and control was not regained in its entirety until the fighters regrouped at Kabala.¹⁵⁴⁹

TF1-366 describes a panicked, disordered retreat from Freetown in February 1998. He states in answer to the following question from Counsel:

“Q: There was no marching in an ordered fashion out of Freetown, was there, in brigade structure?”

In fact, we were pushed out in a disgrace. We didn't move out respectfully.”

¹⁵⁴⁵ TF1-071/ Transcript 24 January 2005, pp.102 line 13 – pp. 104 line 3.

¹⁵⁴⁶ TF1-361/ Transcript 15 July 2005, pp. 9, lines 10-18.

¹⁵⁴⁷ TF1-360/ Transcript 22 July 2005, pp. 49, line 24 – pp. 52, line 3.

¹⁵⁴⁸ TF1-174/ Transcript 20 March 2006, pp. 101 line 21 – pp. 102 line 8. (Exhibit 119C)

¹⁵⁴⁹ TF1-344/ Transcript 6 July 2005, pp. 101, line 1 – pp. 102, line 13 and pp. 105, lines 12 -27.

b) Absence of de facto effective command by Sesay

688. In the event that the Trial Chamber find the existence of some command and control over the fighters in Bombali district at the time of the intervention, it is submitted that the evidence shows an absence of *de facto* effective command and control by Sesay over the retreating fighters or perpetrators of crimes.

689. It is not disputed that fighters from the RUF, SLA and STF fled Freetown and moved through Bombali in February 1998. Additionally, civilians fearing that they would be targeted as collaborators as the junta regime collapsed fled with them. While the Prosecution has adduced limited evidence of illegitimate use of property by fighters, they had failed to identify with any degree of specificity who the physical perpetrators were, the existence of a superior/subordinate relationship or any material ability to prevent and punish. .

c) No command over the SLA

690. The RUF and AFRC always maintained independent chains of command.¹⁵⁵⁰ The Prosecution adduced no evidence to show that Sesay was in de facto effective control of SLAs during the junta period. It submitted that, during the retreat, SLA fighters such as TF1-184, [REDACTED] George Johnson, Bazy's security, would not have regarded Sesay as being in de facto command and control of them. Indeed both remained with the command structure of the junta and reported to their bosses, [REDACTED] Bazy, respectively. In any event precisely how could Sesay have prevented or punished them or any other men on the retreat? Sesay tried this in Bo and was shot in reprisal (see below).

d) Fighters based in Makeni at time of the intervention not under Sesay's control

691. It is not in disputed that both the AFRC and RUF had fighters based in Bombali district (with the military HQ being Teko barracks in Makeni) during the time of the

¹⁵⁵⁰ TF1-045/ Transcript 22 November 2005, pp. 69, line 1 – pp. 72, line 12.

AFRC government. TF1-174 and TF1-361 suggest that Colonel Isaac Mongor was the highest RUF commander based in Bombali during that time.¹⁵⁵¹

692. The evidence of TF1-174 shows the beginning of looting in Makeni occurred when a jet bombed a police station in Makeni, leading fighters to believe that an ECOMOG advance was imminent.¹⁵⁵² It is submitted, therefore, that the fighters based in Bombali district started looting at the time of the intervention when Sesay was still in the vicinity of the Western Area and Masiaka. It is not realistic to expect one man to have intervened. Command Responsibility does not demand the impossible.

e) Sesay wounded in Bo attack and his consequent late arrival in Makeni

693. It is not disputed that following the ECOMOG intervention in Freetown, Sesay left Masiaka at the point when JPK and other senior commanders had already arrived and was involved on an unsuccessful attack in Bo. Prosecution witnesses TF1-036¹⁵⁵³, TF1-167¹⁵⁵⁴, TF1-334¹⁵⁵⁵ and TF1-371¹⁵⁵⁶ all gave evidence that Sesay had been wounded on this attack. The wound was not life threatening but the scar attest to the relative severity. This- if not the situation – made it impossible to exercise command functions, or intervene to try to calm the situation.

694. It is clear that because of his leaving Masiaka to attack Bo and being wounded in that attack, Sesay arrived in Makeni after many, if not most, of the fighters and the other senior commanders. TF1-334, who also participated in the attack on Bo, confirms that JPK and other senior commanders left Masiaka for Makeni while the group was in

¹⁵⁵¹ TF1-174/ Transcript 20 March 2006, pp. 100, lines 12 – 25; and TF1-361/ Transcript 18 July 2005, pp. 8, lines 18-20.

¹⁵⁵² TF1-174/ Transcript 20 March 2006, pp. 101-102.

¹⁵⁵³ TF1-036/ Transcript 29 July 2005, pp. 65, line 4 – pp. 67, line 5.

¹⁵⁵⁴ TF1-167/ Transcript 19 October 2004, pp. 17, line 8 – pp. 18, line 2.

¹⁵⁵⁵ TF1-344/ Transcript 6 July 2006, pp 108, lines 2-11.

¹⁵⁵⁶ TF1-371/ Transcript 20 July 2006, pp. 64, lines 11-17.

Bo and that he was unable to comment on events in Makeni until he arrived later on to find Makeni full of RUF and SLAs.¹⁵⁵⁷

695. Similarly, TF1-371 noted that Sesay remained behind in Masiaka recuperating from the wounded sustained in the Bo attack while the other senior commanders proceeded on to Makeni.¹⁵⁵⁸

696. It is submitted therefore that by reason of Sesay's injury sustained in the Bo attack and the fact that Sesay arrived in Makeni days later than other senior commanders, it would have been impossible for him to wield any command and control over the fighters that had moved into Bombali before he arrived. The retreat was characterised by a breakdown in lack of overall organisation: there were for example no muster parades to pass orders and instructions to fighters, no military formations, no evidence of effective radio communications. It is submitted that such organization would have been impossible given the large scale panicked exodus of people from Freetown.

f) Sesay's lack of command: role of Superman and JPK

697. Whilst Sesay was the *de jure* BGC and thus expected to be able command Superman and the other RUF men the evidence shows that his *de facto* command was considerably less, and at this time conclusively limited to influence over his immediate men. The *de facto* leader was JPK and the *de facto* BGC was in fact Superman. TF1-071 gave evidence about Superman calling a meeting in Masiaka at which Superman declared Operation Pay Yourself to the fighters and later giving an order for fighters to move to Makeni.¹⁵⁵⁹ In Makeni, TF1-071 describes Superman speaking at a muster parade at Teko barracks and informing the fighters that Bockarie had ordered that they travel to Kailahun through Kono.¹⁵⁶⁰ TF1-184 indicated that as the AFRC and RUF fled from Freetown, Superman was the commander for the RUF fighters.¹⁵⁶¹ TF1-334 stated

¹⁵⁵⁷ TF1-344/ Transcript 6 July 2006, pp. 105, line 28 – pp. 106, line 15 and pp. 108, lines 12- 23.

¹⁵⁵⁸ TF1-371/ Transcript 28 July 2006, pp. 52, line 7 – pp. 55, line 26.

¹⁵⁵⁹ TF1-071/ Transcript 19 January 2005, pp. 26, line 7 – pp. 27, line 25.

¹⁵⁶⁰ TF1-071/ Transcript 19 January 2005, pp. 29, lines 3-13.

¹⁵⁶¹ TF1-184/ Transcript 5 December 2005, pp. 8, lines 18-26.

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that JPK gave the order for Operation Pay Yourself in an interview with the BBC while in the peninsula, after which looting started by both the SLA and RUF.¹⁵⁶²

698. TF1-361 stated that JPK was in command of both the RUF and SLA in Makeni during the intervention and that it was Superman who held a meeting at a house in Makeni and briefed fighters on the situation and who led the convoy from Makeni towards Kono.¹⁵⁶³ In cross-examination for Sesay, TF1-361 accepted that he did not see Sesay at the meeting in Makeni despite so alleging in this direct examination.¹⁵⁶⁴ TF1-371 stated that Sesay was on the attack on Bo at the time that a meeting was held of senior commanders in Masiaka. Sesay arrived 2 days later and remained in Masiaka for several days recuperating from a wound sustained in the attack on Bo while senior commanders such as JPK and Superman moved ahead to Makeni.¹⁵⁶⁵

g) Inconsistent accounts as to the ordering of Operation Pay Yourself

699. The Prosecution have failed to prove that Sesay ordered OPY. First, the Prosecution evidence is widely inconsistent. The evidence from Prosecution witnesses who testified that Sesay was involved in the ordering of Operation Pay Yourself clearly made assumptions about what Sesay would have done by virtue of his *de jure* authority. The evidence implicating Sesay is wholly unreliable and third, there is a body of evidence which demonstrates beyond a reasonable doubt that Sesay was bitterly opposed to the taking of civilian properties.

700. The various accounts of when Operation Pay Yourself occur are set out below:

- a. TF1-041 said he met Operation Pay Yourself going on in Makeni when he arrived there during the February 1998 retreat from Freetown.¹⁵⁶⁶

¹⁵⁶² TF1-334/ AFRC Transcript 17 May 2005, pp. 74, lines 10-20 (Exhibit 119)

¹⁵⁶³ TF1-361/ Transcript of 11 July 2005, pp. 73, line 3 – pp.74, line 14.

¹⁵⁶⁴ TF1-361/ Transcript of 15 July 2005, pp. 9, line 28 – pp. 10, line 23.

¹⁵⁶⁵ TF1-371/ Transcript 28 July 2006, pp. 52, line 7 – pp. 55, line 26.

¹⁵⁶⁶ TF1-041/ Transcript 10 July 2005, pp. 40, lines 1-25.

- b. TF1-071 stated that Superman ordered Operation Pay Yourself at a meeting in Masiaka at which Sesay was present.¹⁵⁶⁷
- c. TF1-117 stated that he heard from soldiers near Waterloo that JPK had ordered Operation Pay Yourself.¹⁵⁶⁸
- d. TF1-141 stated that Operation Pay Yourself occurred in Koidu the night before the Kamajors re-took Koidu and put tyres on people and set them alight.¹⁵⁶⁹ It is submitted at this stage that the Kamajors took Koidu before the convoy coming out of Freetown enters Koidu.
- e. TF1-174 stated that the RUF and AFRC in Makeni started to say it was Operation Pay Yourself when a jet dropped a bomb on a police station in Makeni.¹⁵⁷⁰
- f. TF1-334 stated that Operation Pay Yourself was announced by JPK in a BBC interview while JPK was still in Freetown.¹⁵⁷¹
- g. TF1-360 stated that Morris Kallon told him that Sesay, at a meeting at Flamingo nightclub in Makeni, ordered fighters to take vehicles and food and move into the bush and that this was Operation Pay Yourself.¹⁵⁷²
- h. TF1-361 stated that Operation Pay Yourself was occurring between Masiaka and Makeni but gives no details of whether it was ordered or whether it was spontaneous action on the part of retreating combatants.¹⁵⁷³
- i. TF1-366 stated that he saw looting and burning of houses as part of Operation Pay Yourself in Masiaka¹⁵⁷⁴ and it continued through Makeni to Kono. He stated that it was ordered by Sesay, Morris Kallon and Superman. In cross examination, however, TF1-366 stated that Operation Pay Yourself started in Makeni pursuant to an order given by Sesay and Morris Kallon. When reminded of his earlier testimony of 7 November

¹⁵⁶⁷ TF1-071/ Transcript 19 January 2005, pp. 26 line 1 – pp. 27, line 18 and Transcript 24 January 2005, pp. 95, line 12 – pp. 110, line 6.

¹⁵⁶⁸ TF1-117/ Transcript 29 June 2006, pp. 100-102.

¹⁵⁶⁹ TF1-141/ Transcript 18 April 2005, pp. 31, line 22 – pp. 35, line 26.

¹⁵⁷⁰ TF1-174/ Transcript 20 March 2006, pp. 101-102.

¹⁵⁷¹ TF1-344/ AFRC Transcript 17 May 2005, pp. 69-74.

¹⁵⁷² TF1-360/ Transcript 19 July 2005, pp. 9-12 and Transcript 22 July 2005, pp. 55-58.

¹⁵⁷³ TF1-361/ Transcript 11 July 2005, pp. 71-72.

¹⁵⁷⁴ TF1-366/ Transcript 7 November 2005, pp. 100, line 2-17.

2005, he agreed that the operation started in Masiaka but it was not until Makeni that the order for it was given. TF1-366 agreed that he made no mention of Operation Pay Yourself in his interviews with the Prosecution until August 2005 (p. 13699) when he stated that Morris Kallon ordered the Operation when he was between RDF and Masiaka and that it was Kallon who gave him the order to collect the vehicles. TF1-366 said that he said that Sesay and Kallon gave the order and that Sesay himself when in Makeni ordered the witness to bring him a vehicle. TF1-366 stated that Sesay gave orders for Operation Pay Yourself in Masiaka and in Makeni. It was not until his interview with the Prosecution on 19th October 2005 – 20 days before he started his testimony – that he implicated Sesay in giving an order for Operation Pay Yourself.¹⁵⁷⁵

h) Accounts which indicate that others ordered Operation Pay Yourself

701. There is therefore no one clear consistent account of the ordering of Operation Pay Yourself either prior or during the taking of properties in Bombali district in 1998. Indeed, what the Trial Chamber is faced with is prosecution witnesses TF1-117 and TF1-344 giving evidence of the operation being ordered by JPK while he was in the Western Area, TF1-071 stating the order was given by Superman at a meeting in Masiaka, TF1-360 saying that Kallon told him that Sesay gave the order in a nightclub in Makeni and TF1-366 giving varying accounts but seeming to suggest it was an order given by Sesay, Kallon and Superman in Makeni despite the operation starting at Masiaka. It is also notable that the senior commander TF1-371, who might have been expected to have been present at meeting or at least aware of the giving of such an order, gave no evidence at all about Operation Pay Yourself.

702. In the face of such disparate evidence – all from witnesses called on behalf of the Prosecution – it is submitted that there is no reliable evidence to show that Operation Pay Yourself was an order from Sesay. The overwhelming likelihood is that it was a

¹⁵⁷⁵ TF1-366/ Transcript 7 November 2005, pp. 108, line 5-19 and Transcript 14 November 2005, pp. 3, line 21 – pp. 8, line 2.

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spontaneous response to a desperate situation; the Junta being pushed into the bush, away from the luxury of the city. In the alternative, given it appears to have begun fairly early in the intervention there is ever possibility that TF1-334's recollection was correct and Operation Pay Yourself was announced by JPK in a BBC interview while JPK was still in Freetown.¹⁵⁷⁶ This would mean that any subsequent order would have been otiose, non-operative; there would have been no causal link with the order and the crimes.

i) Sesay's presence at a meeting where Superman orders Operation Pay Yourself

703. It is worth noting at this stage that there is no corroboration of Sesay's presence at a meeting in Masiaka where Operation Pay Yourself was ordered. Indeed, TF1-371 stated that Sesay was on the attack on Bo at the time of a meeting in Masiaka and does not state that any such order was given by Superman at that meeting.¹⁵⁷⁷

(1) De jure authority without effective control

704. Johnson stated in evidence that SAJ Musa was the head of the SLAs in Makeni while Sesay was the head of the RUF. Johnson gives no evidence about any actions taken by Sesay in his role as head of the RUF.¹⁵⁷⁸ It is submitted that Johnson has extrapolated from Sesay's de jure authority as held in the junta period to assuming that he bore de facto command during the retreat and the Trial Chamber ought not, therefore, to rely on this evidence as evidence of any effective command and control on the part of Sesay in Bombali district

705. Similarly, TF1-360 stated that Morris Kallon informed him that Sesay ordered fighters to take vehicles and food and prepare to move into the bush, signaling the start of Operation Pay Yourself in Makeni. TF1-360 also noted that it was Superman who led the convoy from Makeni to Kono.¹⁵⁷⁹ In cross-examination, TF1-360 stated that he believed that there was a meeting at the Flamingo nightclub at which Sesay gave this

¹⁵⁷⁶ TF1-344/ Transcript 6 July 2006 p100, lines 2-8

¹⁵⁷⁷ TF1-371/ Transcript 28 July 2006, pp. 52, line 7 – pp. 55, line 26.

¹⁵⁷⁸ Johnson/ Transcript 14 October 2004, pp. 52, lines 5-8.

¹⁵⁷⁹ TF1-360/ Transcript 20 July 2005, pp. 9, line 24 – pp. 11, line 29.

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order as this was what he was told by Kallon and that it was impossible that Sesay did not order Operation Pay Yourself as he was the RUF high command in Makeni during that period.

So, whosoever delivered a message to us that that was what Issa Sesay said, we believed because we worked according to commands, and commands stem from the top unto the bottom....I am confirming it to you that any instruction, whether it's emanated from JPK, I don't know. What I know is that Issa was our boss and it was from him that we received information. Those people that belonged to the AFRC, they had their information from their bosses, and we had our own information from our boss, Issa. That's what I know.¹⁵⁸⁰

706. It is submitted that the Trial Chamber should not rely on the evidence of TF1-360 as evidence of Sesay having effective command and control in Bombali district. First, it is clear that TF1-360 had difficulty distinguishing de facto and de jure authority. Second, the evidence is weakened both by being hearsay and by a lack of corroboration from any other witness. Third, there is no corroboration from any other witnesses of a meeting of senior commanders at the Flamingo nightclub. It is noted that senior commander TF1-371 has no recollection of any meeting at Flamingo but rather recalls a meeting at Teko barracks.¹⁵⁸¹ Fourth, there are multiple inconsistent accounts of the delivering of the order for Operation Pay Yourself, none of which corroborate it being an order given by Sesay in Makeni.

707. In relation to the evidence of TF1-366, it is submitted that his account of Sesay giving an order is highly unreliable. TF1-366's account is weakened by his varying accounts of the circumstances in which the order was passed. He makes no mention of the operation at all until August 2005 when he said that Kallon ordered it between RDF and Masiaka, before then in evidence saying that Sesay and Kallon ordered it in Masiaka and Makeni, contradicting his examination in chief. His implication of Sesay occurred 20 days prior to testifying and it is clear from the transcript that he simply refused to separate the claim that Sesay ordered him to obtain a vehicle from the crime

¹⁵⁸⁰ TF1-360/ Transcript 22 July 2005, pp. 54, line 23 – pp.

¹⁵⁸¹ TF1-371/ Transcript 31 July 2006, pp. 11, line 3 – pp. 12, line 27.

of ordering thousands of men to pillage. Moreover in characteristic TF1-366 style, the witness in his August 2005 interview stated it was Kallon who ordered him to get the vehicles, once more amply demonstrating his hostile animus for Sesay. Even taken at face value, this is not corroboration that Sesay, Kallon and Superman jointly gave an order for Operation Pay Yourself in Makeni (nor is there any corroboration for any other account of Operation Pay Yourself given by the witness in his statements or testimony).

j) Sesay's attempts to prevent and punish acts of pillage

708. Throughout the Prosecution case, there is evidence demonstrating Sesay's opposition to the commission of crimes against civilians, including looting and burning.

(1) Prosecution witnesses

709. TF1-114 gives evidence stating that Sesay expressly ordered that Makeni should not be burnt during the retreat from Freetown in February 1998.¹⁵⁸²

710. TF1-366 gives cogent evidence of Sesay's attempts to prevent and punish fighters from looting and burning during the intervention period. TF1-366 describes Sesay's shooting of a RUF fighter, Lt. Jeff at Four mile during the retreat from Freetown in February 1998 for looting a bicycle.¹⁵⁸³ TF-366 also states that Issa Sesay started killing fighters for looting and for leaving the frontline.¹⁵⁸⁴ It must be acknowledged that Sesay does not recall these events but it would not be inconsistent with this general practice.

711. On the attack on Koidu in December 1998, led by Sesay, TF1-366 described the RUF fighters killing captured ECOMOG as the fighters did not want Sesay to become aware that they were looting the ECOMOG fighters. TF1-366 detailed an incident where two ECOMOG captured at Kimberlite were taken to Sesay and one reported that his money had been stolen by and RUF fighter. Sesay ordered that they beat the RUF fighter and put him in a cell until he produced the money. TF1-366 stated that this

¹⁵⁸² TF1-114/ Transcript 28 April 2005, pp. 111, lines 4-10.

¹⁵⁸³ TF1-366/ Transcript 7 November 2005, pp. 97 lines 1 – 26 and Transcript 10 November 2005, pp. 82, lines 2-27.

¹⁵⁸⁴ TF1-366/ Transcript 14 November 2005, pp. 8, lines 22-25.

information spread and after that fighters were afraid to take to Sesay the ECOMOG soldiers that they had robbed. The witness confirmed that Sesay ordered the execution of soldiers who looted and this was a reason that fighters killed looted ECOMOG soldiers.¹⁵⁸⁵

712. Furthermore, during the attack on Makeni in December 1998, TF1-366 described Sesay as giving orders to fighters under his command not to loot or burn Makeni as it was his and Foday Sankoh's home town and it was where the RUF headquarters were.¹⁵⁸⁶ It would be curious indeed for Sesay to have abandoned such circumspection only 9 months earlier.

713. TF1-041 was [REDACTED]. He gives evidence about Sesay's commitment to ensuring civilian welfare while in command of Makeni in 1999. This included the setting up of the RUF investigative units and instructing those under his command to work for civilian welfare. This included prohibitions against looting and pillage.¹⁵⁸⁷

714. TF1-078 was a civilian living in Kono district and gives evidence about Sesay's commitment to civilian welfare –including the preventing and punishing of looting and burning - in Kono, Masingbi, Magburaka, Makeni 'and all RUF areas under his control' during Sesay's residence in Kono.¹⁵⁸⁸

¹⁵⁸⁵ TF1-366/ Transcript 10 November 2005, pp. 91, line 23 – pp. 92, line 28 and Transcript 9 November 2005, pp. 11, lines 1-27.

¹⁵⁸⁶ TF1-366, 10 November 2005, pp.84-85, lines 19-20, 22-23, 29, 1-3

¹⁵⁸⁷ TF1-041, Transcript 10 July 2006, p 77, line 19 – p. 83, line 19 and pp. 81, line 25 – pp. 84, line 12.

“Q. And he had made it clear to you and various other RUF, impositions of responsibility, that he regarded the following as completely unacceptable. One, looting; is that correct? A. Yes. In Makeni, yes. Q. Well, that's where we are at, Mr Witness. That's where we are at? A. Yes. Q. Abduction of women, completely unacceptable? A. Yes, by force, he did not accept it during that time .Q. Well, we are in this time and we are in Makeni, so you don't need to qualify it. Assault on any civilian, unacceptable; he made that clear, did he not? A. Yes. Q. Unacceptable burning or destruction of civilian property, correct? A. Yes. Q. And I suggest it went without saying but he did say killing of civilians completely unacceptable? A. Yes. Q. And when it was reported to him, can you confirm that women had been mistreated by rebels, you saw him take action; am I correct about that? A. Yes. He took action, yes.”

¹⁵⁸⁸ TF1-078/ Transcript 25 October 2004, pp. 83 line 5 – pp. 87, line 17.

715. TF1-314 gives evidence about Sesay executing people who had raped while in Makeni in 1999. The witness also confirmed that Sesay gave orders prohibiting looting, burning or harassing of civilians. TF1-314 stated that if you looted you would have to return the items to the civilian and be flogged or locked in the guard room, on the orders of Sesay.¹⁵⁸⁹

(2) Defence witnesses

716. Twelve civilian witnesses and four RUF insiders¹⁵⁹⁰ who were living in Makeni in early 1999 gave evidence that Sesay took actions to ensure that civilians were protected from looting, burning or raping. Specifically that Sesay imposed a system of laws to which RUF subordinate to Sesay were subject.¹⁵⁹¹, that Sesay reassured civilians from the outset that his message was one of peace¹⁵⁹² and that civilians felt secure under his mandate¹⁵⁹³ because he ensured that burning, looting and rape were not a feature of their lives¹⁵⁹⁴. In Makeni a peace committee was set up staffed by civilians to liaise between Kamajors and RUF to ensure peace was maintained¹⁵⁹⁵. Sesay issued a standing order against rape¹⁵⁹⁶ and there were heavy punishments for RUF who raped¹⁵⁹⁷ or looted¹⁵⁹⁸. DIS-163 told the court that “to my knowledge he (Sesay) was a

¹⁵⁸⁹1589 TF1-314/ Transcript 4 November 2005, pp. 52 line 19 – pp. 55, line 16.

¹⁵⁹⁰ DIS-010, DIS-015, DIS-046, DIS-017, DIS-034, DIS-009, DIS-031, DIS-103, DIS-027, DIS-018, DIS-171, DIS 022 and DIS-127, DIS-163, DIS-188 and DIS-214

¹⁵⁹¹ DIS-010/Transcript 15 February 2008, pp. 10, line 20 – pp.11, line 20. Civilians fled town to villages when heard shooting. After two weeks Issa Sesay sent a message asking people to leave the village and come to Makeni for a meeting at Mena hill. 300 people (civilians and soldiers) were there. Issa Sesay said he would put laws in place so that no one would harass them (civilians) anymore. He said he didn't want to hear that anyone had been raped, harassed or property looted. Also DIS-017/Transcript 18 February 2008, pp.42, line 21 – pp.43, line 3 “Issa told us that nobody should shoot, loot, rape, that nothing bad should be done. That women should be respected. He told us that he would deal with anyone who broke the law- that they would be punished”

¹⁵⁹² DIS-034/Transcript 18 February 2008, pp.80, line 2 – pp.82, line 25 RUF “first came to Masingbi to Colonel Amidu. They told him they had come for peace. There was a message written on the wall with charcoal telling them not to run away. Pa Kapr who was in Masingbi ran away and told this witness in Makali. They came with guns but did not shoot. Issa told this witness and the people at Makali that they had come in peace – “we do not want you people to run away when you see us.”

¹⁵⁹³ DIS-017/Transcript 18 February 2008, pp. 40:3-9 “When Issa came the township was so peaceful. We hadn't any problem there. We used to pray with him. We slept well.”

¹⁵⁹⁴ DIS-017/Transcript 18 February 2008 , pp.44, line – 49, line 11. “We the civilians interacted with the soldiers. We greeted them. They greeted us. That was the way we lived there... “I did not hear about any raping, looting or houses burnt”.

¹⁵⁹⁵ DIS-046/Transcript 15 February 2008, pp.86, line 19 – pp.88, line 17

¹⁵⁹⁶ DIS-127/Transcript 12 February 2008, pp. 88 line 26 – 89, line 19

¹⁵⁹⁷ DIS-127/Transcript 12 February 2008, pp. 88, line 26 – pp.89, line 19

friend of civilians.”¹⁵⁹⁹, testimony that flies in the face of the Prosecution’s attempts to link Sesay to an agreement to loot, rape and pillage at a time when the weight of the evidence points to Sesay efforts to ensure the opposite.

B. No evidence substantiating an Act of Terrorism

717. The Prosecution must prove that the primary purpose of the enumerated crime was to spread terror among the civilian population.¹⁶⁰⁰ The evidence must be capable of supporting an irresistible inference that the crimes of unlawful killings, sexual and physical violence and enslavement were committed with the primary purpose of spreading terror.

718. What is striking about the evidence of unlawful killings, sexual and physical violence and enslavement is how little of it there is. The retreat consisted of thousands of fighters streaming out of Freetown into the provinces and yet there is relatively little evidence of crime occurring.

719. It is clear that any crimes committed by fighters that occurred in Bombali during the retreat were not primarily motivated by an objective to inflict terror on the civilian population. Rather the evidence adduced by the Prosecution demonstrated that most of the fighters and civilians fleeing the ECOMOG advanced were concerned with their safety and the safety of their families and so were determined to move eastwards as quickly as possible for their own security. The relatively paucity of offences indicates the presence of small criminal elements within the fighting forces who took advantage of the chaos of the retreat and the consequent disruption of systems of investigation and punishment to commit crimes. This is not to say that relative few incidents of rape and

¹⁵⁹⁸ DIS-010/Transcript 15 February 2008, pp. 15, line 6-14 and pp.20, line 2-6 Mr. Abass told this witness that Issa Sesay shot nine people who broke the law.. “There was nothing to be afraid of anymore.”

¹⁵⁹⁹ DIS-163/Transcript 14 January 2008, pp. 36, line – 37, line 4

¹⁶⁰⁰ “Primary” does not mean that the infliction of terror is the only objective of the acts or threats of violence. Other purposes may exist simultaneously with the purpose of spreading terror among the civilian population (provided that the intent to spread terror is principal among the aims of the acts of violence). *Prosecutor v. Dragomir Milosevic*, IT-98-29/1-T, Judgement (Trial Chamber III), 12 December 2007, para. 879, citing Galić Appeal Judgement, para.104. (*Prosecutor v. Galic*, IT-98-29-A, Judgement (Appeals Chamber), November 30, 2006 para. 104).

killings will not have the effect of spreading terror, but rather the spread of terror was not a principal aim of the fighters if and when they committed crimes on the retreat.

C. No evidence substantiating Collective Punishments

720. The Prosecution must prove that the enumerated crimes were punishment imposed collectively upon, here, the civilian population for omissions or acts that they did not commit. The Prosecution further have to prove that Sesay intended such a collective punishment. It is clear that the relatively few crimes committed on the retreat from Freetown were not committed in order to punish the civilian population, but were rather fighters seizing an opportunity in the chaos of the retreat to act unlawfully. Further, the Prosecution have adduced no evidence to showing Sesay had the requisite intention.

X. The District of Kono: counts 3-5, 6-9, 10-11, 13, 14

721. The Prosecution case in relation to the Kono crime base would appear to be based on the following global propositions:

- a. The crimes alleged in counts 3 to 13 inclusive were done as part of an organised campaign with the primary intention being to terrorise and collectively punish the civilian population¹⁶⁰¹ of the Republic of Sierra Leone;
- b. The unlawful killings, sexual and physical violence, use of child soldiers, enslavement and pillage which formed some of the activities in the Kono district by RUF and AFRC combatants, during the relevant time were the result of a policy which was agreed upon and contributed to by the first Accused;¹⁶⁰²
- c. The First Accused planned, instigated, ordered, committed, or otherwise aided and abetted the crimes and was responsible pursuant to Article 6(3) for failing to prevent or punish the physical perpetrators.

¹⁶⁰¹ Prosecution Supplemental Pre-trial Brief, Para. 14 – 16.

¹⁶⁰² For example: Prosecution Supplemental Pre-trial Brief, Para. 15, 36, 37, 83, 84 and 133.

722. At the outset of the case the Prosecution also alleged that. Sesay's contribution to these crimes were as follows:

- a. that Sesay was the BGC and the Mining Commander for the AFRC/RUF hierarchy;¹⁶⁰³
- b. that Sesay arrived in Kono, along with other senior AFRC/RUF commanders approximately one week after the start of the ECOMOG intervention;¹⁶⁰⁴
- c. that there were meetings of senior AFRC/RUF commanders in Kono and Kailahun Districts in 1998 "aimed primarily at maintaining control of Kono District";¹⁶⁰⁵
- d. the execution by the AFRC/RUF forces of "Operation No Living Thing" while the AFRC/RUF regrouped and controlled Koidu Town and Kono District following the ECOMOG intervention;¹⁶⁰⁶
- e. that Sesay was in charge of mining in Kono District,¹⁶⁰⁷ including abduction for man power¹⁶⁰⁸ and told civilians at a meeting in Koidu that they would mine for the "movement" and would face disciplinary measures including execution.¹⁶⁰⁹ This forced mining was then used to finance the movement to fund "arms, ammunition and medicine";¹⁶¹⁰
- f. that Sesay was present when JPK told other commanders that "the people of Koidu were not good people and that any civilian close to their location should be killed";¹⁶¹¹
- g. that Sesay was present at a meeting following the arrival of JPK which all civilians were "forced to attend and where four civilian men and two civilian women who attempted to run were killed by armed AFRC/RUF men";¹⁶¹²

¹⁶⁰³ Prosecution Supplemental Pre-trial Brief, Para. 38.a.

¹⁶⁰⁴ Prosecution Supplemental Pre-trial Brief, Para. 38.d.

¹⁶⁰⁵ Prosecution Supplemental Pre-trial Brief, Para. 37.g

¹⁶⁰⁶ Prosecution Supplemental Pre-trial Brief, Para. 37.e.

¹⁶⁰⁷ Prosecution Supplemental Pre-trial Brief, Para. 201.c.

¹⁶⁰⁸ Prosecution Supplemental Pre-trial Brief, Para. 201.e.

¹⁶⁰⁹ Prosecution Supplemental Pre-trial Brief, Para. 37.g.

¹⁶¹⁰ Prosecution Supplemental Pre-trial Brief, Para. 37.j, 200.d.

¹⁶¹¹ Prosecution Supplemental Pre-trial Brief, Para. 38.g.

¹⁶¹² Prosecution Supplemental Pre-trial Brief, Para. 38.e.

- h. that Sesay was present in Koidu town when older men had their hands tied behind their backs and were then shot;¹⁶¹³
- i. that Sesay was frequently present at the diamond mines where civilians were indiscriminately fired upon by his subordinates;¹⁶¹⁴ where civilians made direct complaints to him about the mining conditions¹⁶¹⁵;
- j. that Sesay was frequently present in Kono between February and September 1998,¹⁶¹⁶ including at military training camps,¹⁶¹⁷ received reports of the atrocities committed in villages close to Koidu;¹⁶¹⁸ and was in regular communication with subordinates during the commission of crimes.¹⁶¹⁹
- k. Sesay's alleged "1998 request that a 24 member Small Boys Unit be prepared for him while he was in Kono"¹⁶²⁰

A. Lack of notice

723. It is impossible to discern the material allegations which *now* will be alleged against Mr. Sesay. The time frame is clear but the surfeit of new factual allegations alleging a variety of different roles of participation in the alleged criminal enterprise and in the crimes themselves, new subordinates and new ways in which Sesay is alleged to be criminally responsible makes a fair trial on this new case impossible.

724. The evidence supports the Defence case that. Sesay was present in Kono for a period of 2/3 days.¹⁶²¹ The substance of the *old* Prosecution case in relation to Counts

¹⁶¹³ Prosecution Supplemental Pre-trial Brief, Para. 38.h

¹⁶¹⁴ Prosecution Supplemental Pre-trial Brief, Para. 38.i. and 41.f.

¹⁶¹⁵ Prosecution Supplemental Pre-trial Brief, Para. 42.

¹⁶¹⁶ Prosecution Supplemental Pre-trial Brief, Para. 87, 139.c.

¹⁶¹⁷ Prosecution Supplemental Pre-trial Brief, Para. 90.b.

¹⁶¹⁸ Prosecution Supplemental Pre-trial Brief, Para. 42.

¹⁶¹⁹ Prosecution Supplemental Pre-trial Brief, Examples Para. 42, 136,

¹⁶²⁰ Prosecution Supplemental Pre-trial Brief, Para. 184(d). See also the Prosecution's Opening which stated inter alia "the evidence will show that the first Accused, Sesay, was in Kono between February and September 1998.... when he was the mining commander of the RUF and personally collected diamonds which were then exchanged for arms and ammunition. As such, he requested that the 24-member Small Boys Unit be prepared for him. The evidence will show that he always had a Small Boys Unit with him. In Koidu, he addressed the meeting of civilians who had been captured and brought to Kono to mine diamonds for the RUF. He told them that anyone who did not co-operate would be punished".

3-5, 6-9, 10-11, 13 and 14 - that Sesay's *presence* in Koidu during this time (his attendance at meetings, the mines (as Mining Commander) and military camps) - was not proven. These allegations formed the basis for Sesay's alleged 6(1) liability for the events in Kono between 14 February 1998 and 30 June 1998 and would appear to have been discarded. The case against Sesay has changed through the proliferation of evidence in supplemental witness statements. It is a testament to the Prosecution's failure to prove the original case against Sesay and the unreliability of the new. The Trial Chamber should dismiss all the new factual allegations for want of notice.¹⁶²²

B. No link to crimes prior to the end of February 1998

725. It has been judicially noticed that the ECOMOG intervention occurs in Freetown on about 14 February 1998.¹⁶²³ Sesay must have arrived in Koidu around two weeks later. There has been no evidence adduced to link Sesay with any crimes in Kono prior to his arrival in late February 1998. This aspect of the brief will focus on the First Accused's alleged liability from late February 1998 until 30 June 1998.

C. No 6(1) or 6(3) Liability proven during Sesay's presence in Kono

726. The Prosecution have failed to demonstrate that Sesay was criminally responsible pursuant to 6(1) of 6(3) for any crimes in Kono during his brief presence in Koidu for the following reasons:

727. Commonsense dictates that the criminal events which transpired within the first hours and days of the AFRC and RUF arriving into Kono were caused by (i) a breakdown in command and control caused by fear, lack of organisation, lack of understanding and conflicts between the various groups (AFRC/RUF and STF) and

¹⁶²¹ For example: Sesay/Transcript 9 May 2007, pp. 52. line 7-9 and Johnson/Transcript 14 October 2004, pp. 61-62 and TF1-334/AFRC Transcript 18 May 2005, pp. 18 – 19 and TF1-366/Transcript 7 November 2005, pp. 5 – 7.

TF1-141 claimed to have seen Mr. Sesay at the Guinea Base (Transcript 15 April 2005, pp. 5/TF1-141) and TF1-263 claimed to have seen Mr. Sesay regularly at the PC Ground during the mango season of 1998 and this camp was under Sesay's direct command (TF1-263/Transcript 6 April 2005, pp. 30/31 and 8 April 2005, pp. 10-11) but given the lack of corroboration on such a significant point and the unreliability of these young witnesses generally, this testimony must be rejected as wholly unreliable.

¹⁶²² Annex A.

¹⁶²³ *Prosecutor v. Sesay et al.*, Consequential Order regarding Decision on Prosecution Motion for Judicial Notice and Admission of Evidence,

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groups within groups (Superman, Mongo, Sesay, etc), and also (ii) the misbehaviour by some of the autonomous SLA and RUF groupings.

728. The Prosecution have (i) failed to prove an overarching joint criminal enterprise involving all members of the AFRC and RUF; (ii) failed to prove that Sesay participated in any criminal plan which may have existed in Koidu; and (iii) failed to prove that Sesay had any material ability to intervene in the crimes committed. The Prosecution case as regards this period now rests principally on the notion that Sesay's de jure status as the RUF BGC gave him control of the RUF and AFRC troops and he used this control to issue orders to commit crime.

D. Command and Control on the advance into Koidu

729. The preponderance of evidence prior to the fall of the junta – from both Prosecution and Defence witnesses – indicates the lack of a cohesive hierarchical chain of command – including the lack of common chain of command between the AFRC and RUF,¹⁶²⁴ the diffuse command structures, the overarching authority of the top AFRC men,¹⁶²⁵ the conflicts between the two groups, and the personality driven nature of both organisations. It is logical to infer that the intervention did not improve this situation.

1. Flight from Freetown

730. The flight from Freetown was chaotic with a lack of command and control.¹⁶²⁶ There is overwhelming evidence that the military structures had collapsed and organisation was centred on friendships and family. There is some evidence of senior commanders trying to plan their next step but this is not the same as effective control over thousands of armed men or even those who are friends. Moreover, even the purported planning of these men was largely ineffectual. There was no plan to re-enter Freetown by attacking ECOMOG and even though some Commanders gathered in

¹⁶²⁴ TF1-371 noted that there was cooperation but the AFRC would not accept commands from the RUF, regarding the latter as blood thirsty Colonels (Transcript 28 July 2006, pp. 51).

¹⁶²⁵ TF1-367 noted that the real power during the junta was held by the AFRC (Transcript 26 June 2006, pp. 67 -69),

¹⁶²⁶ TF1-071/Transcript 24 January 2005, pp. 95- 110.

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Masiaka the troops remained disorganised.¹⁶²⁷ The meeting at Masiaka, if it happened, was limited to discussions about attacking Bo and not those which were designed to organise the combatants into any unified or hierarchical structure.¹⁶²⁸

731. JPK would give orders to his senior commanders who would visit him at his village¹⁶²⁹ which hardly suggests any real degree of military organisation. JPK was cowering in his village. The lack of foresight, planning and control was manifest. Junior Lion confirmed that there had been a meeting in Makeni chaired by SAJ Musa involving Bazy, 55, Kallon, Superman, RUF Rambo, and SLA Rambo. Superman was the RUF High Command at the meeting where it was decided that troops would travel to Kabala.¹⁶³⁰ This was one of the many half baked plans. The commanders did not know what to do and could not control the situation, the troops as well as look after themselves and their families. This is obvious.

732. The chaos which reigned at that time has also been dealt with in the section on the retreat through Bombali. The lack of command and control (and material ability to prevent and punish) would have diminished as the AFRC and RUF troops fought to Koidu. There were attacks by the Kamajors on the road at various locations including Mattatoka, on the road between Masingbi and Sewafe in towns like Futaneh Junction and Coal Town and on the road between Yengema and Bumpe.¹⁶³¹ This would have further destabilised command and control.

733. As noted by DIS-163 there was limited or no command in the first few days in Koidu Town. Everybody had their bosses and was trying to leave to go to Guinea to escape the fighting.¹⁶³² The evidence shows that there were efforts made by Superman and others to bring the troops under control somewhere in the region of 3 weeks¹⁶³³

¹⁶²⁷ TF1-071/Transcript 24 January 2005, pp. 95- 110.

¹⁶²⁸ Johnson /Transcript 14 October 2004, pp. 50- 52 and Johnson /Transcript 20 October 2004, pp. 1 – 4.

¹⁶²⁹ TF1-371/Transcript 20 July 2006, pp. 11-12.

¹⁶³⁰ Johnson /Transcript 14 October 2004, pp. 56- 57.

¹⁶³¹ TF1-071/Transcript 19 January 2005, pp. 29 – 31.

¹⁶³² DIS-163/Transcript 11 January 2008, pp. 43-44.

¹⁶³³ TF1-071/Transcript 19 January 2005, pp. 49. The witness described a muster parade being called by Superman who was the Commander of the troops in Koidu at that time. The parade was to deal with the

after the arrival but this occurred after Sesay had left to accompany JPK to Kailahun. Until this time – and most certainly in the first few disorientating days in Koidu - the ability to command and prevent and punish crime *for any commander* during these times would have been diminished to the point of being negligible. As noted by TF1-360 there were thousands of people pouring from Freetown into Koidu.¹⁶³⁴ It was impossible for any one commander to control this number of people running for their lives.

E. Sesay's ability to command

734. The Prosecution suggest that Sesay had effective control of every RUF and AFRC combatant apart from Sankoh, Bockarie and JPK at the time of the intervention and throughout until the end of the conflict.¹⁶³⁵ This thesis is derived from prosecutorial strategy, not commonsense. The Prosecution confuse de jure status with de facto command. The paucity of evidence detailing Sesay's actual issuance of orders or command – as opposed to evidence of his de jure title or so-called status as “deputy” to Bockarie – tells its own story.

735. TF1-371 noted that he was present during a meeting in Masiaka immediately after the intervention involving senior members of the AFRC including, AK Sesay, Brigadier Mani, Zagalo, SFY Koroma, and Boysie Palmer and also Superman and SYB Rogers. Strategic discussions concerning the relocation of the junta base and renegotiation of a peace accord (the Conakry Accord). According to the witness Sesay was not present at the meeting and was in fact in Bo or later recuperating in Masiaka, waiting for the trauma of his bullet wound to subside.¹⁶³⁶ TF1-184 confirmed that there he was aware of two meetings at this time; one in Makeni and one in Mabongkinch involving Eldred Collins, SAJ Musa, Superman, JPK and FSY Koroma but neither involved Sesay. He had not seen him in Makeni or Masiaka.¹⁶³⁷ TF1-361 confirmed that Sesay was not

reports which Superman had received dealing with crimes committed. The witness was clearly mistaken when recalling that Sesay had been present at the muster parade, given the timing of the parade and also the fact that the witness recalled that Gullit was present at the parade.

¹⁶³⁴ TF1-360/Transcript 22 July 2005, pp. 49 – 52.

¹⁶³⁵ Consolidated Indictment, Para. 21.

¹⁶³⁶ TF1-371/Transcript 20 July 2006, pp. 57- 63.

¹⁶³⁷ TF1-184/Transcript 5 December 2005, pp. 86-87.

even present when the crucial decision was made by the AFRC and RUF that the troops should find a way to Kono.¹⁶³⁸

736. The Prosecution may argue that there is evidence of other meetings which did involve Sesay. For the reasons set out in the section discussing the retreat from Freetown after the intervention, this evidence is unreliable. Further, even if true, it does not support the Prosecution thesis that Sesay had BFC authority which enabled him to control thousands of nameless men. At best the evidence of Sesay's participation in meetings shows how diffuse the decision making was, and how as aforementioned, his presence at meetings or in the decision making process, somewhat optional.

737. This was not true of Superman. The evidence demonstrates that it Superman who took the initiative in attempting to organise the movement of the RUF troops during the intervention and into Koidu. This was confirmed by TF1-071 who mistakenly thought that Superman was the BGC because of the role he took in advancing the troops. As noted by TF1-071 Superman was in control of the troops from "Freetown, Masiaka, Makeni and Kono"¹⁶³⁹ Tellingly TF1-071 confirmed that Superman had been performing these functions since the onset of the junta¹⁶⁴⁰ which speaks to Sesay's real de facto position. In contrast TF1-071 agreed that Sesay's functions were akin to a messenger in the junta who performed no command functions in relation to the RUF troops but merely passed on some of Bockarie's orders to other senior commanders.¹⁶⁴¹ This might not be entirely accurate but it is telling, in terms of command ability, that an RUF member would consider Sesay so lightweight.

¹⁶³⁸ TF1-361/Transcript 11 July 2005, pp. 10, line 20-29.

Q. So the first time you see Sesay in Makeni is after the decision has been made to go to Kono when everybody is getting ready to leave to go to Kono?

A. Yes, sir.

Q. And did Superman tell you that the decision to go to Kono had been made by a number of commanders?

A. Yes, sir.

¹⁶³⁹ TF1-071/Transcript 24 January 2005, pp. 89.

¹⁶⁴⁰ TF1-071/Transcript 24 January 2005, pp. 89.

¹⁶⁴¹ TF1-071/Transcript 24 January 2005, pp. 89.

738. The evidence shows that Sesay's role was one of the "authorities", undoubtedly with some command function over some RUF men, but limited to particular operations (e.g., the attack on Bo). And even this proposition must be examined with care. Sesay's testified – and it was not disputed – that he had travelled to Bo to a military operation at the time when others went to Makeni. During the mission the SLA group commanded by Boysie Palmer tried to break into a store. Sesay tried to prevent it and was shot by one of them.¹⁶⁴² This small but significant example demonstrates the impossibility of preventing and punishing crime at this time. Even junior ranks had guns and gangs.

739. It is telling that even men such as TF1 -360 and TF1-361 whose functions ought to have supplied them with good information appear not to have known that Sesay went on a mission to attack on Bo at this crucial time.¹⁶⁴³ This usefully contrasts with the well *known* role played by Superman.

740. It was Superman, who led the RUF out of Freetown;¹⁶⁴⁴ who looked after JPK out of Freetown¹⁶⁴⁵ who was partly in charge of securing JPK in Masiaka,¹⁶⁴⁶ who was contacted by Bockarie with an order to bring JPK to Kailahun.¹⁶⁴⁷ Superman was in charge of the RUF from Masingbi and Makeni.¹⁶⁴⁸ He gave the order to some of the RUF to go straight to Makeni.¹⁶⁴⁹ It was Superman who organised the advance group around Magburaka¹⁶⁵⁰ and who led the troops into Koidu¹⁶⁵¹ Logic dictates that Bockarie would have been in direct contact with Superman in Koidu upon the junta's arrival,¹⁶⁵² even though Sesay was present. This was confirmed by TF1-361.¹⁶⁵³ DIS-214 neatly summed up the situation, explaining that Sesay was the High Command

¹⁶⁴² Sesay/Transcript 8 May 2007, pp. 99 – 105.

¹⁶⁴³ TF1-361/Transcript 11 July 2005, pp. 6-9 and TF1-360/Transcript 19 July 2005, pp. 17-21.

¹⁶⁴⁴ For example: TF1-184 /Transcript 5 December 2005, pp. 5- 8.

¹⁶⁴⁵ TF1-361/Transcript 11 July 2005, pp. 2-6.

¹⁶⁴⁶ TF1-184/Transcript 5 December 2005, pp. 83-85.

¹⁶⁴⁷ TF1-334/Transcript 6 July 2006, pp. 110 - 113.

¹⁶⁴⁸ DIS-214/Transcript 15 January 2007, pp. 65.

¹⁶⁴⁹ Johnson /Transcript 14 October 2004, pp. 50-52.

¹⁶⁵⁰ DIS-214/Transcript 26 October 2007, pp. 66.

¹⁶⁵¹ TF1-367/Transcript 21 June 2006, pp. 15-16 and TF1-071/Transcript 24 January 2005, pp. 110-114 who noted, quite logically, that it was this advance group which fought in Koidu town and was responsible for the various crimes against civilians.

¹⁶⁵² Sesay/Transcript 9 May 2007, pp 41, line 15-18.

¹⁶⁵³ TF1-361, 15 July 2005, p.75, line 18- 29.

present in the convoy; “[b]ut for the convoy, Superman was the High Command because by then Issa Sesay was a wounded man, so he – there was not too much command for him so Superman took everything”.¹⁶⁵⁴

741. This is not to suggest that Superman had the material ability to intervene and prevent crime, except on a localised basis. The following outlines the reasons.

F. No fusing of chains of command in the first few days

742. The evidence shows that the AFRC, the SLA and STF were “uneasy bedfellows”¹⁶⁵⁵ throughout the junta and from then on throughout the remaining years cooperation was difficult, especially around the time of the junta’s entry into Koidu. The evidence demonstrates how the three groups *at no time* fused their respective chain of commands. The fact that Superman was considered the overall commander of both groups later, with – according to TF1-334 – Papa Bangura being the second in command,¹⁶⁵⁶ could not have transformed the two chains of command into one or given Superman (or any of the RUF including Sesay) any command over members of the opposing groups.

743. This is amply demonstrated by the evidence given by Junior Lion (TF1-167) who described a time *after* Sesay and JPK had retreated to Kailahun when Superman organised a fighting force to defend Kono.¹⁶⁵⁷ This was the first occasion when there existed any degree of large scale coordination. Coordination was limited to small and, it would appear, largely criminal tactical level operations e.g., so-called food finding missions. The command hierarchy was supposed to involve a fusion, where there was a RUF commander would be deputised by an SLA deputy and vice versa, with the secondary notion that the SLA would be subordinate to the RUF.¹⁶⁵⁸ This ridiculous idea could never have led to a real meshing of command.

¹⁶⁵⁴ DIS-214/Transcript 17 January 2008, pp. 102, line 24 and pp. 103, line 6.

¹⁶⁵⁵ TF1-371/Transcript 28 July 2006, pp. 51, lines 3-19.

¹⁶⁵⁶ TF1-334/AFRC Transcript 17 May 2005, pp. 112 lines 3 – 26.

¹⁶⁵⁷ Johnson /Transcript 14 October 2004, pp. 68, lines 8 - pp. 72, lines 4.

¹⁶⁵⁸ Johnson /Transcript 20 October 2004, pp. 17, lines 24 - pp. 22, lines 15.

744. There are Prosecution witnesses who tried to conceal this de facto separation but in the final analysis the evidence provides proof that separate chains of commands were maintained, as was logically inevitable. And so whilst TF1-334 (and others) attested to joint patrols in areas sometime after the junta's arrival¹⁶⁵⁹ this could not have led to any material ability to control those from other groups.

745. TF1-334 confirmed that the two groups had their own areas; that the SLAs had their own Brigade; that Bazzy as the head of the Brigade made appointments to the Brigade; as well as handing out promotions to Lt. Lagah, Tito, Savage, Kallay, Bakarr and SLA Mosquito.¹⁶⁶⁰ TF1-334 testified that Superman was the only commander who had a radio in Koidu town and the SLAs were not permitted to employ their own system,¹⁶⁶¹ which eventually led to a gun fight between the two groups.¹⁶⁶² DIS-163 confirmed that the RUF refused to share logistics (weapons, ammunition or food).¹⁶⁶³ TF1-360 confirmed that some of the SLAs refused to attend muster parade¹⁶⁶⁴ and testified that the withdrawal of the Gullit, Bazzy and 55 and their men was caused by the separation of command structures.¹⁶⁶⁵

746. From the outset there were problems. TF1-334 testified that upon arrival in Superman's advance team set up defensive positions but the SLA group took the Masingbi Road and the RUF took the roads to Guinea.¹⁶⁶⁶ This arrangement continued for the time that the SLAs remained in Koidu and in fact became entrenched to the point that each group lived in "isolated" or "different" areas and the SLAs found it "difficult" to even approach the RUF area.¹⁶⁶⁷ There were joint operations but not joint

¹⁶⁵⁹ TF1-334/AFRC Transcript 16 May 2005, pp. 48 - 49.

¹⁶⁶⁰ TF1-334/AFRC Transcript 16 May 2005, pp. 50- 51.

¹⁶⁶¹ TF1-334/AFRC Transcript 19 May 2005, pp. 3 lines 4 – pp. 4 lines 11.

¹⁶⁶² DIS-214/Transcript 15 January 2008, pp. 85 - 86.

¹⁶⁶³ DIS-163/Transcript 11 January 2008, pp. 61 and DIS-214/Transcript 15 January 2008, pp. 88, line 12 – pp. 89, line 1.

¹⁶⁶⁴ TF1-360/Transcript 20 July 2005, pp. 22-23.

¹⁶⁶⁵ TF1-360/Transcript 25 July 2005, pp. 2 lines 26 – pp. 4 lines 4.

¹⁶⁶⁶ TF1-334/AFRC Transcript 16 May 2005, pp. 107.

¹⁶⁶⁷ TF1-334/AFRC Transcript 7 July 2006, pp. 21-24.

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military command. TF1-071 and DIS-069 confirmed that the two groups lived apart and had separate command structures.¹⁶⁶⁸

747. In short, the “arrangement” between the RUF and SLA from the outset allowed for some cooperation in relation to small operations but the two groups remained quite separate in all other activities, including the operation of their chains of command, the reporting lines and consequently their conduct. Naturally this situation was much, much worse at the outset of the entry into Koidu Town. As noted by TF1- 371, who had been present in Koidu at the same time as Sesay, the AFRC and RUF were “not a cohesive group, as previously they were... the core element found it difficult to co-exist with their RUF command, so they had their own command”.¹⁶⁶⁹ This was confirmed by TF1-361¹⁶⁷⁰

748. The effect of these failures to properly fuse their command structures *at any time* is obvious. Individual RUF members could not order individual SLA combatants and vice versa. This commonsense conclusion was confirmed by TF1-071 who complained about the behaviour of the SLA towards civilians, noting that Superman could not control the SLAs; because “[t]hey also were controlling their men in their own way. So the command structure was not in one direction”.¹⁶⁷¹ Significantly TF1-071 also confirmed that most of the crimes had been committed by the SLAs during the time in Koidu and because Superman was unable to control them he [Superman] requested that they leave the district.¹⁶⁷² Johnson also confirmed that Superman had tried to order the SLAs to move to Kailahun but they refused to obey his orders.¹⁶⁷³

749. The notion that Sesay had effective control over the SLA or the STF during the three days he was present in Koidu (or thereafter) is therefore absurd. It is not disputed that there were three groups within Koidu at this time, the RUF, AFRC, and STF. The

¹⁶⁶⁸ TF1-071/Transcript 18 January 2005, pp. 120 line 14 – pp. 121 line 16 and DIS-069/Transcript 23 October 2007, pp. 26.

¹⁶⁶⁹ TF1-371/Transcript 31 July 2006, pp. 69 line 18 – pp. 70 line 3.

¹⁶⁷⁰ TF1- 361/Transcript 14 July 2005, pp. 67 - 68.

¹⁶⁷¹ TF1-071/Transcript 24 January 2005, pp. 120, line 14 – pp. 121 line 16.

¹⁶⁷² TF1-071/Transcript 24 January 2005, pp. 120, line 14 – pp. 121 line 16

¹⁶⁷³ Johnson /Transcript 19 October 2004, pp. 34-35.

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Prosecution has not proven that Sesay had any ability to command as a group either the SLA or STF.¹⁶⁷⁴ The Prosecution have proven that there was some cooperation at some stage in Koidu town. There is no evidence that this cooperation was anything other than opportunistic or that any control could be exercised by a Commander unless they were specifically involved in the specific operation.

G. Little or no coordination between the RUF groups

750. It is submitted that the evidence demonstrates that throughout the first few days, if not weeks, of the entry into Koidu the RUF was divided into distinct groups who reported to their own commanders. Sesay testified that upon arrival at Koidu RUF men formed into their previous Area Groupings, including the men from the Western Area who congregated around their commander Superman.¹⁶⁷⁵ The evidence Mr. Sesay gave was credible and given the RUF organisation and its historical development (through the formation of the Northern and Western Jungles and the Kailahun base) logical. Given the number of “significant” men, with long standing histories and command within the various areas (e.g., Colonel Mike Lamin, Colonel Isaac Mongo, Colonel Superman, Lieutenant-Colonel Issa Sesay, Lieutenant-Colonel Peter Vandt, Major Johanas Robert, Major Rambo, Major Morris Kallon, Major Rocky Co (real name Manuel Johnson), Major Kailondo, Major Kolo Mulbah, Major Babay, Major Nyaa and others)¹⁶⁷⁶ this undoubtedly had a profound effect on the ability of Sesay (or any one commander) to command the RUF as a whole. The notion that these thousands of self interested men, scattered over many miles of Koidu town and its environs, each seeking the safety of their respective families, would fall into a nice neat formation ready to obey the orders of the de jure BGC defies commonsense.

751. The evidence suggests that these divisions were not healed, even after Superman had attempted to arrange a more formal structure, long after Sesay had retreated to Kailahun. TF1-078 spoke eloquently about his time in the bush near Madina around the 17th March 1998 and the randomness of the combatant groupings. TF1-078 recalled that

¹⁶⁷⁴ Sesay/Transcript 10 May 2007, pp. 1 – 6.

¹⁶⁷⁵ Sesay/Transcript 10 May 2007, pp. 8, line 1-3.

¹⁶⁷⁶ Sesay/Transcript 10 May 2007, pp. 6.

a group of combatants had advised them to report at Kaidu, “where there were civilians and there were military -- I mean, AFRC/RUF juntas, with civilian there. They did not allow civilians alone to live in the bushes for fear that other group will go and take them for Kamajors and kill them. So in our best interest we should report to Kaidu to one Captain Rocky”.¹⁶⁷⁷

752. It is clear that the arrival of the junta into Koidu was characterised by utter chaos. It would have been impossible to identify which fighters belonged to which groups and who was a civilian.¹⁶⁷⁸ There were probably numerous committed into Koidu town by the advance group.¹⁶⁷⁹ There were uncontrolled revenge attacks by both the AFRC and the RUF upon perceived collaborators and their properties.¹⁶⁸⁰ The military structure had broken down in Makeni or thereabouts.¹⁶⁸¹ It was natural that combatants would congregate according to previous junta groupings, for example the men from the Western Area around Superman.¹⁶⁸² Even the Honourables only had control over their securities at that time.¹⁶⁸³ Sesay confirmed that the only people under his control in Koidu were his own securities.¹⁶⁸⁴ Everyone was out for themselves, some for material wealth.¹⁶⁸⁵

753. There would have been civilians who had been captured mixed with civilians seeking protection.¹⁶⁸⁶ There would have been women who had been abducted whereas others had fallen in love with the rebel commanders.¹⁶⁸⁷ There would have been civilians who had been forced to carry loads whereas others worked in exchange for

¹⁶⁷⁷ TF1- 078/Transcript 22 October 2004, pp. 61, lines 8-14.

¹⁶⁷⁸ DIS - 163/Transcript 11 January 2008, pp. 30.

¹⁶⁷⁹ See for example: TF1- 071/Transcript 19 January 2005, pp. 31 – 32.

¹⁶⁸⁰ DIS - 163/Transcript 11 January 2008, pp. 83.

¹⁶⁸¹ TF1- 334/Transcript 6 June 2006, pp. 100 – 102.

¹⁶⁸² Sesay/Transcript 10th May 2007, pp. 7-8. .

¹⁶⁸³ TF1- 334/Transcript 6 June 2006, pp. 100 – 102.

¹⁶⁸⁴ Sesay/Transcript 9 May 2007, pp. 52.

¹⁶⁸⁵ DIS - 163/Transcript 14 January 2008, pp. 30.

¹⁶⁸⁶ TF1- 360/Transcript 19 July 2005, pp. 61-66.

¹⁶⁸⁷ TF1- 360/Transcript 22 July 2005, pp. 66.

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protection and food.¹⁶⁸⁸ It was not possible for one man to control, especially one with a fresh bullet wound, obtained when trying to prevent crime elsewhere.

754. It is submitted that the Prosecution have failed to prove that Sesay had any effective control over the perpetrators of crime. It is submitted that no liability could arise pursuant to Article 6(3). The Prosecution have failed to prove that Sesay's ability to command was not fatally undermined by the chaos, the breakdown of the military structures, the dangers for both civilians and combatants, the disparate and disloyal groupings, the lack of an effective judicial process or any enforcement mechanism, and the fact that Sesay was handicapped by a recent bullet wound.

H. No ordering or instigating of crimes by Sesay

1. JPK alleged order that Koidu should be a no-go area

755. TF1-334 alleged that JPK had given an order that "Koidu should be a no-go area for civilians". This alleged order was supposedly given by JPK during a meeting held between Tankoro and Woama.¹⁶⁸⁹ It is submitted that this did not happen and if it did, no criminal responsibility for this act can be attributed to Sesay.

756. TF1-334 was well placed to describe the atrocities committed because the evidence shows that the bulk of the crimes in Koidu were committed by TF1-334 and his cohorts. In these circumstances it was easy for the witness to describe his own crimes, whilst blaming others including the first Accused.

757. The evidence shows that the majority of the crimes committed in Koidu in the early stages of the junta's settlement in Koidu (and thereafter) were committed by the SLA's (including TF1-334) and specific RUF commanders, such as Komba Gbudema, whose barbarism had been finely honed in the Western and Northern Jungles. This was confirmed by TF1-071 who stated that most of the crimes had been committed by the

¹⁶⁸⁸ TF1- 360/Transcript 22 July 2005, pp. 68 – 69.

¹⁶⁸⁹ TF1- 334/AFRC Transcript 20 May 2005, pp. 4.

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SLA's during the time in Koidu.¹⁶⁹⁰ It was also confirmed obliquely by TF1-367, who stated that it was the SLA, with the ULIMO soldiers who broke into the bank into Koidu. They had not told anybody, including Superman and were acting on their own.¹⁶⁹¹

758. This is confirmed by an analysis of the evidence given by TF1-334 who confirmed the following: that the principal villages and towns attacked after JPK had retreated were Tombodu, Yengema,¹⁶⁹² Jagbwema Fiana and Yomandu,¹⁶⁹³ Bumpe and Gandorhun¹⁶⁹⁴ The witness confirmed that he and Papa Bangura would patrol Jagbwema, Tombodu, Sewafe and Woama, checking on the strength of the men¹⁶⁹⁵ Colonel Mohamed Savage was the battalion commander in Tombodu. He had been a corporal in the Sierra Leone Army. He had 80 men, mixed RUF and SLA but mostly SLA. His deputy was Staff Alhaji. He had been a staff sergeant in the Sierra Leone Army but Mohamed Savage later recommended him for promotion to lieutenant. Mohamed Savage was subordinate to the Sierra Leone Army operation commander, Papah Hassan Bangura. Bazy promoted Savage from corporal to lieutenant.¹⁶⁹⁶ TF1-334 admitted that he was present in Tombodu when civilians were being amputated.¹⁶⁹⁷

759. Lieutenant Tito was the battalion commander at Yengema. He was an SLA and had been freed from prison at the time of the coup. He had 60 men, mostly SLAs with some RUF. He was subordinate to the operation commander, Papah Hassan Bangura.¹⁶⁹⁸ Bazy promoted Tito to lieutenant.¹⁶⁹⁹ Captain Junior, the CSO to Colonel Foday Kallay alias Command One, was deployed to Jagbwema Fiana.¹⁷⁰⁰ TF1-334 went with

¹⁶⁹⁰ TF1-071/Transcript 24 January 2005, pp. 120, line 14 – pp. 121 line 16

¹⁶⁹¹ TF1- 367/Transcript 22 June 2006, pp. 16 - 22.

¹⁶⁹² TF1- 334/AFRC Transcript 20 May 2005, pp. 8.

¹⁶⁹³ TF1- 334/AFRC Transcript 20 May 2005, pp. 19.

¹⁶⁹⁴ TF1- 334/AFRC Transcript 20 May 2005, pp. 4.

¹⁶⁹⁵ TF1- 334/AFRC Transcript 20 May 2005, pp. 4.

¹⁶⁹⁶ TF1- 334/AFRC Transcript 19 May 2005, pp. 22, 23 and 50.

¹⁶⁹⁷ TF1- 334/AFRC Transcript 20 May 2005, pp. 3-7.

¹⁶⁹⁸ TF1- 334/AFRC Transcript 19 May 2005, pp. 25.

¹⁶⁹⁹ TF1- 334/AFRC Transcript 19 May 2005, pp. 50.

¹⁷⁰⁰ TF1- 334/AFRC Transcript 19 May 2005, pp. 17.

Captain Junior to capture Jagbwema Fiama.¹⁷⁰¹ Captain Junior was subordinate to the operation commander, Papah Hassan Bangura). He reported directly to him.¹⁷⁰² Komba Gbudema was deployed at Yomandu. He covered Kayima. He was subordinate to Superman.¹⁷⁰³ Lieutenant Kallay, younger brother of Colonel Foday Kallay was the battalion commander at Bumpe. He was an SLA. He had 70 men. Mostly SLAs, but some RUF. He was subordinate to the operation commander.¹⁷⁰⁴ Lieutenant Mosquito (Sierra Leone Army) was the battalion commander in Sewafe. He had 70 men, mostly SLAs but some RUF. He was subordinate to the operation commander (Papah Hassan Bangura). Bazzy promoted Lieutenant Mosquito from other ranks to lieutenant.¹⁷⁰⁵

760. In other words almost all the worst crime scenes, by TF1-334's own admission, were under the SLA command and he "visited" many of them. It is significant that the TF1-334 appeared to have a great deal of knowledge about Tombodu and Yomandu.¹⁷⁰⁶ The criminality of these men is chilling. The notion that this man, or the likes of Junior Johnson, should be prosecuting a man like Sesay, whilst enjoying the benefits which accrue, is a terrible irony. Men such as these would not find a fraction of the civilian support which formed the backbone of Sesay's defence.

761. In other words it is clear from the evidence that TF1-334 was one of the worst perpetrators of crime in the conflict. The witness admitted that he was in Superman's advance group to Koidu and had captured the town.¹⁷⁰⁷ As confirmed by TF1-334 the SLA group took the Masingbi Road and the RUF took the roads to Guinea.¹⁷⁰⁸ It was the SLAs, under the command of Bazzy, who burnt Masingbi Road. It appears that this was the area of the town which was the first to be burnt. This was after Sesay had left the town.¹⁷⁰⁹ The evidence shows that TF1-334, the SLAs and RUF Gbudema, were

¹⁷⁰¹ TF1- 334/AFRC Transcript 19 May 2005, pp. 20.

¹⁷⁰² TF1- 334/AFRC Transcript 19 May 2005, pp. 21.

¹⁷⁰³ TF1- 334/AFRC Transcript 19 May 2005, pp. 32 – 33.

¹⁷⁰⁴ TF1- 334/AFRC Transcript 19 May 2005, pp. 23.

¹⁷⁰⁵ TF1- 334/AFRC Transcript 19 May 2005, pp. 24-25 and pp.51.

¹⁷⁰⁶ TF1- 334/AFRC Transcript 20 May 2005, pp. 4 and 6.

¹⁷⁰⁷ TF1- 334/AFRC Transcript 20 June 2005, pp. 38.

¹⁷⁰⁸ TF1-334/AFRC Transcript 16 May 2005, pp. 107.

¹⁷⁰⁹ TF1- 334/Transcript 7 July 2006, pp. 17 – 18.

responsible for the attacking of civilians and burning of their villages after JPK had left the town. It was this witnesses group who rampaged through Koinadugu and were responsible for the 6th January 1999 attack on Freetown. This witness had much to gain by implicating others for these crimes and approached his task with relish. The witness ought to be on trial himself and by prosecuting Sesay this could be avoided.

762. It is clear that these – and other like minded men – needed no orders to commit crime. These so-called soldiers organised themselves own criminal groups, searching for food and other items. DIS-163, an SLA with no ulterior reason to testify against his previous colleagues, confirmed that Superman received an order to maintain Koidu and even he tried to put the situation under control. However the SLA and the likes of TF1-334 refused to take command.¹⁷¹⁰ TF1-071 confirmed this account and testified that Superman refused to tolerate their crimes and issued several warnings to them. The SLAs refused to obey his command and refused to desist from their crimes and eventually they left for Koinadugu.¹⁷¹¹ This exposes the notion that a responsible commander, like Sesay could have done anything in the first few days of the entry into Koidu.

763. The proposition put forward by the Prosecution that this motley band of criminals required an order by JPK, or that any reinforcement by Sesay instigated or compelled their criminal deeds, needs to be examined in this context.

a) Timing of TF1-334's atrocities

764. The account proffered by TFI-334 that JPK ordered Koidu Town to be a no –go area for civilians does not make sense. TF1-334 claimed that the order signalled the commencement of abductions wherein “we started pushing the civilians from the other towns”. The witness claimed that this order led to the RUF and AFRC capturing civilians from the villages and either using them for the movement or even executing

¹⁷¹⁰ DIS - 163/Transcript 11 January 2008, pp. 41-43.

¹⁷¹¹ TF1- 071/Transcript 21 January 2005, pp. 26 – 29. The witness recalled that Sesay had been present at the first two meetings but clearly, given the timing of them, the witness must have been mistaken.

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them.¹⁷¹² In the first place, the TF1-334 confirmed that by the time the junta forces arrived all the civilians had run from the town, “there were only a few and somewhere in Tombodu and other towns”.¹⁷¹³ This was confirmed by TF1-078, who was woken up in Koidu Town on the 28th February 1998, by the sounds of bombardment from the southern part of the town. The witness gathered his belongings and with his family and *thousands* of other civilians left Koidu Town.¹⁷¹⁴ In this context JPK’s alleged order, was not only lacking in any purpose but downright bizarre.

765. On the 7th July 2006, during cross examination, the witness realised that the absence of civilians exposed the absurdity of this account. And so he changed the account. It was put to the witness that all the civilians had left and therefore the order would have been superfluous. The witness claimed that “[t]he civilians were around, *and most of them*, because Koidu Town is large, some were in the very small areas” [emphasis added].¹⁷¹⁵

766. It is submitted that the bulk of these atrocities occurred much after JPK had left and for reasons best known to those committing them. TF1-334 confirmed that he had participated in these crimes, along with the “operation commander”, the deputy operation commander, and others.¹⁷¹⁶ This would appear to imply that the crimes were being committed *after* the deployments had been given which would have been several weeks after Sesay had left - when the combatants were more settled within Koidu town. Junior Johnson confirmed that at this time Superman (who was now the de jure BGC) called a meeting who – as noted by TF1-167 - called a meeting to organise the fighting force. The meeting was to organise the command structure and specific orders were given to take care of the defence of Koidu.¹⁷¹⁷

¹⁷¹² TF1- 334/AFRC Transcript 20 May 2005, pp. 5.

¹⁷¹³ TF1- 334/AFRC Transcript 20 May 2005, pp. 4.

¹⁷¹⁴ TF1- 078/Transcript 22 October 2004, pp. 47-54 and Sesay/Transcript 9th May 2007, pp.42, line 7-12.

¹⁷¹⁵ TF1- 334/Transcript 7 July 2006, pp. 21, line 11-16.

¹⁷¹⁶ TF1- 334/Transcript 20 May 2005, pp. 6 – 11.

¹⁷¹⁷ Johnson /Transcript 14 October 2004, pp. 64 – 72.

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b) No corroboration for TF1-334's account

767. TF1-366 testified that he was at the meeting with JPK immediately prior to his retreat through Gandorhun. The witness was asked what happened at the meeting and responded that, "The first item on the agenda for that meeting was Issa told Morris Kallon and Superman and Akim, even myself and Peter Vandi, Collins that Sam Bockarie had sent a message to make sure that we take Johnny Paul Koroma to Kailahun. The second item on the agenda how to defend Kono, because all of what we did centred around Kono, and that was why the government was fighting against us. He said Morris Kallon should ensure that all the roads leading to Kono should be distributed among the brigade commanders, roads leading to Kono".¹⁷¹⁸

768. The Prosecution followed this response with a push for more information about what was said at the meeting. TF1-366 stated that "[n]othing else happened at the meeting"¹⁷¹⁹ The witness was then asked to relate what happened after the meeting and the witness confirmed the following "[A]fter the meeting, we started searching the villages. Some started looting and everything was in disarray... In the villages -- Morris Kallon and others sent us to the villages to search for Kamajors. So many things happened in those villages. They took their properties from them and they were captured -- they were forcefully captured and brought to Kono, the civilians in those villages". The witness confirmed that the looting and capturing was done by the RUF, SLA, STF.¹⁷²⁰

2. Perversion of a military order

769. In other words, rather than there being an order for crimes to be committed there appears to have been an order from Kallon which was military in nature. It would have made good military sense to search for Kamajors. Unfortunately it also provided an opportunity for the criminally minded, like TF1-334, to take advantage of the lack of organisation and the lack of any, or any effective, reporting structures.

¹⁷¹⁸ TF1- 366/Transcript 18 November 2005, pp. 6, line 12 - 20.

¹⁷¹⁹ TF1- 366/Transcript 8 November 2005, pp. 7, line 17-20.

¹⁷²⁰ TF1- 366/Transcript 8 November 2005, pp. 7, line 29 and pp. 8, line 1-5.

770. TF1-366 also confirmed that a degree of order was brought to Koidu after the first three days.¹⁷²¹ TF1-366 also confirmed to *the Prosecution* that Sesay had arrived after this first three days. Although the witness disowned this statement during his oral testimony in order to implicate this is likely to be true.¹⁷²² TF1-371 confirmed the *relative* calmness of Koidu during his stay, stating that the whole “township was occupied by the joint forces of the RUF and the AFRC, and there were looting of household properties.... and at the same time, at the outskirts of the town, there were burning of houses in the night by some combatants”.¹⁷²³ TF1-071 recalled that reports of random killings, burnings of houses and amputations in surrounding villages started to be made about three weeks after the arrival of the junta in Koidu town.¹⁷²⁴ The evidence would appear to confirm that there was chaos before Sesay’s arrival, a brief hiatus during his two to three days in Koidu town, followed by utter chaos when he had retreated to Kailahun. The degree of order in the town when Sesay was present disintegrated the moment that he left. This was alluded to by Sesay in his testimony who stated that there were no civilians in the town during his three days residence and no crimes were committed directly upon them. However AFRC/RUF elements, who had captured Kono, continued to burst into the shops or looting from houses in Koidu Town and this situation continued until he left Kono.¹⁷²⁵

771. In these circumstances the notion that JPK or Sesay or any other commander gave an order which gave rise to the crimes does not stand up to scrutiny.

I. No participation by Sesay in any criminal plan

1. Sesay did not contribute to any crimes

772. It is obvious that Sesay’s role during his two/three days stay was limited by the authority vested in others, including JPK, Bockarie, Superman and the SLAs. The Prosecution have failed to prove that Sesay’s role was anything more than taking JPK

¹⁷²¹ TF1- 366/Transcript 14 November 2005, pp. 18.

¹⁷²² TF1- 366/Transcript 14 November 2005, pp. 17.

¹⁷²³ TF1- 371/Transcript 20/July 2006, pp. 68 – 69.

¹⁷²⁴ TF1- 071/Transcript 19 January 2005, pp. 45 - 47.

¹⁷²⁵ Sesay/Transcript 9th May 2007, pp. 52.

to Kailahun and as a conduit for information from Bockarie to Superman, and this latter role was arguably superfluous.¹⁷²⁶ The evidence suggests that this was the only task given to Sesay during his stay in Koidu. As confirmed by TF1-360, Bockarie sent a radio message to Sesay that his task was to look after JPK and make sure he was safely taken to Kailahun. This appears to have limited the role of both Sesay and JPK.¹⁷²⁷ It was not within his authority, or physical capabilities, at that time to do more. The Prosecution have not proven any acts or omission which would makes Sesay liable pursuant to 6(1) or 6(3) of the Statute.

2. Sesay did not arrange military deployments

773. Whilst no criminal liability could conceivably arise from the mere allocation of deployments at the outset of the entry into Koidu town it will be addressed to demonstrate the negligible role played by Sesay in Koidu. As noted above the evidence suggests that it was some time later – perhaps even weeks – when Superman called a meeting to organise the fighting force. The meeting was to organise the command structure and specific orders were given to take care of the defence of Koidu. Superman also gave promotions during this meeting. Sesay was not present.¹⁷²⁸ Morris Kallon was present.¹⁷²⁹ Sesay was not present and could not have effected or altered these deployments.

774. This evidence of the issuance of deployments is partially corroborated by TF1-360 who although claiming that Sesay had passed on the order that the combined troops should deploy into their usual Battalion formations, the detail of the arrangements had been left to Superman (“He passed it on to the battle commander to arrange it immediately he left”).¹⁷³⁰ The supposed action was, according to TF1-360, an order from Bockarie. On any sensible view this would not rates as any real contribution to the Kono operations.¹⁷³¹ The same goes for the allegation that Sesay instructed the second

¹⁷²⁶ TF1- 366/Transcript 14 November 2005, pp. 19 – 20, referring to statement 30th August 2004, pp.1371.

¹⁷²⁷ TF1- 360/Transcript 19 July 2005, pp. 79 – 82 and 25 July 2005, pp. 5, line 20-25.

¹⁷²⁸ Johnson /Transcript 14 October 2004, pp. 64 – 72.

¹⁷²⁹ Johnson /Transcript 14 October 2004, pp. 68 – 74 and Exhibit 9.

¹⁷³⁰ TF1- 360/Transcript 25 July 2005, pp. 11.

¹⁷³¹ TF1- 360/Transcript 25 July 2005, pp. 14-16.

Accused to remain and take care of Kono.¹⁷³² The choice of the men - and the responsibility for ensuring their suitability for the military tasks- was left to Superman.¹⁷³³ It is not a coincidence that the men Superman selected were almost exclusively those from the Western and Northern jungle, a motley bunch of guerrilla combatants unfamiliar with the Kailahun RUF ideology. Or rather unwilling to subordinate themselves to it. The Prosecution have failed to adduce reliable evidence which would support the notion that these men looked to Sesay as their effective superior.

775. The evidence of Superman deciding the deployments exposes the false testimony given by TF1-366 on a number of issues. TF1-366, a witness whose evidence was scrupulously unreliable in many respects, claimed that the deployments had been given by the second Accused who had been given them by Sesay at a meeting in Kimberlite with JPK, Superman and the combined AFRC and RUF forces.¹⁷³⁴ This tortuous testimony was obviously designed to implicate the first and second Accused, by a nonsensical account which involved both the first and second Accused, whilst curiously downgrading Superman to a side player. The notion that the deployments were decided by Sesay and implemented by Kallon is unrealistic, uncorroborated and plain silly. (This was the same witness who could not decide which assignments had been given to the second Accused – despite allegedly being tasked to keep him under surveillance for the best part of year¹⁷³⁵ - first telling the Prosecution that at the meeting at Kimberlite Superman had been appointed BGC and Morris Kallon BFC but then in his oral testimony changing his mind and claiming Morris Kallon was the BGC whereas Superman was the Field Inspector).¹⁷³⁶

3. Sesay did not pass orders in Koidu

776. The Defence have not been provided with any notice concerning the alleged significance of the allegation that Sesay was responsible for the burning of Koidu

¹⁷³² TF1- 045/Transcript 18 November 2005, pp. 53-55.

¹⁷³³ TF1- 360/Transcript 25 July 2005, pp. 14-16.

¹⁷³⁴ TF1- 366/Transcript 7 November 2005, pp. 23 - 26.

¹⁷³⁵ TF1- 366/Transcript 14 November 2005, pp. 23 - 26.

¹⁷³⁶ TF1- 366/Transcript 14 November 2005, pp. 45 - 46.

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Town. This allegation has not been specified in the indictment or in the Pre-trial Brief¹⁷³⁷ and should be disregarded. Any claim that it gives rise to criminal responsibility ought to be dismissed for want of notice.

777. TF1-360 claimed that Sesay received a lot of orders from Bockarie during the time the former was present in Koidu, including to burn Koidu. Curiously the witness was only able to detail a few. First the witness claimed that Sesay was to arrange the command structure. At its highest this evidence proves that Sesay passed on the order from Bockarie that Superman should be in charge and Kallon should be second.¹⁷³⁸ However there is much to undermine even this claim. TF1-334 testified that it was JPK who had appointed Superman at a meeting. This was confirmed by Sesay.¹⁷³⁹

4. No liability for any Order to burn Kono

778. The Prosecution have failed to prove that Sesay had anything to do with the burning of Koidu Town. TF1-361, TF1-360, TF1-334 claimed that Sesay had given the order or seconded an order that Kono should be burnt. These accounts are not corroborated nor do they corroborate each other.

a) TF1-360

779. TF1-360 testified that Sesay had given this order at a public meeting with JPK in attendance. This evidence is wholly unreliable for the following reasons. TF1-360 gave several contradictory accounts on this issue. On the 25 June 2004 TF1-360 gave a statement to the Prosecution which stated that Sesay was already in Kailahun by the time the witness arrived in Kono (following the intervention). In the same statement the witness claimed that he was informed that JPK had held a meeting before he left for Kailahun. The meeting concerned "*the basic thing... for all SLA's to take orders from the commanders on the ground, be he AFRC or RUF*". The witness was not present because. He was at the rear of the fleeing junta troops and was still making his way to

¹⁷³⁷ Para. 80 of the Consolidated Indictment, Para. 263 – 269.

¹⁷³⁸ TF1- 360/Transcript 25 July 2005, pp. 9 - 10

¹⁷³⁹ Sesay/Transcript 9 May 2007 pp.45.

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Kono.¹⁷⁴⁰ On the 22 July 2005 TF1-360 testified in court that the information concerning Sesay's alleged order came from Kallon who informed the combatants "that was the order given to him by the field commander".¹⁷⁴¹ On the 25 July 2005 TF1-360 altered his account again, this time claiming to have been present at the JPK meeting when Sesay issued the order to burn Kono.¹⁷⁴² The witness conceded that he had never told anyone that he had been present at such a meeting until giving evidence in court.¹⁷⁴³

b) TF1-334

780. TF1-334 also claimed to have been present at a meeting which was chaired by JPK. This meeting was held between Tankoro and Woama (along the Gandorhun Highway), and not Kimberlite.¹⁷⁴⁴ TF1-334's accounts concerning the role played by either JPK or Sesay did not present as reliable as detailed above and for the following reasons. First, the witness on the 5th November 2003 told the Prosecution that after returning from the Gandorhun region (the route by which JPK and Sesay had retreated to Kailahun) he had returned to Koidu Town and had been annoyed at the burning which had taken place at the Masingbi Road area. At the time of this interview the witness forgot that Bazy was apparently following the order given by JPK and Sesay. On the 7th July 2006 during the RUF trial the witness was unwilling or unable to explain why he had been annoyed at this burning when it had allegedly arisen pursuant to an order from JPK.¹⁷⁴⁵ This account was further contradicted by his earlier claim that the purpose of the burning of the Masingbi Road area was for security reasons and the witness had himself participated in the burning.¹⁷⁴⁶ Significantly the witness at that time claimed this burning has occurred when Gullit had returned to Koidu – about May 1998.¹⁷⁴⁷ The witness was incapable of telling the truth but the timing of the burning slowly emerged from the untruths.

¹⁷⁴⁰ TF1- 360/Transcript 25 July 2005, pp. 18 referring to the 25 June 2004 statement, pp. 10018.

¹⁷⁴¹ TF1- 360/Transcript 22 July 2005, pp. 82, line 23-29.

¹⁷⁴² TF1- 360/Transcript 25 July 2005, pp. 11.

¹⁷⁴³ TF1- 360/Transcript 25 July 2005, pp. 21.

¹⁷⁴⁴ TF1- 334/Transcript 7 July 2006, pp. 14 – 21.

¹⁷⁴⁵ TF1- 334/Transcript 7 July 2006, pp. 17 – 18.

¹⁷⁴⁶ TF1- 334/Transcript 20 May 2005, pp. 8.

¹⁷⁴⁷ TF1- 334/AFRC Transcript 20 May 2005, pp. 31 - 34.

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781. On the 11th November 2003 the witness claimed to the Prosecution that Sesay had been present at a meeting where JPK had given the order to burn Koidu. Sesay had not spoken at the meeting. On the 18 May 2005 TF1-334, realising the benefits of dancing to the Prosecution's tune, changed his account again; this time claiming that Sesay had in fact spoken at the meeting and had reinforced the JPK order.¹⁷⁴⁸

c) Inconsistencies between TF1-360 and TF1-334

782. The accounts given by TF1-360 and TF1-334 are fundamentally inconsistent. TF1-360 claimed that the order given by Sesay was a "standing order" which "every combatant was forced to do" if, and only if, the RUF and AFRC were pushed out of Koidu. According to the witness this order was implemented at the time the RUF were pushed out of Koidu and retreated to the Guinea Highway.¹⁷⁴⁹ Conversely TF1-334 claimed that the order was for immediate implementation so to ensure that Koidu became a no go area for civilians and continued from the time the junta arrived until the day the SLA left Koidu to meet SAJ Musa. According to this curious account - which absurdly suggests that the junta forces could not remove any remaining civilians through threat of a gun alone - the burning of Koidu commenced immediately.¹⁷⁵⁰ The evidence given by TF1-334 is illogical, suggesting that the only way to remove civilians or prevent them from remaining in Koidu, was by burning the very houses which the combatants would need as shelter from the approaching rainy season. Moreover it describes an order which is completely different to the order referred to by TF1-360.

d) Lack of corroboration for the account given by TF1-360 and TF1-334

783. George Johnson was present at a meeting chaired by JPK in which the decision was taken that all SLA's should be under the RUF. Superman was appointed the overall

¹⁷⁴⁸ TF1- 334/Transcript 7 July 2006, pp. 14 – 21 referring to interviews of the 5th November 2003, pp. 14497 and 11 November 2003, pp. 14581.

¹⁷⁴⁹ TF1- 360/Transcript 25 July 2005, pp. 11 and 12.

¹⁷⁵⁰ TF1- 334/Transcript 18 May 2005, pp. 2 – 10.

commander of Kono and Bazy was appointed as his second in command.¹⁷⁵¹ It is likely that this was the meeting which TF1-360 belatedly claimed to have attended before JPK left for Kailahun. This meeting was confirmed by Sesay in his testimony who recalled that in this meeting JPK had appointed Superman and Bazy as first and second man respectively.¹⁷⁵² Johnson made no mention of Sesay or any other commander giving an order to burn Koidu at this meeting. TF1-371 could not even recall this or any meeting during his brief stay in Koidu¹⁷⁵³ and also, during the two days he was in Koidu, only observed burning at the outskirts of Koidu town.¹⁷⁵⁴ This is the type of order which one would suppose would remain firmly embedded in the memory of even the most hardened combatant.

J. The real culprits: Bockarie and Commanders in Koidu

1. The truth?

784. The evidence points inexorably in one direction. The Prosecution evidence shows beyond a doubt that the effective and operative order to burn Koidu Town was issued by Bockarie, implemented by commanders in Koidu either to encourage the combatants to resist the advancing ECOMOG troops or in order to deprive them of a base.

785. In part this was corroborated by TF1-041 who confirmed that that the reason for the burning, which took place at the time when ECOMOG were advancing upon Koidu town, was to destroy the area and deprive them of a base. The witness also confirmed that, upon observing the town being burnt, he removed the civilians who had been based at the Tankoro Area of the town, to the safety of Kpakuima.¹⁷⁵⁵ This latter piece of evidence provides additional support for the contention that there was never an order, from Sesay or any other, at the time of entering Koidu Town that it should be a no go area for civilians.

¹⁷⁵¹ Johnson /Transcript 14 October 2004, pp. 61-62.

¹⁷⁵² Sesay/Transcript 9 May 2007 pp.45.

¹⁷⁵³ TF1- 371/Transcript 31 July 2006, pp. 12, line 28 – pp. 13, line 21.

¹⁷⁵⁴ TF1- 371/Transcript 20 July 2006, pp. 69.

¹⁷⁵⁵ TF1- 041/Transcript 17 July 2006, pp. 40 - 42.

786. This was confirmed by TF1-367 and DIS-188 who confirmed that Bockarie issued an order to Superman to burn Koidu. This occurred around the time when the RUF were losing Koidu and was specifically designed to destroy the properties (houses and vehicles) of the soldiers so to motivate them to concentrate on military matters.¹⁷⁵⁶ This chain of command was obliquely but firmly corroborated by TF1-361's many verbal contortions when dealing with this subject. TF1-361's originally claimed that Bockarie gave the instruction to burn Koidu Town.¹⁷⁵⁷ The witness claimed that there had been a series of communications between Bockarie and Superman; which had been initiated by Bockarie requesting to talk to Superman.¹⁷⁵⁸ The order had nothing to do with creating a no go area for civilians but was a military measure designed to make it easier for the RUF to re-take Koidu at some later date.

787. This strategic purpose was also corroborated by DIS-163 who was staying at Dabundeh Street, near Superman, and heard of it from his black guard friends, FOC (Francis O. Charles), Jackson Jackima, and Kpenyor.¹⁷⁵⁹ It is submitted that these Black Guards would have been well placed to know the chain of reporting and command given their function which involved reporting to the Black Guard Commander Ray Swarey, who in turn reported directly to Bockarie.¹⁷⁶⁰ TF1-361 also confirmed that Mosquito had stated in a radio communication that "if the town [Koidu] remained when ECOMOG occupied it, it would be difficult to take it from them again."¹⁷⁶¹ The witness changed his version of events at the door of the court to claim that Sesay had been present and participated in the discussions. This was clearly a lie designed to implicate Sesay in the burning of Koidu. The claim that the witness had told the Prosecution during previous interviews about Sesay's involvement in those discussions/orders but this information – and only that information – had been missed out of the statement is risible.¹⁷⁶²

¹⁷⁵⁶ TF1- 367/Transcript 22 June 2006, pp. 16-17 and DIS - 188/Transcript 29 October 2007, pp. 18-20.

¹⁷⁵⁷ January 2005 statement, pp. 10681, Para. 3.

¹⁷⁵⁸ January 2005 statement, pp. 10681, Para. 4.

¹⁷⁵⁹ DIS - 163/Transcript 11 January 2008, pp.44 and 85.

¹⁷⁶⁰ DIS - 288/Transcript 9 November 2007, pp. 51.

¹⁷⁶¹ TF1- 361/Transcript 15 July 2005, pp. 63.

¹⁷⁶² TF1- 361/Transcript 15 January 2005, pp. 67- 74 and January 2005 statement, pp. 10681, Para. 4.

K. Particular criminal acts alleged against Sesay

1. No participation by Sesay in Operation No Living Thing – March/April

788. TF1 – 114 falsely claimed that this Sesay had passed an order for Operation No living Thing.¹⁷⁶³ The witness was claiming that this operation occurred whilst Sesay was present in Koidu.¹⁷⁶⁴ The witness claimed that this led to all the houses in Koidu being burnt.¹⁷⁶⁵ The witness confirmed that he had not made mention of this allegation until his court appearance and could not explain why it was not in his statements.¹⁷⁶⁶ The witness confirmed later in his testimony that this was not true, confessing “to be sincere, I was not told that it [the Operation] came from him”.¹⁷⁶⁷ During cross examination on behalf of the first Accused, the witness thus changed his evidence claiming that Eldred Collins had told him that the Operation had come from the head of the RUF and had been agreed or ordered by all the heads of the AFRC.¹⁷⁶⁸

789. None of this evidence was corroborated by any RUF or AFRC combatant, neither Prosecution nor Defence. TF1-071 however testified that there had been an order for Operation No Living Thing but this occurred at a time when the RUF were “intensively under attack by the ECOMOG forces, nowhere to go during the time of fighting.. in 1998...around March or April... ”.¹⁷⁶⁹ This was clearly not the first few days of entry into Koidu and had nothing to do with Sesay. The witness testified that this order came directly from Bockarie to Superman who relayed it to the combatants on the ground.¹⁷⁷⁰ There is no evidence that Sesay participated in this operation.

2. No commission of crime during the journey to Kailahun

790. The Prosecution have failed to plead or give notice of any criminal responsibility arising from JPK’s retreat to Kailahun. It is submitted that consequent upon this lack of

¹⁷⁶³ TF1- 114/Transcript 28 April 2005, pp. 45 – 46.

¹⁷⁶⁴ TF1- 114/Transcript 28 April 2005, pp. 45.

¹⁷⁶⁵ TF1- 114/Transcript 28 April 2005, pp. 45 and pp.114.

¹⁷⁶⁶ TF1- 114/Transcript 28 April 2005, pp. 109, lines 3 -7.

¹⁷⁶⁷ TF1- 114/Transcript 28 April 2005, pp. 11, pp.14 – 17.

¹⁷⁶⁸ TF1- 114/Transcript 28 April 2005, pp. 106.

¹⁷⁶⁹ TF1- 071/Transcript 21 January 2005, pp. 90 -91.

¹⁷⁷⁰ TF1- 071/Transcript 21 January 2005, pp. 63, line 19 - pp. 63, line 27.

notice no criminal responsibility can arise from any alleged criminal conduct within the towns and villages along the route, unless they enumerated within the indictment. The following locations, inter alia must be dismissed for lack of notice: Koindu Geiya, Gandorhun, Koindu Bwema, Sandaru, Yobo.¹⁷⁷¹ Additionally the Defence relies upon the following additional submissions. .

3. Mistreatment of civilians and civilian properties on the trip

a) TF1-141

791. The Prosecution's approach from the beginning to the end of the case has been to produce any witness who is prepared to implicate the first Accused. There appears to have been no selection of accounts or any attempt to call consistent evidence. TF1-141 claimed to have been a child combatant who was on the trip with JPK [and Sesay] on their retreat to Kailahun.¹⁷⁷² This account clearly cannot be true. First, the witness claimed that the RUF had already moved to the Guinea base at the time he travelled with JPK.¹⁷⁷³ Second, the witness claimed to have still been in Koidu at the time of the looting of the Koidu bank and claimed to have travelled with the proceeds.¹⁷⁷⁴ This clearly took place sometime after JPK had retreated. Third, the witness claimed that there were about 300 people on the trip and that the trip passed through Koindu Gaiya.¹⁷⁷⁵ For this latter allegation the Prosecution also rely upon TF1-366 - whose relationship with the truth was equally tenuous - and who claimed that the trip went through Koindu Geiya and houses were burnt along the route and civilians were killed.¹⁷⁷⁶

792. These accounts are at variance with all others. For example: TF1-371, [REDACTED], confirmed that the convoy consisted of around 50 people, namely senior commanders and their families, who were moving as rapidly as possible to avoid alerting the CDF to their movement. Koindu Gieya was blocked by the CDF and so

¹⁷⁷¹ TF1- 366/Transcript 14 November 2005, pp. 31.

¹⁷⁷² TF1- 141/Transcript 15 April 2005, pp. 71-76.

¹⁷⁷³ TF1- 141/Transcript 15 April 2005, pp. 71-76.

¹⁷⁷⁴ TF1- 141/Transcript 18 April 2005, pp. 61 and 11 April 2005, pp. 103.

¹⁷⁷⁵ TF1- 141/Transcript 15 April 2005, pp. 71-76.

¹⁷⁷⁶ TF1- 366/Transcript 14 November 2005, pp. 30.

they took the bush road. TF1-367 confirmed that the trip was limited to JPK, [REDACTED], Sesay and their family and securities. They took the bush road in secret to avoid the Kamajors at Koindu Giaya.¹⁷⁷⁷ TF1-371 confirmed that there was no fighting undertaken by the Convoy from Gandorhun, across the Moa and all the way to Buedu.¹⁷⁷⁸ TF1-045 confirmed that the trip did not pass through Koindu Gaiya because it was occupied by Kamajors who could not be dislodged.¹⁷⁷⁹

793. TF1-045 confirmed that the trip was limited to a few senior commanders (Sesay, [REDACTED], JPK etc) and their families.¹⁷⁸⁰ This was also confirmed by Sesay. The Prosecution must have been aware that the allegations of the use of child soldiers, abductions of civilians and other related crimes on that trip could not have been true. In the face of TF1-141 manifest inconsistencies and his failure to corroborate this testimony it is clear that the Prosecution's reliance upon this evidence lacked principle and was unfair and wrong.

794. TF1-041 claimed that a number of civilians were forced to care for the wounded soldiers on the trip. The witness claimed that they were not treated well and some of them were sent to the training base.¹⁷⁸¹ The witness provided no detail concerning the exact nature of the alleged coercion, the number of civilians, from whence they were captured. The witness did not give the attitude of the alleged abductees at the time when they allegedly went and the source of his knowledge. This evidence was equally uncorroborated by first hand accounts by those men on the journey.

795. TF1-366 claimed that Sesay gave the order to burn houses on the way, including the following towns and villages Koindu Geiya, Gandorhun, Koindu Bwema, Sandaru, Yobo,¹⁷⁸² No sensible reason or motive could be discerned to explain the purpose of

¹⁷⁷⁷ TF1- 367/Transcript 23 June 2006, pp. 23.

¹⁷⁷⁸ TF1- 371/Transcript 31 July 2006, pp. 16.

¹⁷⁷⁹ TF1- 045/Transcript 19 November 2005, pp. 53-55.

¹⁷⁸⁰ TF1- 045/Transcript 19 November 2005, pp. 53-55. See also TF1-045/Transcript 23 November 2005, pp. 6 – 8 where in a rare moment of truthfulness TF1-045 confirmed that Lamin and JPK were senior to Sesay at that time.

¹⁷⁸¹ TF1- 041/Transcript 10 July 2006, pp. 42 -43.

¹⁷⁸² TF1- 366/Transcript 14 November 2005, pp. 31.

these orders or why Sesay would waste time or resources committing random acts of violence given the importance attached to JPK safety and his retreat to Kailahun. Again the lies told by TF1-366 are exposed through the Prosecution's own witnesses; TF1-371 confirmed that there was no fighting activity on the trip between Gandorhun and Buedu, they were just moving as rapidly as possible.¹⁷⁸³

4. Koidu crimes: Sesay in Kailahun - crimes committed by members of the SLA and RUF groups

796. The Prosecution case that Sesay contributed to or participated in an agreement (or agreements) to commit crime in Koidu is nonsense. The Prosecution have failed to prove that Sesay provided any assistance to the military operation in Koidu. More significantly, the Prosecution have failed to prove that Sesay participated in any way to the crimes committed during his absence from late February 1998 until 30 June 1998

L. No overall campaign of terror or punishment

797. It is accepted that many crimes were committed during the February 1998 to June 1998 period. However the nature of the crimes has to be examined with care. The Prosecution case appears to be predicated upon an allegation that the crimes committed were the result of a campaign to terrorise and punish the population. The evidence does not support this theory. The evidence supports the contention that the crimes committed were the result of excesses by Commanders and combatants on the ground, who were not controlled or were uncontrollable, and not a deliberate policy from Bockarie or others outside of Kailahun. There was no overall agreement or coordinated plan from top down to commit crimes against civilians.¹⁷⁸⁴ As stated above it was the view of TF1-071 that the majority of the crimes were committed by the SLA's who Superman could not control.¹⁷⁸⁵ The RUF ideology, and its focus upon civilian welfare, was supposed to be implemented but was perverted for a variety of reasons.

¹⁷⁸³ TF1- 371/Transcript 31 July 2006, pp. 15-16.

¹⁷⁸⁴ TF1- 078/Transcript 26 November 2004, pp. 8.

¹⁷⁸⁵ TF1-071/Transcript 24 January 2005, pp. 120, line 14 – pp. 121 line 16; Johnson /Transcript 19 October 2004, pp. 34-35.

798. There was a clear expectation within the RUF ideology that crimes should be punished. It should be noted, as confirmed by TF1-371, it was common practice within the RUF to recall senior military commanders who were undisciplined and who engaged in the killing of civilians.¹⁷⁸⁶ This would involve commanders being recalled from their assignment areas to the HQ to explain themselves and then sanctioned, which meant grounded at HQ until the High Command decided to give them a new assignment.¹⁷⁸⁷ TF1-371 explained that the RUF high command disciplined officers for killing civilians, burning houses, destructing combat mission.¹⁷⁸⁸

799. The senior commanders in the RUF, including Sesay expected civilians in Koidu to be protected. Many had come to the RUF seeking protection. TF1-041 observed the dangers for civilians who remained in Freetown following the intervention. The dangers of being labelled a collaborator were many.¹⁷⁸⁹ Civilians in Koidu had already suffered attacks by the CDF prior to the arrival of the bulk of the junta forces.¹⁷⁹⁰ TF1-078 recalled 200-300 civilians at Kaidu who had come from the forest to escape random attack.¹⁷⁹¹ This was the RUF ideology.

800. There were some real efforts by many in the RUF to provide that protection. It is submitted that it is wholly unfair to blame all for the crimes of the few, however horrific the crimes. There were real efforts made to bring civilians from the bush for their own safety and to ensure security for the RUF.¹⁷⁹² TF1-041 was able to act to protect the civilians in his charge, moving them from the danger of combat or illegal acts of burning. TF1-041 testified to removing the civilians to a place of safety, at Papuima, before being *ordered* to remove them to a village behind Gandorhun called

¹⁷⁸⁶ TF1- 371/Transcript 21 July 2006, pp. 4-5.

¹⁷⁸⁷ TF1- 371/Transcript 21 July 2006, pp. 5.

¹⁷⁸⁸ TF1- 371/Transcript 24 July 2006, pp. 4.

¹⁷⁸⁹ TF1- 041/Transcript 11 July 2006, pp. 21-24.

¹⁷⁹⁰ TF1- 041/Transcript 11 July 2006, pp. 23.

¹⁷⁹¹ TF1- 078/Transcript 22 November 2004, pp. 72 - 77.

¹⁷⁹² TF1- 078/Transcript 25 November 2004, pp. 61-65.

Baoma Tanywuhun ¹⁷⁹³ Civilians went voluntarily to Guinea Highway seeking protection from Kamajor and ECOMOG attacks.¹⁷⁹⁴

1. Guinea Highway Camps

801. Civilians were kept away from the frontlines and were not permitted to enter the combat camps. The RUF three points of Attention and the eight codes of conduct formed the basis of the laws.¹⁷⁹⁵ There were laws not to rape or steal and these applied to both combatants and civilians.¹⁷⁹⁶ They were permitted to travel to visit relatives within the locality provided it was considered safe.¹⁷⁹⁷ It is obvious that the idea was that civilians would work, finding food, in exchange for protection.¹⁷⁹⁸ It was not permitted to assault civilians to force them to work and the witness would not have permitted this to happen in his presence.¹⁷⁹⁹ The civilians preferred to be in the towns with the RUF than in the bush.¹⁸⁰⁰ The civilians were expected to find food for themselves and for the fighters and would go and search for abandoned food.¹⁸⁰¹ It was necessary for the survival of both the civilians and the fighters.¹⁸⁰² This was the context in which the crimes were committed. In some places this worked very well with civilians and combatants consenting to this symbiotic relationship.¹⁸⁰³ Sadly it also failed.

2. Failure of the JSU

¹⁷⁹³ TF1- 041/Transcript 11 July 2006, pp. 47.

¹⁷⁹⁴ TF1- 041/Transcript 11 July 2006, pp. 25.

¹⁷⁹⁵ TF1- 041/Transcript 11 July 2006, pp. 27.

¹⁷⁹⁶ TF1- 078/Transcript 25 November 2004, pp. 61-65.

¹⁷⁹⁷ TF1- 041/Transcript 11 July 2006, pp. 29.

¹⁷⁹⁸ TF1- 041/Transcript 11 July 2006, pp. 29-32 and TF1-071/Transcript 21 January 2005, pp. 39-43 and 26 January 2005, pp. 25 – 28.

¹⁷⁹⁹ TF1- 041/Transcript 11 July 2006, pp. 20.

¹⁸⁰⁰ TF1- 015/Transcript 31 January 2005, pp. 38 – 47.

¹⁸⁰¹ TF1- 041/Transcript 11 July 2006, pp. 30 – 32 and TF1-074/Transcript 22 October 2004, pp. 31 – 32.

¹⁸⁰² TF1- 078/Transcript 26 October 2004, pp. 9 -13.

¹⁸⁰³ According to TF1-078 the relationship between civilians and combatants in Kaidu, Wonedu and Kunduma was cordial and civilians were willing to work in exchange for the protection of the camps (TF1-078/Transcript 25 October 2004, pp. 65- 66).

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802. The overall unit heads ought to have been receiving reports from their respective agents in the fields. TF1-041 confirmed that he would not send any reports from Koidu [REDACTED] during 1998. The witness would send his reports to Superman or the Brigade Commander and other commanders in Kono. The witness confirmed that the efficiency of the [REDACTED] system depended upon the interest of the commander on the ground and whether they supported the work. In 1998 reports concerning [REDACTED] were not dealt with because Superman did not have time for civilians and instead favoured combatants.¹⁸⁰⁴

803. The evidence therefore does not support a finding that any neglect on the part of Bockarie, was therefore planned, directed or in any way the result of an agreement with Sesay to terrorise or punish the population. The evidence clearly shows that Sesay had little or no real BFC authority, no functioning authority and no ability to effect arrests or punishment within Koidu. The evidence also shows that Bockarie, whilst being neglectful, was hamstrung by having little or no effective control over the SLA's within Koidu, the unpredictability of an arrogant Superman, poor geography and irregular communications. Notwithstanding, the evidence clearly demonstrates that the only commander from outside of Kailahun who could have prevented or punished crime within Koidu between February and June 1998 was Bockarie.

804. However this failure and the crimes which ensued were not the consequence of a policy of terror or collective punishments.

805. At the time of these crimes Sesay was engaged in Pendembu. Civilians were living peacefully.¹⁸⁰⁵ This was his participation and his state of mind. It had nothing to do with the state of mind held by either the perpetrators of crime in Koidu or Bockarie who may have acquiesced in that conduct.

¹⁸⁰⁴ TF1- 041/Transcript 10 July 2006, pp. 30 -32.

¹⁸⁰⁵ TF1-371 agreed that civilians in Pendembu could rely upon Sesay to take action against commanders to protect them from crimes. Sesay was against the rape, looting and harassment of civilians. This was the RUF ideology. Pendembu was a quiet place. The Witness confirmed that Pendembu was quiet because everyone knew that Sesay would not allow things to happen, his response to crimes against civilians would have been determined, disciplined and forceful (TF1-371/Transcript 21 July 2006, pp 110 – 112).

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M. Sesay's lack of control and influence

1. Lack of de facto BFC powers pre-December 1998

806. The Prosecution failed to either particularise or prove a significant de facto command role for Sesay during the period from February 1998 through to December 1998. The totality of the evidence demonstrates that Sesay's de jure status as BFC was not matched by de facto powers. The struggle by the Prosecution witnesses to provide convincing detail or to even admit the obvious (that Bockarie jealously held onto the de facto functions of a BFC whilst Sesay was reduced to some kind of military assistant before being marginalised in Pendembu for the vast majority of 1998) is significant. The Prosecution's attempt to prove that Sesay was both the de jure and de facto BFC was marked by inconsistency and vagueness.

807. It is important to separate the theory from the reality. The theoretical role for the BFC undoubtedly could have provided the holder of the title with significant command responsibility. Conversely the evidence proves that Sesay did not possess autonomous command and thereby had little, if any, effective control over the military system. It was Superman who arranged the Battalions and Battalion Commanders in Kono. Sesay merely passed in Bockarie's orders that Superman should be the Commander of Kono and Bazzy his second in command.¹⁸⁰⁶ The commanders in Koidu reported to the Commanders in Koidu and ultimately were supposed to report to Superman.¹⁸⁰⁷ Superman put his most loyal Western and Northern Jungle men in charge of key assignments – men who were close to him, such as Gbudema.¹⁸⁰⁸

808. There was a suggestion from TF1-071 that Sesay appointed Kallon to the post of Battlefield Inspector, a special assistant to the battlefield commander – dealing with combat activities, preparation of missions and other issues,¹⁸⁰⁹ but this was not corroborated and is denied. Naturally this act, even if true, would only be meaningful or

¹⁸⁰⁶ TF1- 360/Transcript 19 July 2005, pp. 14-16.

¹⁸⁰⁷ TF1- 071/Transcript 21 January 2005, pp. 14-21 and pp. 94-95.

¹⁸⁰⁸ TF1- 360/Transcript 22 July 2005, pp. 26-29.

¹⁸⁰⁹ TF1- 071/Transcript 26 January 2005, pp. 76 - 78.

significant in the event that Sesay had any corresponding material ability to intervene in his subsequent activity. The evidence does not provide this proof.

2. Concentration of authority in Bockarie: the RUF system

a) Bockarie –The de facto BFC

809. It is not uncommon in a criminal trial for the Accused to blame absent others. The dead make useful scapegoats. However in this instance this evidence is powerfully supported by almost all the insider witnesses, both Prosecution and Defence. The evidence given by witnesses such as TF1-036 establishes beyond any doubt that, whilst Sesay had the title BFC, it was Bockarie who jealously possessed the functions of all the significant aspects of the RUF military machinery. The Prosecution have failed to establish that Sesay had any official duties or authority within Koidu during the February to June 1998 time frame.

810. It is obvious that the RUF command structure and its historical development were profoundly affected by Sankoh's obsessive inconsistency. At the same time as creating a theoretical structure which anticipated the hierarchical chain of command Sankoh thwarted by bypassing it; handing out junior assignments, issuing orders to and obtaining reports from a number of subordinate commanders. A number of witnesses confirmed this fact and it is consistent with the practice of guerilla movements and guerilla leaders across the globe. (For example: TF1-361 confirmed that in 1996, when Bockarie was the BGC based in Kailahun, Superman was the Area Commander in the Western Jungle and Mongo, the Area Commander of the Northern Jungle Sankoh, the latter two men were not reporting to Bockarie, as the hierarchy suggests, but were reporting directly to Sankoh. Sankoh was giving orders to each region¹⁸¹⁰).

811. It is obvious that the bypassing of the chain of command and the concentration of functional military power in the hands of the Leader became both a practice and, given the distances involved and the relatively weak communications system, perhaps even a necessity.

¹⁸¹⁰ TF1- 361/Transcript 14 July 2005, pp. 57.

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812. The RUF military system was designed to vest substantial, if not overwhelming, command authority in the hands of the Leader (or Commander in Chief). TF1-036 described how a system was implemented involving adjutants in the field sending written reports directly to the Chief Adjutant, who would then compile the reports and then file them.¹⁸¹¹ TF1-360 confirmed that the RUF was a guerrilla army which believed in the practical. Commanders could make recommendations but it was always Bockarie who would make the decisions.¹⁸¹² The reports would encompass manpower, ammunition and arms, government properties including radio sets.¹⁸¹³ The adjutants would also collate information concerning the training base and “would send it to the G1 directly who was the head of training and the G1 would send it to Headquarters. He would address it directly to Mosquito”.¹⁸¹⁴ As observed by DIS-157,

... [I]n the RUF we had a very big illness. It was not only with Mosquito but even with the leader. When somebody was a leader you wouldn't want any other person to be another leader, so Mosquito as a leader would not like any other person to give command, except he, so everything emanated from him. All commands emanated from him. That was how things obtained.¹⁸¹⁵

b) Control of Unit Heads including the JSU

813. TF1-036 confirmed that Bockarie would send messages directly, either verbally or sometimes through his adjutant Rashid. Bockarie was in direct control of all the unit heads and was receiving reports and issuing instructions to them on a regular, if not daily basis. Bockarie would receive reports regularly from “all operational areas” and the reports would be taken to him at his house for his response.¹⁸¹⁶ As noted by TF1-036, “When the report comes, [REDACTED], and what his reaction was, if it was through a radio message he would send it. If it's calling the commander directly he would call him and talk to him over to the air. If it's a radio

¹⁸¹¹ TF1- 036/Transcript 29 July 2005, pp. 82.

¹⁸¹² TF1 360/Transcript 19 July 2005, pp. 23 - 26.

¹⁸¹³ TF1- 036/Transcript 29 July 2005, pp. 82.

¹⁸¹⁴ TF1- 036/Transcript 29 July 2005, pp. 82, line 16 -18.

¹⁸¹⁵ DIS-157/Transcript 24 January 2008, pp.73, line 11-17.

¹⁸¹⁶ TF1- 036/Transcript 29 July 2005, pp. 77 – 82 and 95.

message he would write it and send it. [REDACTED]
[REDACTED]

814. The system whereby the G Staff reported directly to the Leader was created by Foday Sankoh in the early years of the conflict and had been in existence throughout.¹⁸¹⁸ It incorporated the essential functioning of all of the RUF military organisation, including the G1 who would compile reports concerning training and deliver it to Bockarie;¹⁸¹⁹ the G5 who would compile reports from information concerning civilian welfare supplied by sub-G5's and deliver them to Bockarie;¹⁸²⁰ TF1-0371 confirmed that Bockarie would speak to Prince Taylor everyday,¹⁸²¹ and other unit heads regularly.¹⁸²² Witness TF1-036 further confirmed that, even the Koidu mining commanders came directly to Bockarie¹⁸²³ who trusting so little kept them secured in his own house.¹⁸²⁴ TF1-361 confirmed that the signalling commander would report directly to the Commander in charge, namely Bockarie in 1998.¹⁸²⁵ This was confirmed a number of witnesses including DIS-069,¹⁸²⁶ DIS-085,¹⁸²⁷ .This was also true of the S4 who in 1998 was responsible for the Buedu food store. TF1-371 confirmed that S4 Jabba T reported directly to and received direct orders from Bockarie. Bockarie would be contacted directly from Kono and he would then instruct the S4 to provide the supply.¹⁸²⁸

815. TF1-141, who appears to have been based somewhere around Bockarie at the HQ, also observed that Bockarie would instruct the unit commanders who were at the HQ,

¹⁸¹⁷ TF1- 036/Transcript 29 July 2005, pp. 81, line 3-9.

¹⁸¹⁸ TF1- 168/Transcript 31 March 2006, pp. 89-90.

¹⁸¹⁹ TF1- 036/Transcript 29 July 2005, pp. 77 – 82.

¹⁸²⁰ TF1- 036/Transcript 1 August 2005, pp. 34 – 35.

¹⁸²¹ TF1- 371/Transcript 28 July 2006, pp. 31 – 32.

¹⁸²² TF1- 371/Transcript 28 July 2006, pp. 72 - 78.

¹⁸²³ TF1- 036/Transcript 28 July 2005, pp. 66 – 67.

¹⁸²⁴ TF1- 036/Transcript 1 August 2005, pp. 8-10.

¹⁸²⁵ TF1- 361/Transcript 15 July 2005, pp. 22 - 24.

¹⁸²⁶ DIS-069/Transcript 22 October 2007, pp. 103 -105.

¹⁸²⁷ DIS-085/Transcript 14 February 2008, pp. 36 – 39.

¹⁸²⁸ TF1- 371/Transcript 31 July 2006, pp. 73, line 24 -29 and pp. 74, line 1-4.

including Kaisuku the overall MP Commander and Monica Pearson from the training base, and they would send messages to the Brigade Battalion Commanders.¹⁸²⁹

816. No obvious role for a second in command emerges. The RUF system and more particularly the criminal justice system (JSU) was not designed to need a second in command. This is clear. As confirmed by TF1- 371 *“That was the custom for the personnel of a particular unit to report to the immediate boss and immediate boss, in turn, report to the commander in charge”*.¹⁸³⁰ In other words, the JSU agents (the IO’S, IDU, MP, G5’s) were expected to report to their overalls who would then either report to their area commander or to the Leader. The Black Guards in Koidu reported directly to Bockarie.¹⁸³¹ Although TF1-366 claimed that the Black Guard in Koidu reported security information to Superman, Morris Kallon and Sesay¹⁸³² it was clear that this was not true. TF1-036 and TF1-041, confirmed that the Blackguards reported from Koidu and all areas directly to Bockarie.¹⁸³³ [REDACTED]

817. The overall MP Commander Kaisuku¹⁸³⁵ and the G5 Commander Prince Taylor reported directly to Bockarie.¹⁸³⁶ The IDU had a room in the HQ in Buedu.¹⁸³⁷ Gbao, the overall IDU reported directly to Bockarie in Buedu, notwithstanding that he was based in Kailahun Town which was closer to Pendembu;¹⁸³⁸ a fact which formed the mainstay of the Gbao Defence. DIS-163 confirmed that Bockarie had the right to “invite” commanders to his location and would send messages to this effect.¹⁸³⁹

¹⁸²⁹ TF1- 141/Transcript 11 April 2005, pp. 53 – 54 and pp. 60 – 61.

¹⁸³⁰ TF1-372/Transcript 28 July 2006, pp. 76, line 15 -17.

¹⁸³¹ Sesay/Transcript 17th May 2007, pp. 13 -14.

¹⁸³² TF1- 366/Transcript 14 November 2005, pp. 69.

¹⁸³³ TF1- 036/Transcript 29 July 2005, pp. 95 and TF1- 041/Transcript 18 July 2006, pp. 47 – 48.

¹⁸³⁴ DIS - 288/Transcript 9 November 2007, pp. 51.

¹⁸³⁵ Sesay/Transcript 10th May 2007, pp. 77.

¹⁸³⁶ Sesay/Transcript 10th May 2007, pp. 64.

¹⁸³⁷ Sesay/Transcript 10th May 2007, pp. 65.

¹⁸³⁸ DIS-157/Transcript 25 January 2008, pp. 36, line 11- pp. 38, line 14.

¹⁸³⁹ DIS - 163/Transcript 11 January 2008, pp. 86.

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818. TF1-168 confirmed that he knew “about the G staff, these are executive positions directly answerable to the commander in chief. Other staffs, you can have S1, S2, S3, S4, S5, they could be answerable to the battle group commander, the battle field commander, other commanders. But the G staff, they report directly to the commander in chief, Corporal Sankoh”. This was a system which was well known and was the system.¹⁸⁴⁰

c) Bockarie’s control of property, manpower, ammunition etc

(1) Control of the lower ranks

819. TF1-371 confirmed that Bockarie would also visit the Buedu HQ everyday. It was 20-30 metres from his house. Bockarie would occasionally even speak to the unit agents directly.¹⁸⁴¹ Bockarie would use bodyguards as assistants, sending them to obtain information and fetch things.¹⁸⁴²

820. Bockarie would also give orders directly to the Brigade Commanders.¹⁸⁴³ Bockarie would give promotions¹⁸⁴⁴, even to relatively junior personnel. Bockarie’s role extended far beyond even a conventional BFC as confirmed by Exhibit 197, the appointment papers dated 21 September 1998, signed by Dr Fabai assigning a medic to Kuiva. Bockarie signed to indicate his approval, notwithstanding Sesay’s purported role as the commander of *that* frontline. He really was in charge of everything.¹⁸⁴⁵

821. Preferring to do business from his own house, rather than from the War Office,¹⁸⁴⁶ Bockarie’s focus and control of the operations was impressively detailed. As noted by TF1-036,

“Okay, like I said, you are a secretary to the organisation. Then, all reports that comes (sic) in for the organisation, you receive them on behalf of the commander. Then you

¹⁸⁴⁰ TF1-168, 31 March 2006, p.90, line 5- 21.

¹⁸⁴¹ TF1- 371/Transcript 28 July 2006, pp. 72 - 78.

¹⁸⁴² TF1- 371/Transcript 28 July 2006, pp. 72 - 78.

¹⁸⁴³ TF1- 141/Transcript 11 April 2005, pp. 53 – 54.

¹⁸⁴⁴ TF1- 141/Transcript 14 April 2005, pp. 60 – 61.

¹⁸⁴⁵ Sesay/Transcript 10 May 2005, pp. 110.

¹⁸⁴⁶ TF1- 036/Transcript 29 July 2005, pp. 80.

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either read it to him or he too will read it sometimes. Then what will be the response that he will give. Then if it's an instruction, he will give you and you will write it down for you to send it out. Or if it's a radio message, you will draft it and then give it to the radio operator. And he also tried very hard to tell other battalion commanders, company commanders and battalion adjutants or company adjutants, for them to collate within the areas of operation".¹⁸⁴⁷

822. TF1-036 confirmed that nothing went on without his direct knowledge or instruction.¹⁸⁴⁸ TF1-371 stated that Bockarie would receive messages direct from the frontlines on a daily basis.¹⁸⁴⁹ The role for a second in command is conspicuously absent.

(2) Traditional role of the BFC

823. The Defence military expert Mr. Hederstedt concluded that the role being played by Bockarie and Superman at this time – according to both Prosecution and Defence evidence – equated with the role of the BFC and BGC respectively within a conventional force. The role played by Sesay within Pendembu – as the protector of the rear – was significantly less important.

(3) Bockarie's exclusive responsibility for Kono

824. The Prosecution allege, notwithstanding the above, that Sesay was engaged on a day to day basis with planning and collaborating with the RUF in Koidu. The lack of corroborating or convincing detail is manifest. In the main the Prosecution adduced a lot of evidence of de jure command and little, of any thing else, but stereotyped assertion. This is clear from the below.

(4) Orders from Bockarie

825. The evidence is overwhelming. TF1-071 confirmed that Superman answered directly to Bockarie. It was usual for the commanders to all report to Bockarie directly;

¹⁸⁴⁷ TF1- 036/Transcript 28 July 2005, pp. 11 -21.

¹⁸⁴⁸ TF1- 036/Transcript 1 August 2005, pp. 61.

¹⁸⁴⁹ TF1- 371/Transcript 28 July 2006, pp. 25.

the command was like a wheel with Bockarie at the centre. Superman would report all matters deemed relevant directly to Bockarie.¹⁸⁵⁰

826. TF1-015 confirmed that Bockarie sent direct orders to Kono until he left Sierra Leone¹⁸⁵¹ (December 1999). DIS-085 [REDACTED] had access to the radio log books belonging to Kabbah (Bockarie's operator) in the first few weeks after the intervention and confirmed that all the orders went from Bockarie to Superman.¹⁸⁵² This was also confirmed by DIS-069.¹⁸⁵³ TF1-360 confirmed inter alia (i) that Bockarie would contact Superman and other commanders such as Komba Gbudema *directly*;¹⁸⁵⁴ (ii) that he had witnessed many verbal radio discussions between Bockarie and Superman; (iii) that Bockarie had been in touch with Superman four or five times a week; (v) that the order to commence mining in Koidu town came directly from Bockarie to Superman.¹⁸⁵⁵ DIS-214 confirmed that at no time [REDACTED] [REDACTED] had he heard from Sesay or saw any message from him in the log books. All messages came directly from Bockarie.¹⁸⁵⁶

(5) Bockarie supplying ALL ammunition

827. The Prosecution case appears thus to revolve, in part, around the contention that Sesay was integral to the supply and this was a contribution to the crimes committed between February and June 1998. It is submitted that the Prosecution have failed to prove that Sesay was involved in any supply of ammunition to the Guinea Highway.

828. TF1-360 confirmed that Bockarie was the person who would be contacted for ammunition (a "direct message from Superman asking Mosquito... and the response could come directly from Mosquito to Superman"¹⁸⁵⁷). Bockarie would provide the

¹⁸⁵⁰ TF1- 071/Transcript 20 January 2005, pp. 120, line 1-8.

¹⁸⁵¹ TF1- 015/Transcript 31 January 2005, pp. 74 – 76.

¹⁸⁵² DIS-085/Transcript 14 February 2008, pp. 43, line 23 – pp. 45, line 7.

¹⁸⁵³ DIS-069/Transcript 22 October 2007, pp. 105 -107.

¹⁸⁵⁴ TF1- 360/Transcript 19 July 2005, pp. 13 – 14. This was also confirmed by TF1-361 who confirmed that the Gbudema would send reports to Bockarie (Transcript 15 July 2006, pp. 78 - 79).

¹⁸⁵⁵ TF1- 360/Transcript 25 July 2005, pp. 13-14.

¹⁸⁵⁶ DIS - 214/Transcript 15 January 2008, pp. 93 - 94.

¹⁸⁵⁷ TF1- 360/Transcript 25 July 2005, pp. 14, line 17-19.

ammunition for the missions.¹⁸⁵⁸ This was logical. First, ammunition was a premium in the RUF and it made sense that the de facto leader would maintain a tight grip on it. Second, and consistent with this, the ammunition was stored very close to Bockarie's house. In these circumstances it hardly made sense to have Superman contacting Sesay only for the message to be passed onto Bockarie. Third, this was the practice for all sub-commanders within all the RUF controlled zones, even in Kailahun during 1998. This was confirmed by DIS-157 [REDACTED] who stated that requests for arms or ammunition would be made to Bockarie.¹⁸⁵⁹ This unsurprisingly is the case being advanced by the Prosecution against Taylor in the Hague but not Sesay at the Special Court.

829. The evidence shows that the missions which were organised from the various bases at the Guinea Highway utilised ammunition which had been supplied by Bockarie. TF1-360 noted that there were no missions being conducted immediately after the withdrawal from Koidu town, the camps were on the defensive, until ammunition was obtained by Superman from Bockarie and Sesay during his trip to Buedu in 1998.¹⁸⁶⁰

(6) Bockarie making ALL the plans

830. The extent of Sesay's marginalisation from the traditional role of a BFC was exacerbated and entrenched by his enforced banishment to Pendembu, late April 1998. TF1-360 read the letter sent from Bockarie to Superman detailing Sesay's loss of the diamonds and this punishment. Consequently when TF1-360 and others (including TF1-361) travelled to Buedu two days later to meet Bockarie they did not meet Sesay. Sesay, the de jure BFC, was not permitted to attend the meeting, even though important military issues, including an alleged plan about an assault on Freetown were being discussed.¹⁸⁶¹ Sesay's absence was also confirmed by DIS-085,¹⁸⁶² and DIS-288.¹⁸⁶³

¹⁸⁵⁸ TF1- 141/Transcript 11 April 2005, pp. 55.

¹⁸⁵⁹ DIS-157/Transcript 24 January 2008, pp. 88 – 89.

¹⁸⁶⁰ TF1- 361/Transcript 15 July 2005, pp. 88- 89.

¹⁸⁶¹ TF1- 041/Transcript 17 July 2006, pp. 47-48.

¹⁸⁶² DIS-085/Transcript 14 February 2008, pp. 42, Line 13-26.

¹⁸⁶³ DIS - 288/Transcript 9 November 2007, pp. 65 - 66.

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(7) Supply of ammunition for Fitta Fatta attack

831. At the end of the week long trip it was Bockarie, as always, who supplied Superman with ammunition to take back to the Guinea Highway.¹⁸⁶⁴ According to TF1-360 there were other important matters discussed and arranged in the absence of Sesay. Bockarie made arrangements directly with Superman concerning his movement to Koinadugu to join/arrest SAJ Musa and implement a plan to attack Freetown.¹⁸⁶⁵ According to TF1-360 further arrangements for his trip to Koinadugu were made by Bockarie contacting Kallon directly.¹⁸⁶⁶

832. TF1-360 claimed that civilians had been forced to carry the ammunition from Buedu to Kono.¹⁸⁶⁷ This is disputed. The witness was mistaken on this point. TF1-361, no stranger to implicating the accused, recalled that the ammunition was carried by soldiers.¹⁸⁶⁸ In any event it is clear from the evidence that Sesay was in Pendembu or its environs and would have no knowledge of these acts.

3. Further evidence of Sesay's lack of influence

833. TF1-361 showed the full extent of his hostile animus toward Sesay when discussing this trip. TF1-361 claimed that Sesay had not only been present during the private meeting between Superman and Bockarie but had initiated the meeting through a radio communication.¹⁸⁶⁹ The account lacks any credibility or reliability. First, it contradicts the account given by TF1-360 who was on the same trip and clearly recalls the absence of Sesay, and the reasons for it. Second the witness thoroughly impeached himself and was unable to explain the contradiction between his original statements to the Prosecution (wherein he referred to a private meeting between Superman and Bockarie) and his court testimony implicating Sesay. No further explanation was

¹⁸⁶⁴ TF1- 360/Transcript 25 July 2005, pp. 24.

¹⁸⁶⁵ TF1- 360/Transcript 25 July 2005, pp. 24, line 28-29.

¹⁸⁶⁶ TF1- 360/Transcript 25 July 2005, pp. 25, line 5.

¹⁸⁶⁷ TF1- 360/Transcript 20 July 2005, pp. 54, line 12 – 20.

¹⁸⁶⁸ TF1- 361/Transcript 15 July 2005, pp. 89 – 90.

¹⁸⁶⁹ TF1- 361/Transcript 12 July 2005, pp. 24, lines 9-7 (“Superman said, ‘Let us contact them’ so that he would be able to talk with them personally so as for him to understand why he should go. So we conducted the dialogue. ... with Mosquito and Brigadier Issa Sesay by the set ... They concluded that [Superman] should leave the next day, very fast, for him to reach Buedu and return to Kono to put the situation under control.”)

proffered to explain the inconsistency¹⁸⁷⁰ Third, even the likes of TF1-366 confirmed that at the time of Fitta Fatta Sesay was not militarily active and was not communicating with Superman but was detained by Bockarie.¹⁸⁷¹ It is a curious aspect of the case against Sesay that, despite being a fully functioning BFC, even the omnipresent TF1-366 appears not to have heard Sesay on the radio set from June 1998 until December 1998!

a) Supply of ammunition for the SAJ Musa mission

834. TF1- 361 also claimed that there was another supply of ammunition following the unsuccessful Fitta Fatta mission and immediately prior to Superman's mission to join SAJ Musa.¹⁸⁷² The Prosecution have not provided notice concerning whether they allege that this gives rise to any criminal responsibility on behalf of Sesay. It is anticipated that the Prosecution will allege that this alleged supply was Sesay's contribution to the crimes committed by Superman and SAJ Musa District. This is a desperate claim.

835. First the Prosecution need to prove that the ammunition was supplied by Sesay. TF1-361 stated that he did not know what ammunition was taken by Gbudema who he alleged formed the advance team to SAJ Musa. All the ammunition which had been supplied at the Buedu meeting was used during the Fitta Fatta mission.¹⁸⁷³ The witness attempted to implicate Sesay by claiming that there had been a further supply after the Fitta Fatta mission but could not explain why Gbudema's so-called advance group had not waited for this delivery lacked commonsense. TF1-361 claimed that his group went with the further supplies and took them to Kurubonla.¹⁸⁷⁴ This could not conceivably give rise to criminal responsibility. Even if this evidence was reliable, which it is not, it is evidence that Sesay supplied ammunition for a mission to attack Freetown. Not the civilians in Freetown but the military and governmental apparatus. There is no evidence

¹⁸⁷⁰ TF1- 361/Transcript 15 July 2005, pp. 81 -84 and also 11 June 2004 statement, pp. 10026, and the notes from an interview with Lorenzo Pugliatti, pp. 10661. 125.

¹⁸⁷¹ TF1- 366/Transcript 8 November 2005, pp. 81.

¹⁸⁷² TF1- 361/Transcript 12 July 2005, pp. 39 - 40 and 15 July 2005, pp. 112 and pp. 120.

¹⁸⁷³ TF1- 361/Transcript 15 July 2005, pp. 120.

¹⁸⁷⁴ TF1- 361/Transcript 18 July 2005, pp. 120-123.

that the supply was used to commit crimes. And the Prosecution have not proven that it was supplied with any intention to commit crime or that Sesay would have been aware that it was so intended.

836. There is no evidence that this ammunition had a substantial effect on the perpetration of any crime. As the witness testified SAJ Musa and Gbudema obtained a large supply of ammunition from an attack on Mongo Bendegu and were therefore well armed before the arrival of TF1-361.¹⁸⁷⁵ Finally, and decisively, no criminal responsibility arises because the witness was plainly giving false testimony. As confirmed by TF1- 360, Sesay was not present at the meeting in Buedu and was not heard on the radio to Koidu throughout this period. All communications had come from Sam Bockarie to Superman, including from the time the witness came to Buedu and through to his travel to Koinadugu (see below).

b) TF1-360: “when [Sesay] crossed over to Buedu I didn’t get any information from him”.¹⁸⁷⁶

837. The evidence given by TF1-360 conclusively undermines the suggestion that Sesay was involved in the military operation in Koidu during 1998. In the face of this evidence it is impossible for the Trial Chamber to be sure that Mr. Sesay was involved in the operations in Koidu the indictment period; no less to be sure that he is guilty of any crimes arising therein.

c) No operational communication from Sesay

838. TF1-360 confirmed that he had not been in contact with Sesay from the time Sesay left Koidu in February 1998 until he met him in Waterloo in January 1999. TF1-360 had not heard from Sesay from the time Sesay “crossed over to Buedu” (and until the witness saw Sesay in Waterloo in late January 1999). All communications had come from Bockarie to Superman, including from the time the witness came to Buedu and through to his travel to Koinadugu.¹⁸⁷⁷ The Prosecution case, that Sesay was both the

¹⁸⁷⁵ TF1- 361/Transcript 18 July 2005, pp. 3 - 4.

¹⁸⁷⁶ TF1- 360/Transcript 25 July 2005, pp. 24, line 21-23.

¹⁸⁷⁷ TF1- 360/Transcript 25 July 2005, pp. 24.

de jure and de facto BFC (whose functions included ensuring the smooth running of the Kono operations) was irretrievably and irrevocably undermined by their own witness. The evidence given by TF1-360 on this issue was clear and unequivocal. At no time did he receive any radio messages, instructions or orders from Sesay from the time Sesay left and went to Buedu. This evidence firmly rebuts the Prosecution case (that Sesay was Bockarie's right hand man in organising Kono) and demonstrates the truthfulness of Sesay's account.

d) TF1-361 and his lies

839. This witness (who was the subordinate to TF1-360) developed an elaborate but ludicrous theory designed to implicate Mr. Sesay. Lengthy proofing sessions transformed a 10 page statement into 47 pages of untruths. The witness maintained that following the intervention Sesay coordinated all the frontlines, including the Kono operations. The witness claimed that Bockarie was not an active Leader but would leave all the work for Sesay, and would only intervene if there was a difficulty.¹⁸⁷⁸ The witness claimed that *all* the radio communications from Kono to Buedu HQ would be sent directly to Sesay, who would then pass the message to Bockarie.¹⁸⁷⁹ According to the witness, even if the Bockarie was within his residence (with the radio set positioned at the rear) the messages would first be taken across the road to Sesay before the radio operator then returned to the waiting arms of Bockarie.¹⁸⁸⁰ The witness claimed that he sent radio reports to Sesay on a daily and weekly basis.¹⁸⁸¹ The witness also claimed that Sesay role was to deal with ammunition and manpower supply to Koidu, and he would request and receive information through radio communications concerning supply at the frontlines.¹⁸⁸²

840. It is clear from an assessment of his testimony that the witness was doing his best to falsely implicate Sesay. The witness was repeatedly exposed as changing his testimony to shift responsibility from Bockarie to Sesay. For example: the witness told

¹⁸⁷⁸ TF1- 361/Transcript 15 July 2005, pp. 51.

¹⁸⁷⁹ TF1- 361/Transcript 11 July 2005, pp. 20 – 24.

¹⁸⁸⁰ TF1- 361/Transcript 15 July 2005, pp. 50.

¹⁸⁸¹ TF1- 361/Transcript 11 July 2005, pp. 15 – 17.

¹⁸⁸² TF1- 361/Transcript 18 July 2005, pp. 16.

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the Prosecution in his pre-trial interviews that “Every morning we would give the situation report to Mosquito’s radio operator.... ” but then unconvincingly claimed that this meant the control station which *belonged* to Mosquito and Sesay. He had not intended to convey the impression that the reports went directly to Mosquito.¹⁸⁸³

841. The evidence given by other witnesses such as TF1-360 and TF1-036 exposes the fictitious version of events given by TF1-361. TF1-361 is the foundation of the case against Sesay concerning his alleged involvement with Kono during 1998 and latterly with the activities of Superman in Koinadugu. It is impossible, given that TF1-360 was TF1-361’s immediate superior, whose job in part was to supervise TF1-361, that their version of events could be so different. It is obvious that if Sesay had been passing orders to Superman on a regular basis, TF1-360 would also have known.

842. Equally DIS-163 would have known. This witness, a radio operator was good friends with Top Marine and not once did the latter mention this fact during the time they were living near each other in Koidu Town.¹⁸⁸⁴

e) TF1-361 ulterior motives

843. TF1-361 was Superman’s loyal comrade from the Western Jungle days,¹⁸⁸⁵ and even resided with him during the junta period and also after the intervention.¹⁸⁸⁶ This witness was a self confessed criminal, whose criminal habits were learnt at the Northern Jungle, under the neglectful tutelage of Superman.¹⁸⁸⁷ The witness had been an integral participant in the long running animosity between Superman and Sesay and had from the junta clearly aligned himself with the former.¹⁸⁸⁸

¹⁸⁸³ TF1- 361/Transcript 15 July 2005, pp. 76, line 27-29 claiming that he told the Prosecution that he “referred to the radio set as a control station, that that was where we sent the report and not to Mosquito directly, but to the radio station as a control station” (referring to the January 2005 statement, pp. 10684).

¹⁸⁸⁴ DIS - 163/Transcript 11 January 2008, pp. 51.

¹⁸⁸⁵ TF1- 036/Transcript 11 July 2005, pp. 50.

¹⁸⁸⁶ TF1- 361/Transcript 11 July 2005, pp. 79 and 14 July 2005, pp. 64 – 68.

¹⁸⁸⁷ TF1- 361/Transcript 18 July 2005, pp. 125.

¹⁸⁸⁸ TF1- 361/Transcript 14 July 2005, pp. 73 – 80.

f) Superman and his antipathy to Sesay

844. The evidence indicates that, even if the conventional military hierarchy was supposed to be respected, it was not. Superman would not accept orders from Sesay. First there were several significant occasions during the junta and during the time when Superman was in Koidu when he refused to take orders from even Bockarie. This insubordination was confirmed by witnesses, such as George Johnson (who observed this whilst in Koidu)¹⁸⁸⁹ (See also Section on Junta). The evidence clearly establishes the antipathy between the two men from the junta period onwards. This was confirmed by DIS-174¹⁸⁹⁰ who stated that during the visit by Superman to Buedu in 1998 he heard Superman say that he was not prepared to take any orders from Sesay. The witness, who shared a radio with Sesay in Pendembu had never heard Sesay pass orders to Kono for the whole of 1998.¹⁸⁹¹ This was also confirmed by DIS-163. Superman spoke to this witness and referred to himself as a fighter and Sesay as a coward to whom he would not subordinate himself.¹⁸⁹²

N. Alleged Crimes between March and June 1998

1. Forced Labour towards and from Kono (see also section on Kailahun – abductions)

845. The Prosecution have alleged in paragraph 74 of the indictment that throughout the first Accused is criminally responsible for capturing civilians, bringing them to various locations within the District and using them as forced labour. The Defence submits that the Prosecution have failed to prove their case. First, there is almost overwhelming Defence evidence which demonstrates *through civilian testimony* that the issue of the use of civilian labour was significantly more complex and nuanced than the trite dichotomy between good and evil propounded by the Prosecution. It is astonishing given that the RUF occupied Kailahun (or parts of it) for over ten years and yet the Prosecution's high powered investigation team, were unable to secure civilian

¹⁸⁸⁹ DIS-167/Transcript 19 October 2004, pp. 124.

¹⁸⁹⁰ DIS-174/Transcript 21 January 2008, pp. 103.

¹⁸⁹¹ DIS-174/Transcript 21 January 2008, pp. 104, line 21- pp. 105, line 19.

¹⁸⁹² DIS-163/Transcript 11 January 2008, pp. 51.

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testimony beyond TF1-108 and TF1-330. The subsequent and inevitable reliance upon suspect insiders does not alter this important fact.

846. The Prosecution have failed to prove that there was a policy of forced labour and/or that Sesay contributed to it. Commonsense dictates that here may have been instances where civilians did things they did not want to do but this is life for everyone and it cannot be assumed. Nor can it be assumed that these incidences would reach the level of gravity to be classified as enslavement. The evidence given by Prosecution witness is general and unconvincing. The witnesses fail to name victims, routes, direct perpetrators or other operative details which would give rise to criminal responsibility.

847. A number of witnesses claim that there were forced labour marches to and from Kono during 1998. The Prosecution must prove that the marches in fact occurred and that Sesay participated in them pursuant to 6(1) and 6(3) of the Statute. It is submitted that the Prosecution have failed. First, much of the evidence is inherently unreliable and uncorroborated. Second, the Prosecution have failed to prove that any marches were intended to further any plan to terrorise or punish the population. Third, the Prosecution have failed to prove that Sesay knew or intended that civilians were being captured and sent by force to Kailahun or Kono, for any reason. Fourth, the Prosecution have failed to prove that Sesay had effective control over the perpetrators with material ability to prevent or punish their crimes.

a) Weekly forced trips (TF1-366)

848. TF1-366 claimed that civilians were forced to carry supplies, including uniforms, shoes, arms and ammunition, were carried from Liberia through Kailahun to Kono.¹⁸⁹³ The witness claimed that this happened every one or two weeks and involved the MP's and their Commander, Sesay, Gbao, Morris Kallon, Superman and Rambo".¹⁸⁹⁴

¹⁸⁹³ TF1- 366/Transcript 17 November 2005, pp. 85 – 86.

¹⁸⁹⁴ TF1- 366/Transcript 8 November 2005, pp. 65 – 66 and 17 November 2005, pp. 85.

849. TF1-366 alleged a variety of forced labour from Kono to Kailahun, including civilians being sent from Kono to Kailahun for training,¹⁸⁹⁵ farming and diamond mining.¹⁸⁹⁶ The witness alleged that Sesay would send orders to him to capture Kono civilians and send them to Kailahun.¹⁸⁹⁷ The civilians were captured from Nimikoro, Sewafe, Kombayende and Guinea.¹⁸⁹⁸ This absurd witness and his allegations should not detain the Trial Chamber any longer. The evidence is not corroborated. The suggestion that Sesay could have been transmitting these types of orders to TF1-366 without anyone else knowing stretches the bounds of incredulity. The witness was unable to explain why civilians would be captured in Kono and sent to Kailahun in 1998 when Kailahun was heavily populated by civilians,¹⁸⁹⁹ bizarrely asserting that the ones that were being sent to Kailahun were, “different” but offering no further explanation.¹⁹⁰⁰ During cross examination for the third Accused the witness bizarrely claimed that he knew about this forced labour because Sesay had told him.¹⁹⁰¹

850. In any event TF1-366 was roundly contradicted by TF1-367 who confirmed that civilians from Kailahun were not sent to Kono, they remained in Kailahun doing their own special jobs, harvesting cocoa, coffee and harvesting palm fruit. That was their work. And carrying loads. That was their (sic) own work”.¹⁹⁰² This was consistent with the evidence given by DIS-188 who confirmed that civilians would infrequently travel from Kailahun to Kono but only those who wished to travel to trade at the Mende Buima crossing point or to see their families. They would be protected from Kamajor attacks by armed men.¹⁹⁰³ This witness, in contrast to the generalized assertions provided by TF1-366, provided a detailed account of how it worked: with the involvement of G5, IO’s, MP’s which were needed to protect civilians due to Kamajor activities.¹⁹⁰⁴ DIS-214, in an equally detailed account, corroborated DIS-188.¹⁹⁰⁵

¹⁸⁹⁵ TF1- 366/Transcript 8 November 2005, pp. 67 - 68.

¹⁸⁹⁶ TF1- 366/Transcript 10 November 2005, pp. 6 – 12.

¹⁸⁹⁷ TF1- 366/Transcript 14 November 2005, pp. 93 – 97.

¹⁸⁹⁸ TF1- 366/Transcript 15 November 2005, pp. 59 - 60.

¹⁸⁹⁹ TF1- 366/Transcript 15 November 2005, pp. 59.

¹⁹⁰⁰ TF1- 366/Transcript 15 November 2005, pp. 60, line 4 -6.

¹⁹⁰¹ TF1- 366/Transcript 17 November 2005, pp. 86, line 3-8.

¹⁹⁰² TF1- 367/Transcript 23 June 2006, pp. 45, line 6-8.

¹⁹⁰³ DIS - 188/Transcript 29 October 2007, pp. 41-46.

¹⁹⁰⁴ DIS - 188/Transcript 29 October 2007, pp. 46-48.

851. It is submitted that this is much more credible than the stereotyped evidence of “chain ganging” civilians between Kono and Kailahun. This appeal to the emotions is based on a nonsensical premise, namely that the RUF and the civilians in Kono or Kailahun would not have recognized that collaboration with civilians was beneficial for all. The fact that there were civilians amongst their midst in Kono for understandable reasons (protection/food/shelter/friendships etc) is wholly inconsistent with this case. Is it the Prosecution case that all these other civilians watched whilst their brethren were being brutalized? This is not to argue that it never happened but that it, if it did, it was not supposed to and was condemned by most in the RUF.

852. Furthermore TF1-366, in an inadvertent moment, established the truth of DIS-188’s account. TF1-366 was asked to explain how the reports would be sent to Sesay and he claimed that he would send letters to Sesay with “[t]he women who were doing business, I would write letters and give it to them to take it to Sam Bockarie.. I would be in my own area. I was just see the person return”. [emphasis added]¹⁹⁰⁶ TF1-366 confirmed that both civilians and soldiers would travel between Kono and Kailahun.¹⁹⁰⁷ The witness was clearly testifying about voluntary movement between the two districts.

853. Exhibit 259 further corroborates DIS-188 account and TF1-366’s inadvertent admission. This one page document, from Brigadier Sam Bockarie, dated 23 August 1998, contains inter alia warnings to the soldiers that “no one should harassed, (sic) molest or convisicate (sic) any ones items who have gone to exchange it”.¹⁹⁰⁸ Clearly this would have been a completely ridiculous instruction and a complete non- sequitur if civilians were being chain ganged across the Moa every two weeks.

b) Proceeds of the Koidu Robbery (TF1-367 & TF1-141)

854. TF1-367 claimed that civilians were forced to carry loads during a trip to Buedu with the proceeds of the Kono Bank robbery. The civilians were captured along the way

¹⁹⁰⁵ DIS - 214/Transcript 15 January 2008, pp. 110.

¹⁹⁰⁶ DIS-366/Transcript 8 November 2005, pp. 30, line 18-25.

¹⁹⁰⁷ DIS-366/Transcript 8 November 2005, pp. 29-30.

¹⁹⁰⁸ Exhibit 259.

to help to carry their loads. The witness met Bockarie in Buedu and handed over the money and a diamond.¹⁹⁰⁹ TF1-141 claimed to have been on this trip and also suggested that civilians were carrying looted items.¹⁹¹⁰ Although TF1-141 also claimed that Sesay and JPK were on this trip and thus his evidence must be approached with caution. In any event, TF1-367 confirmed that Bockarie gave the order to Superman concerning the recovery of the money¹⁹¹¹ and the money was taken directly to Bockarie in Buedu.¹⁹¹² The evidence does not prove that Sesay was present, knew about the trip or the circumstances in which it took place or had any material ability to intervene.

2. No 6(3) liability for Kono: February 1998 to June 1998

855. There was clearly a huge problem with the efficiency of reporting. It is submitted that this is obvious from the huge problems that the Prosecution have faced with trying to prove that the RUF had an efficient reporting system. An efficient conventional army would rely upon many, many more radio sets. Second, the RUF system ultimately relied upon the good will or discipline of a particular de facto commander. If the commander was weak then nothing, reporting included, worked properly or efficiently. This was confirmed by DIS-163 who observed that MP Jalloh had worked tirelessly trying to impose discipline at the Guinea Highway. This had not been made possible previously. The witness observed that the reason for this was that “Superman [was] a weak commander and he wasn’t disciplining that much”.¹⁹¹³ This meant that lawless commanders were not reporting to him and he also was not passing on reports.¹⁹¹⁴ TF1-041 corroborated this account, confirming that when he was working in Koidu during 1998 he too did not report to his overall [REDACTED]; but instead reported directly to the commanders on the ground, namely Superman and Rambo.¹⁹¹⁵ This illustrates the

¹⁹⁰⁹ TF1- 367/Transcript 22 June 2006, pp. 20 – 23.

¹⁹¹⁰ TF1- 141/Transcript 11 April 2005, pp. 106 - 112.

¹⁹¹¹ TF1- 141/Transcript 26 June 2006, pp. 19, lines 14 – 16.

¹⁹¹² TF1- 367/Transcript 22 June 2006, pp. 21-22.

¹⁹¹³ DIS - 163/Transcript 14 January 2008, pp. 30.

¹⁹¹⁴ DIS - 163/Transcript 14 January 2008, pp. 75.

¹⁹¹⁵ TF1- 041/Transcript 17 July 2006, pp. 23 – 26. The witness confirmed that he would not report to his overall, except when he was based in the same location. (“I used to get instructions from him when I was with him When I was closer to him. But if I were in Kono, and he was in Kailahun, he did not give me instructions, sir, because of the distance, sir”).

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central flaw in the RUF military structure. The problem emanated from the lack of reporting. The Prosecution has not proven otherwise.

a) Reports from Koidu

(1) Bodyguards

856. TF1-041 claimed that Sesay had bodyguards, including Boys, Victor, Boy George, and Amara Salia (Peleto) stationed within Koidu who would send security reports to him in Kailahun.¹⁹¹⁶ This occurred whilst the RUF were still stationed within Koidu Town.¹⁹¹⁷ The witness claimed that the bodyguards, who did not have their own radio set, would use the sets which were under the control of the commanders.¹⁹¹⁸

857. The witness was evasive and unable to provide any meaningful detail. The Prosecution were unable to adduce any details concerning the content of the reports. The witness conceded that in relation to the “official” radio communications “Kallon, Mingo and Rambo in communication with JPK and Mosquito who were in Kailahun” the witness did not know the content of the messages because they were transmitted using a code.¹⁹¹⁹

(2) TF1-366

858. TF1-366 presented a strange account about his so-called reporting activities within Koidu. This ridiculous theory, introduced for the first time in October 2005,¹⁹²⁰ does not stand up to scrutiny. TF1-366 almost certainly would rate as one of the most unreliable witness called by any party at the Special Court. In any event at best, if the evidence is taken at face value, it provides a means by which Sesay could learn of crimes committed by Commanders but it does not prove any material ability to act upon them or any duty to forward them to any other authority.

¹⁹¹⁶ TF1- 036/Transcript 29 July 2005, pp. 95.

¹⁹¹⁷ TF1- 041/Transcript 11 July 2006, pp. 5, line 25.

¹⁹¹⁸ TF1- 041/Transcript 11 July 2006, pp. 11.

¹⁹¹⁹ TF1- 041/Transcript 11 July 2006, pp. 6-7.

¹⁹²⁰ TF1- 366/Transcript 14 November 2005, pp. 72-73 and pp. 77-78.

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859. This witness claimed to have been the eyes and ears for Sesay throughout the conflict and in particular from Koidu in 1998 but was staggeringly ill informed about Sesay's activities. First, the witness did not know Sesay's code name or call sign and also confused the meaning of code names with call signs.¹⁹²¹ This was an astonishing admission given his supposed recall of other events and his alleged daily use of the radio to speak to Sesay in 1998. Second, the witness appeared to labour under the misapprehension that Sesay had been imprisoned in Buedu since June 1998 (for the loss of the diamonds in Monrovia) and was not released until December 1998.¹⁹²² On the same note the witness testified that Sesay did not have access to a radio during this period,¹⁹²³ which was patently incorrect. Third, the witness believed that Sesay and Bockarie lived in the same house in Buedu.¹⁹²⁴

860. Fourth, the witness claimed that Sesay had instructed him not to "abandon" Kallon and to report on things which he did wrong¹⁹²⁵ but could offer no sensible explanation for this so-called mission.¹⁹²⁶ This mission does not make sense nor could it give rise to any criminal liability. Fifth, the witness claimed that he spoke to Sesay everyday but was forced to admit that he did not even speak the same language as Sesay. Instead the witness was forced to claim that he had used interpreters.¹⁹²⁷

861. Furthermore, if TF1-366 was to be believed, he may well have been the busiest man in the RUF, never too far from the radio set. The witness claimed to have a number of assignments as well as speaking to Sesay everyday to report on issues relating to the frontlines and Kallon, as well as reporting to Superman and Kallon.¹⁹²⁸ In light of this,

¹⁹²¹ TF1- 366/Transcript 14 November 2005, pp. 76 - 79.

¹⁹²² TF1- 366/Transcript 14 November 2005, pp. 47.

¹⁹²³ TF1- 366/Transcript 14 November 2005, pp. 72.

¹⁹²⁴ TF1- 366/Transcript 14 November 2005, pp. 52-53.

¹⁹²⁵ TF1- 366/Transcript 8 November 2005, pp. 27-30.

¹⁹²⁶ TF1- 366/Transcript 14 November 2005, pp. 66 lines 28-29 and pp. 67 lines 1-16.

¹⁹²⁷ TF1- 366/Transcript 14 November 2005, pp. 71. DIS - 214 noted, somewhat disparagingly, "that man is an illiterate so he cannot read and write, so if he send any message he should first meet the commander. Q. Did you ever observe him doing that? A. I never observed him doing that." For the whole eight months the witness was at the Guinea Highway he had not observed Pellato sending any messages. (DIS-214/Transcript 15 January 2008, pp. 103-104).

¹⁹²⁸ TF1- 366/Transcript 14 November 2005, pp. 58-62.

it is remarkable that TF1-371, [REDACTED], laboured under the misapprehension that TF1-366 had been based in Tongo at this time.¹⁹²⁹

862. Additionally, this omnipresent witness claimed to have attended all the significant events and criminal sites during 1998. TF1-366 falsely claimed to be at the various sites so he could implicate all three accused, especially the first Accused. The witness falsely accused Sesay of ordering and participating in the killings of the alleged Kamajors in February 1998 in Kailahun. The witness claimed to have been present.¹⁹³⁰ A Prosecution, less keen on convictions and more focused on truth, would not have adduced this evidence which is manifestly untrue. TF1-366 could not have been present at this event (given that he was on the retreat to Koidu, along with Sesay) and should be prosecuted for false testimony. As confirmed by a myriad of witnesses including many of the Prosecution witnesses such as TF1 – 371 and TF1-168¹⁹³¹ and defence witnesses such as DIS-157,¹⁹³² DIS-188¹⁹³³ this unfortunate event occurred prior to the arrival of JPK in Kailahun, and had nothing whatsoever to do with Sesay.¹⁹³⁴

b) No material ability to prevent or punish

863. In the absence of any authority to either recall commanders or put correct the workings of the JSU or intervene in any way, no 6(3) liability could arise for any commander outside Koidu during the relevant time. The evidence shows that these actions could only be taken by Commanders in Kono and throughout by Sam Bockarie.

864. The evidence shows that the decision concerning which commanders could be recalled to Kailahun for investigation and punishment lay exclusively with Bockarie.

¹⁹²⁹ TF1- 371/Transcript 20 July 2006, pp. 76. TF1-041 was also encouraged by the Prosecution through during his pre-court testimony to support this theory. In his pre-interview statements he had clearly been asked leading questions and stated in response that he *thought* that Pelato had been a senior bodyguard for Sesay. The witness was evasive and was unable to provide any detail concerning this witnesses alleged reporting activities, despite being repeatedly pressed on the subject (TF1- 041/Transcript 10 July 2006, pp. 99 – 100).

¹⁹³⁰ TF1- 366/Transcript 8 November 2005, pp. 59-79.

¹⁹³¹ TF1- 168/Transcript 3 April 2006, pp. 17-18.

¹⁹³² DIS-157/Transcript 24 January 2008, pp. 88, line 2-3.

¹⁹³³ DIS-188/Transcript 26 October 2007, pp. 83.

¹⁹³⁴ TF1- 371/Transcript 28 July 2006, pp. 105 and DIS-069/Transcript 22 October 2007, pp. 108, line 27 – pp. 109, line 5.

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The little information which obtained from Kono was destined for Bockarie and it was he, and he alone who could action any investigation or RUF prosecution. In this regard it is hugely significant that the mechanism for punishment within Kailahun was so tightly controlled by Bockarie.

865. In addition to the evidence above, referring to the monopoly held by Bockarie over the recall of commanders, there is further evidence which points irrevocably to the conclusion that Sesay's authority to prevent and punish crimes, even in Kailahun, was extremely limited. TF1-371 provided an interesting insight into the limitations by noting, within the context of the power to recall commanders that, You had... you had the Battlefield Commander who played a tremendous role in making some decision and, in fact, that area [REDACTED] was under the ambit of Pendembu... he will recall there".¹⁹³⁵

866. TF1-371 suggested that Sesay either received reports through the VHF radio or was informed by the IDU about the alleged crimes committed by Rocky, Kallon and Savage,¹⁹³⁶ but did not suggest, nor realistically could he have, that Sesay was expected to, or had any right, to utilise the information.

867. There is absolutely no evidence which could prove that Sesay had any authority to instigate or implement any investigation into any suspected criminal conduct arising from Kono during February to June 1998. There is some evidence that Mr. Sesay would have known the general nature of some of the crimes being committed by RUF and SLA combatants but little evidence that he would or could have known the specifics. More crucially the Prosecution have not proven that Sesay had any duties to supervise or restrain the commanders in Kono or *any* ability to intervene in the situation in Kono at the relevant time to prevent or punish crime. The criminal process, such that it was, by deliberate design or otherwise, bypassed Sesay's command.

¹⁹³⁵ TF1- 371/Transcript 28 July 2006, pp. 110, line 26 and pp. 111, line 1-2.

¹⁹³⁶ TF1- 371/Transcript 21 July 2006, pp. 6 and 24 July 2006, pp. 19.

868. DIS-188 summed up the situation in a remarkably succinct fashion,

the AFRC were on one hand, were having the RUF on the other hand. And Foday Sankoh have given instructions to the RUF to take all orders and instructions from Johnny Paul Koroma. So when they landed in Kono, there were many officers. I remember Superman was there, Morris Kallon was there, we have Gullit was there, Five-Five was there, and many other officers were there. We are senior officers. They were not able to come together and form one structure under one command. And all the soldiers, many of the soldiers who were within Kono at this time were concentrating in looting properties or trying to carry the looted properties. So there was no understanding between the commanders and even the combatants. It was chaos. Even like Savage who was doing his own towards Tombodu area. Any -- Rocky CO, that is CO Rocky, he himself okay, doing his own. So the SLAs, anyone, doing his own, taking his own men. Akim was there also. Banya, the majority of them. So because there was no mutual understanding between them, so there was no control of the men, until -- so there was no way to establish any form of security, joint security, because we are accepting of the joint security. There must be someone to head it. And the person who headed the joint security will have backing from the command. So no form -- no proper command was in place at that time in Kono until later Sam Bockarie sent for Superman, sent for Morris Kallon, sent for Rocky CO and some others to Buedu, and then appointed Rambo to be the brigade commander of Kono.¹⁹³⁷

869. DIS-188 thus eloquently confirmed his own impotence at that time. The lack of a proper command structure meant that, whilst receiving reports from a variety of informal sources about the general level of chaos, he was unable to receive reports from [REDACTED], who was supposed to be subordinated to him, in Kono. There was no respect or regard between the RUF and SLA commanders in Kono and the joint security board could not work at that time. Superman failed to take action.¹⁹³⁸ DIS-288 bemoaned the fact that he could not take the necessary action of sending [REDACTED] to Kono without referring to SB [REDACTED]

¹⁹³⁷ DIS - 188/Transcript 26 October 2007, pp. 107, line 11 – pp. 108, line 1-7.

¹⁹³⁸ DIS - 188/Transcript 26 October 2007, pp. 105, line 5 – pp. 106, line 17 and Transcript 2 November 2007, pp. 16-22.

¹⁹³⁹ DIS - 188/Transcript 2 November 2007, pp. 16-22.

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870. There was no evidence which proved that Sesay could have initiated any independent investigative or prosecutorial action against any of the combatants in Koidu. Once Bockarie had decided to decline to act (Savage) or administered inadequate punishments (detention in Buedu) there is no evidence that Sesay could have intervened or interfered with this action, in any way. This is clear from the following evidence.

c) Effective Control of combatants from Koidu – February to June 1998

(1) Recall of Superman

871. DIS. 188 was under the impression that Superman (as well as Kallon and Rocky CO and others were recalled to Buedu. Rambo was appointed to be Brigade commander of Kono at this time.¹⁹⁴⁰ Bockarie recalled Rocky to Kailahun [District]. The Witness remembers a report that Rocky killed civilians. The Joint Security in Pendembu reported the matter to Bockarie that Kono was getting out of hand. Therefore, Superman, MK and Rocky CO were recalled to Buedu by SB. The witness testified that Superman was recalled towards the end of June 1998 (Superman came to Burkina and Juru [Joru]). Kallon was sent to Juru Jungle; Rocky CO to Kuiva; Superman sent back to Kono. Superman was sent back to Kono in early July.¹⁹⁴¹ There was no suggestion that Sesay was expected to or could have intervened. Conversely the responsibility lay with the unit heads and Bockarie.

(2) Recall of Kallon

872. TF1-371 claimed that the signal office in Buedu received reports of killings by Savage and Rocky in Tombodu. The witness alleged that information concerning ‘carnage, the summary execution of civilians and burning of houses’ in Kono and particularly in the town of Tombodu¹⁹⁴² had been transmitted to the HQ in Buedu. The witness had also received information from Sam Bockarie himself. The witness alleged that Sam Bockarie – through his usual VHF communication station - received

¹⁹⁴⁰ DIS - 188/Transcript 26 October 2007, pp. 108.

¹⁹⁴¹ DIS - 188/Transcript 26 October 2007, pp. 126.

¹⁹⁴² TF1- 371/Transcript 21 July 2006, pp. 4 lines 7-9 and lines 11-12.

intelligence reports about the alleged killing of civilians in Tombudu, wherein Morris Kallon was implicated.¹⁹⁴³ Crucially the witness noted that it was Bockarie who was in command of all aspects of this alleged punishment. It was Bockarie who appointed Kallon to his position in Kono, who subsequently recalled Kallon to Buedu for sanction.¹⁹⁴⁴ Furthermore, according to the witness, Kallon was compelled to report to the signal office every day, minutes away from Bockarie's house in Buedu.¹⁹⁴⁵ It was Bockarie who gave Kallon new assignments after this alleged punishment.¹⁹⁴⁶ There was no suggestion that Sesay was expected to or could have intervened. Conversely the responsibility lay with the unit heads and Bockarie.

873. This evidence is contradicted by TF1-366 who claimed that Kallon was ordered to come to Buedu by Bockarie (through Sesay) following his report concerning Kallon's alleged killing of 3 civilians at the 55 spot in Koidu¹⁹⁴⁷ but clearly TF1-371 account is preferable to the ridiculous meanderings of TF1-366.

(3) Recall of Rocky CO

874. TF1-371, confirmed that Bockarie had sent a radio communication to Koidu and summonsed Rocky to come to Kailahun for investigation.¹⁹⁴⁸ TF1-071 also confirmed that Rocky was punished by detention in Buedu. Bockarie instigated the MP led investigation and imposed and decided upon the punishment.¹⁹⁴⁹ The witness claimed that this process was the privilege of the High Command (including Sesay) but the evidence of what actually occurred does not support this claim.

(4) Sesay's Lack of ability to recall Savage

875. The crimes committed by Savage cannot be attributed to Sesay. The Trial Chamber can be sure that the crimes committed by Savage would not have been agreed upon or condoned by Sesay. The evidence demonstrates that these crimes were horrific

¹⁹⁴³ TF1- 371/Transcript 21 July 2006, pp. 4.

¹⁹⁴⁴ TF1- 371/Transcript 21 July 2006, pp. 4.

¹⁹⁴⁵ TF1- 371/Transcript 24 July 2006, pp. 4 - 5.

¹⁹⁴⁶ TF1- 371/Transcript 21 July 2006, pp. 4 and 24 July 2006, pp. 4 -5.

¹⁹⁴⁷ TF1- 366/Transcript 8 November 2006, pp. 36-37.

¹⁹⁴⁸ TF1- 371/Transcript 28 July 2006, pp. 27-29 and 31 July 2006, pp. 70-71.

¹⁹⁴⁹ TF1- 371/Transcript 28 July 2006, pp. 27 -29 and 31 July 2006, pp. 70-71.

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and condemned in varying degrees by all commanders. There is evidence that some RUF, for example Superman, might have been able to act sooner and more effectively and this action *might* have saved lives. The evidence does not however demonstrate that Sesay could have acted to prevent or punish his crimes.

(5) No effective Control by Sesay

876. There is unconvincing evidence that the specifics of Savage's crimes were reported to Sesay at the time of their occurrence. First, TF1-371 claimed that information was sent through radio communication by the Intelligence Officers from the frontline at Kono. The witness, clearly exaggerating, claimed that radio reports would come to the signal office on an hourly basis from the frontlines.¹⁹⁵⁰ The witness also claimed that Gbao received reports from the IDU concerning the killings in Tombodu. This information detailed the massacre of civilians by Savage¹⁹⁵¹. There was no suggestion that Sesay was expected to or could have intervened. Conversely the responsibility lay with the unit heads and Bockarie.

877. TF1-366 claimed that he reported some of Savage's crimes to Sesay.¹⁹⁵² The evidence is unconvincing, relying upon his creative tale of secret reporting to Sesay. The witness failed to mention this secret reporting structure, at any time prior to his oral testimony. Curiously the witness appeared to have forgotten this important duty. Instead the witness's previous version of events concerning Savage was limited to observing, "Complaints were lodged against Savage with Morris Kallon and Superman and Savage was called to see Kallon or Superman and they talked together in private. I do not know what was said in those private meetings."¹⁹⁵³

878. As stated by Sesay during his testimony, even if information had been forthcoming he had no authority to act.¹⁹⁵⁴ It is clear that the evidence supports this

¹⁹⁵⁰ TF1- 371/Transcript 24 July 2006, pp. 17.

¹⁹⁵¹ TF1- 371/Transcript 24 July 2006, pp. 17 - 18.

¹⁹⁵² TF1- 366/Transcript 8 November 2005, pp. 38 – 42 and 14 November 2005, pp. 77-79.

¹⁹⁵³ TF1- 366/Transcript 14 November 2005, pp. 77- 79 and witness statement, 14th August 2004, pp.1370.

¹⁹⁵⁴ Sesay/Transcript 17 May 2007, pp. 17.

assertion. Significantly TF1-371 confirmed that even Bockarie could not recall Savage, who was not operating under the control of the RUF.¹⁹⁵⁵ In these circumstances Sesay could not be criminally responsible, even if the Trial Chamber concludes that the information had reached him.

(6) Superman's control?

879. There is evidence that Superman had a degree of control over Savage, but it is unlikely that this amounted to effective control at all times so as to be able to prevent or punish Savage. This does not mean that Superman was without recourse. Savage was an SLA's who was under the direct control of the SLA group. Colonel Mohamed Savage was the battalion commander in Tombodu. His deputy was Staff Alhaji. He had been a staff sergeant in the Sierra Leone Army but Mohamed Savage later recommended him for promotion to lieutenant. Mohamed Savage was subordinate to the Sierra Leone Army operation commander (Papah Hassan Bangura). Mohamed Savage who also reported to Superman. Bazy promoted Savage from corporal to lieutenant.¹⁹⁵⁶ In other words Savage was largely controlled by the SLA.

880. There is evidence however which suggests that Superman had a hand in his deployment to Tombodu. TF1-167 claimed that Savage had been appointed in the second meeting in Koidu.¹⁹⁵⁷ It is clear however that his loyalties were to the SLA group where he retreated to after his crimes in Tombodu.¹⁹⁵⁸ Several witnesses including TF1-167 and TF1-071 testified that Savage reported directly to Superman.¹⁹⁵⁹

881. TF1-071 testified that Superman and other commanders in Koidu received reports about Savage and his crimes within three weeks of settling of the first entry into Koidu.¹⁹⁶⁰ According to TF1-071 called a meeting at the Tankoro Police Station in

¹⁹⁵⁵ TF1- 371/Transcript 31 July 2006, pp. 70, line 1-4.

¹⁹⁵⁶ TF1- 334/AFRC Transcript 19 May 2005, pp. 22, 23 and 50.

¹⁹⁵⁷ TF1- 167/Transcript 14 October 2004, pp. 78 – 82.

¹⁹⁵⁸ TF1- 167/Transcript 14 October 2004, pp. 78 – 82 and TF1- 334/AFRC Transcript 16 May 2005, pp. 56, line 3 – pp.58, line 8 and pp.68, line 1 – pp.71, line 20.

¹⁹⁵⁹ TF1- 167/Transcript 14 October 2004, pp. 78 – 82 and TF1- 071/Transcript 21 January 2005, pp. 94 – 95.

¹⁹⁶⁰ TF1- 071/Transcript 19 January 2005, pp. 45 – 47.

Koidu. (The witness believed that Sesay was present but this is not supported by any other witness or the preponderance of evidence proves that the witness was mistaken.¹⁹⁶¹) TF1-071 recalled that Superman expressed his disapproval and ordered Peleto to take a task force to investigate the killings and burnings. After the warning the crimes were reduced.¹⁹⁶² It would appear that at this time Superman did not have any, or any sufficient control over the SLA. TF1-071 confirmed that Superman held another meeting at the Tankoro Police Station to deal with ongoing reports of crimes and issued a final warning to the SLAs to follow his orders. It appears that this warning fell on deaf ears and instead the SLAs left to join SAJ Musa.¹⁹⁶³ There is ample evidence about the unwillingness of the SLAs to subordinate to RUF command. It is submitted that Superman did not have effective control of Savage at any time before his SLAs comrades left for Koinadugu.

882. There is evidence however of neglect by Superman after this time. There is evidence that appears to confirm that Superman visited Savage during the period of his atrocities and failed to take any real action.¹⁹⁶⁴ DIS-214 confirmed – as did many witnesses – this neglect, for example, noting that salute reports would be made following patrols but Superman took no action.¹⁹⁶⁵ There is evidence however that Savage refused to take orders from anyone in Koidu and regarded himself as an independent man.¹⁹⁶⁶

883. Johnson confirmed that Savage was an outlaw and would not take orders from anyone but JPK. Superman would visit and Savage would pretend to be on patrol. The witness confirmed that the only way to deal with Savage, who had a large amount of weaponry, would have been to kill him or chase him away. At some stage however Superman took this action and sent CO Rocky and Sylvester Kieh to take command of Tombodu. Savage was forced to flee to his erstwhile colleagues in the Northern

¹⁹⁶¹ TF1- 071/Transcript 19 January 2005, pp. 47- 49.

¹⁹⁶² TF1- 071/Transcript 19 January 2005, pp. 47- 49.

¹⁹⁶³ TF1- 071/Transcript 18 January 2005, pp. 26 – 29.

¹⁹⁶⁴ TF1- 334/AFRC Transcript 16 May 2005, pp. 17- 29.

¹⁹⁶⁵ DIS - 214/Transcript 15 January 2008, pp. 10-11.

¹⁹⁶⁶ DIS - 163/Transcript 11 January 2008, pp. 30.

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Jungle.¹⁹⁶⁷ There is evidence that MP Mohammed Jalloh and MP Battalion Commander Sumori Blango, were sent by Bockarie to sort out the JSU in Koidu and also Savage. Savage ran away.¹⁹⁶⁸ This was the action which Bockarie should have taken, and perhaps at any earlier stage. These actions were not within Sesay's functioning authority, at any time in 1998.

3. Conclusions – what the evidence shows Sesay was doing

884. The Prosecution have failed to disprove Sesay's account of his functions from February to the end of 1998. There is no convincing evidence which would prove his military functions were not limited in the first instance to dealing with routine frontline issues in Kailahun.¹⁹⁶⁹ This was confirmed by DIS-127 [REDACTED] who observed that when Sesay first arrived in Buedu he was in fact without function, recovering from his bullet wound.¹⁹⁷⁰ Later Sesay was sent to Monrovia on or around the 20th April 1998¹⁹⁷¹ and therefore could not have been carrying out any BFC functions. From this point on Sesay's de facto command role was either none existent or limited to Pendembu until the end of 1998.

885. TF1-371 provided some useful insight into the role played by Sesay in 1998 at this time. TF1-371 insisted that Sesay had extensive powers as the de facto BFC ("responsible for the entire frontline operation of the combatants"¹⁹⁷²) and yet failed to provide any corroborating detail.

886. Conversely the testimony he gave confirmed the restrictive nature of Sesay's area of responsibility. TF1-371 confirmed the following: (i) Sesay's day to day functions day to day were in Pendembu, dealing with the frontline, including ensuring the welfare of the civilians in the area.¹⁹⁷³ (ii) it was Sesay's responsibility to ensure that the rice and condiments which were supplied by Bockarie was distributed to the frontlines

¹⁹⁶⁷ DIS - 163/Transcript 14 January 2008, pp. 98 and TF1- 071/Transcript 21 January 2005, pp. 53 – 54..

¹⁹⁶⁸ DIS - 188/Transcript 26 October 2007, pp. 32 -33.

¹⁹⁶⁹ Sesay/Transcript 10th May 2007, pp. 22, line 12-13.

¹⁹⁷⁰ DIS-127/Transcript 12 February 2008, pp. 24, line 14 – 17.

¹⁹⁷¹ Sesay/Transcript 10th May 2007, pp. 43

¹⁹⁷² TF1- 371/Transcript 28 July 2006, pp. 108, line 17 – 18.

¹⁹⁷³ TF1- 371/Transcript 28 July 2006, pp. 108 -110.

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around Pendembu; ¹⁹⁷⁴ Bockarie would send the supplies to Pendembu by truck or Sesay would come *personally* to Buedu and collect the items.¹⁹⁷⁵ This role was confirmed by [REDACTED] who stated that Bockarie would use Sesay as G4, to transport materials and rice to the frontlines in Kailahun.¹⁹⁷⁶ This was further corroborated by DIS-188 who stated that Sesay was busy when vehicles arrived from Buedu with rations from Bockarie. Sesay would pass them onto Brigade Commanders, who would in turn call the Battalion commanders and the attached S4 agents.¹⁹⁷⁷ It is noteworthy that it was not expected nor permitted for Sesay to go to Buedu himself to pick up the supplies or for any other purpose; such were the restrictions on his functions. DIS-288 confirmed that this would have required Bockarie's express consent as he was "almost under house arrest".¹⁹⁷⁸ DIS-085, DIS-188, also confirmed that Sesay's functions were limited to the frontlines in Kailahun.¹⁹⁷⁹ Sesay's job was to co-ordinating the defensive position on Daru, Mobai and Kuiva from Pendembu. This was his job as Mosquito's so-called deputy.¹⁹⁸⁰

887. At best the evidence given by various witnesses confirms that Sesay could act to prevent and punish crime in the Pendembu area.¹⁹⁸¹ The evidence demonstrates that this could then be dealt with locally or for more serious issues, Sesay could arrange for the arrest of men in that locality and then take them to be handed over to the MP's in Buedu. This happened with Gibril Massaquoi's brother Saddam who was arrested on the order of Sesay and taken to Buedu and handed over to the MP's in Buedu.¹⁹⁸² Thereafter Sesay's authority came to an end.

888. The evidence suggests that Pendembu was well organised; the combatants generally conducted themselves properly and expected to be punished for infractions

¹⁹⁷⁴ TF1- 371/Transcript 28 July 2006, pp. 105.

¹⁹⁷⁵ TF1- 371/Transcript 28 July 2006, pp. 73-74 and pp.105.

¹⁹⁷⁶ DIS-085/Transcript 14 February 2008, pp. 40 – 42.

¹⁹⁷⁷ DIS-188/Transcript 26 October 2007, pp. 124.

¹⁹⁷⁸ DIS - 288/Transcript 12 November 2007, pp. 68.

¹⁹⁷⁹ DIS-085/Transcript 14 February 2008, pp. 51-52 and DIS-188/Transcript 26 October 2007, pp. 103, line 12- pp. 105, line 4.

¹⁹⁸⁰ TF1- 367/Transcript 23 June 2006, pp. 32, lines 19-23.

¹⁹⁸¹ DIS-157/Transcript 24 January 2008, pp. 114 -pp. 115.

¹⁹⁸² TF1- 371/Transcript 31 July 2006, pp. 77 - 78.

against civilians and the civilians were protected from the excesses of the Government air raids. This was confirmed by a number of witnesses including TF1-371,¹⁹⁸³ DIS-149,¹⁹⁸⁴ who confirmed that civilians lived peacefully in a civilised environment.

889. Sesay's authority outside of these narrow confines and particular localities, was at this time limited to influence, especially that which derived from his rather inconsistent relationship with Bockarie. TF1-371 stated that Bockarie would consult Sesay and was in touch with him daily.¹⁹⁸⁵ TF1-371 claimed that Bockarie "consulted his deputy, who was Issa on promotions. They had direct control and contact with the combatant".¹⁹⁸⁶ This generalised account was given in the context of TF1-371 trying to downplay his own importance to the movement and ought to be approached with a large pinch of salt. In any event, such generalised assertions from the likes of TF1-371 can not be a substitute for proof of command and control over named subordinates.

890. Independent evidence in any event shows that this is not true. As indicated by Exhibit 199 Sesay was humiliated and marginalised by being left out of important forums, such as the August 1998 meeting in Buedu involving many senior commanders, such as Lawrence Womandia and Eldred Collins, thus confirming his testimony that he was not permitted to attend meetings without express permission from Bockarie.¹⁹⁸⁷ This was confirmed by DIS-174 who testified that Sesay did not attend Buedu often, due to his demotion.¹⁹⁸⁸ Moreover DIS-174 was candid enough to accept that it was he, and not Sesay, who had been left in charge of Kailahun when Bockarie had travelled abroad.¹⁹⁸⁹

891. The marginalisation of Sesay by Bockarie throughout May to June 1998 is confirmed obliquely but powerfully by TF1-036 who had no idea where Sesay had been during this period (after the loss of the diamonds) and was unable to confirm that he

¹⁹⁸³ TF1- 371/Transcript 28 July 2006, pp. 111.

¹⁹⁸⁴ DIS/Transcript 5 November 2007, pp. 27, 30, 32 - 33, 56, and 73.

¹⁹⁸⁵ TF1- 371/Transcript 31 July 2006, pp. 12, line 28 – pp. 13, line 21.

¹⁹⁸⁶ TF1- 371/Transcript 1 August 2006, pp. 124. .

¹⁹⁸⁷ Exhibit 199 and Sesay/Transcript 15 May 2005, pp. 37 – 38 and 43.

¹⁹⁸⁸ DIS-174/Transcript 22 January 2008, pp. 56 – 57.

¹⁹⁸⁹ DIS-174/Transcript 22 January 2008, pp. 57, line 29 - pp. 58, line 27.

had been sent to Pendembu. As far as the witness was concerned Sesay was at “front line” and not in Buedu as he had been before.¹⁹⁹⁰ TF1-036’s lack of knowledge about the so called BFC speaks volumes about the reliability of the Prosecution case, both in terms of the alleged authority held by Sesay and also the effectiveness of communications. Notwithstanding, that it is admitted that Sesay was using the radio whilst supervising the frontlines in Pendembu, TF1-036 nevertheless did not learn of Sesay’s whereabouts.

O. Conclusion

892. The notion that Sesay was able to exercise effective control over the combatants in Koidu thus lacks any support. For the reasons aforementioned Sesay is not criminally liable for any of the crimes committed in Koidu between February and June 1998.

XI. Koinadugu District: counts 3-5, 6-9, 10-11, 13 and 14

893. The Prosecution has alleged crimes of unlawful killings, sexual and physical violence, enslavement and pillage in Koinadugu district “between about 14 February 1998 and 30 September 1998”. The use of child soldiers, as appears in Count 13, stretches to cover the temporal jurisdiction of the Indictment.

894. It is submitted that the Prosecution have failed prove liability on the part of Sesay for crimes committed within Koinadugu district; that is to say, the weight of the evidence establishes that Sesay

- a. was not a party to an agreement with groups in Koinadugu, and in particular was not party to any agreement to commit crimes and/or any agreement in the course of which it was foreseeable that other crimes would be committed; and
- b. had no effective command and control of fighters operating in Koinadugu district.

¹⁹⁹⁰ TF1- 041/Transcript 11 July 2006, pp. 4 – 10.

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A. Unlawful killings

895. The Prosecution, in Counts 3-5 of the Indictment, alleges that Issa Sesay is responsible for

- a. Extermination, a crime against humanity, punishable under Article 2(a) of the Statute;
- b. Murder, a crime against humanity, punishable under Article 2(b) of the Statute; and
- c. Violence to life, health and physical and mental well-being of persons, in particular, murder, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute.

896. In the Indictment, the Prosecution pleaded unlawful killings in Koinadugu district from “between about 14 February 1998 and 30 September 1998”.¹⁹⁹¹ Following the Rule 98 Decision, the locations specified in the Indictment were Koinadugu and Fadugu.¹⁹⁹²

897. The Prosecution’s case, as set out in paragraph 52 of its supplementary pre-trial brief, asserts that the following would be proven:

- a. widespread killing throughout Kono¹⁹⁹³ district as part of Operation No Living Thing;
- b. widespread killing of civilians from indiscriminate firing upon AFRC/RUF forces entering villages and towns within the district;
- c. in Katambo II, 2 policemen were killed, gutted and their intestines pulled across a road as a checkpoint; and
- d. in various villages, civilians were burned to death after being locked in houses, including 48 people in one house in Koinadugu town and 41 people in one house in Yifin.

¹⁹⁹¹ Para. 50, Corrected Amended Consolidated Indictment.

¹⁹⁹² Rule 98 Decision/ Transcript, 25 October 2006, pp. 18, lines 5-11 and pp. 41, line 15 – pp. 42, line 14.

¹⁹⁹³ As written in supplemental pre-trial brief, but it has been assumed that it was meant to read “Koinadugu”.

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898. The evidence of unlawful killings adduced in the trial has failed to support the assertions made in the pre-trial brief. Notably, no evidence was adduced of (i) widespread killing of civilians from indiscriminate firing upon the AFRC/RUF entering towns and villages; (ii) the killing and gutting of two policemen in Katambo II; and (iii) 41 people being burnt to death in a house in Yifin. Rather than evidence being adduced of ‘widespread killing throughout Koinadugu as part of Operation No Living Thing’, there is one uncorroborated allegation of a fighter stating that the killings in Kondembaia in May 1998 were part of Operation No Living Thing. There is no evidence from any ‘insider’ witness of Operation No Living Thing being ordered or carried out in Koinadugu district during the indictment period or at all.

1. Inadequate Notice

899. The Prosecution led evidence of unlawful killings in the following locations that were not specifically pleaded in the Indictment: Yifin¹⁹⁹⁴, Seraduya¹⁹⁹⁵, Lengekoro¹⁹⁹⁶, Kondembaia¹⁹⁹⁷, Sandeya (or near Sandeya)¹⁹⁹⁸, Bafodia¹⁹⁹⁹ and in unnamed villages between Tombudu and Kurubonla²⁰⁰⁰. The Prosecution has failed to provide adequate notice, in either the Indictment, the pre-trial or supplemental pre-trial brief of any of the allegations of unlawful killings in these locations. The allegations must be dismissed for want of notice and consequential prejudice to the Defence.

B. Sexual violence

900. The Prosecution, in Counts 6 - 9 of the Indictment, alleges that Issa Sesay is responsible for

- a. Rape, a crime against humanity, punishable under Article 2(g) of the Statute;

¹⁹⁹⁴ TF1-215/ Transcript 2 August 2005, pp. 70, line 27 – pp. 72, line 11.

¹⁹⁹⁵ TF1-172/ Transcript 17 May 2005, pp. 21, line 8 – pp. 23, line 27.

¹⁹⁹⁶ TF1-213/ Transcript 2 March 2006, pp. XX

¹⁹⁹⁷ TF1-214/ Transcript 14 July 2004, pp. 4, line 11 – pp. 5 line 26, pp. 27, line 18 – pp. 29, line 27 and pp. 34, lines 25-37.

¹⁹⁹⁸ TF1-215/ Transcript 2 August 2005, pp. 75, line 8 – pp. 79, line 1.

¹⁹⁹⁹ TF1-199/ Transcript 20 July 2004, pp. 27, lines 17-32.

²⁰⁰⁰ TF1-263/ Transcript 6 April 2005, pp. 46, line 6 – pp. 47, line 14 and Transcript 7 April 2005, pp. 17, line 14 – pp. 19, line 20.

- b. Sexual slavery and any other form of sexual violence, a crime against humanity, punishable under Article 2(g) of the Statute;
- c. Other inhumane acts, a crime against humanity, punishable under Article 2(i) of the Statute; and
- d. Outrages upon personal dignity, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(e) of the Statute.

901. In the Indictment, the Prosecution pleaded sexual violence in Koinadugu district from “between about 14 February 1998 and 30 September 1998”.²⁰⁰¹ Following the Rule 98 Decision, the only location specified in the Indictment was Koinadugu.²⁰⁰²

902. The Prosecution, in paragraph 93 of its supplementary pre-trial brief, indicated that the evidence would demonstrate:

- a. the rape and gang rape of women at various villages throughout the District;
- b. the gang rape of one woman in Kabala that resulted in her death;
- c. the forced marriage of about 50 girls abducted from Katambo; and
- d. the sexual slavery of many women and girls in the area around Kurubonla.

903. No evidence was adduced of the gang rape of a woman in Kabala or of the forced marriage of 50 girls abducted from Katambo (or indeed of any abductions from Katambo).

1. Inadequate Notice

904. The Prosecution led evidence of crimes of sexual violence in the following locations which were not specified in the Indictment: Lengekoro²⁰⁰³, Fadugu²⁰⁰⁴, Kondembaia²⁰⁰⁵ and in various unnamed villages.²⁰⁰⁶

²⁰⁰¹ Para. 56, Corrected Amended Consolidated Indictment.

²⁰⁰² Rule 98 Decision/ Transcript 25 October 2006, pp. 23, lines 25 – pp. 24, line 1 and pp. 42, line 15 – pp. 43, line 4.

²⁰⁰³ TF1-213/ Transcript 2 March 2006, pp. 10, line 24 – pp. 12, line 10.

²⁰⁰⁴ TF1-329/ Transcript 2 August 2005, pp. 42, line 4 – pp. 43, line 17.

905. The Prosecution has failed to provide adequate notice, in either the Indictment or in its pre-trial briefs, of any allegations of crimes of sexual violence in these locations. The allegations must be dismissed for want of notice and prejudice to the defence.

C. Physical violence

906. The Prosecution, in Counts 10 -11 of the Indictment, alleges that Issa Sesay is responsible for

- a. Violence to life, health and physical and mental well-being of persons, in particular, mutilation, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute; and
- b. Other inhumane acts, a crime against humanity, punishable under Article 2(i) of the Statute.

907. The Prosecution pleaded physical violence in Koinadugu district from “between about 14 February 1998 and 30 September 1998”.²⁰⁰⁷ Following the Rule 98 Decision, the only location specified in the Indictment was Kabala.²⁰⁰⁸

908. The Prosecution, in paragraph 150 of its supplementary pre-trial brief, indicated that the evidence would demonstrate:

- a. civilians were amputated at various locations, a number of whom were given a letter and told to “go to Kabbah”;
- b. the amputation of a 6 year old girl at Koneibaia; and
- c. the marking of “RUF” by razor blade on the forehead of 3 men in Konebaia.

909. No evidence was adduced of the marking of 3 men in Koneibaia.

²⁰⁰⁵ TF1-213/ Transcript 2 March 2006, pp. 26, line 22 – pp. 27, line 18.

²⁰⁰⁶ TF1-199/ Transcript 20 July 2004, pp. 29, line 29 – pp. 30, line 8, pp. 30, lines 9 – pp. 31, line 1 and Johnson/ Transcript 14 October 2004, pp 92, line 18 – pp. 94, line 13.

²⁰⁰⁷ Para. 64, Corrected Amended Consolidated Indictment.

²⁰⁰⁸ Rule 98 Decision/ Transcript 25 October 2006, pp. 27, lines 4-9 and pp. 43, lines 5-18.

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1. Inadequate Notice

910. The Prosecution led evidence in the following additional unspecified locations: Fadugu²⁰⁰⁹, Kondembaia/ Konebaia²⁰¹⁰, Lengekoro²⁰¹¹, Yifin²⁰¹², Bafodia²⁰¹³, Koinadugu²⁰¹⁴, Seraduya²⁰¹⁵ and Badela.²⁰¹⁶

911. The Prosecution has failed to provide adequate notice, in either the Indictments or in its pre-trial briefs, of any allegations of crimes of sexual violence in the locations listed. The allegations must be dismissed for want of notice and consequential prejudice to the Defence.

D. Child Soldiers

912. The Prosecution, in Count 12 of the Indictment, alleges that Issa Sesay is responsible for conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, and other serious violation of International Humanitarian Law, punishable under Article 4(c) of the Statute.

913. The Prosecution has alleged that the use of child soldiers occurred in the following locations in Koinadugu throughout the Indictment period but specified no location in which such use occurred.²⁰¹⁷

²⁰⁰⁹ TF1-329/ Transcript 2 August 2005, pp. 4, line 18 – pp. 10, line 4, pp. 23, lines 1-7 and pp. 28, line 27 – pp. 33, line 1.

²⁰¹⁰ TF1-214/ Transcript 14 July 2007, pp. 6, line 15 – pp. 7, line 22, pp. 20, line 26 – pp. 21, line 7 and pp. 25, line 2 – pp. 26, line 16.

²⁰¹¹ TF1-213/ Transcript 2 March 2006, pp. 122, line 11 – pp. 18, line 17 and pp. 21, line 21 – pp. 26, line 6.

²⁰¹² TF1-074/ Transcript 12 July 2004, pp. 30, line 23 – pp. 31, line 11.

²⁰¹³ TF1-199/ Transcript 20 July 2004, pp. 29, line 29 – pp. 30, line 8.

²⁰¹⁴ TF1-212/ Transcript 8 July 2005, pp. 100, line 2 – pp. 101, line 1, pp. 110, lines 7-29 and pp. 111, line 2 – pp. 114, line 25.

²⁰¹⁵ TF1-172/ Transcript 17 May 2005, pp. 8, line 22 – pp. 17, line 18.

²⁰¹⁶ TF1-213/ Transcript 2 March 2006, pp. 26, line 20 – pp. 27, line 4.

²⁰¹⁷ Para. 68, Corrected Amended Consolidated Indictment.

1. Inadequate Notice

914. The Prosecution led evidence of the use of child soldiers in the following locations: Kurubonla²⁰¹⁸, Koinadugu²⁰¹⁹, Bafodia²⁰²⁰, Lengekoro²⁰²¹ and children who were abducted by the group under Gullit as it moved from Mansofinia to Rosos²⁰²².

915. The Appeals Chambers in the *Prosecutor v. Gullit et al* endorsed Trial Chamber II's refusal to make any findings on crimes perpetrated in locations not specifically pleaded in the indictment. The allegations must be dismissed for want of notice and consequential prejudice to the Defence.

E. Enslavement

916. The Prosecution, in Count 13 of the Indictment, alleges that Issa Sesay is responsible for abductions and forced labour, constituting enslavement, a crime against humanity punishable under Article 2(c) of the Statute.

917. Following the Rule 98 Decision²⁰²³, the Prosecution pleaded enslavement in Koinadugu between 14 February and 30 September 1998 in the following locations: Kabala, Koinadugu and Fadugu.²⁰²⁴

918. The Prosecution, in paragraph 207 of its supplemental pre-trial brief, indicated that it would adduce evidence to demonstrate

- a. civilians captured near Kasimbeck village were forced to carry looted food and pound rice;
- b. about 10 civilians were captured from Kamadugu Sokurula village, and
- c. a number of civilians were captured from Konebaia village and forced to carry food and other items.

²⁰¹⁸ TF1-263/ Transcript 6 April 2005, pp. 47 – 52, Transcript 7 April 2005, pp. 3-7 and Transcript 8 April 2005, pp. 29-30. (witness claims he is a child soldier and describe participating on attacks).

²⁰¹⁹ TF1-212/ Transcript 8 July 2005, pp. 113 and TF1-361/ 11 July 2005, pp. 69.

²⁰²⁰ TF1-199/ Transcript 20 July 2004, pp. 25 - pp. 32.

²⁰²¹ TF1-213/ Transcript 2 March 2006, pp. 20, lines 13-21.

²⁰²² Johnson/ Transcript 14 October 2004, pp.

²⁰²³ Rule 98 Decision/ Transcript 25 October 2006, pp. 43, line 29 – pp. 44, line 8.

²⁰²⁴ Para. 72, Corrected Amended Consolidated Indictment.

919. The Prosecution failed to adduce evidence to support any of the above assertions.

1. Inadequate Notice

920. The Prosecution led evidence in the following locations that were not specifically pleaded in the Indictment: Kurubonla²⁰²⁵, Lengekoro²⁰²⁶, between Tombudu and Kurubonla²⁰²⁷ and on the movement from Mansofinia to Rosos by Gullit's group.²⁰²⁸ These allegations must be dismissed for want of notice and consequential prejudice to the Defence.

F. Pillage

921. The Prosecution, in Count 14 of the Indictment, alleges that Issa Sesay is responsible for looting and burning, constituting pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute.

922. Following the Rule 98 Decision²⁰²⁹, the Prosecution pleaded enslavement in Koinadugu between 14 February and 30 September 1998 in the following locations: Kabala and Fadugu.²⁰³⁰

923. The Prosecution, in paragraph 256 of its supplemental pre-trial brief, indicated that it would adduce evidence to demonstrate

- a. many houses in Kalaba (sic) town were burnt;
- b. food was taken by AFRC/RUF forces from Kasimbeck village;
- c. houses were burnt down and goods were looted from Koinadugu town;
- d. many houses in Yifin were burnt;
- e. food was taken by AFRC/RUF forces from Koneibaia; and
- f. all the houses in Koidu town except the mosque were burnt.

²⁰²⁵ TF1-263/ Transcript 6 April 2005, pp. 7, line 16 – pp. 10, line 17.

²⁰²⁶ TF1-213/ Transcript 2 March 2006, pp. 29, line 3 – pp 30, line 15.

²⁰²⁷ TF1-263/ Transcript 6 April 2005, pp. 46, line 6 – pp. 47, line 15.

²⁰²⁸ Johnson/ Transcript 14 October 2004, pp 85 – 88.

²⁰²⁹ Rule 98 Decision/ Transcript 25 October 2006, pp. 44, lines 11 – 21.

²⁰³⁰ Para. 79, Corrected Amended Consolidated Indictment.

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1. Inadequate Notice

924. The Prosecution led evidence in the following locations that were not specifically pleaded in the indictment: Bafodia²⁰³¹, Yifin/ Efin²⁰³², Lengekoro²⁰³³, Kondembaia²⁰³⁴, Badela²⁰³⁵, Koinadugu²⁰³⁶, Seraduya²⁰³⁷ and Dankalie.²⁰³⁸ These allegations must be dismissed for want of notice and consequential prejudice to the Defence.

G. Prosecution's theory in relation to Sesay's liability

925. At the outset of the case the Prosecution also alleged that Sesay was linked to these crimes by

- a. his position of command and authority within the AFRC/RUF hierarchy²⁰³⁹;
- b. his role in the distribution of arms and ammunition to Superman, who subsequently became one of the top commanders in Koinadugu²⁰⁴⁰;
- c. that the AFRC/RUF soldiers who became known as the Northern Jungle group in Koinadugu was in regular communication with Bockarie in Kailahun²⁰⁴¹;
- d. Sesay's regular communication with Bockarie in Kailahun²⁰⁴²;
- e. The AFRC/RUF announcement of "Operation No Living Thing"²⁰⁴³; and
- f. The overall conduct of the AFRC/RUF.

²⁰³¹ TF1-199/ Transcript 20 July 2004, pp.29 –30.

²⁰³² TF1-074/ Transcript 12 July 2004, pp 24 and pp. 31 and TF1-215/ Transcript 2 August 2005, pp. 70-72.

²⁰³³ TF1-213/ Transcript 2 March 2006, pp. 5 - 10 and pp. 18 -19.

²⁰³⁴ TF1-214/ Transcript 14 July 2007, pp. 4 – 5, pp. 21 and pp. 31; and TF1-215/ Transcript 2 August 2005, pp.

²⁰³⁵ TF1-215/ Transcript 2 August 2005, pp. 81 – 84, 90 – 92.

²⁰³⁶ TF1-212/ Transcript 8 July 2005, pp. 73 – 74.

²⁰³⁷ TF1-172/ Transcript 17 May 2005, pp. 5-8, pp. 17-21.

²⁰³⁸ TF1-212/ Transcript 8 July 2005, pp. 98-99

²⁰³⁹ Para. 54.a, 103.a, 154.a, 209.b, Supplemental pre-trial brief.

²⁰⁴⁰ Para. 54.b, Supplemental pre-trial brief.

²⁰⁴¹ Para 209.c, Supplemental pre-trial brief.

²⁰⁴² Para 209.d, Supplemental pre-trial brief.

²⁰⁴³ Para 258.b, Supplemental pre-trial brief.

926. Evidence adduced by the Prosecution shows the following commanders either basing in or moving through Koinadugu district between February and September 1998:

- a. fighters under the command of SAJ Musa, General Bropleh and Brigadier Mani basing in Koinadugu shortly after the intervention;
- b. fighters under the command of Gullit moving from Koidu into Koinadugu for less than a week before leaving for Bombali on the orders of SAJ Musa; and
- c. fighters under the command of Superman leaving Koidu after the failed Fitti Fata mission in Kono in the rainy season of 1998. The Prosecution alleges that an advance team led by Komba Gbudema went before the remainder of the Superman group.

H. Crimes committed in Koinadugu immediately post intervention

927. SAJ Musa left Makeni during the retreat from Freetown following the 14 February 1998 ECOMOG intervention in Freetown. Brigadier Mani and General Bropleh based in Koinadugu at around the same time.

928. TF1-184 described attacks on Mongo Bendegu and Kabala with the assistance of Komba Gbudema shortly after the intervention. This is not credible, as set out in detail below, as the weight of the evidence suggests that Gbudema was a commander in Kono *immediately* after the intervention and moved to Koinadugu after the Fitti Fata mission, shortly before Superman. No other witness corroborated an attack on Kabala and Mongor Bendegu in the immediate months following the intervention. It is submitted, therefore, that the TF1-184's account of such attacks occurring, at least in the months immediately following on from the intervention is unreliable.

929. Witnesses such as TF1-214 in Kondembaia²⁰⁴⁴, TF1-213 in Lengekoro²⁰⁴⁵, TF1-074 in Efin²⁰⁴⁶ describe attacks occurring in February/ March 1998. It is submitted that

²⁰⁴⁴ TF1-214/ Transcript 14 July 2004, pp. 4, lines 11 – pp. 5, line 26 (attack in February 1998)

²⁰⁴⁵ TF1-213/ Transcript 2 March 2006, pp. 12, line 11 – pp. 30, line 15 (attack on 18 March 1998)

²⁰⁴⁶ TF1-074/ Transcript 12 July 2004, pp. 30, line 23 – pp. 31, line 11 (attack in early 1998)

given the time frame in which these attacks take place, they were most likely to have been carried out by fighters operating under SAJ Musa, General Bropleh or Brigadier Mani.

930. In relation to TF1-214 stating that in 2001 she met 'Kumba' in Koinadugu and was told that Superman was responsible for the attack, it is submitted that an identification of Superman as being the commander of the attack on Lengekoro 4 years after the fact and with no details as how 'Kumba' arrived at this conclusion before passing it on to the witness, is highly unreliable. It is submitted that a finding cannot be made on the basis of this evidence that Superman was in command of an attack on Lengekoro on 18 March 1998. It is alleged that Superman was a senior commander in Kono at that time engaged in other more pressing issues.

1. No evidence of commanders being aware of the attacks

931. There is no evidence on the Prosecution case of any orders being given by SAJ Musa or the other commanders to carry out such attacks on towns and villages. The Prosecution has also failed to adduce evidence to show that the physical perpetrators of these attacks made reports to any senior commander or that they would have known of them. It is submitted that, in the absence of any such evidence, caution should be exercised before finding that these attacks were part of any policy or undertaken on the orders of any individual commander or group. It is entirely possible that these attacks never happened or were the acts of individual fighters, acting as vigilantes.

2. No common plan, purpose or design in existence

932. The Prosecution have failed to adduce evidence showing any common plan purpose or design in existence between the RUF/SLA in the Koidu and Kailahun axis and any of the Northern groupings, from the time SAJ Musa, Brigadier Mani and General Bropleh move to Koinadugu to the time that Gullit moves into the district from Kono. The lack of common purpose is demonstrated through the following:

a) No communication between SAJ Musa and the RUF and/or Sesay

933. The evidence adduced by the Prosecution suggests that Bockarie made failed attempts to either bring SAJ Musa and his men under his command or to build a working relationship with them.

934. TF1-184 testified that the RUF believed they should be in control now that everyone was in the jungle and so they sent a SLA named Korpomeh to meet with SAJ Musa and his men to relay a message from JPK that all SLAs should be answerable to the RUF. SAJ Musa rejected this.²⁰⁴⁷ In cross-examination, TF1-184 confirmed that his evidence in chief was consistent with the statements given to the Prosecution on 7 August 2003²⁰⁴⁸ and in cross-examination confirmed his earlier statements, given in interview, that Korpomeh arrived in March 1998 and refused to take instructions from SAJ Musa or surrender his and his men's weapons [REDACTED] as they were now RUF. SAJ Musa instructed [REDACTED] to arrest Korpomeh and his men and [REDACTED] arrested 5 of them. As they resisted all but Korpomeh, who escaped, were executed. Following the executions, SAJ Musa ordered a strong defensive be set up in case of an RUF retaliatory attack.²⁰⁴⁹

935. George Johnson testified that while he was still in Koidu, Bockarie had sent some men to Koinadugu to take SAJ Musa – who had refused to submit himself to RUF command – back to Kailahun forcibly. Johnson said that the men sent by Bockarie arrived and met the ground “packed full of soldiers” and so decided to remain with SAJ Musa and not return to Bockarie and “this is how some of the RUF ended up in Koinadugu”.²⁰⁵⁰

²⁰⁴⁷ TF1-184/ Transcript 5 December 2005, pp. 88, line 25 – pp. 89, line 20.

²⁰⁴⁸ At pp. 13603 of Prosecution Interview with TF1-184, 8 August 2003.

²⁰⁴⁹ TF1-184/ Transcript 6 December 2005, pp. 25, line 4 – pp. 28, line 1.

²⁰⁵⁰ Johnson/ Transcript 19 October 2004, pp. 37, line 14 – pp. 38, line 16.

936. TF1-036, [REDACTED], stated that while some of the AFRC were cooperating with the RUF after the intervention in Freetown, the AFRC who had removed themselves to base in Koinadugu, were not:

the RUF and the AFRC soldiers, we were operating together as a single force. But there again, I can clarify it. When I said the AFRC and the RUF were operating together, it was not all the AFRC members. Some were there -- there was a split. Like SAJ Musa, Brigadier Mani and others; they didn't come to Kailahun. They decided to go to the Koinadugu area. There they based. Whereas Johnny Paul and some other -- and others came on the side of -- in the Kailahun area. We were still working together. But the other group went to Koinadugu. They were on a different operation, whereas we were on a different one. Mosquito tried to talk to them over the radio, to talk to SAJ Musa, that we should come together, but SAJ Musa refused. So they were on their own.²⁰⁵¹

937. While the evidence suggests attempts by Bockarie to bring SAJ Musa under control, either through influence or force, what remains consistent is SAJ Musa's refusal to align with or to work under the RUF.

b) No radio communication between groups in Koinadugu and RUF in Kono and Kailahun

938. While TF1-361 appeared to suggest that he was having operator to operator communications with Captain Suma, SAJ Musa's operator [REDACTED] TF1-361 confirmed that they received no response once Brima had moved to Koinadugu.²⁰⁵² TF1-361 elaborated further:

THE WITNESS: [REDACTED] effective cooperation was not with the SLAs, SAJ Musa, that was the reason why we were sent to be there. So when we went there, we communicated with them.

PRESIDING JUDGE: The question is whether or not there was coordination with SAJ Musa and whoever was up north [REDACTED].

THE WITNESS: No, there was not much cooperation during that period.

[...]

MR JORDASH: Q. SAJ Musa and Gullit had decided not to communicate and cooperate with the RUF, had they not, during this period?

²⁰⁵¹ TF1-036/ Transcript 28 July 2005, pp. 43, lines 10-25.

²⁰⁵² TF1-361/ Transcript 15 July 2005, pp. 29, line 14 - pp. 30, line 28.

Yes, sir.

939. It is apparent that SAJ Musa rejected all alleged attempts by Bockarie to forge a working relationship between them. It is clear from the evidence on the Prosecution case above that the fighters under SAJ Musa and the RUF under Bockarie were not working in concert with each other during this time and did not share any common objectives.

940. There is no evidence in the prosecution case of any communications between SAJ Musa's group and Sesay nor or of Sesay or Bockarie communicating about events in Koinadugu before the fall of Koidu and Gullit's move into Koinadugu.

941. That the RUF and SAJ Musa's group were not acting in concert with each and shared no common purpose is underlined by the evidence raised through prosecution witnesses of SAJ Musa's hostility to the RUF and his declared goal of reinstating the SLA.

c) SAJ Musa's long-standing antipathy towards the RUF

942. SAJ Musa - Vice President under Strasser's NPRC government and Secretary of State²⁰⁵³ and de facto Vice Chairman in the AFRC government²⁰⁵⁴ - had been hostile to the AFRC government linking itself to the RUF. TF1-045, a RUF fighter attached to a senior commander, described the relationship between SAJ Musa and Bockarie during the junta period as "it was not good at all. It was not good... 'Til we went into the bush. The relationship was not cordial". Similarly, George Johnson, a senior bodyguard to Ibrahim Kamara, agreed that SAJ Musa was not a great admirer of the RUF and saw them as 'bush rebels'.²⁰⁵⁵

943. SAJ Musa's lack of respect for the RUF, held in check by the existence of a 'coalition' government, metamorphosed into an outright and very public refusal to

²⁰⁵³ TF1-045/ Transcript 22 November 2005, pp. 55, lines 14-17.

²⁰⁵⁴ TF1-371/ Transcript 28 July 2006, pp. 48, lines 1-10.

²⁰⁵⁵ Johnson/ Transcript 18 November 2005, pp. 104, lines 9-12.

continue to be linked with the RUF once that government fell to the ECOMOG intervention in February 1998.

944. George Johnson described arriving in Kabala from Makeni in March 1998 and attending a meeting being held in Kabala while JPK was in his village near Makeni. Johnson testified:

In the meeting there was a tussle between SAJ Musa and Denis Mingo aka Superman that the troops should move to Kono as one, but SAJ Musa refused that order, that he's a soldier and he will never [inaudible] himself under the Revolutionary United Front. So he's going further to the north to Kurubonla to open his own jungle.²⁰⁵⁶

945. It was after this meeting that Superman and Bazy and RUF and AFRC fighters under them moved to Kono. Johnson stated that SAJ Musa then moved with more than 823 fighters to form his own base in Kurubonla. Brigadier Mani was a senior commander who went with SAJ Musa at that time.²⁰⁵⁷ Johnson described this as “a split” in the SLA.²⁰⁵⁸

946. TF1-071, a RUF insider, stated in the course of his evidence:

There have always been the problem of SAJ Musa not subordinating to Sam Bockarie, cause that was the problem between he and Sam Bockarie.

Q. Do you know why that was?

Yeah, from the initial stage, before even getting the bush, SAJ Musa said he was not going to become, let me just say, a jungle fighter. So he created his own division, that was he went by Koinadugu axis.²⁰⁵⁹

²⁰⁵⁶ Johnson/ Transcript 14 October 2004, pp. 57, line 14 – pp. 59, line 7. This is consistent with Johnson’s statements in his prosecution interview of 8 May 20XX, p 8470 as quoted in Transcript/ 19 October 2004, pp. 36, line 19 – pp. 37, line 10. See also TF1-184/ Transcript 5 December 2005, pp. 88, line 7 - pp. 89, line 19 where TF1-184 stated that when JPK sent soldiers with a message that the SLAs should be answerable to the RUF, SAJ Musa “said he would not be answerable, that that was a great mistake for him to answer to the RUF”.

²⁰⁵⁷ Johnson/ Transcript 14 October 2004, pp. 59, line 15 – pp. 60, line 2.

²⁰⁵⁸ Johnson/ Transcript 19 October 2004, pp. 122, line 13 – pp. 123, line 2.

²⁰⁵⁹ TF1-071/ Transcript 25 January 2005, pp. 59, line 20 – pp. 60, line 1.

947. SAJ Musa's hostility to the RUF and consequently his decision to set up an autonomous base in Koinadugu district was well-known.²⁰⁶⁰

d) SAJ Musa's aim to reinstate the army

948. It is submitted that SAJ Musa's pride in being a professional soldier motivated his decision to set up an autonomous base in Koinadugu district, removed from any control by or cooperation with the RUF. TF1-184 stated in chief that SAJ Musa, speaking at a muster parade in Kurubonla had declared that the group's main motive was to reinstate the army:

he said since the army was the oldest institution, he said based on this, so we should strive to fight and reinstate the army. He said -- it was at this point that he said we should start to attack Mongo.²⁰⁶¹

949. TF1-184 also confirmed a statement, made in interview with the Prosecution, that SAJ Musa, when speaking to a muster parade in Kurubonla, said that "their major reason for taking up arms was to reinstate the army which they belongs to; that had been disbanded by the SLPP government and restore back its dignity."²⁰⁶² This aim, reiterated by SAJ Musa until his death in Benguema in late December 1998, reinforced his position as independent from the RUF movement.

950. SAJ Musa's stated aim of reinstating the army under the SLPP government is also counterintuitive to SAJ Musa working under or alongside the RUF. This aim, rejoining the SLPP armed forces is the complete reverse aim of the RUF which was to unseat the SLPP government. Such declared aims serve to underline the absence of any common purpose between SAJ Musa and the RUF.

²⁰⁶⁰ See prosecution witnesses: TF1-041/ Transcript 11 July 2006, pp. 52, line 29 – pp. 53, line 14; and TF1-071/ Transcript 24 January 2005, pp. 93, line 1 – pp. 94, line 19.

²⁰⁶¹ TF1-184/ Transcript 5 December 2005, pp. 17, lines 9-12.

²⁰⁶² TF1-184/ Transcript 5 December 2005, pp. 104, line 17 - pp. 106, line 11.

e) No communication with Brigadier Mani

951. There is no evidence of any communication between any member of the RUF command and Brigadier Mani during the time that Brigadier Mani settled in Koinadugu prior to Komba Gbudema's and/or Superman in the district. No evidence has been adduced by the Prosecution to suggest that any common plan existed between Brigadier Mani and the RUF and/or Sesay.

952. Further, it is submitted that, like SAJ Musa, Brigadier Mani would have been hostile to forming any sort of working relationship with the RUF command. While Director of Defence in the AFRC government²⁰⁶³, Brigadier Mani, according to TF1-371, shared the opinion of some of the SLAs that "the RUF were blood-thirsty bush Colonels" and he was not happy about being in government with fighters whom he did not regard as professional soldiers.²⁰⁶⁴

f) No communication with General Bropleh

953. It is not in dispute that General Bropleh was in the Koinadugu district following the intervention and it is submitted that General Bropleh would have based in Koinadugu at the same time as SAJ Musa.²⁰⁶⁵ There are no sightings of him in Kono district post-intervention.²⁰⁶⁶ General Bropleh was the head of the Special Task Force (STF), Liberian ex-ULIMO fighters that had been a unit within the SLA.²⁰⁶⁷

954. The evidence suggests that General Bropleh retained command and control over his own STF group while maintaining a cordial relationship with SAJ Musa. TF1-184, [REDACTED] comments that when he moved from Makeni to Kabala during the intervention, there were three groups present in Kabala: SLA, STF and RUF, with Bropleh commanding the STF.²⁰⁶⁸

²⁰⁶³ TF1-334/ AFRC Transcript 17 May 2005, pp. 18, lines 13-26 (Exhibit 119). Pls note that Exhibit 6 suggests that he was not a member of the Supreme Council.

²⁰⁶⁴ TF1-371/ Transcript 28 July 2006, pp. 51, lines 3-9.

²⁰⁶⁵ TF1-184/ Transcript 5 December 2005, pp. 100, lines 2-7.

²⁰⁶⁶ For example, TF1-071/ Transcript 27 January 2005, pp. 49, line 20 – pp. 50, line 13.

²⁰⁶⁷ TF1-361/ Transcript 12 July 2005, pp. 44, lines 1-18.

²⁰⁶⁸ TF1-184/ Transcript 5 December 2005, pp. 14, line 20 – pp. 15, line 17.

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955. There is no evidence of any communication between any member of the RUF command and General Bropleh during the time that General Bropleh settled in Koinadugu prior to Gbudema's arrival in the district. No evidence has been adduced by the Prosecution to suggest that any common plan existed between General Bropleh and the RUF and/or Sesay.

3. Crimes committed by fighters under Gullit as they moved through Koinadugu

956. Johnson testified that fighters under Gullit left Koidu for Mansofinia in early May 1998.²⁰⁶⁹ TF1-344 states that the group under Gullit left Koidu soon after mid-May 1998 and travelled to Mansofinia, where they remained for three days²⁰⁷⁰ before proceeding to Rosos.

957. Fighters who moved to Koinadugu under the command of Gullit were only in Koinadugu for a short period of time. Johnson however testified that as Gullit's group moved from Mansofinia to Rosos, they abducted civilians who were used to carry looted items, arms and ammunition. They also abducted children between 8-14 yrs old who were later trained in Rosos.²⁰⁷¹ Johnson also stated that between Mansofinia and Rosos, women were abducted and forcibly married to fighters.²⁰⁷²

958. Additionally witnesses such as TF1-329²⁰⁷³ in Fadugu, TF1-214²⁰⁷⁴ in Kondembaia and TF1-215 in Yifin²⁰⁷⁵, gave evidence of crimes committed during attacks on in May 1998 at the time. The nature of attacks when compared to attacks by the same fighters in Bombali district and later in the Western Area suggest that they are likely to have been committed by the same group.

²⁰⁶⁹ Johnson/ Transcript 14 October 2004, pp. 78, lines 5-7.

²⁰⁷⁰ TF1-334/ AFRC Transcript 20 May 2005, pp. 51, line 12 – pp. 56, line 18.

²⁰⁷¹ Johnson/ 14 October 2004, pp. 85, line 5 – pp. 88, line 11.

²⁰⁷² Johnson/ 14 October 2004, pp. 92, line 18 – pp. 94, line 13.

²⁰⁷³ TF1-329/ Transcript 2 August 2005, pp. 4, line 18 – pp. 10, line 4, pp. 23, lines 1-17 and pp. 28, line 27 – pp. 33, line 1.

²⁰⁷⁴ TF1-214/ Transcript 14 July 2004, pp. 22, lines 12 – pp. 35, line 5.

²⁰⁷⁵ TF1-215/ Transcript 2 August 2005, pp. 70, line 27 – pp. 72, line 11.

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a) Ambiguity in TF1-215's testimony

959. TF1-215 states that while in Kondembaia village at the end of April 1998, a man, Kabbah Jalloh had come from Yifin and had suffered a double amputation. The witness says that he was told by Kabbah Jalloh that his brother's head was cut off but on being asked the question again, says "they chopped his brother on his head and on his shoulder". It is therefore unclear whether his brother was beheaded and suffered a chop wound on his head and shoulder.²⁰⁷⁶ While the former guarantees death, the latter does not. As the witness does not indicate whether Kabbah Jalloh's brother died, it is submitted that this evidence cannot be used to substantiate a finding of an unlawful killing.

b) No cooperation/ interaction between Gullit's group and the RUF and/or Sesay following Gullit's departure from Kono

960. As detailed the Kono 1998 section, the RUF under Superman and AFRC under Bazy captured and held Koidu for a period of time following the retreat from Freetown in February 1998. It is submitted that the friction between the groups, existing during the time of the AFRC government, began to express itself with ever greater freedom following the intervention. This friction, it is submitted, culminated in the departure of the bulk of the AFRC forces from Kono district to join SAJ Musa's mainly SLA group, then based in Kurubonla in Koinadugu district.

961. At the time that Gullit's left Koidu with the fighters under his command, any common purpose that might have existed with the RUF at that point was obliterated, as detailed below.

c) Erosion of cooperative relationship between the AFRC and RUF in Kono post intervention

962. [REDACTED], TF1-371, testified that Bazy was the senior AFRC commander in Koidu post-intervention but said "he had his own faction that he was in command of". He elaborated on this, stating "The AFRC and the RUF at that point in

²⁰⁷⁶ TF1-215/ Transcript 2 August 2005, pp. 71, line 2 – pp. 72, line 8.

time was not a cohesive group, as previously they were. The honourables of the junta were around their focal point, especially the principle liaison officer.....the core element found it difficult to co-exist with their RUF command, so they had their own command.²⁰⁷⁷

963. George Johnson testified that the RUF “were not trusted by the SLAs. That’s why we pulled out to join SAJ Musa”. Johnson said the reasons for this included the absence of any direct communication with JPK and the belief the RUF was not sharing arms and ammunition equally. He said that at the time of the fall of Kono, there was a level of distrust between the groups.²⁰⁷⁸ A more detailed discussion of the worsening relationship, the de facto separation of the two groups and the lack of common command in Kono post –intervention can be found in the Kono 1998 section.

964. It was alleged by TF1-334 that Morris Kallon was involved in the shooting of some AFRC fighters at a muster parade in Koidu, resulting in confusion between the AFRC and RUF and hastening the departure of the AFRC in Kono to Koinadugu. According to TF1-334, it was this confusion that allowed Brima to convince Bockarie to allow him to return to Koidu from Kailahun.²⁰⁷⁹

d) Arrival of Brima with news of JPK

965. Brima was based in Kono at the time of the intervention.²⁰⁸⁰ When the CDF forces attacked Koidu, Brima fled to Kailahun where he was searched and had diamonds from him and was not allowed to leave the Buedu area.²⁰⁸¹ The evidence shows that Brima left Kailahun in a rage, vowing not to work with the RUF. During his

²⁰⁷⁷ TF1-371/ Transcript 21 July 2006, pp. 37, line 23 – pp. 38, line 16.

²⁰⁷⁸ Johnson/ Transcript 19 October 2004, pp. 27, lines 14-29.

²⁰⁷⁹ TF1-334/ AFRC Transcript 19 May 2005, pp. 7, line 26 –pp. 14, line 14 (Exhibit 119). See also TF1-360/ Transcript 20 July 2005, pp. 22, line 3 – pp. 23, line 7 for the impact of the shooting of the SLAs at a muster parade.

²⁰⁸⁰ TF1-371/ Transcript 31 July 2006, pp. 18, lines 20 – 29; Johnson/ Transcript 14 October 2004, pp. 40, line 18 – pp. 41, line 16; and TF1-360/ Transcript 22 July 2005, pp. 46, lines 14-27.

²⁰⁸¹ TF1-371/ Transcript 20 July 2006, pp. 71, line 6 – pp. 73, line 12.

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time in Buedu, Brima also became aware of diamonds being taken from JPK and the complete loss of his authority.²⁰⁸²

966. Brima returned to Kono district and took over command of the AFRC forces from Bazy. TF1-334 testified that Brima returned to Kono as an adviser to both the RUF and AFRC but held a meeting with Bazy and other senior AFRC commanders to say that he had used the problems between the AFRC and RUF in Kono to convince Bockarie to allow Brima to return to Koidu.²⁰⁸³ In the course of the meeting, TF1-334 reported Brima as saying: “This was the time that the SLAs should come together and if ECOMOG continues to penetrate Koidu, that we should withdraw and join SAJ Musa in Koinadugu”.

967. It is clear that Gullit, aggrieved at this treatment in Kono, did not intend to act with, or seek the assistance of anyone in the RUF. His refusal to work with RUF obliterated any previously shared purpose.

e) Fracturing of the loose alliance

968. George Johnson, who was part of the group under Brima leaving Kono, stated that he moved with senior AFRC commanders to Mansofinia. Johnson stated that the intention in moving into Koinadugu was “because we wanted to reach SAJ Musa and join him at his own camp in Krubola.” Johnson stated that “most of the RUF fighters did not go with us to Mansofinia. The majority that went to Mansofinia were SLA soldiers and just a few RUF boys, about 20 of them.”²⁰⁸⁴ It is clear that the RUF within the ranks became de facto subordinates of the SLA. The notion that RUF within the ranks of this group could form the basis of liability for Bockarie, Sesay or any other RUF commander is nonsensical.

²⁰⁸² TF1-371/ Transcript 20 July 2006, pp. 73, line 17 – pp. 74, line 18; and TF1-361/ Transcript 12 July 2005, pp. 29, line 13 – pp. 30, line 23.

²⁰⁸³ TF1-334/ AFRC Transcript 19 May 2005, pp. 7, line 26 – pp. 8, line 14 and pp. 10, line 11 – pp. 15, line 5 (Exhibit 119). See also TF1-361/ Transcript 15 July 2005, pp. 96, lines 2-10 for an account of Brima coming from Buedu with the news of JPK’s mistreatment in Kailahun.

²⁰⁸⁴ George Johnson/ Transcript 14 October 2004, pp. 76, line 25 – pp. 77, line 6.

969. Similarly, TF1-361, a member of the RUF, stated that no senior AFRC commanders remained in Koidu after the group under Brima moved to Koinadugu:

Q. None of the main commanders stayed, did they, like Gullit, like Five-Five, like Bazy Kamara? They all left, having fallen out with the RUF in Koidu Town; is that right?

A. No, they didn't stay. It is only the junior ones that stayed.²⁰⁸⁵

970. TF1-361 testified that a SLA fighter Marouf had left with Gullit taking a Land Rover equipped with a missile launcher stating "Superman received a report that Marouf had escaped together with Gullit, because Gullit had left Buedu and come with a report that they had maltreated Johnny Paul Koroma; they had taken his diamonds and taken foreign currency from his wife's pants. So they passed through and went to SAJ Musa. So we hadn't a SLA commander whom I knew about in Koidu."²⁰⁸⁶

f) Amalgamation of SLA's into SAJ Musa's group

971. Johnson testified that on arrival at Mansofinia, SAJ Musa sent a message that only the senior commanders should move forward to his base at Krubonla. At a meeting in Krubonla, SAJ Musa instructed Brima to restructure his battalions and move into Bombali district to find a suitable place to camp.²⁰⁸⁷ Johnson testified that he believed that they arrived in Mansofinia in early May 1998.²⁰⁸⁸

972. TF1-344 gives an inconsistent account of a meeting with SAJ Musa and Brima in Mongor Bendegu at which Brima explained his and JPK's mistreatment in Kailahun at the hands of the RUF and stated that he had come with troops and was waiting for further instructions from SAJ Musa. TF1-334 states that SAJ Musa said that he had warned JPK not to go to Kailahun and that Brima was to move his men to find Brigadier Mani who had left to base in the Bombali district and together they were to set up a strong SLA defensive. Following the meeting, Brima returned to Mansofinia

²⁰⁸⁵ TF1-361/ Transcript 15 July 2005, pp. 95, lines 1-5.

²⁰⁸⁶ TF1-361/ Transcript 15 July 2005, pp. 96, lines 5-10.

²⁰⁸⁷ Johnson/ Transcript 14 October 2004, pp. 77, lines 11-15.

²⁰⁸⁸ Johnson/ Transcript 14 October 2004, pp. 78, lines 3-7.

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and reorganised the battalions. They were joined by other fighters, including 55, who had been with SAJ Musa in Mongor Bendegu.²⁰⁸⁹

973. Of the accounts, it is submitted that Johnson's is to be preferred, not least because the evidence adduced in the Prosecution case weighs in favour of Brigadier Mani remaining in Koinadugu district. Regardless, there is a consistent thread in both accounts: Brima meets with SAJ Musa and is instructed to set up a base in Bombali district. It is clear that on arrival in Koinadugu district, at that stage at least, Brima subordinates himself to the command and control of SAJ Musa and there is no common purpose or agreement between the RUF and those groups. This was the start of Gullit's autonomous criminal operations, which quite evidently had nothing to do with the RUF.

974. This is reinforced by TF1-334's evidence that Brima, in Yaryah, having departed from Mansofinia on SAJ Musa's orders, had a radio communication with Superman who was still in Kono district. TF1-334 testified that Superman purported to order Brima to return to Kono and threatened to send troops to dislodge him if Brima continued to advance. TF1-344 stated that Gullit responded by telling Superman "that he will not retreat back with any troops and that he has the capability to challenge any attacker that will attack his troops and that he's moving further. He will not listen to any instructions from Superman, he is moving further."²⁰⁹⁰

975. It is submitted that Brima's movement signaled his absolute subordination to SAJ Musa's de facto command and control and his and his fighters' formal separation from any possible RUF command or any agreed actions.

²⁰⁸⁹ TF1-334/ AFRC Transcript 20 May 2005, pp. 83, line 29 – pp. 87, line 27.

²⁰⁹⁰ TF1-334/ AFRC Transcript 20 May 2005, pp. 39, line 27 – pp. 41, line 29.

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4. Movement of Superman to Koinadugu

a) Buedu meeting (rainy season of 1998) does not denote common purpose

976. TF1-360 testified that Superman went to Buedu in the rainy season of 1998 immediately before proceeding to Koinadugu.²⁰⁹¹ TF1-360 stated that he was present at the meeting and it was not attended by Sesay who was under punishment in Pendembu for losing diamonds. In examination in chief, TF1-360 alleged that at this meeting, it was decided that Superman should join SAJ Musa in Koinadugu as part of a broader plan for Bockarie, SAJ Musa and Gullit to work together to capture territory, culminating in an attack on Freetown. TF1-360 also stated that Bockarie was sending operators and reinforcements to Gullit who had requested them through SAJ Musa. In cross-examination, however, TF1-360 admitted that SAJ Musa was *not* aware of the plan at the time of the meeting in Buedu and that at the time SAJ Musa was effectively operating independently in Koinadugu. TF1-360 also agreed that Superman went to Koinadugu with an elite fighting force and the plan amounted to Bockarie attempting to force SAJ Musa to work under Bockarie's instruction.²⁰⁹²

977. TF1-361 further undermines TF1-360's account given in chief by testifying that the meeting was a private meeting between Bockarie, Superman and Sesay. 361 stated that the radio operators went to speak to and eat with the radio operators in Buedu who were their friends.²⁰⁹³ TF1-361 stated that after the meeting Superman informed them that Bockarie had said that Superman was to move to SAJ Musa and "force him in order them to have one operation".²⁰⁹⁴ TF1-361 stated that Superman said that Bockarie had informed him that SAJ Musa was not willing to work with them because of the perceived mistreatment of JPK and his wife when the diamonds were taken from them in Buedu.²⁰⁹⁵

²⁰⁹¹ TF1-360/ Transcript 20 July 2005, pp. 45, line 10 – pp. 46, line 15.

²⁰⁹² TF1-360/ Transcript 28 July 2005, pp. 27, line 3 – pp. 29, line 9.

²⁰⁹³ TF1-361/ Transcript 12 July 2005, pp. 24, line 2 – pp. 26, line 4.

²⁰⁹⁴ TF1-361/ Transcript 12 July 2005, pp. 26, line 8 – pp. 28, line 12.

²⁰⁹⁵ TF1-361/ Transcript 12 July 2005, pp. 28, line 29 – pp. 30, line 23.

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978. TF1-361 said the reasoning behind Superman going to Kurubonla was “to join forces with SAJ Musa so that if he was with SAJ Musa with the forces, any plans that SAJ Musa could take, he would prevent them from happening. So he should go and join SAJ Musa”.²⁰⁹⁶

979. It is clear therefore that the Buedu meeting, which SAJ Musa was unaware of, does not demonstrate any common purpose between the groups but rather underlines SAJ Musa’s independence from the RUF and their lack of control and/or influence over him.

b) Was Sesay at the meeting?

980. It is of note that the first time that TF1-361 mentioned Sesay sending a message calling Superman to the Buedu meeting and being present at the meeting was while giving evidence. His interview notes states that Mosquito told Superman over the radio to come to Buedu and that once in Buedu, Mosquito and Superman had private discussions in Bockarie’s house. In court, TF1-361 simply stated that the records of his interview did not reflect what he had told the Prosecution.²⁰⁹⁷ Both TF1-360 and TF1-366²⁰⁹⁸ who spoke about a meeting in Buedu in the rainy season of 1998, confirm that Sesay was not present.

5. Movement of Komba Gbudema into Koinadugu

a) When does Gbudema go to Koinadugu?

981. TF1-184 testified that he saw Komba Gbudema (RUF) with about 30 RUF fighters in Mongo with 55 less than a week from the time SAJ Musa’s group moved from Kabala to Mongo. He stated that Gbudema moved with SAJ Musa’s group from Mongo to Kurubonla but was not part of the command structure of the STF under General Bropleh or the SLA under SAJ Musa.²⁰⁹⁹ TF1-184 stated that Komba Gbudema

²⁰⁹⁶ TF1-361/ Transcript 12 July 2005, pp. 31, lines 5-9.

²⁰⁹⁷ TF1-361/ Transcript 15 July 2005, pp. 81, line 17 – pp. 87, line 7 and TF1-361/ Witness Statement 11 June 2004, pp. 10026 and Interview Notes February 2005, pp. 10661.

²⁰⁹⁸ TF1-366/ Transcript 8 November 2005, pp. 77-78. TF1-366 does not speak about any plan to send Superman to SAJ Musa’s position.

²⁰⁹⁹ TF1-184/ Transcript 5 December 2005, pp. 100, line 9 – pp. 103, line 26.

and the RUF fighters with him participated, alongside STF and SLA forces, on attacks on Mongo and Kabala and implicated Gbudema in the abduction and enslavement of civilians following these attacks.²¹⁰⁰ TF1-184 stated that Gbudema was not subordinating himself to SAJ Musa and was based in a separate location in Kurubonla but once Superman arrived in Koinadugu district, Gbudema became answerable to Superman.²¹⁰¹

982. The evidence adduced by the Prosecution in the trial suggests that the account given by TF1-184 is inaccurate as it is clear from all other evidence that Gbudema's was in the Kono district for several months after the intervention.

983. In answer to questions by the Prosecution concerning which RUF commanders were present in Kono after the AFRC and RUF captured Koidu shortly after the intervention, TF1-334 stated the Komba Gbudema was one of the RUF commanders in Koidu and had moved with Rambo of the RUF and a SLA commander to capture Koidu.²¹⁰² TF1-334 stated that Gbudema was the commander based at Yomadu and Kayima and reported to Superman. Superman would brief TF1-334 and his commander about Komba Gbudema and TF1-334 would see Komba Gbudema at Yomadu and Kayima when TF1-334 went on patrol with his commander. TF1-344 stated

[Superman] used to tell us about Kumba Gudama and myself, and my operations commander, we went and patrolled to where Kumba Guduma was because he was a close friend to the operations commander.²¹⁰³

984. Johnson, in confirming Exhibit 9, the Kono command structure chart detailing the command structure between March and May 1998, stated that Komba Gbudema was a RUF stand-by officer in Kono during this time.²¹⁰⁴

²¹⁰⁰ TF1-184/ Transcript 5 December 2005, pp. 17, line 13 – pp. 19, line 17.

²¹⁰¹ TF1-184/ Transcript 5 December 2005, pp. 28, line 21 – pp. 30, line 6.

²¹⁰² TF1-334/ AFRC Transcript 19 May 2005, pp. 31, line 15 – pp. 32, line 2.

²¹⁰³ TF1-334/ AFRC Transcript 19 May 2005, pp. 32, line 21 – pp. 33, line 21. See also TF1-074/ Transcript 12 July 2004, pp. 10, lines 30-35 and pp. 16, lines 30-32 for an account of Gbudema being in command at Kayima and TF1-366/ Transcript 15 November 2005, pp. 58, lines 14-15 for evidence of Gbudema being in Yomadu.

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985. In evidence TF1-360 stated as follows

Q. And allegiances in the command structure were made over many years of combat. So for example, Superman was very close to Gbundema, would you agree?

Yes, Superman was close to Gbundema.

Q. And that closeness had come about through years of working together at Kono and Koinadugu.

That closeness that I am talking about, both of them were in Koinadugu and they worked together.

[...]

Q. They had been together in Kono, Koidu Town, had they not, and Superman Ground?

No. It is in my statement that Komba Gbundema was at Yomandu as battalion commander, while Superman was at Koinadugu and there he met him.

[...]

Q. When Superman went to Koinadugu, did he take Gbundema with him?

Yes, sir.

Q. Did they travel together to Koinadugu?

Yes. The only thing, I cannot say they moved on the same day or he moved after or later, rather. But when I left Kono I learned that Komba Gbundema and Superman were in Koinadugu, and when I went to Koinadugu I saw Superman and Komba Gbundema in Koinadugu.²¹⁰⁵

986. TF1-361 testified that after Brima and the bulk of the SLAs broke from Kono to move to Koinadugu, only junior SLAs remained in Kono. He noted that some were based with Komba Gbudema at Yomadu.²¹⁰⁶ TF1-361 testified that Superman sent Komba Gbudema from Yomadu to Krubonla as his advance team before Superman himself left Kono for Koinadugu.²¹⁰⁷ This was after the Fiti Fata mission.²¹⁰⁸

²¹⁰⁴ Johnson/ Transcript 14 October 2005, pp. 66, line 25 – pp. 68, line 25 and Exhibit 9.

²¹⁰⁵ TF1-360/ Transcript 22 July 2005, pp. 27, line 8 – pp. 28, line 12.

²¹⁰⁶ TF1-361/ Transcript 15 July 2005, pp. 94, line 23 – pp. 95, line 5.

²¹⁰⁷ TF1-361/ Transcript 15 July 2005, pp. 115, line 20 – pp. 116, line 23.

²¹⁰⁸ TF1-361/ Transcript 15 July 2005, pp. 117, lines 20-28 and pp. 118, line 28 – pp. 119, line 10.

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987. Furthermore, TF1-184, in the AFRC trial, himself stated that: "Superman stayed with us while at that time. He left with us and he left one of his men called Komba Gbundema."²¹⁰⁹

988. It is submitted, therefore, the TF1-184's evidence in relation to Komba Gbundema being present in Koinadugu district, participating in joint attacks with SLA and STF forces as well as any evidence of Gbundema committing crimes in the course of those attacks, is contradictory with a substantial amount of evidence, also adduced by the Prosecution, which demonstrates Gbundema's presence in Kono district until shortly after the Fiti Fata attack on Koidu. As such, TF1-184's evidence in relation to the presence of Gbundema in Koinadugu is unreliable and cannot form the basis for a finding of cooperation or agreement between the RUF, SLA or STF in Koinadugu district.

b) No evidence that Gbundema reports to Bockarie or Sesay from Koinadugu

989. TF1-361 stated that the ammunition given to Superman after the meeting in Buedu was used up in the unsuccessful Fitti Fata mission²¹¹⁰ TF1-361 confirmed that Gbundema did not take ammunition with him but stated that ammunition was taken later by another group.²¹¹¹

990. Once in Koinadugu, according to TF1-361, Gbundema sent a message to *Superman* that SAJ Musa and he had jointly attacked Mongor Bendegu and had captured arms and ammunitions. [REDACTED]

[REDACTED]²¹¹²

991. There is no evidence of Gbundema communicating with either Bockarie or Sesay, about attacks or anything else, during the time that he is in Koinadugu from any witness. There is also no evidence on the Prosecution case of Superman communicating

²¹⁰⁹ TF1-184/ Transcript 6 December 2005, pp. 32, line 22 – pp. 33, line 19.

²¹¹⁰ TF1-361/ Transcript 15 July 2005, pp. 89, line 28 – pp. 90, line 12.

²¹¹¹ TF1-361/ Transcript 15 July 2005, pp. 120, lines 1-14.

²¹¹² TF1-361/ Transcript 18 July 2005, pp. 3, line 27 – pp. 5, line 11.

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with Bockarie or Sesay about the activities of Gbudema in Koinadugu. There is no evidence from which the Trial Chamber could infer any agreement or joint action.

992. Further following the failed Fitta Fata mission on Koidu led by Superman, no witness, save for TF1-361, gives evidence about communications between Superman and fighters under him on one hand and the RUF under Bockarie on the other, as detailed below. The only witness who is aware of the apparently many communications flowing between fighters in Koinadugu and Bockarie and Sesay in Kailahun is TF1-361, whose account and credibility are discussed below.

6. Movement of Alfred Brown into Koinadugu

993. It is not in dispute that Alfred Brown, a Liberian radio operator and member of the RUF, was in Koinadugu in the indictment period and at some point moved from Koinadugu to Rosos, Major Eddie Town and into Freetown in January 1999. There is no consistent account in the Prosecution case of how Alfred Brown came to be in Koinadugu district:

- a. George Johnson testified that Alfred Brown was with SAJ Musa from the pull-out from Kabala to Krubonla and from that time was under the command of SAJ Musa not the RUF;²¹¹³
- b. TF1-184, however, agreed in his evidence that Alfred Brown came to SAJ Musa with the group that moved from Kono under Brima.²¹¹⁴ TF1-184, who moved to Major Eddie Town with SAJ Musa, testified that he saw Alfred Brown at Major Eddie Town but did not know how he got there;²¹¹⁵
- c. TF1-361 stated that Alfred Brown was part of a group led by Jin Gbandeh dispatched by Bockarie following a request for manpower from Superman and SAJ Musa and this group, [REDACTED]. Alfred Brown

²¹¹³ Johnson/ Transcript 19 October 2004, pp. 127, lines 18-20.

²¹¹⁴ TF1-184/ Transcript 6 December 2005, pp. 34, lines 6-19.

²¹¹⁵ TF1-184/ Transcript 6 December 2005, pp. 34, lines 6-19.

was dispatched to meet Gullit at Rosos but says no one from Koinadugu accompanied them;²¹¹⁶

- d. TF1-360 does not comment on how Alfred Brown got to Koinadugu but confirmed that both he and Alfred Brown moved to Gullit together from Koinadugu but in a group under the command of SLA CO 05;²¹¹⁷
- e. TF1-366 stated signalers Co Nya, Alfred Brown, 202 and Gogume all went with Superman when Superman left Kono for Koinadugu following the Fiti Fata attack.²¹¹⁸

994. It is submitted that there is no clear evidence to support any finding by the Trial Chamber as to how Alfred Brown came to be in Koinadugu. Furthermore, it is to be noted that no evidence was adduced of Alfred Brown serving as a radio operator to any fighters in Koinadugu nor is their evidence linking him to any communication with persons or groups operating outside of Koinadugu. Even if it were true, that Brown was sent by Bockarie intending this to be assistance to the group, there is no evidence that this was realized, no less that any assistance was substantial. Moreover the paucity of corroboration for TF1-361's account must cast a doubt over this event. It would have been more widely known had Brown been sent by Bockarie.

995. Submissions as to whose command and control he operated under during Alfred Brown's movement between Koinadugu and Freetown in 1998 – early 1998 are made in the section dealing with the movements of various SLA groups across Bombali.

7. Evidence showing Superman's decision to move to Koinadugu represents a split from Bockarie's RUF

996. The meeting between Bockarie and Superman in Buedu was followed by the unsuccessful Fitti Fata operation on Koidu led by Superman in which many fighters were killed. There is evidence, outlined, below to suggest that at this point Superman breaks with Bockarie's RUF and heads north to Koinadugu.

²¹¹⁶ TF1-361/ Transcript 12 July 2005, pp. 60, line 1 – pp. 63, line 29.

²¹¹⁷ TF1-360/ Transcript 22 July 2005; pp. 22-23.

²¹¹⁸ TF1-366/ Transcript 8 November 2005, pp. 84, line 22 – pp. 85, line 9.

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997. The weight of the Prosecution case suggests that it was at this time Superman, aggrieved with Bockarie's interference in his personal affairs and perceived preferred treatment of Sesay, leaves Kono to move to Koinadugu, as an independent movement breaking from the RUF.

998. TF1-366 testified that after the unsuccessful Fiti Fata mission, Morris Kallon and the witness went to see Superman at Superman ground outside of Koidu and a quarrel took place between Superman and Kallon:

Superman told Morris Kallon and Sam Bockarie and Issa Sesay that they were not sober-minded people. That they were not working truthfully because if they were working truthfully – if he had been the one who had misplaced those diamonds, then Issa and Sam Bockarie would have passed an order for him to be killed, and Morris Kallon. That they would have given that order. But now that it is their brother, that they are united, he wouldn't take any command from Morris Kallon, Issa or Sam Bockarie. Then he got up and summoned all the armed men in the Joe bush. That he was going to Kurubonla to SAJ Musa, that was he was not going to work with us. If I couldn't forget, it was during the day at 12.00. That was midday. Superman was at the Guinea Highway on his ground.....Superman himself, he got up and went to Kurubonla to SAJ Musa with 200 armed men. He took them along, 200 guns.²¹¹⁹

999. TF1-366 stated signalers Co Nya, Alfred Brown, 202 and Gogume all went with Superman.²¹²⁰

1000. TF1-371 [REDACTED] testified that Superman fell out with Bockarie because of Bockarie's interference in Superman's relationship with his girlfriend:

Sam Bockarie had a strained relationship with Denis Mingo at the point in time when Denis Mingo was in the Kono District as a result of the constant interference of Sam Bockarie into the personal issues of Denis Mingo that had to do with the girlfriend of

²¹¹⁹ TF1-366/ Transcript 8 November 2005, pp. 82, line 7 – pp. 83, line 17.

²¹²⁰ TF1-366/ Transcript 8 November 2005, pp. 84, line 22 – pp. 85, line 9.

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Denis Mingo. And because of that there was a strain in the relationship.....This event occurred sometime in the middle of 1998. I cannot tell you specifically the month when it occurred.....He was recalled by Mosquito -- I mean, Sam Bockarie and he refused initially to attend to the call.²¹²¹

1001. TF1-371 stated that it was within the period of the strained relationship that Superman was in Koinadugu with SAJ Musa:

When the ECOMOG intervention force took Kono from the RUF and the AFRC, Denis Mingo at that point in time had already started developing strained relationship with Mosquito and he was not taking instructions from Sam Bockarie, alias Mosquito. At that particular juncture, he liaised with SAJ Musa and they headed for Koinadugu District. Sometime later it was alleged that SAJ Musa ordered the execution of some RUF combatants that were with Denis Mingo. Denis Mingo was infuriated by the action of SAJ Musa and he took his leave of the faction led SAJ Musa and headed towards Kono District. It was during that time he made an effort to align himself again with the RUF High Command in Buedu.²¹²²

1002. TF1-071 testified that Superman was sent by Bockarie to Krubonla to arrest SAJ Musa who had broken off communication but that Superman never arrested SAJ Musa but remained in Krubonla. TF1-071 also stated that after Superman failed to arrest SAJ Musa, Bockarie sent Major Rocky from Kono to arrest SAJ Musa but Major Rocky returned to Kono without SAJ Musa.²¹²³

1003. There is further support for the view that Superman's movement to the North was not planned or coordinated with SAJ Musa or Bockarie. TF1-361 described Titus, Superman's adjutant, having to intervene to arbitrate between the two groups upon Superman's arrival in Koinadugu with his Cobra unit. SAJ Musa believed that Superman was about to attack them.²¹²⁴

²¹²¹ TF1-371/ Transcript 21 July 2006, pp. 38, line 17 – pp. 39, line 19.

²¹²² TF1-371/ Transcript 21 July 2006, pp.40, line 9 – pp. 41, line 10.

²¹²³ TF1-071/ Transcript 25 January 2005, pp. 59, line 7 – pp. 62, line 13.

²¹²⁴ TF1-361/ Transcript 15 July 2005, pp. 113, line 13 – pp. 114, line 27.

1004. TF1-184 gives two accounts on the course of his evidence. The first, in chief, was that Bockarie and SAJ Musa were in radio communication and Bockarie stated that he would send items like soap and cigarettes to SAJ Musa and that these things were sent with Superman to Koinadugu.²¹²⁵ In cross-examination for Sesay however, TF1-184 agreed with a statement made in an interview with the Prosecution on 7 August 2003 where he stated that Superman and about 20 SLA and RUF were captured in an ambush and brought to SAJ Musa. There, Superman admitted to having instructions to take SAJ Musa to Kailahun, which SAJ Musa refused. SAJ Musa then ordered that Superman not be allowed to leave. It was after this according to TF1-184 that Superman was under the direct command of SAJ Musa. In evidence TF1-184 amended this to say that this was the time that SAJ Musa and Superman worked together.²¹²⁶

1005. TF1-036, [REDACTED], testified

Mosquito contacted SAJ Musa. He tried to inform him in order for him to see a reason why we come together so that we would not have two groups. He said because if all of us were together and we could make a formidable force, but if they were in their own group and we were in our own group, he said it wouldn't be nice. Then SAJ denied bitterly and said he wouldn't come to Kailahun. So he and Brigadier Mani were together in their own operation. And during that time one RUF senior commander had also broken off from Mosquito, that was Superman. They used to call him Denis Mingo. He, too, had broken away because he was not – he was not in good terms with Issa Sesay and Mosquito so he preferred staying with SAJ Musa.²¹²⁷

1006. When asked in cross-examination, about contact between Bockarie and Superman in Kono in 1998, TF1-036 stated “Well, '98, Superman, just like I said, was on his own; he was with SAJ Musa and others. So I didn't hear where he spoke to Mosquito. Probably they spoke, but I was not there. But by then I knew there was misunderstanding between them. So he was not so much with the RUF, he was with the AFRC people.” He confirmed that he saw Superman visit Buedu once in 1998 and that

²¹²⁵ TF1-184/ Transcript 5 December 2005, pp 21, line 25 – pp. 22, line 11.

²¹²⁶ TF1-184/ Transcript 6 December 2005, pp 24, line 5; pp. 29, line 1 – pp. 30, line 3.

²¹²⁷ TF1-036/ Transcript 28 July 2005, pp. 63, lines 4-20.

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once Superman left for Kono, he did not see him again and heard that Superman was with SAJ Musa.²¹²⁸ This is significant. TF1-336 and TF1-371,²¹²⁹ [REDACTED] both confirmed that there was little, or no relationship between Bockarie and Superman and that is what led to Superman leaving Koidu.

1007. The only prosecution witness who gives evidence of continuing communications between Superman and the RUF command, including Sesay, is TF1-361. No other witness corroborates TF1-361's account. It is submitted that it cannot be relied upon.

8. TF1-361's account

a) Delivery of ammunition

1008. TF1-361 stated that following Gbudema's move to Koinadugu, he was in Superman ground in Koidu when he heard a message from Sesay informing Superman that more ammunition would be sent to him so he could go to join SAJ Musa.²¹³⁰ In the night TF1-361 testified that he heard footsteps passing through the camp and the next morning, Superman informed him that Sesay and Bockarie had sent ammunition for them to take to meet SAJ Musa.²¹³¹ TF1-361 stated that he accompanied Superman and 3 other operators, [REDACTED] on their move to Koinadugu.

(1) Credibility of this account

1009. TF1-361's account of a second delivery of ammunition from Kailahun to Koidu is not corroborated by any other witness. The Prosecution adduced no evidence from any other witness stating that Superman arrived in Koinadugu with any amount of ammunition. TF1-263, who was based in Koinadugu, stated that Superman and SAJ Musa were conducting operations in order to get ammunition as neither of them had much ammunition with them.²¹³²

²¹²⁸ TF1-036/ Transcript 29 July 2005, pp. 95, line 29 – pp. 97, line 28.

²¹²⁹ TF1-371/ Transcript 21 July 2006, pp.40, line 9 – pp. 41, line 10.

²¹³⁰ TF1-361/ Transcript 12 July 2005, pp. 40, lines 24-29.

²¹³¹ TF1-361/ Transcript 12 July 2005, pp. 41, line 7-26.

²¹³² TF1-263/ Transcript 8 April 2005, pp. 35, line 15 – pp. 36, line 9.

1010. Furthermore, Sesay was in Pendembu under punishment for losing diamonds in Monrovia at the time of the Fitti Fata operations. As detailed in the sections on Kailahun and Kono 1998, there is significant evidence to demonstrate that Sesay had been effectively cut out of the de facto command structure and that Superman was reporting directly to Bockarie while at Superman ground. It is therefore not plausible that Sesay would have been sending messages about deliveries of ammunition to Superman or anyone else outside of the frontlines around Pendembu.

b) No evidence as showing use of ammunition

1011. There is no evidence concerning the use of this ammunition in the commission of crimes or to show that it was in fact dispatched, if indeed it was, with the intention that it be used for attacks against civilians or with the knowledge that it would be. This would have been an absurd use of ammunition given the obvious difficulties that Bockarie had in obtaining it.

c) Varying accounts of communications with Kailahun while en route

1012. TF1-361 gives three different accounts of communications with Bockarie and Sesay as Superman moves from Koidu to Koinadugu. In his testimony, TF1-361 stated that:

- a. Superman's group did not send any messages to Bockarie or Sesay during the two days it took for them to move from Kono to Koinadugu and that the first message which was sent was when they arrived in Kurubonla informing Bockarie and Sesay of their location²¹³³;
- b. Superman communicated with the control station during the journey to Krubonla and that the radio operators were communicating with Daff and Ebony Prince, who were Bockarie's operators in Buedu²¹³⁴;
- c. That the group stopped in Tombudu and set up the radio set to inform the commanders of their location and that he knew that the message was

²¹³³ TF1-361/ Transcript 15 July 2005, pp. 104, lines 15-27.

²¹³⁴ TF1-361/ Transcript 15 July 2005, pp. 105, line 4 – pp. 106, line 22.

passed to the commanders because “we spoke with them and they told us to go ahead”. He says that his message was passed to Bockarie²¹³⁵; and

- d. That he did not know whether the hierarchy for messages going through Sesay had taken place.²¹³⁶

1013. The multiple accounts given by TF1-361 demonstrate his unreliability as a witness. Furthermore it is not credible that Sesay, then in Pendembu, would have been communicating with Superman during this time. The evidence, as set out in the Kono 198 section, shows that while under Bockarie’s command at Superman ground in Kono, orders, instructions and reports flowed directly between Superman and Bockarie.

d) Superman’s hostile reception in Koinadugu demonstrates a lack of common purpose

1014. TF1-361 stated that when Superman arrived at Kurubonla “the soldiers were jittery. They took positions to fight us... The adjutant Titus that we went with, he used his own initiative. He summoned an immediate meeting with SAJ Musa, General Bropleh and all the authorities. They held an immediate meeting so that they could discuss and understand themselves”.²¹³⁷

1015. It is submitted that the fact that SAJ Musa and General Bropleh prepared themselves to fight Superman demonstrates clearly that there was no common purpose in existence between Bockarie’s RUF and the groups in Koinadugu.

1016. It is to be noted that TF1-184 testified that Titus was also present in Koinadugu immediately following the intervention and acted as a liaison between the SLA, STF and SLA groups.²¹³⁸ This account, like his account that Gbudema was in Koinadugu following the intervention, emphasises his lack of reliability as a witness.

²¹³⁵ TF1-361/ Transcript 15 July 2005, pp. 106, lines 23 – pp. 111, line 5.

²¹³⁶ TF1-361/ Transcript 15 July 2005, pp. 111, lines 6-19.

²¹³⁷ TF1-361/ Transcript 12 July 2005, pp. 46, lines 15-23.

²¹³⁸ TF1-184/ Transcript 5 December 2005, pp. 21, lines 14-16.

e) Crimes committed on 1st Kabala attack

1017. TF1-361 stated that in the meeting between Superman, SAJ Musa and General Bropleh, a joint plan was agreed to attack Kabala and Superman subsequently contacted Bockarie and Bockarie stated that he agreed with the plan and that they should carry on.²¹³⁹ Following the attack, TF1-361 testified that a message was sent to Bockarie informing him that they had captured ammunition on the attack.²¹⁴⁰

1018. TF1-361 testified that during this first attack on Kabala, fighters took vehicles and food and captured civilians to help them with the household chores. He confirmed that civilians were handed over to the G5 who took care of them.²¹⁴¹

f) No evidence of communications flowing to Sesay

1019. TF1-361 does not give any evidence of reports to Sesay at this time concerning a joint operation on the Kabala attack. There is no corroboration from any other witness that such communication took place. This attack could not give rise to criminal liability for Sesay.

g) Conflicting account of command structure in Koinadugu at time of 1st attack on Kabala

1020. TF1-361 gave two conflicting accounts of the command structures in place in Koinadugu:

- a. TF1-361 stated that Superman, SAJ Musa and General Bropleh did not regard themselves as subordinate to each other and did not take orders from each other but saw themselves as “fighting for one goal” at the time of the first attack on Kabala²¹⁴²;
- b. TF1-361 then stated that at the time of the Kabala attack, SAJ Musa was taking orders from Bockarie and SAJ Musa had decided to subordinate

²¹³⁹ TF1-361/ Transcript 12 July 2005, pp. 47, lines 3-17 and pp. 48, lines 4-15.

²¹⁴⁰ TF1-361/ Transcript 12 July 2005, pp. 53, lines 20-25.

²¹⁴¹ TF1-361/ Transcript 12 July 2005, pp. 52, line 19 – pp. 53, line 12.

²¹⁴² TF1-361/ Transcript 18 July 2005, pp. 20, line 12 – pp. 21, line 14.

himself to Bockarie and to Sesay because of the presence of Superman in Koinadugu.²¹⁴³

1021. It is submitted that TF1-361's inability to be consistent in his evidence even on the command structure in Koinadugu shows his lack of credibility as a witness. This evidence cannot properly implicate Bockarie, and even less Sesay, even if it were true. There is no suggestion that Bockarie was participating in attacks on civilians. At best it is evidence of Bockarie's encouragement to fight to obtain territory, not commit crimes.

h) Varying accounts of communicating with Sesay at the time of the first Kabala attack

1022. Following on from the communication with Bockarie in which Bockarie allegedly agreed to the 1st Kabala attack, TF1-361 stated that Sesay was sent on a mission to Liberia to take diamonds to Charles Taylor in exchange for ammunition.²¹⁴⁴ Following the loss of diamonds in Monrovia, TF1-361 confirmed that Sesay was sent to the frontlines at Pendembu as a punishment. He gave the following varying accounts of communications with Sesay at this time:

- a. That Sesay was in Liberia for 2 weeks before being sent to Pendembu as a punishment.²¹⁴⁵ He stated that Sesay had no communication with Superman while in Pendembu²¹⁴⁶;
- b. That Sesay was in Pendembu for not more than one week and that his stay in Pendembu was not "effective" but was to allow Bockarie to have the other commanders believe that Sesay was being punished and that "after that, he [Sesay] went back to Koidu...where we normally contact him"²¹⁴⁷;

²¹⁴³ TF1-361/ Transcript 18 July 2005, pp. 24, line 15 – pp. 26, line 4.

²¹⁴⁴ TF1-361/ Transcript 12 July 2005, pp. 48, line 23 – pp. 49, line 29.

²¹⁴⁵ TF1-361/ Transcript 18 July 2005, pp. 70, lines 23-28.

²¹⁴⁶ TF1-361/ Transcript 18 July 2005, pp.75, lines 2-8.

²¹⁴⁷ TF1-361/ Transcript 18 July 2005, pp.76, line 17 – pp. 77, line 21

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- c. that the group in Koinadugu was still in close communication with Sesay while he was in Pendembu as his punishment was not very effective and they continued to report to him as a high command;²¹⁴⁸
- d. that following the capture of Kabala, a message was sent from Superman to Sesay and Bockarie where Sesay and Bockarie told them that ECOMOG was planning to ambush them and they should operate together with SAJ Musa.²¹⁴⁹

1023. Again the widely varying accounts point not only to a lack of credibility but a willingness to alter his account to implicate Sesay. No other witness corroborates communications flowing between Sesay in Pendembu and groups in Koinadugu.

i) Superman and Bockarie fall apart

1024. TF1-361 stated that during the first week in Koinadugu, Superman and Bockarie fell out over the radio. Bockarie accused Superman of not wanting to fight because of the white woman that Superman was courting. Superman denied the allegation but this conflict led to Bockarie sending a message out to all stations that no RUF station was to contact Superman.²¹⁵⁰ In cross-examination, TF1-361 confirmed this and stated that this occurred at the end of the second week that Superman was in Koinadugu. He testified

Q. And what you said last week was that the message from Sam Bockarie was, in effect, that Superman was no longer part of the RUF; is that right?

Yes, that was the last message.

Q. And the operations Superman then conducted were conducted along with SAJ and Brigadier Mani until later on in the year 1998. Is that correct?

Yes.

Q. Now, do you know why -- before I ask you this, was this common knowledge amongst the RUF men that Sam Bockarie had cut off communication?

No, it was instructions given to all the stations informing them that if anyone is caught talking to Superman's station it means that particular person is a collaborator.

Q. And would be punished by death; was that the threat?

²¹⁴⁸ TF1-361/ Transcript 18 July 2005, pp.76, line 2-16.

²¹⁴⁹ TF1-361/ Transcript 12 July 2005, pp. 54, lines 5-8

²¹⁵⁰ TF1-361/ Transcript 12 July 2005, pp. 56, line 21 – pp. 57, line 6.

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Yes.²¹⁵¹

1025. TF1-361 confirmed that Superman was cut off from the RUF a week after he arrived in Koinadugu and that Superman continued to participate in operations after this point.²¹⁵² TF1-361 confirmed that Superman was ordered to go to Buedu but refused as he believed that Bockarie would kill him.²¹⁵³ Bockarie sent an instruction to all stations saying that if anyone was caught communicating with Superman's station, they would be considered a collaborator and would be punished with death.²¹⁵⁴

1026. At its highest, therefore, TF1-361's evidence, if believed, shows communication between Superman in Koinadugu and Bockarie and Sesay in Kailahun for one week.

j) TF1-361's account of the 2nd Kabala attack

1027. TF1-361 testified that a week after the first attack on Kabala, SAJ Musa, Superman and General Bropleh launched a second attack on Kabala. Prior to the attack the above commanders met and decided that Kabala, if not captured from ECOMOG, was a threat to them it should be burnt down.²¹⁵⁵ On the attack, TF1-361 stated that a section of the town was partially burnt.²¹⁵⁶

k) Was Kailahun informed?

1028. TF1-361, again, gives varying accounts of the state of knowledge that the RUF based in Kailahun had of the attack. His evidence concerning the cutting off of communication between Bockarie and Superman at the end of the first week that Superman is in Koinadugu suggests that Superman was no longer in contact with Bockarie at the time of the attack and any agreement or collaboration had dissolved at this time.

²¹⁵¹ TF1-361/ Transcript 18 July 2005, pp. 39, lines 4-29.

²¹⁵² TF1-361/ Transcript 18 July 2005, pp. 39, lines 4-21.

²¹⁵³ TF1-361/ Transcript 18 July 2005, pp. 40, lines 5-28.

²¹⁵⁴ TF1-361/ Transcript 18 July 2005, pp. 39, lines 22-27.

²¹⁵⁵ TF1-361/ Transcript 12 July 2005, pp. 54 – 55.

²¹⁵⁶ TF1-361/ Transcript 12 July 2005, pp. 55.

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1029. TF1-361 in evidence stated that the plan to attack and burn Kabala in the 2nd attack was on instruction from SAJ Musa, Superman and General Bropleh and that Superman only sent a report to the control station after the attack to say that they had failed to capture Kabala.²¹⁵⁷ In the event, therefore that the Trial Chamber finds TF1-361's account of the communication credible, the communication itself demonstrates no participation or contribution on the part of Bockarie or Sesay.

l) TF1-361's account of Bockarie's involvement with the training base.

1030. TF1-361 testified that Superman, SAJ Musa and General Bropleh decided to open a training base in Koinadugu after their third attack on Kabala, which itself was 2 weeks after the 1st attack. TF1-361 stated that they planned to increase the size of their forces by training captured civilians and children from the ages of 10 yrs and over were trained at the base.

1031. TF1-361 testified that the control station was consulted and Bockarie gave the green light for the base and that he monitored conversations between Bockarie, SAJ Musa and Superman at this time. That Bockarie was involved in the setting up of a training base in Koinadugu is clearly not credible. It is, once again, an allegation uncorroborated by any other witness. The Prosecution may suggest that this gives rise to criminal responsibility for Sesay. This is entirely fatuous. The notion that SAJ Musa or Superman would have been compelled or even encouraged by Bockarie giving the "green light" for a training base simply does not make sense. These were two strong independent, if not arrogant, commanders who TF1-361 wants the Trial Chamber to believe were waiting for some implicit permission or urging from Bockarie. This is not realistic. SAJ Musa had vowed not to work with Bockarie and Superman had, or was shortly, to thumb his nose at Bockarie, refusing to be recalled to Buedu. The notion that they compliantly informed Bockarie and he responded in the way suggested is further proof that TF1-361's evidence must be disregarded in its entirety.

²¹⁵⁷ TF1-361/ Transcript 18 July 2005, pp. 30 – 32.

m) Reinforcements sent by Bockarie under Jin Gbandeh

1032. TF1-361 stated that a group led by Jin Gbandeh was dispatched by Bockarie following a request for manpower from Superman and SAJ Musa and this group, which included TF1-360 and Alfred Brown were dispatched to meet Gullit at Rosos but says no one from Koinadugu accompanied them.²¹⁵⁸

1033. TF1-361 stated, however, that by the time the men arrived, Bockarie and Superman had were not longer in communication and as such the men effectively fell under the command of Superman, SAJ Musa and General Bropleh and were no longer in contact with the RUF in Kono and Kailahun.²¹⁵⁹ TF1-361 testified that though the men had been sent by Bockarie, they operated under Superman and as such were no longer in communication with Bockarie. It was Superman, therefore, who dispatched them to move towards Brima.²¹⁶⁰ In other words, even if Bockarie had sent the men as reinforcements, in the absence of proof that they provided substantial assistance to crimes and Bockarie was aware of this intent when he sent them, no other 6(1) liability could arise. Similarly the lack of contact with Bockarie from their arrival means that no 6(3) liability could arise. The link with Sesay is even more remote.

1034. It is submitted that this group had moved out of the control of Bockarie and that at the time that they moved to Koinadugu, no common plan existed between the RUF under Bockarie and the groups in Koinadugu.

n) Reinforcements: Senegalese (Account of TF1-366)

1035. TF1-366 testified that after Superman broke away from Kono to join SAJ Musa in Kurubonla SAJ Musa sent a message to Bockarie saying that they wanted reinforcements. Bockarie, alleged, then radioed Kallon at Superman ground in Kono to say that he was sending a force to Superman ground.²¹⁶¹ TF1-361 stated that 70 men led by Colonel Senegalese, a mercenary sent by Charles Taylor, slept the night at

²¹⁵⁸ TF1-361/ Transcript 12 July 2005, pp. 60, line 1 – pp. 63, line 29.

²¹⁵⁹ TF1-361/ Transcript 18 July 2005, pp. 43, lines 6 -26.

²¹⁶⁰ TF1-361/ Transcript 18 July 2005, pp. 48, line 2 – pp. 50, line 25.

²¹⁶¹ TF1-366/ Transcript 8 November 2005, pp. 86-88.

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Superman Ground before moving on to SAJ Musa at Krubonla.²¹⁶² TF1-366 gives no details as to what this group did while in Koinadugu.

1036. This account of TF1-366's is uncorroborated in every aspect. No operators heard of SAJ Musa asking for Bockarie for reinforcements – something highly unlikely to have happened given SAJ Musa's attitude towards the RUF and Bockarie, as set out earlier. No operator hears Bockarie tell Kallon that he is sending men under Colonel Senegalese to Superman Ground en route to Koinadugu. No other witness gives evidence about 70 men arriving at Superman ground from Kailahun and sleeping there for the night before moving ahead to SAJ Musa's position and no witness has given evidence about such a group being received in Koinadugu. This account is wholly unreliable.

1037. Furthermore there is no evidence of Colonel Senegalese and his men being involved in the commission of any crimes. There is no evidence that Sesay was aware of this movement of men, if it did occur nor is there evidence that any such movement that these men took orders or made reports to Bockarie or Sesay in Kailahun. Finally, as set out above, the relationship between Superman and Bockarie, if it is not accepted that it is cut off at the time of Superman's departure from Kono, dissolves after the first week in Koinadugu on the evidence of TF1-361, ending any agreement to act in concert with each other. Similarly the fight between SAJ Musa and Superman and SAJ Musa's consequent fleeing of Koinadugu ends any cooperation or interaction between himself and Superman and/or the RUF in Kailahun, if found to exist.

o) Reinforcements: TF1-360

1038. TF1-360 stated that he was sent by Morris Kallon on the orders of Bockarie from Kono to Koinadugu after Superman's departure to Koinadugu. TF1-360 states that he and others were sent so that SAJ Musa could reinforce the fighting force with Brima at

²¹⁶² TF1-366/ Transcript 8 November 2005, pp. 86-88.

Rosos. TF1-360 states that he spent a week in Koinadugu before being sent to Rosos under the lead of Col 05 of the SLA.²¹⁶³

1039. As detailed in the section concerning the movement of the SLA groups across Bombali en route to the Western Area below, it is clear that TF1-360 and other members of this group became assimilated into the SLA group and were not longer under the command and control of the RUF.

XII. Movement through Bombali to Freetown: counts 3-5, 6-9, 10-11, 13, 14

A. Prosecution's allegations

1. Crimes alleged

1040. The Prosecution alleged crimes of unlawful killings, sexual violence, physical violence, enslavement, and pillage in Bombali district between 1 March 1998 and 31 November 1998.²¹⁶⁴ The use of child soldiers, as it appears in Count 12, stretches to cover the temporal jurisdiction of the Indictment.²¹⁶⁵ The Prosecution case expanded throughout the trial to encompass new factual allegations of crimes and new allegations of modes of participation.²¹⁶⁶

1041. The Prosecution alleged that crimes of unlawful killings took place in the following locations in Bombali district between 1 May 1998 and 31 November 1998: Bonyoyo (or Bornoya), Karina, Mafabu, Mateboi and Gbendembu (or Gbenedu or Pendembu). The Prosecution led evidence of unlawful killings in the following locations that were not specifically pleaded in the indictment: Mayayi²¹⁶⁷, Madogbo²¹⁶⁸, Malama²¹⁶⁹, Rosos²¹⁷⁰, Major Eddie town²¹⁷¹, Kukuna²¹⁷², Batkanu²¹⁷³, Batmis²¹⁷⁴,

²¹⁶³ TF1-360/ Transcript 21 July 2007, pp. 6, line 9 – pp. 10, line 29.

²¹⁶⁴ Indictment, Paras. 51, 57, 65, 73, and 81

²¹⁶⁵ Indictment, Para. 68.

²¹⁶⁶ Annex A.

²¹⁶⁷ TF1-031/Transcript, 17 March 2006, pp. 84. Killing of 2 people.

²¹⁶⁸ TF1-156/AFRC Transcript 26 November 2005. People killed in an attack.

²¹⁶⁹ TF1-159/Transcript, 5 April 2006, pp. 11. Civilians hacked to death and shot.

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Madina Loko²¹⁷⁵, Kamagbende²¹⁷⁶ and Kantia²¹⁷⁷ as well as in many unnamed villages. The new allegations should be dismissed for want of notice and consequential prejudice.

a) Sexual Violence

1042. The Prosecution alleged that crimes of sexual violence occurred in the following locations in Bombali district between 1 May 1998 and 31 November 1998: Mandaha and Rosos. The Prosecution led evidence in the following locations that were not specifically pleaded in the indictment: Karina²¹⁷⁸, Batmis²¹⁷⁹ and Madina Loko.²¹⁸⁰ The new allegations should be dismissed for want of notice and consequential prejudice.

b) Physical Violence

1043. Following the Rule 98 Decision, the Prosecution pleaded physical violence only in Rosos in Bombali district between 1 May 1998 and 31 November 1998.²¹⁸¹ The Prosecution led evidence in the following locations that were not specifically pleaded in the indictment: Mayayi²¹⁸², Madogbo²¹⁸³, Karina²¹⁸⁴, Mandaha²¹⁸⁵, Bornoya²¹⁸⁶, Mafabu²¹⁸⁷, Mamusa²¹⁸⁸, Batmis²¹⁸⁹, Ma-Alimamikukuna²¹⁹⁰, Madina Loko²¹⁹¹,

²¹⁷⁰ Johnson/Transcript, 14 October 2004, pp. 95, lines 3 – 20; TF1-334/AFRC Transcript 23 May 2005, pp. 101.

²¹⁷¹ Johnson/Transcript, 14 October 2004, pp. 103. Note that Johnson says that Major Eddie town is in Kambia.

²¹⁷² Johnson/Transcript, 14 October 2004, pp. 108.

²¹⁷³ TF1-179/AFRC Transcript, 4 April 2006, pp. 35. Exhibit 102.

²¹⁷⁴ TF1-196/Transcript, 13 July 2004, pp. 19.

²¹⁷⁵ TF1-199/Transcript, 20 July 2004, pp 20, lines 20 – pp. 23, lines 15; and pp. 63, lines 9 – 30.

²¹⁷⁶ TF1-334/AFRC Transcript, 23 May 2005, pp. 55.

²¹⁷⁷ TF1-334/AFRC Transcript, 23 May 2005, pp. 3.

²¹⁷⁸ TF1-028/Transcript, 17 March 2006, pp. 104; and TF1-031/Transcript, 17 March 2006, pp. 78. Both TF1-028 and TF1-031 allege women stripped naked and tied together. TF1-334/AFRC Transcript, 23 May 2005. Rapes and women being stripped naked.

²¹⁷⁹ TF1-196/Transcript, 13 July 2004, pp. 19. Raped in the bushes near Batmis and hearsay evidence of a gang rape.

²¹⁸⁰ TF1-199/Transcript, 20 July 2004.

²¹⁸¹ Rule 98 Decision/Transcript, 25 October 2006, pp. 43, lines 5-18.

²¹⁸² TF1-031/Transcript, 17 March 2006. Amputations.

²¹⁸³ TF1-156/AFRC Transcript 26 November 2005. Amputations.

²¹⁸⁴ TF1-028/Transcript, 17 March 2006 (sees civilians being beaten up); and TF1-334/AFRC Transcript, 23 May 2005, pp. 66. Amputations on orders of Gullit.

²¹⁸⁵ TF1-031/Transcript, 17 March 2006. Witness' leg burnt.

²¹⁸⁶ TF1-156/AFRC Transcript, 26 November 2005. People injured in an attack.

²¹⁸⁷ TF1-159/Transcript, 5 April 2006. Witness struck with a gun.

²¹⁸⁸ TF1-184/Transcript, 6 December 2005, pp 36. Amputation.

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Mateboi²¹⁹², Riema²¹⁹³, in a village near Gbendembu²¹⁹⁴ and on the road between Batkanu and Makeni.²¹⁹⁵ The new allegations should be dismissed for want of notice and consequential prejudice.

c) Child Soldiers

1044. The Prosecution, in Count 12 of the Indictment, alleged that Sesay is responsible for conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, and other serious violation of International Humanitarian Law, punishable under Article 4(c) of the Statute.

1045. The Prosecution alleged that the use of child soldiers occurred in various locations in Bombali District throughout the Indictment period but specified no location in which such use occurred. The charges should be dismissed for want of notice and consequential prejudice.

d) Enslavement

1046. The Prosecution, in Count 13 of the Indictment, alleged that Sesay is responsible for abductions and forced labour, constituting enslavement, a crime against humanity punishable under Article 2(c) of the Statute. The Prosecution pleaded enslavement in Bombali District between 1 May 1998 and 31 November 1998 but did not specify any locations in which the crimes were said to have taken place within the District. The Prosecution led evidence in the following locations that were not specifically pled in the indictment: Mafabu²¹⁹⁶, Malama²¹⁹⁷, Rosos²¹⁹⁸, Karina²¹⁹⁹, Batkanu²²⁰⁰, Batmis²²⁰¹,

²¹⁸⁹ TF1-196/Transcript, 13 July 2004. Double amputation of witness.

²¹⁹⁰ TF1-343/Transcript, 17 March 2006, pp. 61, lines 6 – 10. Amputation.

²¹⁹¹ TF1-199/Transcript, 20 July 2004. Amputation of 40 people.

²¹⁹² TF1-343/Transcript, 17 March 2006. Amputation of witness.

²¹⁹³ TF1-343/Transcript, 17 March 2006. Hearsay of evidence of amputations.

²¹⁹⁴ TF1-334/AFRC Transcript, 23 May 2005, pp. 83. Amputations on orders of Gullit.

²¹⁹⁵ TF1-179/AFRC Transcript, 27 July 2005. Amputation of four men.

²¹⁹⁶ TF1-159/Transcript, 5 April 2006. Witness made to pound rice and fetch water.

²¹⁹⁷ TF1-159/Transcript, 5 April 2006.

²¹⁹⁸ TF1-159/Transcript, 5 April 2006; Johnson/Transcript, 14 October 2004.

²¹⁹⁹ Johnson/Transcript, 14 October 2004. Abductions.

²²⁰⁰ Johnson/Transcript, 14 October 2004. Abductions.

²²⁰¹ TF1-196/Transcript, 13 July 2004. Civiliand made to pound rice and fetch water.

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Mateboi²²⁰² and on the road between Batkanu and Makeni.²²⁰³ The charges should be dismissed for want of notice and consequential prejudice.

e) Pillage

1047. The Prosecution, in Count 14 of the Indictment, alleged that Sesay is responsible for looting and burning, constituting pillage, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(f) of the Statute. The Prosecution pleaded pillage in the following locations in the Bombali District between 1 March 1998 and 31 November 1998: Karina and Mateboi.²²⁰⁴ The Prosecution led evidence in the following locations that were not specifically pleaded in the indictment: Manyae²²⁰⁵, Bornoya²²⁰⁶, Mayambo²²⁰⁷, Mafabu²²⁰⁸, Rosos²²⁰⁹, Batkanu²²¹⁰, Madina Loko²²¹¹, Gbendembu²²¹², Matiti²²¹³, Almamikukuna²²¹⁴, Gbinti²²¹⁵, Kukuna²²¹⁶ and on a road between Batkanu and Makeni²²¹⁷ and other unnamed villages. The new allegations should be dismissed for want of notice and consequential prejudice.

2. Prosecution's Theory in Relation to Sesay's Liability

1048. Evidence adduced by the Prosecution shows three distinct movements of fighters moving across the north of the Bombali District to Rosos and Major Eddie Town before

²²⁰² TF1-343/Transcript, 17 March 2006, pp. 59, line 20 – pp. 60, line 1. Abduction.

²²⁰³ TF1-179/AFRC Transcript, 27 July 2005. Abduction of two children.

²²⁰⁴ Rule 98 Decision/Transcript, 25 October 2006.

²²⁰⁵ TF1-028/Transcript, 20 March 2006

²²⁰⁶ TF1-156/AFRC Transcript, 26 November 2005, pp. 35, lines 14 – 26. Burning of vehicles and houses.

²²⁰⁷ TF1-156/AFRC Transcript, 26 November 2005, pp. 45, lines 12 – 16. Burning of two houses.

²²⁰⁸ TF1-159/Transcript, 5 April 2006, pp. 10. Looting of civilians and burning of town.

²²⁰⁹ TF1-159/Transcript, 5 April 2006 (looting); TF1-334/AFRC Transcript 23 May 2005, pp. 106 (Gullit ordering villages around Rosos to be burnt).

²²¹⁰ TF1-179/AFRC Transcript, 27 July 2005, pp. 32 Burning of witness's house.

²²¹¹ TF1-199/Transcript, 20 July 2004. Houses burnt and property taken from houses.

²²¹² TF1-334/AFRC Transcript, 23 May 2005, pp. 84, lines 19 – 25 (shops looted); TF1-360/Transcript, 19 July 2005, pp. 15 (school and houses burnt).

²²¹³ TF1-334/AFRC Transcript, 23 May 2005, pp. 95 (village burnt); TF1-343/Transcript, 17 March 2006, pp. 60, line 21 – pp. 61, line 5.

²²¹⁴ TF1-343/Transcript, 17 March 2006, pp. 60, line 21 – pp. 61, line 5.

²²¹⁵ TF1-334/AFRC Transcript, 24 May 2005, pp.47. Village looted and partially burnt.

²²¹⁶ TF1-334/AFRC Transcript, 25 May 2005, pp.52. Village burnt.

²²¹⁷ TF1-179/AFRC Transcript, 27 July 2005. Looting money from witness.

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moving as one large group towards Freetown. The evidence demonstrated that the three groups of SLA combatants were:

- a. Commanded by SLA Gullit (including George Johnson and TF1-334);
- b. Commanded by SLA Colonel 05 (including TF1-360); and
- c. Commanded by SLA SAJ Musa (including TF1-184).

1049. The evidence shows the commission of crimes by all three 'waves' of fighters. However the evidence shows that the vast majority of the crimes committed in Bombali during the indictment period (1 May 1998 and 31 November 1998) were committed by Gullit and fighters under his command. This is clear from the evidence given by TF1-334 and Johnson. It is also clear from the evidence of TF1-272, [REDACTED], that victims, a large part of who were recent amputees, arrived to the hospital over a 6 week period from mid/late April through to June 1998. She confirmed that the wave of atrocities went from Koidu to Kabala in the general direction of Makeni and that patients were received from those locations.²²¹⁸

B. Crimes Committed on the Movement to Rosos by Gullit's Group

1050. It is accepted that fighters under Gullit moved from Mansofinia to Rosos, attacking Karina, Kamagbende, Mandaha, Batkanu and other unspecified villages en route. It is accepted that in the course of these various attacks that fighters under Gullit committed crimes as set out in Counts 3-14 of the Indictment. Johnson testified that this group left Koidu for Mansofinia in early May 1998.²²¹⁹ TF1-334 states that the group under Gullit left Koidu soon after mid-May 1998 and travelled to Mansofinia, where they remained for three days²²²⁰ before proceeding to Rosos.

1051. The Prosecution have failed to prove that the aforementioned crimes can be attributed to Sesay pursuant to 6(1) and 6(3). The Prosecution have failed to prove that the criminal acts perpetrated by fighters under Gullit as they moved from Mansofinia to Rosos were in any way linked to Sesay for the following reasons.

²²¹⁸ TF1-272/Transcript, 5 July 2005, pp. 61, lines 22 – 24.

²²¹⁹ Johnson/Transcript, 14 October 2004, pp. 78, lines 5 – 7.

²²²⁰ TF1-334/AFRC Transcript, 20 May 2005, pp. 51, line 12 – pp. 56, line 18.

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1. Relationship Between Gullit and RUF at the Point of Departure of Gullit's Group From Koinadugu

1052. Gullit had abandoned all attempts to collaborate with the RUF at the time he left Kono, in May 1998. At the time when Gullit left SAJ Musa at Koinadugu and headed towards Rosos the estrangement was absolute. TF1-334 stated that shortly after leaving Mansofinia in mid/late May 1998, Gullit stopped in a village close to Bumbuna and raised Superman over radio communications. When Superman told Gullit that he was to return to Kono or Superman would send fighters to dislodge him, Gullit was said to have told Superman that he had the capability to challenge any attacker and would not longer listen to any instructions from Superman.²²²¹ The group then moved launched attacks on the village in which the communication had taken place, followed by Kamagbende and Karina, committing crimes.

2. Absence of Communications Between Gullit's Group and Any RUF Commander

1053. There is no evidence on the Prosecution case of *any communication whatsoever* between Gullit's group and any senior RUF commander during the time that the group moves from Mansofinia to Rosos, notably through Karina and Mateboi. TF1-334 testified that the group arrived in Rosos in the rainy season.²²²² Johnson, the bodyguard to Bazzy who was second in command to Gullit during the movement, testified that en route to Rosos, his group had no direct communications with the RUF. They were not taking orders from them, nor were they planning any joint operation or even sharing information.²²²³ At Mandaha, several fighters in the group fled including their radio operator who took with him one radio set and their only microphone. TF1-334 says from that point onward they were not able to send messages but could only monitor.²²²⁴ The group only locates another microphone during an attack on Batkanu after they are already settled at Rosos.²²²⁵

²²²¹ TF1-334/AFRC Transcript, 23 May 2005, pp. 40, line 1 – pp. 45, line 18 and TF1-334/Transcript, 7 July 2006, pp. 35, line 16 – pp. 39, line 3.

²²²² TF1-334/AFRC Transcript, 23 May 2005, pp. 102, line 29 – 103, line 22.

²²²³ Johnson/Transcript, 19 October 2004, pp. 47, line 11 – pp. 48, line 20,

²²²⁴ TF1-334/AFRC Transcript, 23 May 2005, pp. 40, line 10 – pp. 42, line 3.

²²²⁵ TF1-334/AFRC Transcript.

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3. No Communication Between SAJ Musa and any RUF Commander About Gullit's Activities During the Movement to Rosos

1054. Similarly the Prosecution have failed to adduce any evidence whatsoever of communications between SAJ Musa and any RUF commander during the journey about the conduct of fighters under Gullit as they moved towards Rosos. Johnson testified that, as far as he was aware at the time, SAJ Musa was neither in direct communication with nor taking orders from the RUF.²²²⁶ There is no evidence from any witness, including TF1-360, TF1-361 and TF1-371 of any communications between SAJ Musa and any senior RUF commander at the time that Gullit is moving to Rosos concerning the conduct of the fighters moving towards Rosos. No member of the RUF could conceivably be criminally responsible for crimes committed by this group.

4. Gullit's Group: a Semi-Autonomous Criminal Gang

1055. While it is clear that Gullit leaves Mansofinia for Rosos at the behest of SAJ Musa the evidence raised by the Prosecution suggests that SAJ Musa was unaware of the crimes being committed by Gullit's group as it moved across Bombali and to that extent, Gullit was operating within his own discretion.²²²⁷ Johnson testified in relation to the crimes committed when Gullit's group attacked Karina that the attack was not done under the instructions of SAJ Musa and no one reported to him about the attack TF1-184 stated that Gullit had disobeyed SAJ Musa's instructions not to target the civilian population and when SAJ Musa arrived at Rosos he was very displeased with the operations that Gullit had launched on Karina, Batkanu and other areas around Rosos. TF1-184 also testified that when SAJ Musa heard that a fighter had amputated people at Mamusa, he threatened to have the soldier amputated but was prevented from doing so by other fighters.²²²⁸

1056. Additionally the Prosecution have adduced no evidence of Bockarie and Sesay having any communications relating to the movement and conduct of fighters under Gullit as they moved across Bombali towards Rosos. The Prosecution have also failed

²²²⁶ Johnson/Transcript, 19 October 2004, pp. 47, lines 11-18.

²²²⁷ Johnson/Transcript, 19 October 2004, pp. 57, line 2 – pp. 58, line 20.

²²²⁸ TF1-184/Transcript, 6 December 2005, pp. 35, line 6 – pp. 37, line 19.

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to adduce any evidence to show how otherwise Bockarie, Sesay or any other RUF commander would have been aware of the activities of Gullit's group at the time they were occurring.

1057. Johnson stated that only about 20 RUF fighters moved with the group under Gullit from Koidu to Mansofinia. Johnson testified that the highest among these was Captain Arthur, 3rd Battalion commander but the small number of RUF fighters reported to the SLA high command.²²²⁹

5. Allegation of a Meeting in Buedu (Rainy Season 1998)

1058. TF1-360 testified about a meeting in Buedu in the rainy season of 1998 where Bockarie and Superman discussed how the RUF would coordinate with Gullit then at Rosos and SAJ Musa at Koinadugu to capture specified parts of the country before grouping at Masiaka for an advance to Freetown. TF1-360 stated that Sesay was not present at the meeting as he was in Pendembu under punishment for losing diamonds. TF1-366 stated that following the death of President Abacha²²³⁰, Superman, Morris Kallon and Akim Turay were called by Bockarie to Buedu to have a meeting about attacking Kono "all the way to Freetown". No mention was made of any plan to coordinate with any other group. TF1-366 stated that Sesay was not present in the meeting as he was locked in a cell in Buedu as a punishment for losing diamonds in Monrovia.²²³¹

a) No Reliable Evidence of Discussion of a Plan to Attack Freetown with SAJ Musa and Gullit

1059. TF1-360's evidence in relation to his being present during a discussion between Bockarie and Superman about coordinating with Gullit and SAJ Musa for a joint attack on various locations in Sierra Leone, culminating in an attack on Freetown, is unreliable.

(1) TF1-360

²²²⁹ Johnson/Transcript, 14 October 2004, pp. 77, lines 4 – 6.

²²³⁰ Exhibit 54 gives the date of his death as 8th June 1998.

²²³¹ TF1-366/Transcript, 8 November 2005, pp 77.

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1060. In cross-examination, TF1-360 stated that SAJ Musa was not aware of the plan at the time of the meeting in Buedu and that SAJ Musa was effectively operating independently in Koinadugu at that time. Superman went to Koinadugu with an elite fighting force and the plan amounted to Bockarie attempting to force SAJ Musa to work under Bockarie's instruction.²²³² It is also relevant that TF1-360 did not mention any meeting in Buedu where Bockarie planned an attack on Freetown in his first two statements to the Prosecution in June 2004. This was despite TF1-360 speaking about attacks on Kabala and Makeni in late 1998 in the course of those statements. The first time that TF1-360 spoke about Superman and Bockarie planning an attack on Freetown was in January 2005.²²³³ It would appear that TF1-360 "forgot" about this most significant plan.

(2) *TF1-361*

1061. The evidence adduced in the cross-examination of TF1-360 is more consistent with that of TF1-361. TF1-361 stated that Superman moves to Buedu for a meeting with Bockarie and that both he and TF1-360 accompanied Superman. TF1-361, however, stated that it was a private meeting between Bockarie, Superman and – departing from the evidence of TF1-360 – Sesay. TF1-361 states that he and the others (presumably including TF1-360) went to speak to and eat with the radio operators in Buedu who were their friends.²²³⁴

1062. When Superman emerged from the meeting, TF1-361 said Superman informed them, among other things, that Bockarie had said that Superman was to move to SAJ Musa and "force him in order them to have one operation".²²³⁵ TF1-361 states that Superman said that Bockarie had informed him that SAJ Musa was not willing to work with them because of the perceived mistreatment of JPK and his wife when the diamonds were taken from them in Buedu.²²³⁶ TF1-361 makes *no* mention of any plan to have a coordinated operation with SAJ Musa to advance towards Freetown.

²²³² TF1-360/Transcript, 28 July 2005, pp. 27, line 3 – pp. 29, line 9.

²²³³ TF1-360/Transcript, 28 July 2005, pp. 29, line 28 – pp. 35, line 13.

²²³⁴ TF1-361/Transcript, 12 July 2005, pp. 24, line 2 – pp. 26, line 4.

²²³⁵ TF1-361/Transcript, 12 July 2005, pp. 26, line 8 – pp. 28, line 12.

²²³⁶ TF1-361/Transcript, 12 July 2005, pp. 28, line 29 – pp. 30, line 23.

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1063. TF1-361 said the reasoning behind Superman going to Kurubonla was so they would join forces with SAJ Musa. The witness testified that, rather than this being a plan to work together, it was a plan to subvert and divert SAJ Musa from his own activities. This was not cooperation or even plans for cooperation but a manifestation of disagreement.

1064. Neither [REDACTED] TF1-036, nor [REDACTED] TF1-371, made mention of any meeting taking place in Buedu in the rainy season of 1998, never mind that it concerned a joint nationwide plan to attack Freetown which was intended to involve SAJ Musa and Gullit. It is submitted that the evidence of TF1-360 in relation to a planning meeting being held at Buedu for an attack on Freetown is, even simply from a review of his own evidence elicited during cross examination, not credible.

b) Meeting Does Not Demonstrate Existence of a Common Plan, Purpose or Design.

1065. While the inconsistency between TF1-361 and TF1-360's accounts are striking, TF1-360's admissions in cross-examination that i) SAJ Musa was unaware of any plan to work with Bockarie's RUF to attack Freetown; ii) that the plan was, essentially, for Superman to force SAJ Musa to submit to Bockarie's command; iii) following the in-fight with Superman in Koinadugu, SAJ Musa arrived at Major Eddie town without any ammunition allegedly given to him by Bockarie and Superman; and iv) at Major Eddie town, SAJ Musa put into place his own independent plan for the movement towards Freetown, it is submitted that TF1-360's evidence cannot be the basis of the finding of any agreement between Bockarie's RUF and SAJ Musa to commit joint attacks in Koinadugu or on Freetown.

**c) Meeting is Not Evidence of Sesay Planning Crimes
Committed in and Around Rosos**

1066. Sesay is not alleged even on the evidence of TF1-360, taken at its highest, to have participated in the planning meeting. This cannot be inferred from Sesay's de jure BFC command position.

6. The Absence of Reliable Evidence of the Supply of Any Logistics

1067. TF1-360 and TF1-361 alleged that Superman was instructed by Bockarie to join SAJ Musa and that Bockarie indicated that, following a request from Gullit through SAJ Musa to Bockarie, that he was sending operators and reinforcements to Gullit's base in Rosos.

1068. It is submitted that it is highly improbable that any movement of men and ammunition was made on the request of SAJ Musa given:

- a. the evidence of SAJ Musa's continued hostility towards the RUF;
- b. TF1-361 and TF1-360's evidence that Superman was sent to Koinadugu to effectively force SAJ Musa to either subordinate himself to Bockarie or to work with Bockarie;
- c. TF1-361's evidence that the ammunition sent to be used on the Fitti Fata attack was itself insufficient and led to the failure of the operation and loss of many RUF fighters;²²³⁷
- d. the absence of any evidence from any witnesses in Koinadugu that ammunition was received by the fighters in Koinadugu from Bockarie and/or Superman; and
- e. TF1-360's evidence that SAJ's group arrived at Major Eddie with weapons but not a significant amount of ammunition.²²³⁸

1069. Johnson noted – in testifying that the operational plan put into place by SAJ Musa at a meeting at Major Eddie town was an SLA plan motivated by a desire to return to

²²³⁷ TF1-361/Transcript, 15 July 2005, pp. 91, line 20 – pp. 92, line 19.

²²³⁸ TF1-360/Transcript, 25 July 2005, pp. 29, lines 8-15.

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Freetown and reinstate the army – that ammunition was a problem for the group. At a meeting in Major Eddie town, the group now under SAJ Musa formed a plan to attack Kukuna “to get more arms and ammunition to start the invasion to Freetown”.²²³⁹ Johnson testified that they were using ammunition captured from the Guineans at Masiaka as they were a group operating on their own with no access to ammunition from any other groups.²²⁴⁰

1070. TF1-360, who travels with Gullit’s group, gives no evidence about taking supplies of ammunition to Gullit at Rosos. TF1-360 also testified that when SAJ Musa arrived at Major Eddie town they came with weapons but not a significant amount of ammunition.²²⁴¹

7. Communications with RUF and/or Sesay from Rosos

1071. Johnson testified that there were no communications between Gullit’s group at Rosos and the RUF, stating that:

SAJ Musa had no communications neither with the RUF in Kailahun, nor the fighters at Krubola when he left there.

Q. So SAJ’s movement to you and your group at Camp Rosos were effectively doing your own thing; is that correct?

Yes.²²⁴²

1072. TF1-334 stated that communications with Bockarie, Sesay, Kallon, SAJ Musa and Brigadier Mani did take place after they captured a microphone following the attack on Batkanu. The microphone is brought to Gullit at Rosos and it was at this point, according to TF1-334, that Gullit contacts the above commanders. TF1-334 stated that Gullit informed SAJ Musa about the loss of the microphone and the various operations. When Gullit spoke to Sesay he informed him of the loss of the microphone and the rumours about their group surrendering being false. TF1-334 stated that Sesay said that

²²³⁹ Johnson/Transcript, 14 October 2004, pp. 108, lines 8 – 17.

²²⁴⁰ Johnson/Transcript, 19 October 2004, pp. 59, line 7 – pp. 60, line 9.

²²⁴¹ TF1-360/Transcript, 25 July 2005, pp. 29, lines 8-15.

²²⁴² Johnson/Transcript, 19 October 2004, pp. 52, lines 24 – 28.

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he was happy to hear from them and passed the microphone to Kallon, who was also happy to hear from them.²²⁴³

1073. TF1-334 testified that following the communication with SAJ Musa, Gullit ordered the attack on Gbinti. Following that attack, TF1-334 stated that Gullit called Bockarie and explained why the group had not been in communication previously and gave details about the areas that they had attacked. Bockarie allegedly replied that he was happy, that the RUF and SLA were brothers and that JPK was safely with him.²²⁴⁴

a) Credibility of TF1-334's account

1074. TF1-334's account of communications between Gullit's group and members of the RUF including Sesay cannot be credible. In the first instance, the state of the relationship between both SAJ Musa and Gullit on one hand and the RUF on the other would have militated against the occurrence of any communication. Gullit had moved from Kailahun to Koidu aggrieved with his own and JPK's treatment at the hands of the RUF. Once in Koidu, he encouraged the SLA fighters to move towards Koinadugu to join SAJ Musa once ECOMOG began to penetrate Kono. When meeting with SAJ Musa, Gullit explained his grievances against the RUF. SAJ Musa himself was hostile to forming any sort of working relationship with the RUF.²²⁴⁵ Finally as Gullit started moving into Bombali, he and Superman fall out over the radio and Gullit stated that he would no longer listen to instructions from Superman. Secondly, TF1-334, who had impressive recall of a wide range of details, could not remember the call signs of Sesay, Kallon or Bockarie while testifying. He was also unable to recall the names of Sesay or Bockarie's radio operators or the location where Sesay was based.²²⁴⁶ Also undermining his credibility is the fact that it is highly unlikely at the time Gullit's group was based in Rosos (in the rainy season of 1998) that Sesay and Kallon would have been in the same location as each other.

²²⁴³ TF1-334/AFRC Transcript, 23 May 2005, pp. 79, line 20 – pp. 81, line 11.

²²⁴⁴ TF1-334/AFRC Transcript, 24 May 2004.

²²⁴⁵ See Section on Koinadugu.

²²⁴⁶ TF1-334/Transcript, 7 July 2006, pp. 51, line 18 – pp.

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1075. Thirdly, TF1-334's account of communications with RUF commanders, including Sesay, is not corroborated by any other witness. It is indeed contradicted entirely by the evidence of Prosecution witness George Johnson, who stated unequivocally that no communications between Gullit's group and the RUF took place while at Rosos.

b) TF1-334's Description of Communications Do Not Indicate the Existence of a Common Plan

1076. In the event that TF1-334's evidence is accepted above that of the other prosecution witnesses such as Johnson, it is submitted that the communications, as described, do not demonstrate the existence of a common plan or purpose between the groups. TF1-334 stated, in effect, that Gullit's communication with Sesay detailed the loss of a microphone and a confirmation that news reports about Gullit's group surrender were untrue. This is insufficient for a finding of the existence of a common purpose as it does not demonstrate Sesay and/or the RUF acting together with Gullit's group in the implementation of a common criminal objective. At its highest, it is simply a greeting insufficient to attract criminal liability. Rather than proof of any common design to commit crimes, it is evidence of the near total isolation of the Gullit group from any other military group, including the RUF.

1077. Even the alleged communication with Bockarie – to which Sesay is not said to be a party – merely informs Bockarie of areas where attacks had taken place with Bockarie saying that he was happy to hear from them, that they were brothers and that JPK was safe. For the same reasons as expressed in the paragraph above, this too is insufficient for the finding of a common purpose, plan or design between the groups. A greeting cannot be the basis for any criminal liability nor can it be the basis of any adverse inference.

8. No Communications Between Bockarie and Sesay Regarding Events at Rosos

1078. The Prosecution have adduced no evidence from any of its witnesses of communications between Sesay and Bockarie or any other RUF commander concerning the criminal activities of Gullit and fighters in and around Rosos. In particular there is

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no evidence from any radio operator to show any flow of information about events occurring in the area of Rosos to or from Sesay. It can be safely inferred that even Gullit would not be boasting about his own atrocities, and especially not to Sesay.

1079. [REDACTED] TF1-371 and [REDACTED] TF1-036 both lived in Buedu near to Bockarie at the time of Gullit's group being based in Rosos. In the evidence of both TF1-371 and TF1-036, [REDACTED] neither of them, in their testimony, were aware of any of the activities of Gullit's fighters during the time that they were based in Rosos.

C. Crimes Committed by Col. 05's Group

1080. TF1-360 describes attacks on villages by Col 05's group, including the commission of crimes in Pendembu, Karina, Kantia²²⁴⁷ and other unnamed villages before joining Gullit's group in Major Eddie town on 21st September 1998.²²⁴⁸

1. No Communications Between Col. 05's Group and Any Member of the RUF

1081. TF1-360 moved to Koinadugu in Col 05's group. He testified that "We were going to Rosos where we were to meet Gullit. As we were going, we were communicating with SAJ Musa and at the same time we were communicating with Gullit that we were on our way. And we were telling SAJ Musa that we were on our way in a radio communication."²²⁴⁹ TF1-360 made no mention of any communication with any member of the RUF while moving from Koinadugu district to Rosos/ Major Eddie town.

2. Col. 05's Group: Operating Semi-Autonomously

1082. While TF1-360 testified that the group was in contact with SAJ Musa, he also said that there was no order to destroy every village on the way and he believed that Col 05 took it upon himself to give such orders.²²⁵⁰ Following SAJ Musa's arrival at

²²⁴⁷ TF1-334/AFRC Transcript 25 May 2005. Execution of 15 civilians captured at Kamalo.

²²⁴⁸ TF1-360/Transcript, 21 July 2005, pp. 16, line 27 – pp. 17, line 4.

²²⁴⁹ TF1-360/Transcript, 21 July 2005, pp. 16, lines 22-28.

²²⁵⁰ TF1-360/Transcript, 22 July 2005, pp. 21, lines 1-29.

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Major Eddie town and his ordering of attacks on Masiaka to get arms and ammunition, Johnson recalled that Col 05 only gave SAJ Musa a report about arms and ammunition but did not mention any crimes against civilians. Johnson in evidence, after an initial denial, confirmed that women had been abducted and civilians taken and made to carry loads on this attack.²²⁵¹ The evidence raised by the Prosecution suggests that SAJ Musa was unaware of the crimes being committed by Colonel 05's group as it moved across Bombali and to that extent, Colonel 05 was operating within his own discretion.

D. Crimes Committed by SAJ Musa's Group

1083. TF1-184 moves to Major Eddie town with the third group led by SAJ Musa which leaves Koinadugu following a fight between the men under SAJ Musa and Superman.

1084. There is little evidence of crimes committed by this group as it moves towards Major Eddie town. TF1-184 states that en route SAJ Musa had ordered his fighters to abduct Father Mario, which they did. TF1-184 testified the abduction of Father Mario "was a threat, that he [SAJ Musa] wanted medicines, he wanted a satellite phone, then the reinstatement of the military".²²⁵² This was the common plan, and the crimes which were committed may have been the means of achieving that objective. It is worth deconstructing this objective. SAJ Musa wanted his troops to be allowed to re-join the army so that they would form part of Kabbah's military forces and would hence defend the State against all hostile forces. It is obvious that the RUF would not have shared this overall objective, nor have contemplated *those* crimes.

1085. There is evidence that suggests SAJ Musa himself was trying to minimize crimes by his troops, although it might be argued that his efforts were unimpressive. Notwithstanding, it is significant that SAJ Musa held a meeting in Major Eddie town to impose laws on his group and to chastise the group for the apparent non-reporting of crimes to him by Gullit and '05. This would appear to suggest that any criminal enterprise arose extemporaneously and were the responsibility of the physical perpetrators of the crimes, and no one else.

²²⁵¹ Johnson/Transcript, 19 October 2004, pp. 64, line 5 – pp. 68, line 24.

²²⁵² TF1-184/Transcript, 5 December 2005, pp. 28, lines 4-16.

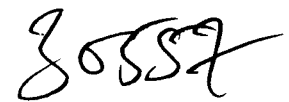
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1. Crimes Committed in and Around Major Eddie Town Prior to SAJ Musa's Arrival

1086. Johnson gave evidence about killings occurring at Major Eddie town.²²⁵³
1087. TF1-360 states that while based at Major Eddie town, prior to SAJ Musa's arrival, the group was in communication with SAJ Musa in Koinadugu, Superman and Bockarie in Buedu.²²⁵⁴ TF1-360 gave no details of the contents of the communications with Superman and Bockarie. There is no evidence of any communication with Sesay. In any event, it is submitted that this statement of TF1-360, without more, cannot support a finding of an existence of a common purpose.
1088. TF1-334 states that while a receiving team went to meet Col. 05's group at Gbendembu, he heard Eldred Collins' announcement of Operation Spare No Soul over the BBC. TF1-334 testified that Collins said it was an order that soldiers should destroy all villages that they captured and spare no person.
1089. In the first instance, no such thing was announced by Collins over the BBC. The broadcast of Collin's interview is Exhibit 329 in which Collins clarifies that it was a call to fight against ECOMOG in Sierra Leone and was expressly not an order directed towards attacking civilians or damaging civilian property.
1090. Furthermore, it is clear that this was not an order being given to the SLAs based at Major Eddie town and no action was taken by any of the fighters in Major Eddie town on the basis of this radio broadcast. Indeed TF1-334 alleged direct communication with Bockarie and Superman while the fighters were at Major Eddie town and does not testify as to any such orders being given directly over the private communications.

²²⁵³ Johnson/Transcript, 14 October 2004, pp. 105, line 7 – pp. 106, line 6.

²²⁵⁴ TF1-360/Transcript, 21 July 2005, pp. 19, lines 4-20.



2. SAJ Musa's Ban on Communication With the RUF

1091. SAJ Musa leaves Koinadugu district following a gunfight between his men and the men of Superman. The Prosecution's witnesses testified about SAJ Musa's heightened hostility to working with the RUF in any form, underlining the absence of any common purpose shared by the fighters under SAJ Musa and the RUF and/or Sesay.

a) TF1-360

1092. TF1-360 testified that as SAJ Musa and his fighters neared Major Eddie town, SAJ Musa send message to Gullit ordering that all RUF men at the base be put under arrest and all guns be taken from them but that Gullit refused to do so as he felt that it would be problematic. TF1-360 estimated that there were approximately 200 RUF fighters present amongst thousands of SLAs. TF1-360 testified that SAJ Musa held a meeting in which he said there were to be no radio messages to Superman or to Bockarie. All RUF radio operators received warning letters that if went near a radio they would be killed.²²⁵⁵ It was after this meeting that the group, now united with *their* common plan to reinstate the army began moving towards the Western Area.

1093. TF1-360 stated that the RUF were made powerless after the time that SAJ Musa joined them at Major Eddie town. He testified "The order that was given to us was that we should not transmit any information from where we are and from the group in which we were to any of the RUF high command. If anybody attempted to do so, he or she will die".²²⁵⁶

b) TF1-334

1094. TF1-334 echoed this, testifying that when SAJ Musa arrived, he gave an order that the RUF fighters in the group were to be arrested and executed. They were not executed as the other fighters pleaded for them.²²⁵⁷ While the group was at Mamamah,

²²⁵⁵ TF1-360/Transcript, 21 July 2005, pp. 20, line 18 – pp. 22, line 26.

²²⁵⁶ TF1-360/Transcript, 22 July 2005, pp. 16, line 28 – pp. 18, line 16.

²²⁵⁷ TF1-334/AFRC Transcript, 13 June 2005, pp. 36, line 23 – pp. 37, line 10.

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TF1-334 stated that Bockarie made an announcement over the BBC claiming that the troops at RDF were under his command. SAJ Musa accused Alfred Brown of giving Bockarie information, which Brown denied. Following this SAJ Musa banned Brown from using the radio and spoke to Bockarie calling him 'a SBU' who had no right to say that they were his troops that were moving towards Freetown.²²⁵⁸

c) TF1-184

1095. TF1-184 testified that at a meeting held in Rosos, SAJ Musa said "they should forget about the RUF, they had no business with the RUF".²²⁵⁹ TF1-184 states that after the fighters had attacked Masiaka, Bockarie made an announcement over the BBC radio saying that it was his men who had been responsible. SAJ Musa called Alfred Brown, who TF1-184 said confessed to relaying information to Bockarie. SAJ Musa then slapped Alfred Brown and warned him that "he should not inform the RUF about anything [they] were doing at the time".²²⁶⁰ If the Trial Chamber is of the view that such communications did take place, it is submitted that the fact of the communications, without more, is insufficient to support a finding of the existence of a common plan, or any participation in the commission of crimes. There is no evidence of an agreement to work in cooperation with each other and certainly no cooperation results from this alleged communication.

d) TF1-366

1096. TF1-366 stated that during the attack on Makeni in December 1998, there was communications between Sesay, Kallon, Superman, Rambo and SAJ Musa. Following the capture of Makeni, TF1-366 claims there was a meeting of Sesay, Kallon, Superman, Rambo and others including with Bockarie over the radio in which it was decided that they should advance to where SAJ Musa was in Masiaka.²²⁶¹ In cross-examination, TF1-366 stated that he did not personally communicate with SAJ Musa's operators but he was aware of communications between Sesay, Kallon and SAJ Musa. TF1-366 denied that SAJ Musa was refusing to cooperate with the RUF and says they

²²⁵⁸ TF1-334/AFRC Transcript, 13 June 2005, pp. 46, line 6 – pp. 48, line 28.

²²⁵⁹ TF1-184/Transcript, 5 December 2005, pp. 29, lines 9-11.

²²⁶⁰ TF1-184/Transcript, 5 December 2005, pp. 31, line 16 – pp. 33, line 20.

²²⁶¹ TF1-366/Transcript, 9 November 2005, pp. 19, line 18 – pp. 24, line 8.

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were ‘united’. He denied a statement in his prosecution interviews at p. 13677 where he said that SAJ Musa refused to wait for the advancing RUF group.²²⁶²

1097. The evidence of TF1-366 is not credible given the consistent accounts of SAJ Musa banning all contact with any member of the RUF command structure. TF1-366’s account is not corroborated by any other witness. Additionally, the evidence suggests that the RUF forces finally captured Makeni on 25th December 1998 by which time SAJ Musa was likely to have died.²²⁶³ Regardless, SAJ Musa and his fighters were no longer in Masiaka around the time of the capture of Makeni.

E. SAJ Musa’s Declared Aim of Coming to Freetown: to Reinstate the Army

1098. While based in Koinadugu, SAJ Musa’s public motivation to move towards Freetown was to reinstate the army of Sierra Leone which had been disbanded following the ECOMOG intervention in Freetown. The evidence adduced in the Prosecution’s case clearly demonstrates that this aim was retained by SAJ Musa while groups under his command moved through Bombali district until the time of his death in the Western Area in late December 1998. At a meeting with the fighters, TF1-184 said that SAJ Musa briefed them on the mission to Freetown saying: “it was for the reinstatement of the army... they should forget about the RUF, they had no business with the RUF. The stride that they were taking was an SLA stride”.²²⁶⁴

1099. TF1-334 testified that when SAJ Musa was moving with the fighters towards Freetown, his aim was to reinstate the army.²²⁶⁵ This was confirmed by Johnson.²²⁶⁶

XIII. January, 1999: counts 3-5, 6-9, 10-11, 13

1100. The Prosecution has alleged crimes of unlawful killings, sexual and physical violence, enslavement and pillage in Bombali district between 6 January 1999 and 28

²²⁶² TF1-366/Transcript, 14 November 2005, pp. 124, line 7 – pp. 127, line 8; and 15 November 2005, pp. 2, line 25 – pp. 8, line 6.

²²⁶³ TF1-184 puts the date of SAJ Musa’s death as being 21st December 1998.

²²⁶⁴ TF1-184/Transcript, 5 December 2005, pp. 29, line 3 – 11.

²²⁶⁵ TF1-334/Transcript, 6 July 2006, pp. 80, lines 23 – 28.

²²⁶⁶ Johnson/Transcript, 14 October 2004, pp. 107, lines 1 – 3.

February 1999. The use of child soldiers, as it appears in Count 13, stretches to cover the temporal jurisdiction of the Indictment.

A. Prosecution's allegations

1. Unlawful killings

1101. The Prosecution, in Counts 3-5 of the Indictment, alleges that Sesay is responsible for unlawful killing taking place in the following locations in Western Area between 6 January and 28 February 1999: Kissy, Wellington and Calaba town.²²⁶⁷ The Prosecution's case, as set out in its supplemental pre-trial brief, asserts: (a) the killing of 70 people in a mosque in Kissi; (b) the burning alive of civilians in houses; (c) the execution of civilians on the streets; (d) deaths arising from large scale amputations; and (e) the killing of 15 babies in front of their mothers on the retreat from Freetown. The Prosecution's supplemental pre-trial brief in respect of (b) to (e) above failed to provide any details, such as location of the crimes within the Western Area/ Freetown or details of the perpetrators, which would have properly provided the Defence with adequate notice of the crimes that the Prosecution alleged Sesay to be responsible for. The Defence has been prejudiced by the introduction of allegations in locations unspecified in the Indictment and the additional charges should be dismissed (including crimes in Tombo²²⁶⁸, Benguema²²⁶⁹, between Regent and Gloucester²²⁷⁰, near the State House in central Freetown²²⁷¹, Kingtom²²⁷², Fourah Bay road²²⁷³, and Waterloo²²⁷⁴).

2. Sexual violence

1102. The Prosecution, in Counts 6-9 of the Indictment, alleges that Sesay is responsible for crimes of sexual violence occurring in Western Area between 6 January and 28

²²⁶⁷ Para 53, Corrected Amended Consolidated Indictment.

²²⁶⁸ TF1-097/ Transcript 28 November 2005, pp. 79 lines XXX (see corpses of civilians after an attack on Tombo prior to Freetown invasion).

²²⁶⁹ TF1-029/ 28 November 2005, pp. 17? (killing of young babies so they did not make noise during the retreat, killing of a woman by Col. Coal Boot, an SLA)

²²⁷⁰ TF1-022/ Transcript 29 November 2005, pp. 24, line 6 – pp. 28, line 23 (shooting of civilian).

²²⁷¹ Johnson/ Transcript 18 October 2005, pp. 53, line 20 – pp. 54, line 19 (sees 30 corpses of ECOMOG and civilians around the State House); TF1-334/ AFRC Transcript, 14 June 2006, pp. 22, line 17 – pp. 24, line 9 and pp. 28. (shootings at the State House).

²²⁷² TF1-334/ AFRC Transcript, 14 June 2005, pp. 44 (shooting of civilians)

²²⁷³ TF1-334/ Transcript 14 June 2005, pp. 66, line 22 – pp. 67, line 9.

²²⁷⁴ TF1-366/ Transcript 9 November 2005, pp. 34, line 28 – pp. 35, line 14 (civilians killed at Waterloo)

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February 1999 but fails to specify any locations in which these crimes were alleged to take place.²²⁷⁵ The additional charges (including crimes in Kissy²²⁷⁶, Wellington²²⁷⁷, Calaba town²²⁷⁸, Allen town²²⁷⁹, Benguema²²⁸⁰, Waterloo²²⁸¹, at the State House in central Freetown²²⁸² and at Newton)²²⁸³ have prejudiced the Defence and should be dismissed.

3. Physical violence

1103. The Prosecution, in Counts 10 -11 of the Indictment, alleges that Sesay is responsible for crimes of physical violence between 6 January and 28 February 1999 in Kissy, Wellington and Calaba town.²²⁸⁴ The pre-trial brief indicated that the Prosecution would adduce evidence to demonstrate: (a) that the AFRC/ RUF executed “Operation Cut Hand” and “Operation Cut Limbs” whilst in Freetown; (b) the amputation of hundreds of civilians, often in groups, on the streets of Freetown, such as a group of 10 men amputated at a rebel base on Fararama street; (c) that on the retreat from Freetown at Kambia a pregnant woman was cut with a pair of scissors between her anus and vagina after she began bleeding black and the AFRC/RUF rebels began arguing over whether her fetus was a boy or a girl. The Prosecution led evidence of countless more allegations in the locations cited and also in Allen town²²⁸⁵. The allegations should be dismissed for want of notice and consequential prejudice.

²²⁷⁵ Para 59, Corrected Amended Consolidated Indictment.

²²⁷⁶ TF1-097/ Transcript 28 November 2005, pp. 100 (sees raping of women and met civilians who said their sisters had been raped), TF1-104/ AFRC Transcript, 20 June 2005, pp. 22 (colleague raped).

²²⁷⁷ TF1-022/ Transcript 29 November 2005, pp. 31-32 (two 10 year olds given to fighters to marry).

²²⁷⁸ TF1-023/ AFRC Transcript 9 March 1005, pp. 37-59 (witness given in marriage to a fighter an is aware of 10 other women in the same position; she alleges that she is captured in Calaba town and is taken through Allen town, Benguema, Waterloo and to Four Mile); TF1-029/ Transcript 28 November 2005, pp. 11, line 28 – pp. 13, line 20 (raped and gives evidence concerning ‘thousands’ of other women raped).

²²⁷⁹ TF1-023/ AFRC Transcript 9 March 1005, pp. 37-59.

²²⁸⁰ TF1-023/ AFRC Transcript 9 March 1005, pp. 37-59; TF1-029/ Transcript 28 November 2005, pp. 15, line 18 – pp. 16, line 9; TF1-334/ AFRC Transcript 14 June 2005, pp. 120, lines 16-22.

²²⁸¹ TF1-023/ AFRC Transcript 9 March 1005, pp. 37-59.

²²⁸² TF1-334/ AFRC Transcript 14 June 2005, pp. 25, line 16 – pp. 26, line 15 (women being brought to the State House for sex).

²²⁸³ TF1-334/ AFRC Transcript 15 June 2005, pp. 13, line 12 – pp. 16, line 11 (women doing domestic tasks and sleeping with the commanders).

²²⁸⁴ Para 66, Amended Consolidated Indictment.

²²⁸⁵ TF1-023/ AFRC Transcript 9 March 2005, pp. 36, line 16 – pp. 37, line 15. (witness to the amputation of hands and tongue of a civilian named Samuel).

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4. Child Soldiers

1104. The Prosecution led evidence of the use of child soldiers in the following locations: Kissy²²⁸⁶, Calaba town²²⁸⁷, Wellington²²⁸⁸, Allen town²²⁸⁹, Waterloo/Benguema²²⁹⁰ and Newton²²⁹¹. Under the Appeals Chambers in the *Prosecutor v. Gullit et al* endorsed Trial Chamber II's refusal to make any findings on crimes perpetrated in locations not specifically pleaded in the indictment. The allegations should be dismissed for want of notice.

5. Enslavement

1105. Following the Rule 98 Decision²²⁹², the Prosecution, in Count 13 of the Indictment, alleges that Sesay is responsible for abductions and forced labour, constituting enslavement in the Western Area between 6 January and 28 February 1999 in the following locations: Kissy and Calaba town.²²⁹³ The Prosecution led evidence in the following locations that were not specifically pleaded in the indictment: Tombo²²⁹⁴, Wellington²²⁹⁵, Allen town²²⁹⁶, Kissy²²⁹⁷ and Benguema/ Waterloo²²⁹⁸. The allegations must be dismissed for want of notice and consequential prejudice.

²²⁸⁶ TF1-097/ Transcript 28 November 2005, pp. 85 (see a 14 year old with a gun at PWD junction); TF1-101/ 28 November 2005, pp. 46-58 (witness and others amputated by a "small rebel" on 19th January 1999); TF1-022/ Transcript 29 November 2005, pp. 31-39 (three boys 8, 10 and 11 years old amputated hands at Winter st.).

²²⁸⁷ TF1-29/ Transcript 28 November 2005, pp. 13 lines 21-27 (sees SBUs 13-16 yrs old); TF1-235/ Transcript 29 July 2005, pp. 51- 52 (sees a 8-10 year old boy with an RPG launcher on his shoulder).

²²⁸⁸ TF1-235/ Transcript 29 July 2004, pp. 63 (a 'boy' in combat was one of the fighters who came in the burnt the witness's house).

²²⁸⁹ TF1-023/ AFRC Transcript 9 March 2005, pp. 35 (SBUs guarding civilians who were being held in Allen town).

²²⁹⁰ TF1-334/ AFRC Transcript 14 June 2005, pp. 121, line 19 – pp. 122, line 13 (children captured were mostly 9-10 yrs old and were taken trained to be SBUs. Witness had 2 SBUS who were strong fighters and trained them himself).

²²⁹¹ TF1-334/ AFRC Transcript 15 June 2005, pp. 14, line 27 – pp. 15, line 8 (all fighters had SBUs of about 10-12 yrs and soldiers were giving them personal training).

²²⁹² Rule 98 Decision/ Transcript 25 October 2006, pp. 43, line 29 – pp. 44, line 9.

²²⁹³ Para. 75, Corrected Amended Consolidated Indictment.

²²⁹⁴ TF1-097/ Transcript 28 November 2005, pp. 78-79 (made to carry a bag on his head by Captain Blood after 23 December 1998 attack, hearsay evidence of another civilian being made to carry SAJ Musa's body from Benguema).

²²⁹⁵ TF1-023/ AFRC Transcript 29 November 2005, pp. 30-33 (witness abducted and told would be used as a human shield and was given a small bag to carry); TF1-029/ Transcript 28 November 2005, pp. 7-11 (witness abducted with 49 others from Wellington); TF1-235/ Transcript 29 July 2004, pp. 58-59 (fighters looting Good Shepherd clinic).

²²⁹⁶ TF1-023/ AFRC Transcript 29 November 2005, pp. 33-36 (abducted civilians held there).

6. Pillage

1106. The Prosecution, in Count 14 of the Indictment, alleges that Sesay is responsible for looting and burning, constituting pillage, in the following locations in Western Area between 6 January and 28 February 1999: Kissy, Wellington, Calaba town, Fourah Bay, State House and Pademba road.²²⁹⁹ The Prosecution led evidence in the following locations that were not specifically pleaded in the indictment: Tombo, Hastings, Waterloo. These allegations should be dismissed for want of notice and consequential prejudice.

B. Prosecution theory in relation to Sesay's liability

1107. It is to be assumed, for want of proper notice, that the Prosecution's case concerning Sesay's alleged criminal responsibility for the crimes committed during the "Freetown invasion" rest upon the question of whether his acts aided and abetted the SLA's in Freetown. Clearly this case represents a huge transformation of the case, which has been dictated by the evidence which has demonstrably not proven a nation wide plan between the SLA and the RUF to invade Freetown, nor more significantly to commit crimes therein.

C. No reliable evidence of existence of a joint plan prior to the attack

1. Buedu meeting (December 1998)

1108. TF1-371 stated that in the 2nd week of December 1998 in Buedu, Bockarie held a meeting where Superman, Sesay, Kallon, Gullit, Gbao among others were present. TF1-371 alleged that it was a strategic meeting to plan the recapture of Kono and the attack on Freetown. No prisoners and no human obstacles would be tolerated. This, TF1-371 alleged, was called 'Operation No Living Thing'.²³⁰⁰ In cross-examination TF1-371

²²⁹⁷ TF1-104/ AFRC 20 June 2005, pp. 17, line 6 – pp. 18, line 26 (civilians forced to bury bodies); Johnson/ 18 October 2004, pp. 67 line 65-67(civilians abducted during the retreat from Freetown); TF1-334/ AFRC Transcript, 14 June 2005, pp. 62-64 (civilians abducted from Ugun onwards on orders of Gullit).

²²⁹⁸ TF1-334/ AFRC Transcript 14 June 2005, pp. 112-114 (civilians made to pound rice, cook and carry looted items at Benguema); TF1-029/ Transcript 28 November 2005, pp. 17 (abduction of civilians).

²²⁹⁹ Para. 75, Corrected Amended Consolidated Indictment.

²³⁰⁰ TF1-371/ Transcript 21 July 2006, pp. 41, line 24 – pp. 46, line 11 and Transcript, 31 July 2006, pp 47, line 12 – pp. 51, line 16.

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confirmed that Gullit was the same person as PLO2 and who had diamonds taken from him by the RUF. He stated that Gullit did not cross the Moa until he went as part of the Kailahun attack. He also reiterated that Superman was present.²³⁰¹ It is obvious that TF1-371 was either fabricating or grossly mistaken. It would have been wholly impracticable for Gullit to have made his way to Kailahun to have the type of meeting alleged by TF1-371. Secondly, it was impossible for Superman to have attended such a meeting. Every Prosecution witness who was able to do so placed Superman in Koinadugu moving down towards Makeni in December 1998.

1109. TF1-371's account of a December meeting in Buedu in which a plan to attack Freetown was formed is entirely uncorroborated. Whilst corroboration is not generally required in this instance logic dictates that if it were true, it would have been. Notwithstanding TF1-371 offers an insight into Sesay's Koidu attack in December 1998. The alleged meeting was demonstrably not about planning crimes as TF1-371's interpretation of Operation No Living Thing confirms. TF1-371 confirmed that this did not mean that the RUF ideology should be abandoned and civilians should be brutalised.²³⁰² At the most this meant that no prisoners would be tolerated. It was a rallying cry to men who were heading into battle.²³⁰³ TF1-371's description exposes the mythology of the meaning of the names of these operations. In other words it was a cry to destroy the enemy – ECOMOG.

1110. This is clear from the way in which Sesay conducted his attack on Koidu in December 1998. TF1-071 testified that before the attack on Koidu, Sesay addressed the fighters and ordered that no civilians or prisoners of war should be killed and that during the attack none were killed.²³⁰⁴ TF1-071 confirmed that ECOMOG fighters captured by Sesay's forces were moved to Kailahun and later released through Liberia. TF1-071 also stated that captured SLA and Kamajors were not killed but "remained in

²³⁰¹ TF1-371/ Transcript 31 July 2006, pp. 47, line 12 – pp. 51, line 16.

²³⁰² TF1-371/ Transcript 31 July 2006, pp. 57 – 59.

²³⁰³ TF1-371/ Transcript 31 July 2006, pp. 57 – 59.

²³⁰⁴ TF1-071/ Transcript 25 January 2005, pp. 88, line 21 – pp. 93, line 1.

Koidu as brothers” and were incorporated into the RUF.²³⁰⁵ Of course this is corroborated by many witnesses. And it reveals the state of his mind as he advanced towards Makeni in late 1998. As revealed by TF1-366 Sesay had ordered the execution of any of his own soldiers who looted.²³⁰⁶

2. Evidence

1111. Once Gullit took over command of the SLA group, the group – now with Bazzy as the second in command – attacked Tombo and Hastings in the Western Area before entering Freetown. Fighters under the command of Gullit, having attacked Hastings on 4-5 January 1999, entered the eastern part of Freetown in the early hours of 6 January 1999.²³⁰⁷ On the morning of 6 January 1999, the fighters burnt the Eastern Police Station, captured the State House and broke open the Pademba Road prison. By the afternoon of 6 January 1999, their advance was stopped at the Congo Cross bridge by an ECOMOG defensive.²³⁰⁸ Johnson testified that the group started pulling out of central Freetown within 3 days of 6 January 1999 and then started to retreat eastwards.²³⁰⁹ As set out below, it is submitted that the evidence adduced by the Prosecution shows that the bulk of the crimes committed in Freetown happen after Gullit’s fighters begin losing ground to ECOMOG.²³¹⁰

D. Crimes committed in Western Area prior to 6 January 1998

1112. The evidence adduced in the Prosecution case of the fighters who moved into the Western Area from Bombali district demonstrates that the physical perpetrators of attacks in December 1998 and early January 1999 in the Western Area were fighters under the command of Gullit.²³¹¹ Johnson testified that in December 1998, fighters under Gullit attacked Hastings twice.²³¹² TF1-360 stated that the group attacked

²³⁰⁵ TF1-071/ Transcript 21 January 2005, pp. 88, line 13 – pp. 89, line 9.

²³⁰⁶ TF1-366/ Transcript 10 November 2005, pp. 91, line 21 – pp. 92, line 28.

²³⁰⁷ Johnson/ Transcript 18 October 2004, pp. 34, line 29 – pp. 42, line 23; TF1-334/ AFRC Transcript 13 June 2005, pp. 92, line 19 – pp. 99, line 25.

²³⁰⁸ Johnson/ Transcript 18 October 2004, pp. 52, line 14 – pp. 53, line 1.

²³⁰⁹ Johnson/ Transcript 18 October 2004, pp. 58, lines 4-7.

²³¹⁰ Johnson/ Transcript 18 October 2004, pp. 54-56.

²³¹¹ See section on Crimes in Bombali May - September 1998 which sets out the assimilation of low-ranking RUF fighters into the various SLA groups that move across Bombali under Gullit, 05 and SAI Musa.

²³¹² Johnson/ Transcript 18 October 2004, pp. 34.

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Hastings and captured a lot of ammunition from ECOMOG and burnt the village down.²³¹³ TF1-334 stated that the fighters attacked Hastings on the orders of Gullit and that they captured arms and ammunition and set fire to a helicopter and the village.²³¹⁴

1. Communications allegedly taking place prior to the invasion of Freetown

1113. There is no consistent account of communications taking place prior to Gullit entering Freetown. However the inconsistent accounts from the Prosecution's witnesses all point to a lack of agreement and/or cooperation between Bockarie's RUF and Gullit's fighters. Johnson stated that the first communication between the SLA group and the RUF from the time the SLAs left Koinadugu occurs after the death of SAJ Musa at Gubawater in the Western Area. Johnson stated that Gullit, using Alfred Brown as his operator, radioed Bockarie to inform him of SAJ Musa's death and to ask him for reinforcements. Johnson said that Bockarie thought this was a trick and that Gullit was lying about the death of SAJ Musa. The group immediately proceeded to attack Hastings.²³¹⁵ Johnson testified that a second communication took place at Orugu village on 5 January 1999 when Gullit again asked Bockarie for reinforcements. Bockarie allegedly agreed to send them and the group waited for 3 days but no reinforcement arrived.²³¹⁶

1114. In contrast, TF1-184 stated that when they were in Gubawater, Gullit told them that he had been in contact with Bockarie and that Bockarie was sending reinforcements. The fighters waited for a day when they were attacked by Kamajors and decided to move into Freetown without waiting for the reinforcements.²³¹⁷

1115. TF1-334 testified that after an attack on York, a temporal base near York was set up and Gullit radioed Bockarie in Buedu to ask for reinforcements in terms of logistics, arms and ammunition. Bockarie allegedly wanted to know where SAJ Musa was and

²³¹³ TF1-360/ Transcript 21 July 2005, pp. 31-32.

²³¹⁴ TF1-334/ AFRC Transcript 13 June 2005, pp. 93.

²³¹⁵ Johnson/ Transcript 18 October 2004, pp. 33, line 15 – pp. 35, line 3.

²³¹⁶ Johnson/ Transcript 18 October 2004, pp. 72-74.

²³¹⁷ TF1-184/ 5 December 2005, pp. 35, line 13 – pp. 37, line 12.

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said he would send reinforcements. Gullit said he would continue to inform Bockarie about how the troops were faring.²³¹⁸ After the group under Gullit attacked Waterloo for food, Basky, a SLA fighter, allegedly gave a report to Bockarie and to Gullit. TF1-334 states that Gullit also spoke to Sesay and Sesay said they had captured Kono and were heading towards Makeni en route to reinforcing Gullit's group in order to head into Freetown. TF1-334 stated that Gullit also radioed Superman who said he was moving towards Makeni and who promised also to reinforce Gullit's position.²³¹⁹ TF1-334 does not give any evidence of any reinforcements ever arriving prior to his group's entry into Freetown.

1116. In contradiction to the accounts of Johnson, TF1-184 and TF1334, TF1-360 alleged that after the death of SAJ Musa, Gullit held a meeting in the bush near Tombo. There was a discussion amongst the fighters and a decision was made to contact Bockarie for advice. Gullit spoke to Bockarie and Bockarie advised that they had insufficient men and material to enter Freetown and that they should wait for his men who were just coming past Makeni. Gullit discussed this with his fighters and the proposal was rejected and the group proceeded to enter Freetown.²³²⁰

1117. It should be noted that Aiding and Abetting after the commission of a crime is only possible if the perpetrator committed the crime in the knowledge that the aider and abettor was to supply practical assistance and the aider and abettor must be aware of the essential elements of the crimes committed by the principal offender, including the state of mind of the principal offender²³²¹ The aforementioned evidence illustrates that there was either no real expectation that reinforcements would arrive or worse, a complete rejection of the offer, such that it was.

2. No evidence of a common purpose or participation

1118. While the accounts differ, what remains consistent is that the RUF did not provide any support to the Gullit's men as they attacked villages in the Western Area and

²³¹⁸ TF1-334/ AFRC Transcript 13 June 2005, pp. 88, line 12 – pp. 89, line 20.

²³¹⁹ TF1-334/ AFRC Transcript 13 June 2005, pp. 90, line 22 – pp. 92, line 2.

²³²⁰ TF1-360/ Transcript 21 July 2005, pp. 29, line 15 – pp. 31, line 9.

²³²¹ Blagojevic and Jokic Trial Judgement, Para. 727 – 731.

poised themselves to enter Freetown. It is submitted that this absence of support coming from the RUF was intentional as in the days before the 6 January 1999 invasion Sesay was based in Makeni and Superman in Lunsar and could have quickly and easily moved to join Gullit and his fighters in the Western Area. Sesay, whose troops had come through from Kono would, if he had been so minded, have been able to provide the fighters with food and supplies, negating any need for an attack on Waterloo, as alleged by TF1-334. Instead no supplies, military or otherwise, were sent to Gullit's group from anyone in the RUF.

1119. It is further submitted that the account given by TF1-334 is not credible. No other witness corroborates any communications with Sesay or Superman prior to the invasion of Freetown and it is undisputed that by early January 1999, Makeni has been captured. Sesay's troops would not have been en route to Makeni. No other witness corroborates any communications between Gullit and Sesay and Gullit and Superman immediately prior to Gullit's group moving into Freetown. And the witness was not a radio operator but a bodyguard.

1120. Additionally, there is no evidence of any communication with any RUF commander in which attacks on Tombo and Hastings were discussed. It is clear that these attacks were directed by Gullit primarily to secure arms and ammunition from the ECOMOG fighters based there before the fighters made their way into Freetown. That they needed to capture arms and ammunition from ECOMOG further undermines any credibility of an allegation of the existence of a common plan: if there was a common plan with the RUF under Bockarie to attack Freetown the fighters under Gullit would, have waited for Sesay – at that time in command of Makeni – to move towards the Western Area with arms, ammunition and additional fighters before attempting to enter Freetown. This lack of supply either shows that no joint plan existed or if it did it was reneged upon. No contribution in any event.

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3. Sesay setting up administration in Makeni

1121. Sesay, based in Makeni following its capture on about 25 December 1998, had no intention of moving towards the Western Area to assist Gullit and his fighters with arm, ammunition or any other form of logistical support. Sesay, in his own evidence, stated that after his successful attack on Koidu, he captured 2 operational tanks and a significant amount of arms and ammunition²³²², which could have been used to reinforce Gullit's fighters in the Western Area. There was ample time to move men and weaponry to the Western Area in support of Gullit. Instead Sesay was busy trying to stop crimes in Makeni, as the SLAs behaved quite differently in Freetown.²³²³ Even if there had been a military plan, there was obviously no plan to commit crimes, nor any intention on Sesay to assist with their commission.

E. Crimes committed in Freetown in January 1999

1. On the advance

1122. There is evidence of crimes being committed in Freetown from the time that fighters under Gullit entered the capital. TF1-360 testified, for instance, that the destruction of Freetown began as the group entered before, on his evidence, there had been any communication with Bockarie.²³²⁴

1123. It is submitted however that most of the crimes committed as the group surged forward to the State House were pre-selected targets selected by both SAJ Musa and Gullit prior to the invasion of Freetown. Johnson testified that SAJ Musa in the meeting at Major Eddie town instructed the fighters that the following groups were to be targeted as enemies of the movement: police, Nigerian soldiers, Nigerian civilians and all collaborators of the SLPP government.²³²⁵

²³²² Sesay/ Transcript 17 May 2007, pp. 89, lines 20-28.

²³²³ DIS-127/ Transcript 12 February 2008, pp 84, line 28 – pp. 86, line 20; DIS-188/ Transcript 29 October 2007, pp. 99, line 8 – pp. 101, line 3.

²³²⁴ TF1-360/ Transcript 25 July 2005, pp. 36.

²³²⁵ Johnson/ Transcript 14 October 2004, pp. 110, line 11-25.

1124. Evidence of crimes committed demonstrates the largely directed nature of the attacks. They include the burning of the Eastern police station²³²⁶, the burning of Kissy barracks²³²⁷, the burning of the CID in central Freetown²³²⁸ and the breaking open of Pademba road prison²³²⁹. Johnson in his evidence notes that there was no looting or burning at Upgun as the fighters surged westwards and no civilians were abducted at that time. As they moved towards the State House, Johnson testified that no properties were burnt during this move. Johnson stated that there was burning on the 3rd day, followed the loss of Kingtom junction, Ascension Town, and also the King Harman Road junction, when we were pulling back to State House. There were no orders given to burn.²³³⁰

a) Communications allegedly taking place during the advance

1125. There is no evidence of communication between fighters under Gullit and any member of the RUF command as the fighters move quickly from eastern Freetown to take control of the State House. The Prosecution have failed to prove a link between Sesay and the crimes committed by the fighters as they advanced.

1126. There is, allegedly, limited communication with Bockarie from the State House. Johnson testified that Gullit spoke to Bockarie after the fighters had taken the State House and informed Bockarie that he was now in control of the city. Johnson stated that Bockarie made an announcement over the BBC.²³³¹ Johnson gave no details as to the content of the announcement.

1127. In contrast, TF1-360 testified that Gullit radioed Bockarie from the State House but that Bockarie told Gullit that he had advised him not to enter Freetown and cut off the communication. It was after this that the burning, amputating and killing began on

²³²⁶ Johnson/ Transcript 18 October 2004, pp. 48.

²³²⁷ Johnson/ Transcript 18 October 2004, pp. 39.

²³²⁸ TF1-334/ AFRC Transcript 14 June 2005, pp. 4.

²³²⁹ For example, Johnson/ Transcript 18 October 2004, pp. 54-55.

²³³⁰ Johnson/ Transcript 18 October 2004, pp. 54, line 19 – 55, line 13.

²³³¹ Johnson/ Transcript 18 October 2004, pp. 59, lines 11-17.

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the orders of Gullit. Bazzy and 55.²³³² TF1-360 testified that he had a private radio communication with Bockarie that night and informed him that SAJ Musa was dead.

1128. Neither TF1-184 nor TF1-334 gave evidence about communications between Bockarie and Gullit during the time that the fighters are in control of the State House. TF1-184 testified that he saw Bazzy on the radio asking Bockarie to speak to JPK and Bockarie replying that he would arrange for them to speak to JPK later on.²³³³ TF1-334 testified that he heard Bockarie on Radio France saying that troops commanded by Gullit had captured the State House and would continue to defend Freetown.²³³⁴ On the evidence of TF1-360, of course, Bockarie severs communications with Gullit precisely because Gullit had not listened to Bockarie's advice not to enter Freetown with such insufficient logistics.

b) Sesay's setting up of units dedicated to protection of civilians in Makeni

1129. As the fighters under Gullit surged in to Freetown and briefly seized control of the State House, Sesay was in his 3rd week as the commander based in Makeni. By this time, Sesay had put into place the RUF units meant to ensure law and order in RUF held areas. This included the Joint Security Panel, itself made up of MPs, G5, IO and IDU officers.²³³⁵ These units were in charge of putting Makeni under control so that its residents could lead normal lives. This was his state of mind towards crimes against civilians.

2. On the retreat

1130. It is clear that the bulk of the crimes committed against the civilians in Freetown and the destruction of property occurred as the SLA under Gullit was forced backwards by ECOMOG. Johnson stated that the loss of the State House, marking the start of the retreat occurred about 3 days after the group entered Freetown, that is to say around 9

²³³² TF1-360/ Transcript 21 July 2005, pp. 34, line 24 – pp. 35, line 25.

²³³³ TF1-184/ 5 December 2005, pp. 38, line 1 – pp. 47, line 6.

²³³⁴ TF1-334/ AFRC Transcript 14 June 2005, pp. 19, line 19 – pp. 22, line 7.

²³³⁵ DIS-188/ Transcript 29 October 2007, pp. 65, line 15 – pp. 67, line 25 and Transcript/ 30 October 2007, pp. 10, line 19 – pp. 13, line 29.

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January 1999.²³³⁶ The evidence is replete with orders from different SLA's to burn Freetown. Papa ordered Freetown to be burnt.²³³⁷ TF1-184 said that it was a general order for the burning of Freetown.²³³⁸ TF1-334 describes Gullit giving an order to burn down Fourah Bay and kill people there after receiving information that people there had killed a soldier.²³³⁹ TF1-101 described the killing and amputating of civilians in Kissy on 19th January 1999.²³⁴⁰

a) Communications allegedly taking place as Gullit's fighters lose ground

(1) Johnson

1131. The next communication, Johnson testified, took place 3 days after the pull-out from the State House and led to Col. Marvin being dispatched to Foamex factory to receive reinforcement of fighters as promised by Bockarie. Johnson stated that no reinforcement from the RUF arrived.²³⁴¹ At the Shankeras building in Ferry Junction, Johnson says that Gullit sent a message to Bockarie informing they were pulling out and Kabbah had declared a cease-fire, which Bockarie said not to accept.²³⁴² It might be argued that this alleged non-acceptance by Bockarie was significant. This would not be correct. At best it indicates that Bockarie was encouraging the SLA's to keep fighting. There is nothing to indicate this was to do with crimes. It had nothing to do with crimes and even less to do with Sesay. When the group moved back to Orugu village, Johnson stated that Gullit allegedly sent a message to Bockarie, "telling Mosquito that we have lost Freetown, he had not sent the reinforcement he asked for and now we are pulling out".²³⁴³

(2) TF1-184

²³³⁶ Johnson/ Transcript 18 October 2004, pp. 58, lines 4-7.

²³³⁷ Johnson/ Transcript 18 October 2004, pp. 68, line 1 – 69, line 14 and pp. 72:122 – pp. 73, line 14.

²³³⁸ TF1-184/ Transcript 5 December 2005, pp 57, line 8 – pp 60, line 8.

²³³⁹ TF1-334/ AFRC Transcript 14 June 2005, pp. 66, line 22 – pp. 67, line 9.

²³⁴⁰ TF1-101/ Transcript 28 November 2005, pp. 46, line 12 – pp. 58, line 4.

²³⁴¹ Johnson/ Transcript 18 October 2004, pp. 59, line 13 - pp. 58, line 22.

²³⁴² Johnson/ Transcript 18 October 2004, pp. 59, line 29 – pp. 60, line 14.

²³⁴³ Johnson/ Transcript 18 October 2004, pp. 60, lines 18-24.

1132. After the loss of the State House, TF1-184 testified that there was a communication between Gullit and Bockarie in which he heard Gullit said that he was going to do something that none of them would be able to do. TF1-184 did not know what that meant.²³⁴⁴ It is submitted that this is an example of Gullit attempting to posture to Bockarie and shows that he neither regarded himself as subordinate to Bockarie or working in concert with Bockarie. It illustrates that Gullit needed no encouragement or prompting to wage war on civilians. This was his mission.

(3) TF1-334

1133. TF1-334 states that the fighters under Gullit lost and then recaptured the State House. In the 2nd – 3rd week that they were in Freetown, TF1-334 stated, the Bockarie spoke on the BBC stating that he was reinforcing the commander in Freetown and ordered that strategic positions, including government buildings, commercial buildings such as banks, should be burnt down. TF1-334 testified that later Gullit called Bockarie to say that he was waiting for reinforcements as he had not yet seen them. Gullit also said that the government was talking about a cease-fire. Bockarie allegedly said this was a lie and that Gullit should begin to burn important areas. TF1-334 states that it was after this communication that Gullit ordered petrol which was distributed with the orders that the big market should be burnt down. TF1-334 said this occurred in the 2nd – 3rd week of their being in Freetown.²³⁴⁵ TF1-334 also stated, however, that it was at Allen town as the fighters moved into Freetown were Gullit gave an order to burn Freetown.²³⁴⁶ Importantly evidence of the first order critically undermines any suggestion that there is any causal link between Bockarie's alleged order and the burning of parts of Freetown. Both logically cannot have been the operative order

1134. In contrast, Sesay made the not only the protection of the civilians in Makeni a priority but was also highly concerned with the physical protection of the town. TF1-

²³⁴⁴ TF1-184/ 5 December 2005, pp. 52, line 17 – pp. 53, line 29.

²³⁴⁵ TF1-334/ AFRC Transcript 14 June 2005, pp. 53, line 19 – pp. 54, line 14.

²³⁴⁶ TF1-334/ Transcript 7 July 2006, pp. 39, line 13 – pp. 41, line 14.

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041 testified that Sesay found the looting or burning or destruction of civilian property unacceptable.²³⁴⁷

1135. TF1-334 stated that after losing the State House for a second time, the fighters moved eastwards. Gullit spoke to RUF Rambo when they were at PWD junction and RUF Rambo allegedly said that the RUF had not sent reinforcements as they believed SAJ Musa to be alive. Gullit said that he was still waiting for reinforcements.²³⁴⁸

(a) Credibility of TF1-334

1136. It is submitted that TF1-334's account cannot be judged to be credible, even leaving aside the marked inconsistencies with the other Prosecution witnesses. Neither Johnson nor TF1-184 testify as to the fighters capturing the State House twice in the time that they are in Freetown and no witness testified to a 3rd attempt to capture the State House after the arrival of Red Goat Rambo. In any event there is no evidence of that Red Goat Rambo's appearance in Freetown either slowed the retreat or assisted the SLA group. No evidence has been asserted as to what Red Goat Rambo and the men who accompanied him actually did during the time that they were in Freetown. Detailed submissions in relation to the importance (or lack thereof) of Red Goat Rambo are set out below.

(4) TF1-360

1137. TF1-360 said that after the loss of the State House, Gullit called Bockarie the following morning and said the tension was high. Bockarie told Gullit to arrest some government areas and to go to Kissy terminal. Gullit said he had already passed an order to have it burnt. Bockarie said Gullit should ensure it was done and Gullit said he had already seen it burning.²³⁴⁹ TF1-360 said that Bockarie said that Gullit should attack strategic areas of Freetown to block or destroy any area where ECOMOG could get fuel as part of a strategic military attack.²³⁵⁰ It is submitted that this advice purportedly given by Bockarie to Gullit were not rallying cries to commit crimes but

²³⁴⁷ TF1-041/ Transcript 10 July 2006, pp. 83, lines 1-16.

²³⁴⁸ TF1-334/ AFRC Transcript 14 June 2005, pp. 54, line 27 – pp. 56, line 19.

²³⁴⁹ TF1-360/ Transcript 21 July 2005, pp. 35, line 25 – pp. 37, line 5.

²³⁵⁰ TF1-360/ Transcript 25 July 2005, pp. 36, line 19 – pp. 38, line 12.

the converse: advice to target those areas which would produce a military advantage. These are military objects and do not give rise to criminal liability.

1138. TF1-360 testified that it was at Ferry Junction that Bockarie told Gullit to send a receiving team to Kossoh town to collect fighters led by Superman, Sesay and Kallon. TF1-360 stated that he was one of those who went but they would not meet them at Kossoh town as it was occupied by ECOMOG. The group in Hastings was nominally led by Alfred Brown, but was actually led by a Liberian named Rambo. TF1-361 states that they were to both attack Kossoh town but this was unsuccessful as the RUF in Hastings did not respond in the way they were expected to do so, in that they failed to launch an attack. The group at Hastings proceeded no further and TF1-360 and the others returned to Gullit.²³⁵¹

1139. The evidence of TF1-360 suggests the continuing absence of any common plan, purpose or design in existence between the RUF under Bockarie and Gullit. It is clear from his evidence that the RUF outside of Freetown and the SLA inside Freetown are not acting in concert with each other. The RUF, on the evidence of TF1-360, continues to fail to send any reinforcements into Freetown to assist the increasingly embattled SLAs demonstrating a lack of participation and or contribution by the RUF as a whole.

(5) Evidence of communication lacking in credibility

1140. The Defence submit the following witnesses' testimony about communications with the SLA group which entered Freetown on 6 January 1999 are wholly unreliable for the reasons set out below. That the Prosecution saw fit to adduce such evidence, which finds no support in the rest of their case, reveals the desperation with which they sought to find liability on the part of Sesay for the acts of Gullit's fighters in Freetown, following the collapse of their case as outlined in the supplemental pre-trial brief.

(a) TF1-366

²³⁵¹ TF1-360/ Transcript 21 July 2005, pp 39, line 6 – pp. 42, line 15 and Transcript 25 July 2005, pp. 38, line 13 – pp. 49, line 10.

1141. TF1-366 stated that following the capture of Makeni, there was a meeting held with Sesay, Kallon, Rambo, Superman including Bockarie by radio from Buedu where it was decided to advance to where SAJ Musa was at Masiaka. Submissions in relation to the credibility of this account are above.

1142. TF1-366 states that he was in Waterloo fighting while Sesay was sending supplies from Makeni. TF1-366 says he fought for 2 weeks and pushed ECOMOG to Hastings but could push them no further than Devil's Hole. There, he testified, there was communication with 55, Gullit, Bazzy, Mama Tina, 05, Red Goat, Sesay, Kallon, Rambo, Bockarie and TF1-366. Those outside of Freetown allegedly told those inside that they needed to clear Hastings, Jui and Kossoh town and devised passwords 'Gullit/Van Damme' to avoid fighting against each other. After the passwords were set, attacks were allegedly launched on Hastings, Jui and Kossoh town but were unsuccessful.²³⁵² TF1-366 testified that the purpose of these attacks was to remove ECOMOG and the Guinean soldiers in order to get an easy passage to Freetown to overthrow Tejan Kabbah.²³⁵³

(i) Credibility of TF1-366's account

1143. Issues of credibility relating to the meeting in Makeni are dealt with above.

1144. TF1-366's evidence concerning communications from Devil's Hole between 55, Gullit, Bazzy, Mama Tina, 05, Red Goat, Sesay, Kallon, Rambo, Bockarie and TF1-366 and a joint attacks being launched from fighters inside Freetown and those outside on Hasting, Jui and Kossoh is uncorroborated by any other witness. It runs contrary in fact to the evidence of TF1-360 who testified that [REDACTED] a receiving team waiting for a group based as Hastings who failed to attack as they were supposed to.

(b) TF1-263

1145. TF1-263 testified that he was in Makeni [REDACTED] when they went to Superman's house. There TF1-263 testified that he heard 55 speaking to Superman over

²³⁵² TF1-366/ Transcript 9 November 2005, pp. 24, line 28 – pp. 28, line 21.

²³⁵³ TF1-366/ Transcript 9 November 2005, pp. 30, lines 14-20.

a radio handset and asking Superman for reinforcements for Freetown. TF1-263 said later that day he saw General Issa forcing fighters into two trucks and a landrover. TF1-263 says that he went on the truck but got off at Lunsar.²³⁵⁴ In TF1-263's interviews with the Prosecution, he never made mention of Sesay capturing fighters and putting them on trucks in Makeni bound for Freetown.²³⁵⁵

(i) Credibility of TF1-263's account

1146. It is submitted that this allegation is not credible. No witness makes any reference to a communication between 55 and Superman and indeed the command structure of the fighters in Freetown and the RUF under Bockarie made such a communication highly unlikely. There is also no corroborating evidence of Sesay forcing RUF fighters on to trucks in Makeni to take them to Freetown. Finally there is no evidence of such trucks either being received at Waterloo or going into Freetown.

(c) TF1-314

1147. TF1-314 testified that she was in Buedu when SAJ Musa sent a message saying that Sesay was to send men to attack Freetown. [REDACTED]. She stated that Sesay then passed a command to send people to Freetown.²³⁵⁶ In cross-examination, it was put to her that her statement to the prosecution read that at p. 10727 that she was in Buedu with JPK and Bockarie. TF1-314 in evidence said that she did not know who those people were. On the same page of her statement TF1-314 had told the Prosecution [REDACTED] that Bockarie sent a message to Sesay to tell him to go to Freetown as a back-up to SAJ Musa. In evidence, she said that it was SAJ Musa who sent the instruction to Sesay.²³⁵⁷

²³⁵⁴ TF1-263/ Transcript 7 April 2005, pp. 30, line 3 – pp. 36, line 8 and Transcript 8 April 2005, pp. 82, lines 18-28.

²³⁵⁵ TF1-263/ Transcript 8 April 2005, pp. 63, line 12 – pp. 66, line 28.

²³⁵⁶ TF1-314/ Transcript 2 November 2005, pp. 44 – 46.

²³⁵⁷ TF1-314/ Transcript 4 November 2005, pp. 37 – 39.

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3. Evidence of orders given by Bockarie

a) Bockarie ordering the burning of parts of Freetown?

1148. TF1-334 testified that Bockarie ordered Gullit to burn important areas in Freetown. It is submitted that this evidence is not credible. TF1-334 had already stated in evidence that Gullit gave the order to burn Freetown at Allen town when the group was entering. This needs no further comment. TF1-360 testified that it was Bazy, Gullit and 55 who ordered the destruction of Freetown and this started before there had been any communication with Bockarie. Johnson's evidence of events on 6 January 1999 show that burning and killing started immediately on entering Freetown, well before TF1-334 states that Bockarie gave such an order. TF1-360 stated that Bockarie had given orders for areas that ECOMOG could use as a base and that he was ordering strategic military attacks.

4. Evidence of Gullit giving order to burn in response to events on the ground.

1149. TF1-184 testified that Gullit ordered the burning of Ross road in response to a report that a fighter had been chopped in that area.²³⁵⁸ TF1-334 stated that Gullit gave the order to burnt down the Fourah Bay area following a report that civilians had killed a fighter there²³⁵⁹ and that Gullit passed an order to burnt down the area around the Kissy mental home on heading people celebrating the arrival of ECOMOG.²³⁶⁰ TF1-334 also observed Gullit passing an order to burn Calaba town.²³⁶¹ It is submitted, therefore, that Gullit passed orders to burn areas of Freetown in response to events on the ground; specifically the lack of support that his fighters received from the people in Freetown and rumours of soldiers being attacked in certain areas.

5. Bockarie ordering Operation No Living Soul

1150. TF1-169 testified he heard the spokesman Mosquito over the radio before the fighters entered Freetown saying that this were going to launch Operation No Living

²³⁵⁸ TF1-184/ Transcript 5 December 2005, pp 57, line 8 – pp 60, line 8.

²³⁵⁹ TF1-334/ AFRC Transcript 14 June 2005, pp. 66, line 22 – pp. 67, line 9.

²³⁶⁰ TF1-334/ AFRC Transcript 14 June 2005, pp. 83, line 24 – pp. 87, line 9.

²³⁶¹ TF1-334/ AFRC Transcript 14 June 2005, pp. 98, line 3 – pp. 101, line 8.

Soul. This is not corroborated by any other witness. There is no evidence of fighters in Freetown having heard this announcement, if it occurred, or of their committing any crimes as a result of it. At the time Sesay is in command of Makeni. The Prosecution have adduced no evidence to link Sesay to any announcement of a 'Operation No Living Soul' made by Bockarie or any other commander.

6. Sesay taking actions to prevent and punish crimes in Makeni

1151. In stark contrast with Gullit and fighters under his command were committing crimes in the streets of Freetown, Sesay had been taking in active role in preventing and punishing crimes against civilians in Makeni and in surrounding areas under his control. This included killing his own men for rape and taking action against looters.²³⁶² TF1-041 stated that Sesay was keen to ensure that the Joint Security Unit was set up in Makeni to ensure the welfare of the civilians and to assist in getting life in Makeni back to normal as quickly as possible. TF1-041 testified that Sesay believed that the RUF should work with civilians not against them and the G5 and JSU should do their best to allow the civilians to make a living for themselves. The Prosecution witness confirmed that it was well known that Sesay found the killing and harassment of civilians, mistreatment of women, destruction of civilians' property unacceptable and that he would take action against it.²³⁶³

1152. The Prosecution has to do more than simply suggest a degree of confluence between the RUF outside of Freetown and the SLAs within. It is obvious that both groups regarded entering Freetown as the ultimate goal, albeit for different reasons. This is unsurprising. It was inevitable that the two groups, finding themselves relatively close, would communicate and there might even be some coordination. But the Prosecution must prove that the Sesay voluntarily participated in a criminal plan to terrorise and punish civilians in Freetown or prove that he shared their intent or at least prove that any assistance offered was provided with the knowledge that this would assist those crimes. The available evidence shows that Sesay was doing his very best to prevent and punish crimes in Makeni and its environs at this time. The Prosecution

²³⁶² DIS-127/ Transcript 12 February 2008, pp. 88, line 15 – pp. 89, line 28.

²³⁶³ TF1-041/ Transcript 10 July 2006, pp. 81, line 25 – pp. 84, line 12.

have offered no reason and none can be discerned for this apparent inconsistency. Men do not kill rape and burn in one town while protecting many, many others at the same time, without good reason. None has been suggested.

F. The limited basis of the Prosecution case

1. Red Goat Rambo

1153. Red Goat Rambo, an SLA fighter with the RUF at Waterloo, is said to have crossed from Waterloo into Freetown. Rather than evidence being adduced of Sesay leading a large group of reinforcements to Freetown, as set out in paragraph 70.g of the Prosecution's supplemental pre-trial brief, Red Goat Rambo and his men are the only alleged instance of any fighters crossing into Freetown after Gullit's group entered that appeared in the Prosecution's case. TF1-334 testified that while at PWD junction, Red Goat Rambo came on radio and said that he was coming with reinforcements. TF1-334 said that Gullit sent Col. Eddie to receive Red Goat Rambo and 50 men. The group then tried to recapture the State House but was not successful and continued to retreat.²³⁶⁴ TF1-366 testified that while the RUF were attacking Hastings, Jui and Kossoh town, Red Goat Rambo managed to cross into Freetown and Gullit later sent a message that they had received 15 STF fighters.²³⁶⁵

1154. Aside from TF1-334's claim that Red Goat Rambo participated on a 3rd attack on the State House which was unsuccessful²³⁶⁶, there is no evidence as to what Red Goat Rambo was doing in Freetown. It is also clear that the addition of Red Goat Rambo and his men did not slow the ECOMOG advance as the fighters continued to be pushed from Freetown. Indeed fighters who entered Freetown on 6 January 1999 numbered in their thousands. It is ludicrous to assert that at a time when ECOMOG is pushing several thousands of fighters into retreat that Red Goat Rambo and his band of 15 – 50 men could have contributed to Gullit's attempt to keep control of Freetown or less the crimes being committed. TF1-184 stated that in Freetown, Red Goat Rambo reported to Gullit but the reinforcements were insufficient and the fighters continued to be pushed

²³⁶⁴ TF1-334/ AFRC Transcript 14 June 2005, pp. 56, line 27 – pp. 59, line 28.

²³⁶⁵ TF1-366/ Transcript 9 November 2005, pp. 24, line 28 – pp. 33, line 1.

²³⁶⁶ TF1-334/ AFRC Transcript 14 June 2005, pp. 56, line 27 – pp. 59, line 28.

from Freetown.²³⁶⁷ It is submitted that the crossing of Red Goat Rambo, even if found to have been agreed to by the RUF, could not amount to significant participation in the crimes alleged. The Prosecution have failed to prove that Red Goat Rambo and the 15-50 fighters who came with him affected, substantially or otherwise, the course of events on the ground or that his presence contributed in any way to the crimes. This is the point. It is not enough that Red Goat fought with the SLAs.

a) Arrival of Red Goat Rambo does not denote existence of any common purpose

1155. There is no evidence to suggest that the crossing of Red Goat Rambo into Freetown was part of any agreed common plan between Gullit's group and the RUF. What is clear from the communications, is that there was a clear unwillingness on the part of Bockarie to send reinforcements into Freetown to aid the SLA fighters under Gullit as evidenced by the failure to send in any reinforcements into Freetown. Indeed the perception that the group under Gullit was somehow going to 'double cross' any RUF fighters who came into the Western Area was a clear concern for Bockarie. Johnson testified that Bockarie thought the news of SAJ Musa's death was a trick and did not send reinforcements.²³⁶⁸ Similarly, TF1-334 testified that in a communication between RUF Rambo and Gullit at PWD, RUF Rambo said that reinforcements had not been sent as the RUF believed SAJ Musa to still be alive.²³⁶⁹ TF1-366 testified that Red Goat Rambo crossed into Freetown in violation of Kallon's orders, which were that no RUF were to enter and that Red Goat Rambo violated the orders as he wanted to join his SLA brothers in Freetown.²³⁷⁰ It is submitted therefore that the Red Goat Rambo entered Freetown of his own accord, and in violation of orders of RUF commanders. His crossing into Freetown therefore does not signal cooperation by the RUF with Gullit's forces, rather the converse.

²³⁶⁷ TF1-184/ Transcript 6 December 2005, pp. 5 – 57. See also TF1-360/ Transcript 21 July 2005, pp. 42, line 16 – pp. 43, line 2.

²³⁶⁸ Johnson/ Transcript 18 October 2004, pp. 33-34.

²³⁶⁹ TF1-184/ Transcript 6 December 2005, pp. 40, lines 3-15

²³⁷⁰ TF1-334/ AFRC Transcript 14 June 2005, pp. 54-56.

1156. The Prosecution has also failed to set out any relationship between Red Goat Rambo and Sesay. There is no evidence of any contact between them or of any superior-subordinate relationship.

b) Arrival of Red Goat Rambo does not denote any form of Article 6(1) liability on the part of Sesay

1157. The Prosecution must prove that he provided material assistance to the perpetrators of crimes. They must also prove that Sesay shared this common criminal purpose and was himself participating. There is no evidence to support these tortuous claims.

2. Allegation of RUF facilitating the retreat of the SLAs from Freetown

1158. Although not foreshadowed in the Indictment or the pre-trial or supplement pre-trial briefs, the Prosecution's case concerning the involvement of the RUF in the Freetown invasion shifted in the course of the trial to focus on whether the RUF had assisted the SLA fighters under Gullit to retreat from Freetown safely. It is unfortunate that the Defence have been reduced to guessing how the Prosecution might argue that Sesay is guilty for the worst single attack in the whole of the conflict. It is submitted that the Prosecution's failure to provide notice on the First Accused's alleged mode of responsibility represents an abandonment of the very premise of a criminal trial. It is submitted that it would be wholly wrong to convict and accused for any crime without prior notice of the material facts alleged and how they are to be legally categorized. The January 6th charges should be accordingly dismissed.

a) Aiding and Abetting?

1159. The Prosecution has failed to show (a) the RUF did in fact facilitate the retreat of the SLA fighters (b) that if the RUF did attack ECOMOG positions at Jui, Kossoh town and Hastings, that they did so with the intention of assisting the SLA to retreat; that (c) that any attempt on assisting the retreat of the SLA made any contribution to their retreat in any event and (d) that any assistance provided on the retreat was directed to supporting crimes previously committed. This assistance, if it be found proven, was not

agreed upon at the time of the planning, preparation or execution of the crimes²³⁷¹ nor could this reasonably be inferred.

(1) No intention to assist fighters in Freetown

1160. Evidence that the RUF assisted (or attempted to assist) the SLA inside Freetown comes primarily from TF1-371 and TF1-036. TF1-371 testified that he overheard a message from the fighters inside Freetown asking Bockarie to open a back corridor to Waterloo and Bockarie ordered Rambo to do so. TF1-371 said the SLA forces did retreat through Waterloo.²³⁷² TF1-036 testified that when Gullit's group had been encircled, he radioed Bockarie and asked him to assist him. In response to this, TF1-036 stated, Bockarie ordered Superman to move with Rambo to open a path out of Freetown which the AFRC used to retreat.²³⁷³ None of the SLA fighters inside Freetown – not Johnson nor TF1-344 nor TF1-184 – gave any evidence about the RUF being asked to assist the SLA fighters to retreat. They also did not give any evidence about the RUF based at Waterloo attempting to open a corridor for them to retreat through. TF1-360 stated that [REDACTED] because of the presence of ECOMOG at Jui and Kossoh town, it was decided there should be a joint attack but the group outside Freetown failed to launch any attack on the ECOMOG positions.²³⁷⁴

1161. TF1-366 testified that both the group inside Freetown and the group outside of Freetown launched joint attacks on Hastings, Kossoh town and Jui but were unsuccessful. TF1-366 stated expressly that the purpose of the attacks was to remove ECOMOG and the Guinean soldiers to provide an easy passage for the RUF fighters to enter Freetown to overthrow Tejan Kabbah.²³⁷⁵ TF1-366 made no mention of any plan or intention to assist those fighters in Freetown with their retreat.

²³⁷¹ Blagojevic and Jokic Trial Judgement, Para. 727 – 731.

²³⁷² TF1-371/ Transcript 21 July 2006, pp. 49, line 19 – pp. 50, line 24.

²³⁷³ TF1-036/ 28 July 2005, pp. 64, line 27 – pp. 66, line 10.

²³⁷⁴ TF1-360/ Transcript 21 July 2005, pp39 – 42.

²³⁷⁵ TF1-366/ Transcript 9 November 2005, pp. 30, lines 14-20.

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1162. The Prosecution has failed to demonstrate beyond a reasonable doubt that the RUF did launch attacks on Hastings, Jui or Kossoh town while at Waterloo in order to assist the SLA to retreat. The witnesses who were SLA fighters inside Freetown gave no evidence about any communication from Brima to Bockarie asking for assistance in retreating nor did they give evidence about the RUF in Waterloo launching attacks in order to assist them to retreat. Johnson, [REDACTED] would certainly have been able to give details of such communications in the same way as they gave evidence about other communications.

(2) No assistance rendered in any event

1163. It is clear, however, from the evidence of Prosecution witnesses, like Johnson, TF1-334 and TF1-184 that the ECOMOG forces at Waterloo are not dislodged and in fact the SLA fighters inside Freetown had no option but to retreat through the peninsula hills.²³⁷⁶ The Prosecution failed to prove that any assistance given by the RUF, if it occurred, assisted in actually facilitating the retreat. No witness gave evidence to suggest that the SLA were able to retreat from Freetown as a consequence of actions taken by the RUF.

1164. The authenticity of Exhibit 227, a report allegedly sent to Sesay on 21st January 1999, is disputed. The Prosecution did not provide details as to how the report came into their possession, purposely opposing the Defence's attempts to investigate its provenance. While the authenticity of the document is not accepted, the document itself demonstrates that any attack launched on ECOMOG positions, did not have the effect of rendering assistance to Gullit's fighters inside Freetown: the documents reads: "The Freetown men scheduled to attack Jui and we to attack Kossoh Town. That night we attacked Kossoh Town, clear the enemies but the Freetown men never turn up."²³⁷⁷ It should be noted that prosecution witness TF1-366 stated that the attack on Kossoh town and Jui was unsuccessful.

(3) Sesay's involvement?

²³⁷⁶ See for example TF1-184/ Transcript 5 December 2005, pp. 64, line 17 – pp. 65, line 14.

²³⁷⁷ Court Exhibit 227, referred to at Sesay/ Transcript 26 June 2007, pp. 44, line 12 – pp. 52, line 6.

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1165. TF1-366 testified that Sesay sent arms to fighters attacking Hastings, Kossoh town and Jui.²³⁷⁸ It is submitted that this is insufficient for a finding of liability in the form of aiding and abetting.

1166. In the first instance, to be found to have aided and abetted a crime, the acts of the Accused must have a substantial effect on the crime and the accused's actions must envisage a specific crime. The Prosecution has failed on both counts. There is no evidence to suggest that Sesay allegedly supplying arms to failed attacks on ECOMOG positions where those attacks were launched to facilitate a retreat of fighters in Freetown – all uncorroborated and disputed evidence from the Prosecution witnesses – had any effect of crimes being committed by the fighters inside Freetown.

1167. Furthermore, it is submitted that the Prosecution have failed to show that in the supply of ammunition to his own fighters, Sesay was envisaging aiding and abetting of crimes by fighters inside Freetown. The Defence have also shown a commitment of Sesay to the protection of civilians in areas in which himself launched attacks and areas in which he was in command at the same time that the SLA were committing crimes in Freetown. It is submitted that this evidence further undermines any claim that the Prosecution seeks to raise that Sesay had knowledge that his acts would assist the commission of crimes by the perpetrators.

(4) Ex post facto aiding and abetting?

1168. It is also relevant that the retreat of the SLAs occurs after the bulk of the crimes were committed in the Western Area. Sesay may only be found to have aided and abetted after the commission of a crime if it is shown that the crime was committed in the knowledge that Sesay was to supply practical assistance. The aiding and abetting act - the supply of arms by Sesay to fighters fighting to open a corridor of retreat to Gullit's forces – must have been agreed upon at the time of planning, preparation or execution of the crimes.

²³⁷⁸ TF1-366/ Transcript 9 November 2005, pp. 24-26.

1169. As has been submitted earlier, the Prosecution have raised no credible evidence of any a priori agreement between the RUF and/or Sesay and Gullit in respect of the launching of the Freetown attack. Further, as has been shown the Prosecution adduced evidence to show multiple requests on the part of Gullit for reinforcements in Freetown, all of which were unfulfilled by the RUF. There is no evidence to suggest that any of the crimes committed by fighters under Gullit's command were committed in the knowledge that Sesay was to supply practical assistance in helping them to retreat.

G. Crimes in Waterloo and surrounding areas

1. 'Continuing' crimes committed by the SLA under Gullit.

a) Enslavement

1170. Fighters under Gullit committed crimes such as the abduction of civilians, including women, in Freetown who retreated with the fighters to Benguema and Waterloo. TF1-334 testified that the civilians in Benguema pounded rice, cooked food and carried looted items for the fighters but added that they were referred to as family and were well protected.²³⁷⁹ TF1-334 stated that at PWD junction in Freetown, Gullit had ordered that civilians should be abducted so as to attract the attention of the international community.²³⁸⁰

b) Sexual violence

1171. TF1-023 stated that she and her cousin had been abducted in [REDACTED] where she was raped by [REDACTED] who remained with her in [REDACTED] at which point he left her in the care of another commander who also raped her.²³⁸¹ She was regarded as the wife of [REDACTED] and received particular respect because of his status.²³⁸² TF1-023 testified that the fighters she was staying with were SLAs and that [REDACTED] told her that his commander was Brigadier Bazzy.²³⁸³

²³⁷⁹ TF1-334/ AFRC Transcript 14 June 2005, pp. 114.

²³⁸⁰ TF1-334/ AFRC Transcript 14 June 2005, pp. 118, line 26 – pp. 120, line 3.

²³⁸¹ TF1-023/ AFRC Transcript 9 March 2005, pp. 37, line 16 – pp. 38, line 14 and pp. 43, line 1 – pp. 51, line 25.

²³⁸² TF1-023/ AFRC Transcript 9 March 2005, pp. 57, line 15 – pp. 59, line 29.

²³⁸³ TF1-023/ AFRC Transcript 10 March 2005, pp. 24, line 19 – pp. 33, line 29.

1172. TF1-029 testified that she was raped and taken as a wife by ██████ in Calaba town and when he retreated she went with him to Benguema where he continued to rape her. She stated that she was aware of 'thousands' of other women who had been abducted and raped by the fighters.²³⁸⁴

1173. TF1-334 testified that young girls who had been abducted in Freetown became wives of the various commanders in Benguema and cooked and had sex with them.²³⁸⁵

c) Child soldiers

1174. TF1-334 also testified that young children, mainly 9-10 yrs old, who had been abducted by fighters under the command on Gullit were staying with commanders and were later trained. TF1-334 testified that he had 2 SBUS with him in Benguema.²³⁸⁶

2. No effective command and control over SLA forces coming out of Freetown

1175. The Prosecution adduced no evidence to show that Sesay was in de facto command and control of the SLA fighters coming out of Freetown into the Waterloo/ Benguema area in late January/ February 1999.

1176. TF1-334 said that in a meeting in Waterloo, Sesay stated that he wanted to arrest Superman and take him to Kailahun causing Papa to fire into the air and say that this would not happen. Additionally fighting broke out between the RUF fighters and the fighters under Gullit as the RUF took away the properties that the SLA had looted from Freetown. TF1-366 stated that the SLAs who had come out of Freetown did not take orders from Sesay from the time their property was taken from them and that there was no further cordiality between the RUF under Sesay and the SLA under Gullit from that time.²³⁸⁷

²³⁸⁴ TF1-029/ Transcript 28 November 2005, pp. 11, line 28 – pp. 16, line 9.

²³⁸⁵ TF1-334/ AFRC Transcript 14 June 2005, pp. 120, lines 16-22

²³⁸⁶ TF1-334/ AFRC Transcript 14 June 2005, pp. 121, line 9 – pp. 122, line 13.

²³⁸⁷ TF1-366/ Transcript 15 November 2005, pp. 27.

1177. It is clear that Sesay was not even in total control of the RUF troops as Superman refused to submit to Sesay's command and refused to hand over Gibril Massaquoi so that he could be taken to Bockarie in Kailahun.²³⁸⁸ Superman and Massaquoi withdraw to Lunsar refusing to cooperate with Sesay, then in command of Makeni.

1178. When the fighters under Gullit disperse in February 1999, many of them go with Bazzy to base in the Okra hills as part of the West Side Boys camp.²³⁸⁹ However a number of SLAs moved to base in Makeni but continued to operate outside of Sesay's effective command and control. TF1-188 stated that there were various groups in Makeni when he arrived there in January 1999: the SLAs under Brigadier Mani, Gullit, 55, 05 and Kallay; the RUF (under Sesay and under Superman) and the STF under General Bropleh.²³⁹⁰

3. Waterloo

1179. TF1-366 testified that there was burning and looting of houses at Waterloo and that any person who was not with the fighters would be killed. TF1-366 stated that Kallon, Gullit, 55 and Rambo were at Waterloo during this time. TF1-334 stated that as ECOMOG advanced to Waterloo, Bazzy ordered that the houses along the highway to Waterloo should be set on fire. TF1-334 said there were some RUF with them at the time including Colonel Senegalese.²³⁹¹

1180. It should be noted that Johnson stated in his evidence that the shops along the main road in Waterloo were burnt by forces under SAJ Musa as they moved into Freetown.²³⁹² TF1-334 testified that Waterloo was looted for food by fighters under the command of Gullit prior to the invasion of Freetown.²³⁹³ Additionally the RUF under Rambo and Superman had been based in Waterloo prior to the SLA fighters withdrawing from Freetown. It is therefore unlikely that civilians, not with the fighting

²³⁸⁸ TF1-366/ Transcript 15 November 2005, pp. 27.

²³⁸⁹ See Port Loko section

²³⁹⁰ TF1-188/ Transcript 29 October 2007, pp. 67-68 and pp. 94-96.

²³⁹¹ TF1-334/ AFRC Transcript 15 June 2005, pp. 11, line 21 – pp. 12, line 16.

²³⁹² Johnson/ Transcript 18 October 2004, pp. 31, lines 8-21.

²³⁹³ TF1-334/ AFRC Transcript 13 June 2005, pp. 89, line 21 – pp. 90, line 21.

forces, had remained waiting for any retreat, at the time that the SLA arrived in Waterloo.

1181. No other witness corroborates the burning of Waterloo in February 1999. TF1-366 fails to identify which fighters were participating in the burning, if the allegation is deemed credible. It is submitted that the situation in Waterloo showed the fracturing of command in both the RUF and SLA groups: Superman and Massaquoi refused to submit to the orders of Sesay and Bockarie and stayed with the SLA before moving to base in Lunsar. Equally Bazzy separated himself from Gullit to set up his own base in the Okra hills. There is therefore no evidence to prove that Sesay had de facto command and control of any fighters participating in the burning of Waterloo in February 1999, an allegation which in itself is disputed.

4. Tombo and Hastings

1182. The evidence of prosecution witnesses suggests that there was an attempt to capture Tombo and Hastings, in order to capture more ammunition from the ECOMOG forces based there. TF1-366 stated that following the unsuccessful attack on Tombo, the group, which included Sesay, Kallon, Superman, Gibril Massaquoi, Gullit, 55 and Bazzy, looted and burnt villages on the way back to Waterloo.

1183. No witnesses – either civilians or other insiders who participated on these attacks - give evidence about any crimes being committed on these attacks and no witnesses corroborates TF1-366's account of looting and burning of unspecified villages on the way back to Waterloo. It is submitted that this is not a credible account given by TF1-366, a witness who said that Sesay's radio codes names were 'Highway' and "Fire Power",²³⁹⁴ and when asked to recall his evidence the following day, stated that Sesay's code names were 'Advance' and 'Retreat'.²³⁹⁵ It is submitted that TF1-361's credibility was not assisted by saying, when confronted with the inconsistency, that he had given the wrong names purposefully to test Counsel's recollection.

²³⁹⁴ TF1-366/ Transcript 17 November 2005, pp.15, lines 11-14.

²³⁹⁵ TF1-366/ Transcript 18 November 2005, pp. 24, line 11 – pp. 25, line 25.

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1184. As stated above – and is obvious – it does not makes sense that Sesay would spend so much punishing fighters who looted and burned and tried to prevent these and other criminal acts by fighters under his command in Makeni and surrounding areas while simultaneously having fighters under his command destroy villages in the Western Area.

1185. George Johnson

1186. Johnson states that after pulling out of Freetown, Gullit and some fighters stayed at Benguema while Bazy and other fighters remained at Waterloo. Johnson says he was at Waterloo and met Superman, Kallon and Rambo there. Sesay arrived later. The RUF were based at Waterloo. He testified that a meeting was held at Lumpa on the outskirts of Waterloo and was chaired by Sesay. At the meeting it was allegedly decided that there should a joint attack on Freetown through Tombo and Hastings. Superman, Kallon and Rambo left to attack Tombo while Bazy, Peleto and others moved towards Hastings. Both attacks were unsuccessful.²³⁹⁶ Johnson said after this there were no more joint attacks.²³⁹⁷ Johnson gave no evidence of any crimes being committed on these attacks.

1187. TF1-184

1188. TF1-184 states that he saw Kallon, Superman and Gibril Massaquoi at Benguema and the RUF were based at Waterloo. He stated that he saw Kallon and Massaquoi sit in a meeting with Bazy, 55 and Gullit and that following the meeting there was an order to attack Tombo which was unsuccessful. Following this, TF1-184 says there were further discussions between the SLA and Superman, who was the only RUF commander still at Waterloo. Superman said that the AFRC and RUF should attack the Guineans who were returning from Freetown to Masiaka and that Bazy, Gullit, Superman and Senegalese were involved in this attack and collected ammunition which RUF Rambo sent to Makeni. TF1-184 gives no evidence of crimes being committed

²³⁹⁶ Johnson/ Transcript 18 October 2004, pp. 78, line 27 – 80, line 11.

²³⁹⁷ Johnson/ Transcript 20 October 2004, pp. 53, line 11 – pp. 54, line 21.

against civilians on the attack on Tombo or the attack on the Guineans.²³⁹⁸ As seen by the evidence Johnson and TF1-334, above, both Hastings and Tombo had been attacked by Gullit's fighters in December 1998 as they moved towards Freetown. It is submitted that, like TF1-097 did, the civilians in these villages would have fled to more secure areas.

1189. (iii) TF1-334

1190. When TF1-334 arrived at Benguema, he is told that Sesay had gone to Makeni. The Guineans were leaving Freetown and passing through Hastings and 55, Papa, RUF Rambo, TF1-334 and others attacked it and captured arms and ammunition.

1191. After this attack, Sesay, Kallon and Superman allegedly came to Waterloo and had a meeting with Gullit, Bazzy, 55, Johnson, Papa and others. TF1-334 testified that Gullit said he was happy that the RUF wanted to join forces with them and wanted to plan an operation to re-attack Freetown. Sesay allegedly said he would give support to such an operation. Following this Kallon and Sesay returned to Waterloo and Superman stayed with the SLAs. TF1-334 testified that Papa, Superman and 55 attacked Tombo and Sesay, RUF Rambo and Kallon came with ammunition. The attack was unsuccessful and they lost many men.²³⁹⁹ TF1-334 gave no evidence of any crimes committed against civilians in the attacks. TF1-334 also notes that while he was at Hastings, they received a message from Gullit at Benguema that the RUF were looting the SLAs.²⁴⁰⁰

1192. It is to be noted that no other witness gives an account a planning meeting in which Sesay stated that he would provide reinforcements to re-attack Freetown and where Sesay attempts to arrest Superman and Papa fires his gun into the air to prevent this from happening.

²³⁹⁸ TF1-184/ Transcript 5 December 2005, pp. 65, line 15 – pp. 67, line 29 and Transcript 6 December 2005, pp. 57, line 2 – pp. 59, line 12.

²³⁹⁹ TF1-334/ AFRC Transcript 14 June 2005, pp. 106, line 10 – pp. 112, line 21.

²⁴⁰⁰ TF1-334/ Transcript 7 July 2006, pp. 47, lines 7-21.

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1193. (iii) TF1-360

1194. TF1-360 testified that after Gullit's group was in Waterloo, Red Goat Rambo had remained in Freetown with over 1000 men. There was no radio communications coming from that group but on commercial radio there were reports of crimes being committed in Freetown. A meeting was held with Sesay, Kallon, Rambo, Superman, Bazy, 55 and Gullit to organise an attack on Freetown. TF1-360 alleged that it was decided that there should be an attack on Tombo first to get arms and ammunition but this was unsuccessful. There was also an attempt by the group at Hastings to attack Kossoh town which was unsuccessful. After this senior commanders started to retreat to Makeni.²⁴⁰¹

1195. For the reasons set out above, it is submitted that the Prosecution have failed to prove that Sesay is liable for any crimes committed in the Western Area as charged in Indictment.

XIV. Port Loko District: counts 3-5, 6-9, 10-11 and 13

A. The Prosecution's allegations

1196. The Prosecution alleged that Sesay is criminally responsible for unlawful killings, abductions, forced labour, sexual violence and physical violence in the Port Loko District.

1197. The Prosecution have failed to prove that Sesay is liable for any crimes within the Port Loko District. There is no evidence that Sesay contributed to or provided any assistance pursuant to Article 6(1) of the Statute. The Prosecution have failed to demonstrate any or any sufficient association with the perpetrators of the crimes to be able to infer any relationship of command pursuant to Article 6(3). The Prosecution have failed to prove that Sesay had the requisite *mens rea*, especially in light of the evidence which demonstrates his attempts to prevent and punish crimes in the Bombali district at this time.

²⁴⁰¹ TF1-360/ Transcript 21 July 2007, pp. 45, line 1 – pp 46, line 13.

B. Defective pleading

1198. The Prosecution pleaded unlawful killings (Counts 3-5) between February 1999 and April 1999 in Manaarma, Tendakum, and Nonkoba²⁴⁰²; abductions and forced labour (Count 13) in the month of February in Port Loko, Lunsar, Tendakum, and Nonkoba.²⁴⁰³ No locations were specified for sexual violence²⁴⁰⁴ (Counts 6-9) or physical violence²⁴⁰⁵ (Counts 10-11). By virtue of failing to specify locations in the Indictment where crimes were alleged to have taken place, the Prosecution has failed to provide adequate notice of those allegations to the Defence. In accordance with the ruling of the Appeals Chamber in *Prosecutor v. Brima et al*, these allegations must be dismissed.

C. Tendakum and Nonkoba

1. Unlawful Killings and Enslavement Defectively Pleaded

1199. The Prosecution rely upon witnesses TF1-255, TF1-256 and TF1-345 to prove that crimes were committed in Tendakum²⁴⁰⁶ and Nonkoba. The Defence submits that these witnesses are speaking about the same events. Each witness's testimony is centred on crime at a garden near Tendakum.²⁴⁰⁷

1200. In particular in response to being asked when the fighting in Tendakum occurred, TF1-255 responded that the fighting took place on and after the 29th May 1999.²⁴⁰⁸ In contrast, TF1-256 was unfairly led on the date "April 1999" by Prosecuting Counsel.²⁴⁰⁹ TF1-345 was referenced to 6 January 1999 and stated that after "some time" rebels came to her village leading to the same events testified to by TF1-255 and

²⁴⁰² Para. 53, Corrected Amended Consolidated Indictment.

²⁴⁰³ Para. 76, Corrected Amended Consolidated Indictment.

²⁴⁰⁴ Para. 60, Corrected Amended Consolidated Indictment.

²⁴⁰⁵ Para. 67, Corrected Amended Consolidated Indictment.

²⁴⁰⁶ Tendakum is alternatively spelled Chendekum or Rochendekom.

²⁴⁰⁷ Crimes were committed at a garden (TF1-255/Transcript, 18 July 2006, pp. 74; TF1-345/Transcript, 19 July 2006, pp. 31) where over 40 people were killed by combatants (TF1-255/Transcript, 18 July 2006, pp. 82; TF1-345/Transcript, 19 July 2006, pp. 37) that came from Masiaka (TF1-255/Transcript, 18 July 2006, pp. 72, lines 21 – 22; TF1-345/Transcript, 19 July 2006, pp. 30:22-24); TF1-256, the brother of Tf1-255 testified to the killing of 47 people at the same garden (TF1-256, Exhibit 136, AFRC Trial, Transcript, 14 April 2005, pp. 52-53, 73-77, and 84).

²⁴⁰⁸ TF1-255/Transcript, 18 July 2006, pp. 69, line 24 – pp. 70, line 14..

²⁴⁰⁹ TF1-256, Exhibit 136, AFRC Trial Transcript, 14 April 2005, pp. 47, lines 15-17.

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TF1-256.²⁴¹⁰ The preponderance of evidence places the events on or after the 29th May 1999. The Prosecution have failed to prove that these events in Tendakum and Nonkoba occurred “between about February 1999 and April 1999”.²⁴¹¹

1201. The Indictment pleads enslavement in Tendakum and Nonkoba “about the month of February 1999”.²⁴¹² As has been demonstrated above, evidence of crime in Tendakum and Nonkoba as elicited through TF1-255, TF1-256, and TF1-345 occurred on and after 29 May 1999. This is significantly outside the indictment period and therefore no liability attaches.²⁴¹³

1202. In any event, the Prosecution have failed to prove that these crimes were committed by Sesay or any men under his effective control.

2. Sesay’s lack of culpability notwithstanding defective pleading

1203. The alleged crimes were committed by fighters from SAJ Musa’s group²⁴¹⁴ or Captain Rittin’s (SLA) group.²⁴¹⁵ There is no evidence that Sesay had any involvement with these groups of fighters from March 1999 (when he was chased out of Makeni by Superman and elements of SLA groups) until his return from Kailahun in late 1999.

1204. The Prosecution have led evidence²⁴¹⁶ tenuously suggesting that the alleged perpetrators were connected to Superman. The evidence demonstrates that Sesay had no control, effective or otherwise, over Superman at this time²⁴¹⁷. Superman was not

²⁴¹⁰ TF1-345/Transcript, 19 July 2006, pp. 26, line 15 – pp. 27, line 7.

²⁴¹¹ Para. 53, Corrected Amended Consolidated Indictment.

²⁴¹² Para. 76, Corrected Amended Consolidated Indictment.

²⁴¹³ This remains true should the Trial Chamber prefer the evidence of TF1-256 over TF1-255 that the crimes in Tendakum and Nonkoba occurred in April 1999.

²⁴¹⁴ TF1-345/Transcript, 19 July 2006, pp. 31, lines 24-27.

²⁴¹⁵ Alternatively spelled Captain Richie. TF1-255/Transcript, 18 July 2006, pp. 75, lines 2-10, pp. 78, line 28 – pp. 79, line 6, and pp. 109, lines 16-18; and TF1-256, Exhibit 136, AFRC Trial Transcript, 14 April 2005, pp. 67, lines 16 – 22.

²⁴¹⁶ TF1-255/Transcript 18 July 2006, pp. 105, line 16 – pp. 107, line 29 (TF1-255 was taken to Lunsar where Superman’s men were; Superman was seen playing football with Sesay); and TF1-256/AFRC Transcript 14 April 2005, pp. 103, line 7 – pp. 105, line 8 (A letter from Superman was read aloud stating that the killing of the people of Masimera should stop).

²⁴¹⁷ TF1-361/Transcript 14 July 2005, pp.37, line 24 – pp.38, line 6 Superman refused to take orders from Sesay throughout 1999 and Exhibit 33 p.8742 In November 1999 Superman refused Sesay’s requests to return materials to him until Sankoh ordered him to do so.

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cooperating with the Sam Bockarie group or Sesay.²⁴¹⁸ It would also appear from the evidence that Superman did not approve of the crimes and attempted to take action to prevent its recurrence which further weakens any inference that these crimes were in any way condoned by any of the RUF commanders.²⁴¹⁹

1205. Finally the evidence suggests that Sesay was engaged in activities in the nearby Bombali/Tonkolili region which proves his general disapproval of these crimes. Both Prosecution and Defence witnesses attest to Sesay's commitment to prevent and punish crimes against civilians at this time²⁴²⁰. Sesay outlawed abduction, rape, killing, looting, burning and harassment of civilians and punished those who broke the law²⁴²¹ This body of evidence is demonstrative of Sesay's non-approval of the actions of the West Side Boys.

D. Manaarma

1. Unlawful Killings Attributable to the West Side Boys

1206. The Indictment pleads unlawful killings in Manaarma. The Defence submits that Manaarma is the same place as Manarma which is alternatively spelled Muharma²⁴²² and Mamamah.²⁴²³ George Johnson, TF1-253, and TF1-334 refer to people being killed in Manaarma.

1207. It is clear that the West Side Boys are responsible for these killings. TF1-253 testified that people were killed in Manaarma by rebels, one of whom was referred to as

²⁴¹⁸ TF1-366/Transcript 15 November 2005, pp.27, line 16 – pp.28, line 17. (There was a time when Superman, Sesay and Brig. Mani & other SLAs occupied Makeni at the same time but everyone kept separate because of the infighting – Superman was based at Lunsar with Gibril Massaquoi running their own operation. TF1-168/Transcript 3 March 2006, pp.29, line 4 – 20 Superman and Gibril Massaquoi were not on good terms with Sam Bockarie.

²⁴¹⁹ A letter from Superman was read aloud stating that the killing of the people of Masimera should stop. TF1-256/AFRC Transcript 14 April 2005, pp. 103, line 7 – pp. 105, line 8.

²⁴²⁰ For example TF1-078/ Transcript 25 October 2004, pp. 83 line 5 – pp. 87, line 17, TF1-314/ Transcript 4 November 2005, pp. 52 line 19 – pp. 55, line 16.

²⁴²¹ TF1-041, Transcript 10 July 2006, p 77, line 19 – p. 83, line 19 and pp. 81, line 25 – pp. 84, line 12.

²⁴²² For example, TF1-253 states that he was born in Muharma (4:22-23) and later refers to the village of his birth as Manarma (6:18-19).

²⁴²³ Johnson/Transcript, 19 October 2004, pp. 77, lines 25 – pp. 78, line 21.

“Johnson.”²⁴²⁴ This is George Johnson, aka Junior Lion, an admitted West Side Boy.²⁴²⁵ George Johnson himself²⁴²⁶ and TF1-334,²⁴²⁷ another admitted West Side Boy,²⁴²⁸ both testified to the attack on Manaarma.

1208. For additional proof that George Johnson, TF1-253, and TF1-334 testified to the same events in Manaarma, consider that TF1-253 testified that the same group that attacked Manaarma also attacked Malian ECOMOG troops at Schlenker, the secondary school of Port Loko.²⁴²⁹ Similarly, George Johnson referred to attacking the Sri Lanka School where the Malians were based,²⁴³⁰ and TF1-334 speaks about an attack on Malians at the Shelenka School.²⁴³¹

1209. The West Side Boys were an autonomous group. George Johnson stated that the West Side Boys was not taking orders from anybody.²⁴³² TF1-371 testified that it would have been naïve of Sankoh to order Superman or Sesay to bring Okra Hills (i.e., the West Side Boys) under control as the West Side Boys had no affiliation with the RUF.²⁴³³ TF1-334 testified that Bazzy, as the leader of the West Side Boys, planned operations on a day-to-day basis.²⁴³⁴

1210. The only purported link between the West Side Boys and Sesay is via TF1-334’s assertion that Bockarie ordered Bazzy to become the commander of the West Side Jungle. Apparently, from this single radio communication, Bazzy abandoned loyalty to Gullit, withdrew, and set up the Jungle. Although, according to TF1-334, there was

²⁴²⁴ TF1-253/Transcript, 28 July 2004, pp. 22, line 32 – pp. 27, line 37. The Colonel Sesay referred to is not the Accused Sesay; TF1-253/Transcript, 28 July 2004, pp. 38.

²⁴²⁵ Johnson/Transcript, 19 October 2004, pp. 77, lines 1 – 7.

²⁴²⁶ Johnson/Transcript, 18 October 2004, pp. 81-82.

²⁴²⁷ TF1-334/AFRC Transcript, 15 June 2005, pp. 20 – 23.

²⁴²⁸ TF1-334/Transcript, 5 July 2006, pp. 28, lines 7 – 21.

²⁴²⁹ TF1-253/Transcript, 28 July 2004, pp. 28, lines 21 – 36.

²⁴³⁰ Johnson/Transcript, 18 October 2004, pp. 84, lines 1 – 9.

²⁴³¹ TF1-334/AFRC Transcript, 15 June 2005, pp. 34 – 35. The Defence submits that the Schlenker, Sri Lanka, and Shelenka School is the same the place.

²⁴³² Johnson/Transcript, 19 October 2004, pp. 79, lines 6 – 7.

²⁴³³ TF1-371/Transcript, 28 July 2006, pp. 86, line 5 – pp. 87, line 6.

²⁴³⁴ TF1-334/Transcript, 6 July 2006, pp. 63, lines 5 – 26.

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cordiality between the RUF and AFRC prior to this communication, that cordiality ceased at the time the West Side Boys was formed.²⁴³⁵

1211. That Bockarie ordered Bazy to become commander of the West Side Jungle begs belief. TF1-334's assertion isn't supported by George Johnson, either of the Prosecution radio operators TF1-360 or TF1-361, and invalidated by the testimony of DIS-163 and DIS-214, both of whom affirmatively stated that they didn't monitor any radio communications between Bockarie and Bazy and affirmatively stated that the West Side Boys were not under the command of the RUF.²⁴³⁶ Ganase Jaganathan also testified that the AFRC were answering to a different command structure than the RUF.²⁴³⁷

1212. At best, TF1-334's assertions²⁴³⁸ allow an inference that Bockarie communicated once with Bazy. Communication between commanders of different groups is not the same as involvement in or commission of crimes or indicative, without more, of control. There is no suggestion that after Bockarie purportedly ordered Bazy to become commander of the West Side Jungle that there were any further communications.

1213. George Johnson's testimony clearly exculpates Sesay of any liability for crimes in Manaarma. Moreover, there is no suggestion that Sesay contributed in any way to the

²⁴³⁵ TF1-334/Transcript, 6 July 2006, pp. 65, line 19 – pp. 73, line 2.

²⁴³⁶ TF1-163 didn't monitor any messages from Sam Bockarie to Bazy. Sam Bockarie had no communication with the AFRC at Okra Hills. TF1-163/Transcript, 14 January 2008, pp. 44, lines 11 – 17. TF1-214 didn't come across anything about the West Side Boys while monitoring the radio. However, everybody knew that the West Side Boys were formed by the AFRC. The West Side Boys were not reporting to anyone in the RUF and not under the command of the RUF. [REDACTED]

[REDACTED] The only time the West Side Boys sent a message was when they said Johnny Paul Koroma was under arrest by Sam Bockarie and that Koroma should be released; otherwise the RUF brothers wouldn't be released. [REDACTED]

²⁴³⁷ Ganase Jaganathan/Transcript, 20 June 2006, pp. 63, line 27 – pp. 64, line 17. Some rebels, especially AFRC, were so resistant to disarming that letters from Sankoh ordering them to abide were ineffective.

²⁴³⁸ TF1-334/Transcript, 6 July 2006, pp. 63, lines 5 – 26.

West Side Boys in their commission of crimes nor does the evidence suggest that Sesay had the requisite *mens rea* to be held accountable for these crimes.²⁴³⁹

E. Port Loko and Lunsar

1. Enslavement Defectively Pleaded

1214. Notwithstanding that the Prosecution conceded that there is insufficient evidence to sustain an enslavement conviction in Port Loko,²⁴⁴⁰ the allegation of enslavement in Port Loko remains on the Indictment. Enslavement in Lunsar also remains part of the Prosecution's case. The Indictment pleads enslavement "about the month of February 1999."²⁴⁴¹

1215. The only witnesses that marginally refer to enslavement in Port Loko and Lunsar are TF1-253 and TF1-255.

1216. The Trial Chamber previously concluded that TF1-253 was "captured *outside* Port Loko and ... was able to escape *before arriving* to Lunsar."²⁴⁴² TF1-253 was not enslaved in Lunsar or Port Loko. In addition, TF1-253 was purportedly enslaved in April 1999 or after,²⁴⁴³ significantly outside the Indictment period of "about the month of February 1999".²⁴⁴⁴ Because TF1-253 wasn't enslaved in Port Loko, Port Loko was defectively pleaded.

1217. Enslavement in Lunsar was also defectively pleaded. TF1-253 purported enslavement didn't occur in Lunsar and occurred outside the Indictment period. In addition, TF1-255's purported enslavement – he carried rice to Lunsar for Captain

²⁴³⁹ The evidence of Sesay's commitment to protect civilians in Bombali and Tonkolili during this period reveals a man who was a friend of the civilians and who regarded mistreatment of civilians as completely unacceptable. This is explored more fully in the Retreat chapter.

²⁴⁴⁰ *Prosecutor v. Sesay et al.*, SCSL-04-15-T, "Prosecution Answers to Questions from the Trial Chamber Regarding Evidence Relevant to Specific Locations Named in the Indictment," 17 October 2006.

²⁴⁴¹ Para.76, Corrected Amended Consolidated Indictment.

²⁴⁴² Rule 98 Decision/Transcript 25 October 2006, pp. 33, lines 24 – 26; emphasis added.

²⁴⁴³ TF1-253 first heard of attacks near his village in April 1999. TF1-253/Transcript 28 July 2004, pp. 6 –

7.

²⁴⁴⁴ Para.76, Corrected Amended Consolidated Indictment.

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Rittin in June 1999²⁴⁴⁵ – also falls significantly outside the Indictment period of “about the month of February 1999”.²⁴⁴⁶ ²⁴⁴⁷ No liability attaches for enslavement in Lunsar.

1218. To find that liability attaches to enslavement in Port Loko or Lunsar would cause an irreparable prejudice to Sesay who has not been put on notice that liability for such crimes would attach.²⁴⁴⁸ Furthermore, for the reasons referred to above – the Prosecution have failed to prove that Sesay is criminally responsible.

F. Sexual Violence and Physical Violence

1. Defective Pleadings

1219. No locations were pleaded with respect to Counts 6-9 and 10-11. For at least the reason that the Indictment wasn't pleaded with the requisite specificity, Sesay cannot be found liable for evidence of sexual violence or physical violence in Port Loko District.²⁴⁴⁹ If the evidence of sexual violence and evidence of physical violence are not dismissed for not being pleaded with particularity, the Prosecution have failed to prove that Sesay is criminally responsible for the reasons aforementioned above.

XV. Kono mining: count 13

A. The Prosecution's case is limited to Tombodu

1220. The Prosecution's case against Sesay with respect to forced mining in Kono District has been limited by the pleadings to Tombodu. The Indictment states that “[b]etween 14 February 1999 to January 2000, AFRC/RUF abducted hundreds of civilian men, women and children, and took them to ... locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wonedu, Tomendeh. At these locations,

²⁴⁴⁵ TF1-255/Transcript, 18 July 2006, pp. 97, line 7 – pp. 98, line 15.

²⁴⁴⁶ Para.76, Corrected Amended Consolidated Indictment.

²⁴⁴⁷ To be held accountable for crime, the evidence of crime must fall within or almost within the periods stipulated in the Indictment. *See, for example, Kunarac and Kovac*, Decision on the Form of the Indictment, TC, 4 November 1999; and *Decision of Preliminary Motions in Dosen and Kolundzija*, 10 February 2000, TC, cited by Jones and Powles at 8.2.21.

²⁴⁴⁸ This is argued fully in the Fair Trial section of the Law chapter above.

²⁴⁴⁹ *Ibid.*

the civilians were used as forced labour, including domestic labour and *as diamond miners in the Tombodu area.*²⁴⁵⁰ The Defence submits that alleged forced mining in other locations led through evidence ought to be dismissed for want of notice and consequential prejudice.

1221. It is submitted that the only location specifically pleaded with respect to forced mining is the “Tombodu area,” Forced mining as charged in Kono District is limited to Tombodu only.

1222. The Prosecution’s Pre-Trial Brief provides notice that Sesay is liable for the commission of forced mining in Kono District because he “was in charge of mining in Kono District;”²⁴⁵¹ he “instructed subordinate AFRC/RUF soldiers that whenever there was a loss of ‘manpower’ at the mines, more workers were to be forcibly brought in”;²⁴⁵² and “his subordinates were in regular communication with the AFRC/RUF leadership during the commission of these crimes.”²⁴⁵³ It is submitted that the Prosecution have failed to prove these allegations and Sesay is not criminally liable for enslavement in Kono between 14 February 1998 and January 2000, as alleged in Count 13 or enslavement in any location throughout the indictment period.

B. No Liability For Forced Mining in Tombodu

1223. There are two periods for which forced mining in Tombodu has been alleged in the evidence. The first is in connection with a Mining Unit based at Bombodu that mined in Tombodu in 1998. It is submitted that this mining ceased at some point before the capture of Koidu Town in December 1998.

1224. It is submitted that the second period of alleged forced mining in Tombodu relates to mining in Tombodu after it recommenced there in March/April or late 2000.

²⁴⁵⁰ Consolidated Indictment, Para. 71; emphasis added.

²⁴⁵¹ Prosecution Supplemental Pre-Trial Brief, Para. 201(c).

²⁴⁵² Prosecution Supplemental Pre-Trial Brief, Para. 201(e).

²⁴⁵³ Prosecution Supplemental Pre-Trial Brief, Para. 201(d).

1225. It is clear that the evidence of TF1-012, TF1-077, and TF1-304 relates to alleged forced mining in Tombodu in March/April or late 2000, significantly after the end of the Indictment period for enslavement in Kono District (January 2000).

1226. The Defence disputes that there was forced mining in Tombodu at this time. Notwithstanding, the Defence will not rehearse the dubious merits of this evidence. As submitted below after the arrival of Foday Sankoh in 1999 - there was a two-pile system operating throughout the Kono District. The Defence submits that from at least the time Kennedy arrived to Bombodu in 1998 any instances of coercion that may have existed prior to that time did not continue.

1227. The evidence provided by TF1-071, as relates to Tombodu in 2000 leaves little room for doubt. TF1-071 testified that there was mining in Tombodu in 2000-2001 under Officer Med.²⁴⁵⁴ There was no use of force. This is because, according to TF1-071, the mining in Tombodu started after the mining principles changed to a two-pile system. He places this change occurring in 2000.²⁴⁵⁵

1228. Conversely TF1-012 testified that the forced mining in Tombodu started in November 2000.²⁴⁵⁶ TF1-077 testified that forced mining in Tombodu began under Officer Med.²⁴⁵⁷ This was in the dry season before disarmament in Kono.²⁴⁵⁸ As TF1-071 placed mining under Officer Med in Tombodu in 2000-2001,²⁴⁵⁹ and Kono was disarmed in 2000, TF1-077 clearly placed the alleged force outside the Indictment period.

1229. The same holds true for TF1-304. Although there was initially some confusion in TF1-304's testimony about when mining started in Tombodu, TF1-304 clearly testified

²⁴⁵⁴ TF1-071/Transcript, 25 January 2005, pp. 79, lines 3 – 12. Office Med was mining for Sesay in 2000-2001.

²⁴⁵⁵ TF1-071/Transcript, 25 January 2005, pp. 70, line 27- pp. 72, line 14.

²⁴⁵⁶ TF1-012/Transcript, 4 February 2005, pp. 46, lines 12 – 20.

²⁴⁵⁷ TF1-077/Transcript, 20 July 2004, pp. 78, lines 15 – 21.

²⁴⁵⁸ TF1-077/Transcript, 20 July 2004, pp. 81, lines 11 – 15.

²⁴⁵⁹ TF1-071/Transcript, 25 January 2005, pp. 79, lines 3 – 12. Office Med was mining for Sesay in 2000-2001.

that the mining in Tombodu started in the dry season (March or April) of 2000,²⁴⁶⁰ a few days after Officer Med arrived.²⁴⁶¹ There was no mining in Tombodu in 1999.²⁴⁶²

1230. In addition, TF1-304 testified that things were becoming more peaceful and civilians were returning to Kono in 2000.²⁴⁶³ Moreover, TF1-304 testified that the G5 present in Tombodu, Sylvester Kieh, would have known about the forced mining in Tombodu.²⁴⁶⁴ There is no suggestion that Kieh did. [REDACTED]

1231. It is submitted thus that this evidence is unreliable and irrelevant.

1. Lack of Cross-Examination of Defence Witnesses

1232. The Prosecution case with respect to allegations of forced mining in Tombodu is unclear. The Defence witnesses were barely cross-examined on these allegations. Notably, Sesay himself – who was purported to be presiding over the forced mining in Tombodu²⁴⁶⁵ and supposed to be “in charge of mining in Kono District”²⁴⁶⁶ – was not cross-examined on these allegations. The lack of challenge deprived the Accused of an opportunity to further expose the weakness of the Prosecution case.

1233. Nonetheless this was further exposed through DIS-063 who testified that he and his workers (DIS-063 is a civilian supporter) went to Tombodu in 2000.²⁴⁶⁷ There was nothing that suggested to DIS-063 that Officer Med had 200-300 miners working for him. The relationship between the RUF and the civilians at this mining site was good: they were cracking jokes; sharing cigarettes together; and eating together.²⁴⁶⁸ This was not challenged during cross-examination. This independent witness had no reason to

²⁴⁶⁰ TF1-304/Transcript, 13 January 2005, pp. 94, line 13 – pp. 96, line 3; and 14 January 2005, pp. 65, lines 9 – 21.

²⁴⁶¹ TF1-304/Transcript, 14 January 2005, pp. 56, lines 26 – 28.

²⁴⁶² TF1-304/Transcript, 13 January 2005, pp. 94, lines 28 – pp. 95, line 7.

²⁴⁶³ TF1-304/Transcript 14 January 2005, pp. 74, lines 20 – 27.

²⁴⁶⁴ TF1-304/Transcript, 14 January 2005, pp. 13, line 12 – pp. 14, line 9.

²⁴⁶⁵ TF1-071/Transcript, 25 January 2005, pp. 79, lines 3 – 12. Office Med was mining for Sesay in 2000-2001.

²⁴⁶⁶ Prosecution Supplemental Pre-Trial Brief, Para. 201(c).

²⁴⁶⁷ DIS-063/Transcript, 28 February 2008, pp. 37, line 10 – pp. 39, line 11.

²⁴⁶⁸ DIS-063/Transcript, 28 February 2008, pp. 39, line 12 – pp. 42, line 8.

fabricate this evidence. He was not challenged because the Prosecution recognised the veracity of his evidence.

1234. DIS-065 (another civilian supporter) testified that he and his workers went to Tombodu in 1999. Again, no cross-examination.²⁴⁶⁹

2. Alleged Forced Mining in Tombodu 1998

a) Prosecution's Failure to Establish Their Case

1235. The Prosecution allege that a Mining Unit of 60 miners was established in Bombodu and that those miners were forced to mine in various locations around Bombodu.

1236. Six Prosecution witnesses testified to mining at this time. The Prosecution's case is limited to the six statements below. Note that no names of the people being forced are given, no specific incidents of force are attested to; and two of the six witnesses do not suggest force (TF1-078 and TF1-361). This is the height of the Prosecution's case.

(1) TF1-041:

1237. The [50] civilians [mining at Pappani Ground], just like I said today, the civilians, they were not pleased. They were not treated well in the place, because if you had a weapon and asked somebody to go and work for you, you will not do it willingly, and the individual just worked because of the weapon that you had.²⁴⁷⁰

(2) TF1-071:

1238. When I say forced mining in Kono District, just it take from a camp like Tuiyor, Bombodu, Tombodu. Those were the restricted and forcely [sic] mining areas in 1998;²⁴⁷¹

²⁴⁶⁹ DIS-065/Transcript, 26 February 2008, pp. 79, lines 3 – 5.

²⁴⁷⁰ TF1-041/Transcript, 10 July 2006, pp. 52, lines 24 – 28.

²⁴⁷¹ TF1-071/Transcript, 21 January 2005, pp. 117, lines 27 – 29.

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1239. Civilians during 1998 and up to 1999, there was no willingness work at all. That was forced labour. [By] [f]orced labour I mean is that you are not working at your own time and you do not know who you are going to work for and what you going to work for you do not know, except by command. You have no specific time of leaving a job;²⁴⁷²

1240. Actually, in 1998, the miners were only treated or only working for food, work for food. They were not paid. In some cases, they should feed themselves, self-feeding, because food that was given to them was not enough. Self-medication as well. When they got sick at site, they treat themselves;²⁴⁷³ and Some [miners] were flogged [if they didn't agree to work].²⁴⁷⁴

(3) TF1-078:

1241. I can remember vividly [a] Captain Kennedy. I mean, Colonel Kennedy²⁴⁷⁵ [who was at] the mining camp²⁴⁷⁶ [b]etween Bombodu and Tuiyor, off the Guinea highway.²⁴⁷⁷

1242. PRESIDING JUDGE: I want to get a certain point clear. Is the witness saying that he visited these camps in these areas and that he didn't see any mining -- any bush mining going on?

1243. THE WITNESS: Yes, My Lord.²⁴⁷⁸

(4) TF1-361:

1244. Jagbwema Fiama, that was the road where Superman Ground, Konowa Ground are. So Jagbwema was at the back. It was not left open there, so people were sent there to take care of the town so that an enemy could not use the back to attack, so they were

²⁴⁷² TF1-071/Transcript, 21 January 2005, pp. 117, lines 1 – 8.

²⁴⁷³ TF1-071/Transcript, 21 January 2005, pp. 120, lines 3 – 8.

²⁴⁷⁴ TF1-071/Transcript, 21 January 2005, pp. 121, line 5 – 6.

²⁴⁷⁵ TF1-078/Transcript., 25 October 2004, pp. 37, lines 2 – 3.

²⁴⁷⁶ TF1-078/Transcript., 25 October 2004, pp. 36, line 6

²⁴⁷⁷ TF1-078/Transcript., 25 October 2004, pp. 36, lines 26 – 27.

²⁴⁷⁸ TF1-078/Transcript, 25 October 2004, pp. 37, line 26 – pp. 38, line 1.

in the camp, which was the combat camp, so there was no other person behind them. They were responsible for mining that area.²⁴⁷⁹

(5) TF1-366:

1245. They [miners at Superman Ground, PC Ground, Yardu Road and Tombodu] were roughly treated,²⁴⁸⁰ and They were working and they were not happy. And we were forcing them to do the work for us. We captured them – we captured them and brought them to the site for mining forcefully. All we were interested in was the diamond. That was the order given to us by Morris Kallon.²⁴⁸¹

(6) TF1-367:

1246. Because wherever you are, you are a Mende, if you are not doing it by your free will, it's by force. It's force. It's forceful.²⁴⁸²

(7) Conclusion: extent of the Prosecution case

1247. The above *is* the Prosecution's case for forced mining in 1998. It is weak and does not discharge the heavy burden of proof. This is evident from the Prosecution's lack of cross-examination of Defence witnesses that could have testified to any knowledge about mining – forced or otherwise – along the Guinea Highway.²⁴⁸³

b) Purported Force Prior to Kennedy's Arrival

1248. Notwithstanding the Prosecution's failure to establish its case, the Defence does not preclude the possibility that some of the miners in the Mining Unit were subjected to some force. The Defence does not know for sure. The Accused was not present and had no information. However, the Defence submits that should there have been any force, it would have been prior to the arrival of Kennedy to Bombodu and his

²⁴⁷⁹ TF1-361/Transcript, 12 July 2005, pp. 17, line 25 – pp. 18, line 1.

²⁴⁸⁰ TF1-366/Transcript, 10 November 2005, pp. 13, line 7.

²⁴⁸¹ TF1-366/Transcript, 10 November 2005, pp. 13, lines 9 – 13.

²⁴⁸² TF1-367/Transcript, 22 June 2006, pp. 29, lines 22 – 24.

²⁴⁸³ Although DIS-085, DIS-127, DIS-163, DIS-188, DIS-214, and DIS-281 testified that they were present at the Guinea Highway at one time or another, they were not cross-examined on any aspect of mining. This is notwithstanding Defence witnesses testifying to their knowledge of mining at this time.

appointment as Mining Unit Commander. The force would have been limited to Tombodu, Bombodu, and Yellow Mosque.²⁴⁸⁴ It may not have amounted to Enslavement for the reasons outlined below.

1249. Both TF1-367 and DIS-307 testified that Kennedy went to Bombodu to replace Mohamed Kamara.²⁴⁸⁵ ²⁴⁸⁶ DIS-307 stated that the reason for Kennedy being posted as Mining Commander was because Mohamed harassed civilians,²⁴⁸⁷ TF1-367's declined to confirm the reason. His failure to confirm is evidence of his mala fides towards the accused. If he had stated the reason this would have undermined his ability to implicate the First Accused in forced mining in Koakoyima after Koidu was captured by the RUF in December 1998.

1250. However, during cross-examination, TF1-367 further revealed some of the truth and the rest can be reasonably inferred. TF1-367 claimed that that after Kennedy's arrival as Mining Commander not all of the 60 miners in the Mining Unit were forced. TF1-367 testified that "there were those who were forced to work, and there others who came there because they were unable to get their own survival, except they worked for somebody." Those that worked voluntarily did so in order to receive food from the RUF.²⁴⁸⁸ It is submitted that this is not reasonable. The fact that there *were* sufficient incentives to encourage civilians to want to work with the Unit for their "survival" – and this must logically have been the case in Kono at that time – then it is not logical that others would only work if forced. The evidence shows that there were hundreds, if

²⁴⁸⁴ DIS-307/Transcript, 19 February 2008, pp. 78, lines 17 – 22. There was no mining at Superman Ground or PC ground (DIS-307/Transcript, 19 February 2008, pp. 78, lines 17 – 22) as suggested by TF1-366.

²⁴⁸⁵ TF1-367/Transcript, 22 June 2006, pp. 28, line 9 – pp. 32, line 2.

²⁴⁸⁶ DIS-307/Transcript, 19 February 2008, pp. 77, lines 7 – 12. A complaint was made to Sam Bockarie about Mohamed's treatment of the miners. The complaint was that Mohamed forced the miners to work until 6pm instead of finishing their day at 4pm (DIS-307/Transcript, 19 February 2008, pp. 72, lines 16 – 29). The Defence submits that, while plausible, it seems somewhat unreasonable that a mining commander would be replaced after only one complaint of mistreatment (DIS-307/Transcript, 21 February 2008, pp. 21, lines 4 – 14).

²⁴⁸⁷ DIS-307/Transcript, 19 February 2008, pp. 77, lines 7 – 12. A complaint was made to Sam Bockarie about Mohamed's treatment of the miners. The complaint was that Mohamed forced the miners to work until 6pm instead of finishing their day at 4pm (DIS-307/Transcript, 19 February 2008, pp. 72, lines 16 – 29). The Defence submits that, while plausible, it seems somewhat unreasonable that a mining commander would be replaced after only one complaint of mistreatment (DIS-307/Transcript, 21 February 2008, pp. 21, lines 4 – 14).

²⁴⁸⁸ TF1-367/Transcript, 23 June 2006, pp. 46 – 47.

not thousands, of civilians living in the bush at that time. Finding food was a significant problem. The notion that the RUF could not maintain a Unit of 60 miners with “incentives” but instead had to force some of them to work is ludicrous. No reasons were proffered for this apparent contradiction.

1251. That Kennedy was sent to replace Mohamed because Mohamed was harassing civilians is in line with TF1-371’s testimony regarding the policy of removing mining commanders that harassed civilians. It also undermines the mythology which the Prosecution propagate concerning the existence of a RUF policy of mass forced mining. As does the fact - that even if the evidence was to be accepted - the Prosecution’s case in 1998, after the arrival of Kennedy, is limited to less than 60 civilians. This is a long way from any mass policy and even further from the notion that “hundreds of civilian men, women and children” were being abducted and enslaved as alleged.²⁴⁸⁹

c) Purported Force Stopped

1252. The Prosecution have not proven that Sesay knew or had reason to know about any force during 1998. [REDACTED]

[REDACTED]. Moreover all the evidence points to all Unit Commander, including the Overall Mining Commander based in Bombodu, reporting directly to Sam Bockarie. This was a well laid down procedure which had been in place for time immemorial. Please see Kono crime base section of the brief. The evidence also definitively, with the exception of TF1-366²⁴⁹⁰ and TF1-367 who attempt to implicate Sesay, points to all diamonds found by the Mining Unit going directly to Sam Bockarie. The Mining Unit was directly under Bockarie’s control and the diamonds were kept in

²⁴⁸⁹ Consolidated Indictment, Para. 71; emphasis added.

²⁴⁹⁰ TF1-366’s evidence in connection with mining should be disregarded. In contrast the body of evidence that there was no forced mining in 2000 – from both Prosecution and Defence witnesses – TF1-366 states that there was forced mining in Mortema, Bandafaye, Simbakoro, Gbeko, Bumpe, Gieya, Yengema, Number 11, Kaisambo, Kimberlite, 27 and Yellow Mosque in 2000 (TF1-366/Transcript, 10 November 2005, pp. 4, line 11 – pp. 6, line 11). TF1-366’s claim is undermined by TF1-071 who states that there was no forced mining in 2000 (TF1-071/Transcript, 25 January 2005, pp. 70, line 27- pp. 72, line 14). In addition, DIS-063, DIS-065, DIS-066, DIS-091, and DIS-307 testified to voluntary mining in a variety of locations throughout Kono District in 2000 (including Mortema [Motema], Bandafaye [Bandafi], Simbakoro, Gbeko, Bumpe, Gieya, Yengema, Kaisambo).

his house. It cannot be inferred that Bockarie would have told Sesay about a handful of miners, however brutal the conditions.

1253. The evidence is clear that Kennedy arrived at the Guinea Highway to prevent any forced. This was prior to Sesay arriving to the Guinea Highway in December 1998 (in anticipation of the attack on Koidu Town).²⁴⁹¹

d) The Prosecution Failed To Establish That Sesay Knew of Any Purported Force

1254. As is the case with all other happenings in Kono District, there is no reliable evidence that Sesay, following his retreat from Kono with JPK, was privy to orders, instructions, or reports concerning diamond mining in Kono District. This is dealt with in the Kono section of the brief. The Prosecution offers no explanation, beyond the fact that Sesay was the de jure BFC, to explain the apparent need, not only to involve Sesay in the mining, but to make him the linchpin of the whole operation. Bockarie would not have allowed for anyone to become involved in the mining operation unless he absolutely trusted them; especially in 1998 when the RUF were being driven to the borders in the Kailahun District and the Guinea Highway. It is laughable to suggest that Sesay would have been the man who was be put in charge of the whole operation. This was the man who could not be trusted to go to Monrovia only a few months before without losing his valuable cargo. And his reward? To be put in charge of all the mining operations. It is nonsense.

1255. TF1-366 was the only other Prosecution witness who testified about who Kennedy reported.²⁴⁹² He testified that Kennedy reported to Sesay, Sam Bockarie, and

²⁴⁹¹ April 1998. TF1-041/Transcript, 10 July 2006, pp. 76, lines 16 – 20. TF1-041's account doesn't seem to be particularly credible as the camps weren't established until the RUF was pushed out of Koidu which was after April. In addition, TF1-041 has Sheku Coomber as a mining commander. This is entirely incorrect. Sheku Coomber was an IDU in Kailahun District and not involved in mining. For the proposition that Sheku Coomber was an IDU, see DIS-149/Transcript, 5 November 2007, pp. 92, line 7 – pp. 93, line 13; DIS-188/Transcript, 1 November 2007, pp. 93, line 9 – pp. 101, line 4; and DIS-281/Transcript, 12 November 2007, pp. 30, line 27 – pp. 31, line 25; November 1998. TF1-367/Transcript, pp. 25, lines 4 – 9; and pp. 26, line 26 – pp. 27, line 25; June 1998. Sesay/Transcript, 24 May 2007, pp. 32, lines 14 -18; DIS-307/Transcript, 19 February 2008, pp. 77, line 13 – pp. 78, line 12.

Morris Kallon.²⁴⁹³ Although, according to TF1-366, Kennedy was reporting to Sesay, Sam Bockarie, and Morris Kallon, TF1-366 also testified that the diamonds would be given to Pelleto, then Kallon, then Sesay in Kailahun District, then Sam Bockarie in Buedu.²⁴⁹⁴ This is obviously plain silly. TF1-366 went on to contradict this evidence, testifying subsequently, that Pelleto had nothing to do with diamonds until 2000.²⁴⁹⁵

1256. Not only does TF1-366 contradict himself, but his evidence is also contradicted by TF1-071 who stated that the only time he saw diamonds being given to Sesay was in 2000 and 2001.²⁴⁹⁶ Given that TF1-071's job was to look after civilians is a curious anomaly. A glimmer of truth however emerges from TF1-367's testimony. TF1-367 testified if there was an instruction from Sam Bockarie that he needed a diamond quickly, Kennedy would give the diamond to Alpha Turay or SO Komba to deliver the diamond to Bockarie. TF1-367 is aware of this happening twice.²⁴⁹⁷ The Defence submits that this was the *normal* procedure. This was confirmed by DIS-307 who stated that diamonds would be taken to Sam Bockarie²⁴⁹⁸ and no one else besides Sam Bockarie in 1998.²⁴⁹⁹ Indeed, if a valuable diamond was found this would be communicated to Sam Bockarie over the radio²⁵⁰⁰ from the Brigade.²⁵⁰¹ The diamonds would be delivered to Sam Bockarie by Mohamed, Michael Coomber, or Alpha Turay.²⁵⁰²

1257. TF1-036, [REDACTED], left the matter in no doubt when he confirmed that the Koidu mining commanders came directly to Bockarie,²⁵⁰³ who trusting so little kept the diamonds secured in his own house.²⁵⁰⁴

²⁴⁹² TF1-367 only indicated that Kennedy was sent to Bombodu on instruction of Sam Bockarie. TF1-367/Transcript, 22 June 2006, pp. 26 – 27.

²⁴⁹³ TF1-366/Transcript, 10 November 2005, pp. 10, lines 20 – 27.

²⁴⁹⁴ TF1-366/Transcript, 10 November 2005, pp. 11, lines 1 – 6.

²⁴⁹⁵ TF1-366/Transcript, 15 November 2005, pp. 33, lines 19 – 29.

²⁴⁹⁶ TF1-071/Transcript, 25 January 2005, pp. 79, lines 17 – 25.

²⁴⁹⁷ TF1-367/Transcript, 23 June 2006, pp. 97, lines 11 – 22.

²⁴⁹⁸ DIS-307/Transcript, 19 February 2008, pp. 22, line 20 – pp. 23, line 4.

²⁴⁹⁹ DIS-307/Transcript, 19 February 2008, pp. 76, lines 4 – 7.

²⁵⁰⁰ DIS-307/Transcript, 19 February 2008, pp. 74, line 26 – pp. 75, line 15.

²⁵⁰¹ DIS-307/Transcript, 19 February 2008, pp. 73, lines 12 – 25.

²⁵⁰² DIS-307/Transcript, 19 February 2008, pp. 76, lines 4 – 7.

²⁵⁰³ TF1-036/Transcript, 28 July 2005, pp. 68 – 69.

Additionally TF1-036 stated that he had no idea where Sesay had been based during the period after Sesay's ill-fated trip to Monrovia. As far as the witness was concerned Sesay was at "front line" and not in Beudu as he had been before.²⁵⁰⁵ [REDACTED]

1258. Until Sesay took over mining operations in 2000 he did not have anything to do with diamond mining operations. Indeed, when Kennedy was investigated for having lost diamonds in April 1999, this was reported to the Brigade Commander, Peter Vandri.²⁵⁰⁶ The complaints about Mohamed harassing miners went to Sam Bockarie.²⁵⁰⁷

1259. On direct examination TF1-071 testified that Kennedy reported directly to Sesay as the Battle Field Commander from 1998-2000. Sesay then reported to Sam Bockarie as the Chief of Defence Staff.²⁵⁰⁸ On cross-examination however, TF1-071 conceded that Sam Bockarie was ordering and directing the diamond mining from Kailahun District in 1999.²⁵⁰⁹ There is no reason to believe that Bockarie was not also ordering and directing the mining operations in 1998. In fact, this is clearly the case. The Defence witnesses confirm that Kennedy was not taking order from Sesay.²⁵¹⁰ The evidence is resounding clear that Sesay was not involved in the mining operations at all in 1998.

C. Failure to Plead Locations Other Than Tombodu

1260. As previously indicated, the Prosecution failed to plead any location other than Tombodu for enslavement in connection with forced mining. Therefore, Sesay cannot

²⁵⁰⁴ TF1-036/Transcript, 1 August 2005, pp. 8 – 10.

²⁵⁰⁵ TF1-041/Transcript, 11 July 2006, pp. 4 – 10.

²⁵⁰⁶ See, Exhibit 107. This is notwithstanding the Prosecution's case that Sesay was in Kono District for the entirety of 1999 and 2000. The Defence notes that this case clearly doesn't make sense as the Prosecution is attempting to hold Sesay liable for direct involvement in the 6 January Freetown invasion or in assisting AFRC forces retreat from Freetown.

²⁵⁰⁷ DIS-307/Transcript, 19 February 2008, pp. 77, lines 7 – 12.

²⁵⁰⁸ TF1-071/Transcript, 21 January 2005, pp. 102, line 27 – pp. 103, line 12.

²⁵⁰⁹ TF1-071/Transcript, 25 January 2005, pp. 98, lines 12 – 25.

²⁵¹⁰ DIS-307/Transcript, 22 February 2008, pp. 3, line 23 – pp. 4, line 1.

be held liable for the evidence of crime in the various other locations in Kono District elicited by the Prosecution.

1261. The Defence submits the following:

1. Koakoyima

a) Preliminary Observations

1262. The Prosecution's case is that, in December 1998 and early 1999; hundreds of civilians were forcibly camped in Koakoyima and taken to mining sites to mine under threat of death or physical beaten if they refused to mine.²⁵¹¹ Characteristically not a single victim was named or called to give evidence.

1263. The Prosecution's case is that in 1999, hundreds if not thousands of civilians were forcibly rounded up and trucked into Kono District to forcibly mine.²⁵¹² Again, not a single victim was named nor did any witness testify that they were knew such a victim.

b) Late Allegations

1264. The Prosecution case for forced mining outside of Tombodu hinges on one witness. This is TF1-367. TF1-367 was the 73rd Prosecution witness out of 84 to testify and the fourth-to-last Prosecution insider. This is not proper notice. Forced mining in any location other than Tombodu (in particular, Koakoyima and its environs) as led by TF1-367 should be dismissed.

c) Mining Unit Moves to Koakoyima

1265. The Prosecution's allegations (TF1-367) about forced mining in the context of a flourishing Koakoyima with the slow but sure return of civilians (see **Error! Reference source not found.** below), can not be true. That a camp of 200-300²⁵¹³ forced miners existed in which miners lived in booths²⁵¹⁴ is unrealistic in this context.²⁵¹⁵

²⁵¹¹ TF1-367/Transcript, 22 June 2006, pp. 37, lines 22 – 24.

²⁵¹² TF1-367/Transcript, 22 June 2006, pp. 52, line 19 – pp. 53, line 21.

²⁵¹³ TF1-367/Transcript, 22 June 2006, pp. 37, lines 22 – 24.

²⁵¹⁴ TF1-367/Transcript, 23 June 2006, pp. 50, lines 26 – 29. TF1-367 stated that the miners would “stay there with their families [in the booths]. [REDACTED].”

1266. TF1-367's claims are not supported – even by TF1-367's evidence. TF1-367 impeached his own allegation that the miners lived in booths (and not the abandoned houses left in Koakoyima):

Q. These civilians had lost their homes, had they, Mr Witness?

A. Some of them, their villages had been burnt, there were no houses there. In fact, in Koidu Town there were houses but they were burnt. But for that camp, that was where civilians were when they were under ECOMOG. So when we dislodged ECOMOG from the town, we too occupied that place and *we were in those houses*.²⁵¹⁶

1267. The evidence suffers from the same internally inconsistencies as that discussed above. TF1-367 revealed that some of the miners were not forced: Some of the miners *were happy to mine*, some were forced.²⁵¹⁷ The witness stated the following. Q. How were the civilians treated? A. Because *some of them were not willing to come to us*, so they were captured forcefully and brought.²⁵¹⁸ The notion that the RUF [REDACTED] could not obtain a band of willing miners in the context of an impoverished Koidu simply does not add up. Food was at a premium and would have enticed many hundreds of willing civilians, as TF1-367's evidence obliquely confirms.

1268. After Koidu was captured, Kennedy ordered that the Mining Unit move to Koakoyima.²⁵¹⁹ Families moved with the mining unit and took up residence in Koakoyima.²⁵²⁰ Miners lived in abandoned houses.^{2521 2522} There were no booths to put up.²⁵²³ An additional 70 miners from Kailahun District voluntarily joined the Mining Unit in Koakoyima about a month after Koidu was captured.²⁵²⁴ These miners came to

²⁵¹⁵ DIS-091/Transcript, 10 March 2008, pp. 64, line 20 – pp. 65, line 1.

²⁵¹⁶ TF1-367/Transcript, 23 June 2006, pp. 51, lines 15 – 20; emphasis added.

²⁵¹⁷ TF1-367/Transcript, 23 June 2006, 72, lines 9-11; emphasis added.

²⁵¹⁸ TF1-367/Transcript, 22 June 2006, pp. 37, lines 25 – 29; emphasis added.

²⁵¹⁹ DIS-307/Transcript, 19 February 2008, pp. 78, line 23 – pp. 79, line 6.

²⁵²⁰ DIS-307/Transcript, 19 February 2008, pp. 79, lines 7 – 15.

²⁵²¹ DIS-307/Transcript, 19 February 2008, pp. 79, lines 16 – 25.

²⁵²² DIS-091/Transcript, 10 March 2008, pp. 39, line 25 – pp. 40, line 23.

²⁵²³ DIS-307/Transcript, 21 February 2008, pp. 16, lines 9 – 26.

²⁵²⁴ DIS-091/Transcript, 10 March 2008, pp. 35, line 25 – pp. 38, line 17.

Koakoyima with their families.²⁵²⁵ By the time this additional group of miners arrived, there were already civilians living in the township of Koakoyima.²⁵²⁶

1269. DIS-089, a community elder to whom civilians would have made complaints, heard of the Mining Unit in early 1999.²⁵²⁷ He did not, however, receive complaints about Kennedy²⁵²⁸ or hear that the RUF were capturing civilians in Kaokoyima or other populated areas of Koidu Town.²⁵²⁹ The only complaints he did receive in connection with mining were that that miners were mining too close to the road.²⁵³⁰ DIS-089 did not receive complaints about forced mining in 1999 and is not aware of civilians in Kaokoyima. being forced to mine in 1999.²⁵³¹ It is difficult to see why a prominent man – still active in Koidu – would come and give false testimony for Sesay, the man who brutalised his own people. The Prosecution’s limited cross examination appeared to confirm this apparent anomaly.

1270. The Prosecution’s case (as put to DIS-065) is that there was a camp where civilian miners would be kept throughout 1999-2000.²⁵³² In response to being asked about this camp in late 1999 when DIS-065 arrived to Koakoyima, DIS-065 stated quite simply “It did not exist”.²⁵³³ There was no camp from which enslaved civilians were escorted to mining locations.²⁵³⁴ And the paucity of civilian testimony (and reliable insider testimony) would appear to confirm the non-existence of this mythological camp.

1271. TF1-367 evidence also confirms the falsity of the various allegations which suggest Sesay was responsible for forcing people hundreds of people from Makeni and its environs to Koidu. This does not dovetail with the evidence given by TF1-367. In

²⁵²⁵ DIS-091/Transcript, 10 March 2008, pp. 35, line 25 – pp. 38, line 17.

²⁵²⁶ DIS-091/Transcript, 10 March 2008, pp. 38, line 23 – pp. 39, line 5.

²⁵²⁷ DIS-089/Transcript, 29 February 2008, pp. 55, lines 7 – 10.

²⁵²⁸ DIS-089/Transcript, 29 February 2008, pp. 56, lines 9 – 15.

²⁵²⁹ DIS-089/Transcript, 29 February 2008, pp. 62, lines 1 – 7.

²⁵³⁰ DIS-089/Transcript, 29 February 2008, pp. 58, lines 16 – 20. Mining too close to the road would have destroyed the road; the miners were warned to mine 25ft away from the road.

²⁵³¹ DIS-089/Transcript, 29 February 2008, pp. 58, lines 9 – 17.

²⁵³² DIS-065/Transcript, 26 February 2008, pp. 99, lines 2 – 9.

²⁵³³ DIS-065/Transcript, 26 February 2008, pp. 99, lines 2 – 9.

²⁵³⁴ DIS-065/Transcript, 26 February 2008, pp. 98, line 18 – pp. 99, line 1.

contrast to the Prosecution's theory of enslavement, people could apply to join the Mining Unit. Hindolo Koroma, as a G5 in Makeni, had the responsibility to send the people to Kono that wanted to go to Kono.²⁵³⁵ No one was forced. In contrast to the Prosecution's allegations,²⁵³⁶

1272. To encourage the civilians in Koakoyima (including the miners), there was a dance troop: "people would dance, everybody [mining commander, civilian miners etc] had to feel good."²⁵³⁷

d) Koakoyima In Context

(1) No Work Fridays-Sundays

1273. The Prosecution's evidence as it pertains to Koakoyima in early 1999 simply does not stand up. The Prosecution contends that 200-300 miners were forced to stay in a camp²⁵³⁸ to be taken to the mining sites each morning to mine for the RUF without pay.²⁵³⁹

1274. Immediate discrepancies appear. TF1-367 testified that the miners that were doing the mining were not fed and "you had to capture them by force. When they finished the work on that day, you released them, and the other day you had to capture someone else to work for you. That is how it was."²⁵⁴⁰ This doesn't make any sense. Why, if the miners were detained in a camp would there be a need to forcibly capture miners each day to mine?

1275. If this indeed were the case, why, when TF1-078 came to Koidu after the RUF had captured Koidu, did he not hear any civilians complain about mining.²⁵⁴¹ Surely

²⁵³⁵ DIS-188/Transcript, 30 October 2007, pp. 30, line 29 – pp. 35, line 20.

²⁵³⁶ *E.g.*, TF1-367/Transcript, 22 June 2006, pp. 52, line 19 – pp. 53, line 21.

²⁵³⁷ DIS-091/Transcript, 10 March 2008, pp. 51, line 16 – pp. 52, line 3. Civilians were not escorted from a camp in Koakoyima to Yengema.

²⁵³⁸ TF1-367/Transcript, 22 June 2006, pp. 37, lines 22 – 24.

²⁵³⁹ Prosecution Supplemental Pre-Trial Brief, Para. 200(d).

²⁵⁴⁰ TF1-367/Transcript, 22 June 2006, pp. 52, lines 1 -8.

²⁵⁴¹ TF1-078/Transcript, 25 October 2005, pp. 46, line 29 – pp. 48, line 25.

those that had been captured, forced to mine, and then released would have complained. Or better still have left Koidu as fast as they could.

1276. In the context of a forced labour system – the Mining Unit – that the Prosecution contends deprived persons of their liberty weekends were vacation time. TF1-367 testified that the *miners in the Mining Unit did not work on Fridays, Saturdays, or Sundays.*²⁵⁴² “During weekends they didn't do anything. All they did was to go to the surrounding villages to find food for themselves or wherever they wanted to go. But when it was time to work they would all come back.”²⁵⁴³ So much for the recapturing every morning and so much for the notion of Sesay exercising powers of ownership equivalent to purchasing, selling, lending or bartering.²⁵⁴⁴ TF1-367 testified that the miners were not being paid, but they received food and medicine although the food was not sufficient.²⁵⁴⁵ None of the diamonds, however, went to the miners. Clearly the incentives were enough to make this useful work for the civilians..

(2) *Koakoyima Flourishes*

1277. Within a week of ECOMOG having been driven out, civilians were coming into Koidu Town every day.²⁵⁴⁶ People were told the war had ended.²⁵⁴⁷ People were coming in from the different directions to Koakoyima including the direction of Makeni.²⁵⁴⁸

1278. The G5, Sylvester Kieh,²⁵⁴⁹ and Pa Moriba asked that all the civilians move from the bush to Koidu Town.²⁵⁵⁰ The G5s held meetings, spoke to the people and advised them.²⁵⁵¹ These G5s were available for civilians to report any problems. The G5s also

²⁵⁴² TF1-367/Transcript, 23 June 2006, pp. 49, line 27 – pp. 50, line 8.

²⁵⁴³ TF1-367/Transcript, 23 June 2006, pp. 50, lines 10 – 13.

²⁵⁴⁴ Kunarac Appeal Para. 116 – 119.

²⁵⁴⁵ TF1-367/Transcript, 23 June 2006, pp. 50, lines 14 – 22.

²⁵⁴⁶ DIS-089/Transcript, 29 February 2008, pp. 49, line 16 – pp. 50, line 18.

²⁵⁴⁷ DIS-089/Transcript, 29 February 2008, pp. 51, lines 9 – 14.

²⁵⁴⁸ DIS-089/Transcript, 29 February 2008, pp. 50, line 27 – pp. 51, line 8.

²⁵⁴⁹ The G5 in Kono, Sylvester Kieh, “had love [for the civilians].” DIS-188/Transcript, 30 October 2007, pp. 35, line 22 – pp. 37, line 4.

²⁵⁵⁰ DIS-089/Transcript, 29 February 2008, pp. 45, line 28 – pp. 47, line 7.

²⁵⁵¹ DIS-089/Transcript, 29 February 2008, pp. 64, line 27 – pp. 65, line 2.

went to the Mining Unit to see if the miners had any problems.²⁵⁵² The G5s also gave people food.²⁵⁵³ Military Police were also present in Koidu Town.²⁵⁵⁴ There were no restrictions on civilians being able to leave Kaokoyima or move within Kaokoyima.²⁵⁵⁵

1279. Within several weeks, Koakoyima was very populated.²⁵⁵⁶ ²⁵⁵⁷ Traders began to sell their warrings and food stuffs.²⁵⁵⁸ Initially, the trading was on a barter system²⁵⁵⁹ because there was no money.²⁵⁶⁰ Civilians were coming into Kono District on a daily basis.²⁵⁶¹

1280. After about two months, traders came from Maburaka and Masingbi²⁵⁶² ²⁵⁶³ and money was used. After the initial two months, a market was established in Koakoyima.²⁵⁶⁴ There was no restriction on who could go to the market.²⁵⁶⁵ Generally speaking, “life was fine because they [the civilians] were doing their business. [Nobody was] being harassed by anybody. You see, they do their business freely.”²⁵⁶⁶ Koakoyima became the centre of business.²⁵⁶⁷

1281. People began to enjoy themselves: they would sing and dance, go to Poyo bars and other bars.²⁵⁶⁸ They also picked up farming activities.²⁵⁶⁹ In April 1999, Peter Vandi gave seed rice to civilians to help them start new farms.²⁵⁷⁰

²⁵⁵² DIS-091/Transcript, 10 March 2008, pp. 51, lines 2 – 15.

²⁵⁵³ DIS-089/Transcript, 29 February 2008, pp. 51, line 18 – pp. 52, line 7.

²⁵⁵⁴ DIS-089/Transcript, 29 February 2008, pp. 65, lines 6 – 7.

²⁵⁵⁵ DIS-089/Transcript, 29 February 2008, pp. 61, lines 11 – 29.

²⁵⁵⁶ DIS-089/Transcript, 29 February 2008, pp. 51, line 18 – pp. 52, line 7.

²⁵⁵⁷ DIS-214/Transcript, 17 January 2008, pp. 27, line 13 – pp. 28, line 19.

²⁵⁵⁸ DIS-214/Transcript, 17 January 2008, pp. 28, lines 20 – 29.

²⁵⁵⁹ DIS-089/Transcript, 29 February 2008, pp. 52, line 20 – pp. 53, line 6.

²⁵⁶⁰ DIS-089/Transcript, 29 February 2008, pp. 52, lines 14 – 19.

²⁵⁶¹ DIS-163/Transcript, 14 January 2008, pp. 33, lines 6 – 21.

²⁵⁶² DIS-089/Transcript, 29 February 2008, pp. 52, line 20 – pp. 53, line 6.

²⁵⁶³ DIS-127/Transcript, 12 February 2008, pp. 89, line 29 – pp. 90, line 16. People were also coming from as far away as Makeni at this time.

²⁵⁶⁴ DIS-089/Transcript, 29 February 2008, pp. 53, lines 7 – 17. DIS-089’s wife went to the market to purchase salt, maggi, and clothing.

²⁵⁶⁵ DIS-089/Transcript, 29 February 2008, pp. 53, lines 22 – 25.

²⁵⁶⁶ DIS-214/Transcript, 17 January 2008, pp. 29, lines 1 – 5.

²⁵⁶⁷ DIS-089/Transcript, 29 February 2008, pp. 53, line 26 – pp. 54, line 12.

²⁵⁶⁸ DIS-089/Transcript, 29 February 2008, pp. 53, line 26 – pp. 54, line 12.

²⁵⁶⁹ DIS-089/Transcript, 29 February 2008, pp. 54, line 26 – pp. 55, line 1.

1282. These conditions continued throughout 1999. After the signing of the Lomé Peace Accord, there were *thousands* of people in the Koakoyima and Koidu areas.²⁵⁷¹ ²⁵⁷² Civilians were coming to Koakoyima and Kono District, generally for a variety of reasons such as visiting their relatives, business, and mining.²⁵⁷³ There was nothing disturbing civilians from moving from Makeni to Kono District;²⁵⁷⁴ vehicles were plying the road every day.²⁵⁷⁵ Public transport vehicles were running from Freetown to Kono; from Makeni to Kono; from Bo to Kono; and some from Kenema to Kono.²⁵⁷⁶

1283. Diamond miners were coming to Koakoyima to sell diamonds to the Jolas.²⁵⁷⁷ Traders were based in Koakoyima; vehicles would alight there.²⁵⁷⁸ There were shops and businesses;²⁵⁷⁹ restaurants and cafes (e.g., Atayah Base café),²⁵⁸⁰ nightclubs;²⁵⁸¹ and cinemas²⁵⁸² There was no restriction on when one could go to Koakoyima or where within Koakoyima one could go.²⁵⁸³ There were no boundaries or fences around Koakoyima.²⁵⁸⁴

1284. If 200-300 people had been forced to live in a camp in Koakoyima, and not allowed to leave, people would have known about it.²⁵⁸⁵ Such a thing could not be hidden.²⁵⁸⁶ If a hundred civilians had been marched out of Koakoyima every day to be

²⁵⁷⁰ DIS-089/Transcript, 29 February 2008, pp. 55, lines 2 – 6.

²⁵⁷¹ DIS-065/Transcript, 26 February 2008, pp. 83, lines 17 -24. Emphasis added.

²⁵⁷² DIS-063/Transcript, 28 February 2008, pp. 20, lines 11 – 13.

²⁵⁷³ DIS-065/Transcript, 26 February 2008, pp. 67, lines 11 – 20; DIS-063/Transcript, 28 February 2008, pp. 18, line 18 – pp. 19, line 6. After the Lomé Peace Accord was signed, it was said that “whoever wants to go to Kono can go back to Kono.”

²⁵⁷⁴ DIS-065/Transcript, 26 February 2008, pp. 66, lines 2 – 13.

²⁵⁷⁵ DIS-065/Transcript, 26 February 2008, pp. 65, lines 16 – 27.

²⁵⁷⁶ DIS-063/Transcript, 28 February 2008, pp. 32, line 27 – pp. 33, line 4.

²⁵⁷⁷ DIS-065/Transcript, 26 February 2008, pp. 84, lines 11 – 27.

²⁵⁷⁸ DIS-065/Transcript, 26 February 2008, pp. 84, line 28 – pp. 85, line 2.

²⁵⁷⁹ DIS-063/Transcript, 28 February 2008, pp. 21, lines 7 – 23.

²⁵⁸⁰ DIS-063/Transcript, 28 February 2008, pp. 21, lines 24 – 28.

²⁵⁸¹ DIS-063/Transcript, 28 February 2008, pp. 22, line 15 – 17.

²⁵⁸² DIS-063/Transcript, 28 February 2008, pp. 23, lines 14 – 17.

²⁵⁸³ DIS-063/Transcript, 28 February 2008, pp. 30, lines 23 – 27.

²⁵⁸⁴ DIS-063/Transcript, 28 February 2008, pp. 32, lines 5 – 18; DIS-065/Transcript, 26 February 2008, pp. 85, line 28 – pp. 86, line 22.

²⁵⁸⁵ DIS-063/Transcript, 28 February 2008, pp. 31, lines 6 – 27.

²⁵⁸⁶ DIS-065/Transcript, 26 February 2008, pp. 86, line 27 – pp. 87, line 18.

forced to mine somewhere else, the information would have circulated.²⁵⁸⁷ However, no such information was spread.²⁵⁸⁸

e) TF1-367's Credibility & Mining Reporting

1285. Apart from the obvious fabrications above, there are a myriad of other obvious lies designed by TF1-367 to implicate Sesay. TF1-367's evidence in these regards should be dismissed.

1286. TF1-367 testified that Sesay was living in Kono throughout 1999 as the mining commander with Kennedy reporting to Sesay.²⁵⁸⁹ This is patently untrue. The Defence notes that the Prosecution's case is that Sesay was based in Lebanon, Kono in 1999 through 2000.²⁵⁹⁰ This, of course, is counter-intuitive and contrary to a very large part of the Prosecution's case against Sesay.

1287. There is a body of evidence that demonstrates that Sesay was in Bombali District (early 1999), Kailahun District (mid-1999), and Bombali District again (late 1999). In addition, it is clear that Sam Bockarie was directing all mining operations from Buedu²⁵⁹¹ and that all diamonds were *delivered* to Sam Bockarie prior to Foday Sankoh's arrival to Kono District.²⁵⁹²

1288. Indeed, if it were the case that Sesay was living in Kono District, he would have been the senior-most RUF present. According to TF1-367, when Kennedy was investigated for having lost diamonds, the Joint Security Unit would have reported to Sesay because Sesay was the mining commander.²⁵⁹³ This was not the case. Exhibit 107

²⁵⁸⁷ DIS-214/Transcript, 17 January 2008, pp. 120, line 17 – pp. 121, line 15; DIS-065/Transcript, 26 February 2008, pp. 87, line 19 – pp. 88, line 14.

²⁵⁸⁸ DIS-065/Transcript, 26 February 2008, pp. 87, line 19 – pp. 88, line 14; DIS-214/Transcript, 17 January 2008, pp. 120, line 17 – pp. 121, line 15.

²⁵⁸⁹ TF1-367/Transcript, 23 June 2006, pp. 80, line 2 – 81, line 7.

²⁵⁹⁰ DIS-307/Transcript, 22 February 2008, pp. 7, lines 7 – 15.

²⁵⁹¹ TF1-071/Transcript, 25 January 2005, pp. 98, lines 12 – 25; DIS-091/Transcript, 10 March 2008, pp. 46, lines 19 – 21; DIS-188/Transcript, 30 October 2007, pp. 26, line 27 – pp. 28, line 5.

²⁵⁹² DIS-307/Transcript, 19 February 2008, pp. 88, line 28 – pp. 90, line 2; DIS-091/Transcript, 10 March 2008, pp. 46, line 22 – pp. 47, line 1.

²⁵⁹³ TF1-367/Transcript, 23 June 2006, pp. 80, line 2 – 81, line 7.

clearly demonstrates that Kennedy was investigated by Brigadier Peter Vandi (5th April 1999).²⁵⁹⁴ After the investigation, the Joint Security Unit reported to Sam Bocakrie.²⁵⁹⁵

1289. The radio that was located at Kennedy's house²⁵⁹⁶ was also used, the Defence submits, to communicate directly with Sam Bockarie as Sam Bockarie was directing all the mining operations.

1290. TF1-367 also states that Sesay came to the Joint Security Unit when Kennedy was being investigated.²⁵⁹⁷ Another patent untruth. Sesay was in Kailahun District at this time after having fled for his life following the attack by Superman in Makeni.

1291. Sesay supervised Kennedy only *after* Foday Sankoh had visited Kono.²⁵⁹⁸

f) Washing Gravel Left By ECOMOG

1292. It is true that upon entry of the Mining Unit to Koakoyima that the miners were operating on a one-pile system. This makes perfect sense. In a customary two-pile system, the gravel that is extracted is divided into two piles – with the first pile going to the labourers/supporter and the second pile going to the plot-owner. The labourers/supporters are not paid or given any benefit for extracting the gravel by the plot-owner. After extracting the gravel, the labourers/supporters then own their pile as payment for extracting the plot-owners pile. The labourers/supporters then wash their pile of gravel with the hope that there is a diamond inside.

1293. The circumstances in December 1998 and early 1999 lent themselves perfectly to a one-pile system. In a one-pile system (or no-pile system) the labourers do not extract gravel; they are given a benefit (e.g., a wage) for transporting the gravel to a mechanical washing site or for washing the gravel by hand. This is because the most

²⁵⁹⁴ See also, DIS-091/Transcript, 10 March 2008, pp. 54, lines 19 – 22; and DIS-307/Transcript, 19 February 2008, pp. 90, line 20 – pp. 94, line 1.

²⁵⁹⁵ DIS-091/Transcript, 10 March 2008, pp. 54, line 23 – pp. 55, line 13.

²⁵⁹⁶ DIS-307/Transcript, 19 February 2008, pp. 80, lines 8 – 27.

²⁵⁹⁷ TF1-367/Transcript, 23 June 2006, pp. 80, line 2 – 81, line 7.

²⁵⁹⁸ DIS-307/Transcript, 22 February 2008, pp. 37, line 22 – pp. 38, line 20.

difficult part of the job, the extraction, has already been completed. The labourers simply receive some form of payment for the work and are not entitled to a share of any diamonds that are found.²⁵⁹⁹

1294. After the capture of Koidu, the one-pile was already present as the ECOMOG forces were mining (extracting gravel) in Koidu and Koakoyima prior to being forced out by the RUF. As such, they left piles of gravel throughout Koidu and Koakoyima.²⁶⁰⁰ The ECOMOG left in such a hurry that they left behind their mining equipment as well.²⁶⁰¹ The only thing that remained to make the diamonds tangible was to wash the gravel. No extraction of the gravel was required.

1295. TF1-078 and TF1-367 confirmed that the first mining that was done by the RUF when they came to Koakoyima was washing the gravel left behind by the ECOMOG.²⁶⁰² After this gravel was washed, the Mining Unit then expanded its operations. DIS-091 and DIS-307 confirmed that the mining in 1999 was initially at Koakoyima,²⁶⁰³ The mining then expanded to Number 11, Benz Garage, Boruma, and Congo Bridge.²⁶⁰⁴

1. Use of Force Doesn't Make Popular or Economic Sense

²⁵⁹⁹ E.g., DIS-293/Transcript, 13 November 2007, pp. 53, line 22 – pp. 54, line 16. DIS-293 was paid a daily wage paid by [REDACTED] circa 1996-1997 for transporting gravel to a mechanical washing plant. The workers did not receive a share of the diamonds that were found; the workers were paid Le10,000 regardless of whether diamonds were found.

²⁶⁰⁰ TF1-078/Transcript, 25 October 2004, pp. 47, lines 1 – 9. “we found so many piles of gravel there along the main Kainkordu Road, opposite Mortar Theatre, and then in Tankoro part of the town Ndomina Street in the Tankoro section.”

²⁶⁰¹ TF1-367/Transcript, 22 June 2006, pp. 33, lines 11 – 18. After coming to Koakoyima, the civilian miners in the bush looked for the equipment to do the mining (e.g., shakers).

²⁶⁰² TF1-367/Transcript, 23 June 2006, pp. 48, lines 16 – 19; TF1-078/Transcript, 25 October 2004, pp. 47, lines 1 – 9; TF1-367/Transcript, 22 June 2006, pp. 36, lines 16 – 18.

²⁶⁰³ DIS-091/Transcript, 7 March 2008, pp. 139, line 21 – pp. 140, line 5. Mining would happen in locations around Koakoyima such as Congo Bridge, Palm Oil Swamp, and Train Seven (DIS-091/Transcript, 10 March 2008, pp. 34, lines 25 – pp. 35, line 16); DIS-307/Transcript, 21 February 2008, pp. 14, lines 15 – 22.

²⁶⁰⁴ DIS-307/Transcript, 21 February 2008, pp. 14, lines 15 – 22.

1296. It made sense to control the trade, and not the person. Clearly, you would have a larger work force (with fewer attendant costs such as detaining or guarding civilians) if the work force were voluntary. DIS-091 and DIS-307's comment are telling in this regard. DIS-091: Members of Mining Unit "wouldn't think about civilians running away at all".²⁶⁰⁵ The reason was that it was work and work, food and necessities were in short supply. As such it was not part of job of mining commander to make sure civilians would not run away or escape.²⁶⁰⁶ DIS-307: "So, if you force me to work, and I am the one that I am washing the gravel, you force me, I would go. You would not see any diamond."²⁶⁰⁷

1297. This is one of the reasons why the miners in the Mining Unit would not have been forced. Although they had no expectation to receive a share of any diamonds that were found²⁶⁰⁸ (as would be the case in a two- or three-pile system), they did receive free food daily,²⁶⁰⁹ free medical treatment,²⁶¹⁰ mining tools,²⁶¹¹ and clothing.²⁶¹² The miners were not forced and were not beaten if they refused to mine.²⁶¹³ The miners consented²⁶¹⁴ in this arrangement. Nobody complained about the work.²⁶¹⁵

²⁶⁰⁵ DIS-091/Transcript, 10 March 2008, pp. 67, lines 20 – 23.

²⁶⁰⁶ DIS-091/Transcript, 10 March 2008, pp. 67, lines 20 – 23.

²⁶⁰⁷ DIS-307/Transcript, 22 February 2008, pp. 6, lines 13 – 21. See also, DIS-065/Transcript, 26 February 2008, pp. 84, lines 3 – 10. "A. Okay. You see that question in 1999 up to disarmament I was in Kono, I never went anywhere. I had no idea of forced mining. I don't have that knowledge because when we went there we had no blockage. There was no curfew. So and it was not a one-way. There were several ways to go to Kono. So if there was any forced labour in Kono, I wouldn't have settled in Kono because it would have been a fruitless endeavour. So there was no forced mining at all."

²⁶⁰⁸ DIS-091/Transcript, 10 March 2008, pp. 43, lines 12 – 13. If a civilian found a diamond, they would give it to their commander; in return they might receive drinks, cigarettes, and even money.

²⁶⁰⁹ DIS-091/Transcript, 10 March 2008, pp. 34, lines 15 – 20.

²⁶¹⁰ DIS-091/Transcript, 10 March 2008, pp. 39, lines 6 – 23.

²⁶¹¹ DIS-091/Transcript, 10 March 2008, pp. 39, lines 6 – 23.

²⁶¹² DIS-091/Transcript, 10 March 2008, pp. 43, lines 5 – 11.

²⁶¹³ DIS-091/Transcript, 10 March 2008, pp. 59, line 13 – pp. 60, line 22.

²⁶¹⁴ DIS-091/Transcript, 10 March 2008, pp. 42, lines 2 – 8. "Then they all consented to help."

²⁶¹⁵ DIS-091/Transcript, 10 March 2008, pp. 43, line 24 – pp. 44, line 3.

2. Expansion of Mining – Introduction of Two-Piles

1298. After the gravel that was left behind by the ECOMOG was washed, the Mining Unit then started extracting gravel.²⁶¹⁶ TF1-367 suggests that in addition to miners in the Mining Unit mining (at least some of whom were not forced),²⁶¹⁷ there were other people working for themselves.²⁶¹⁸ This mining was outside the remit of the Mining Unit.²⁶¹⁹

1299. TF1-071²⁶²⁰ and TF1-367²⁶²¹ each testified to mining expanding in 1999. In addition to those miners that were working for themselves, this comports with mining expanding – on a two-pile system – throughout Kono District. The mining arrangement changed to a two-pile system shortly after Foday Sankoh visited the Kono District post-Lomé Accord.

1300. DIS-091 testified that a two-pile system started three days after Foday Sankoh came to the Kono District from having signed the Lomé Peace Accord.²⁶²² Foday Sankoh changed the mining to two-pile and opened the Mining Office.^{2623 2624} After the mining changed to two-pile, everyone started mining for themselves.²⁶²⁵ Diamonds could either be sold to the Mining Office²⁶²⁶ or to traders that came to Kono.²⁶²⁷

a) The Mining Office

1301. From the RUF's perspective, the Mining Office was responsible for the supervision of the division gravel into two piles.²⁶²⁸ As per the arrangement agreed

²⁶¹⁶ TF1-367/Transcript, 22 June 2006, pp. 36, lines 22 – 24; TF1-367/Transcript, 22 June 2006, pp. 35-36. The witness continues that when the ECOMOG were in Koidu, civilians were mining while the ECOMOG was present.

²⁶¹⁷ TF1-367/Transcript, 23 June 2006, 72, lines 9-11; emphasis added.

²⁶¹⁸ TF1-367/Transcript, 22 June 2006, pp.48, line 25 – pp. 49, line 8.

²⁶¹⁹ TF1-367/Transcript, 22 June 2006, pp.48, line 25 – pp. 49, line 8.

²⁶²⁰ TF1-071/Transcript, 21 January 2005, pp. 117, lines 17 – 21.

²⁶²¹ TF1-367/Transcript, 23 June 2006, pp. 49, lines 10 – 12.

²⁶²² DIS-091/Transcript, 10 March 2008, pp. 47, line 20 – pp. 48, line 21.

²⁶²³ DIS-091/Transcript, 10 March 2008, pp. 47, line 20 – pp. 48, line 21.

²⁶²⁴ DIS-307/Transcript, 19 February 2008, pp. 85, line 14 – pp. 86, line 11.

²⁶²⁵ DIS-091/Transcript, 10 March 2008, pp. 54, lines 4 – 9.

²⁶²⁶ DIS-091/Transcript, 10 March 2008, pp. 52, line 10 – pp. 53, line 2.

²⁶²⁷ DIS-091/Transcript, 10 March 2008, pp. 53, lines 3 – 6.

²⁶²⁸ DIS-063/Transcript, 28 February 2008, pp. 33, line 18 – pp. 34, line 5.

upon by the miners prior to their engagement in mining, representatives from the Mining Office would send monitors when the gravel was being divided.²⁶²⁹ ²⁶³⁰ The extraction, the division of gravel into two piles, and the washing of the labourer/supporter gravel was not done by force.²⁶³¹

1302. From the *civilian* miner's perspective, the Mining Office was a place for workers and their supporters to arbitrate over the price of diamonds.²⁶³² The Mining Office even settled disputes between civilians and RUF combatants that were engaged in mining.²⁶³³ There were no restrictions on who could go to the Mining Office; indeed, many civilians were going there.²⁶³⁴

1303. Civilians could also go to the Mining Office to sell diamonds,²⁶³⁵ ²⁶³⁶ to purchase shovels, to have their shovels repaired,²⁶³⁷ and to purchase second-hand buckets.²⁶³⁸ DIS-063 testified that he saw people at the Mining Office purchasing these items.²⁶³⁹

1304. In connection with DIS-063's testimony, the Prosecution attempted to establish that miners at the Mining Office were given mining implements (e.g., shovels) free of charge and it was *those* miners that were forced to work for the RUF. This is suggestive that the Prosecution conceded (or at least recognized) that there was voluntary mining in Kono District after the opening of the Mining Office. The Prosecution belatedly realised that it was nonsense to suggest that all the mining in Koidu was forced or that Koidu did not fill up with civilians during 1999. In these circumstances the Prosecution have not discharged their burden of proof. Once these matters are accepted the corollary

²⁶²⁹ DIS-063/Transcript, 28 February 2008, pp. 58, lines 10 – 16.

²⁶³⁰ DIS-063/Transcript, 28 February 2008, pp. 58, line 29 – pp. 59, line 20.

²⁶³¹ DIS-063/Transcript, 28 February 2008, pp. 29, line 21 – pp. 30, line 24.

²⁶³² DIS-066/Transcript, 3 March 2008, pp. 22, line 8 – pp. 23, line 16. The Mining Office to which DIS-066 refers was in Yengema (DIS-066/Transcript, 3 March 2008, pp. 23, lines 17 – 18).

²⁶³³ DIS-065/Transcript, 26 February 2008, pp. 100, lines 8 – 18.

²⁶³⁴ DIS-063/Transcript, 28 February 2008, pp. 25, line 29 – pp. 26, line 6.

²⁶³⁵ DIS-065/Transcript, 26 February 2008, pp. 76, lines 21 – 27.

²⁶³⁶ DIS-065/Transcript, 26 February 2008, pp. 74, line 20 – pp. 76, line 17.

²⁶³⁷ DIS-063/Transcript, 28 February 2008, pp. 25, lines 22 – 24.

²⁶³⁸ DIS-063/Transcript, 28 February 2008, pp. 25, lines 16 – 21.

²⁶³⁹ DIS-063/Transcript, 28 February 2008, pp. 25, lines 16 – 21.

is that there must be hundreds, if not thousands of witnesses to this brutal chain ganging. The Prosecution's abject failure to find any, or any reliable ones, speaks volumes about the falsity of their case.

1305. As noted by the Presiding Judge when challenging a defence witness whether that witness knew anyone in the mining sites, "He doesn't know who was mining there? If he visited those areas -- if he visited those areas, why wouldn't he know, you know, at least one or two persons who were mining there?..."²⁶⁴⁰ [b]ut if you were able to get to knowing that it was a two-pile system, you must have carried out some inquiries from people there. If you got to know that it was a two-pile system."²⁶⁴¹ The witness replied, "Yes, you would know, sir. ... You will see them sharing some gravel."²⁶⁴² And so this must apply to the Prosecution's case. Civilians would know if it were true.

1306. TF1-078 testified that, after the Lomé Accord, an understanding developed between the civilians and the AFRC/RUF junta. The G5s were very active in protecting the civilians against intimidation, harassment, and molestation.²⁶⁴³ Although the Defence disagrees that there was any harassment at this time, TF1-078's omission about harassment is a worthwhile observation: when TF1-078 was asked to describe the conditions in Koidu at the time of the Lomé Accord, TF1-078 testifies about some civilians being forced to look for food and tap palm wine. The obvious omission? No apparent knowledge of these hundreds of miners marched at gun point through the streets of Koidu on a daily basis.²⁶⁴⁴

1307. A Military Police Office was functioning at this time Koakoyima by the [lorrie] park. Civilians would take reports there. E.g., if somebody didn't for goods. If a fighter had done something wrong he would be reported. All civilians could make complaints to the MP Office.²⁶⁴⁵

²⁶⁴⁰ DIS-063/Transcript, 28 February 2008, pp. 100, line 29 – pp. 101, line 4.

²⁶⁴¹ DIS-063/Transcript, 28 February 2008, pp. 101, lines 18 – 22.

²⁶⁴² DIS-063/Transcript, 28 February 2008, pp. 101, line 180, line 29 – pp. 101, line 4.

²⁶⁴³ TF-078/Transcript, 25 October 2004, pp. 51, lines 12 – 21.

²⁶⁴⁴ TF-078/Transcript, 25 October 2004, pp. 52, lines 5 – 13.

²⁶⁴⁵ DIS-063/Transcript, 28 February 2008, pp. 22, line 18 – pp. 23, line 13.

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1308. TF1-371 testified that when he arrived to Koidu after the Lomé Accord, he states that they were “not paid” and “dressed haggardly just like they had been previously, as I explained [about their condition in Kono and Tongo during the junta].”²⁶⁴⁶ This evidence does not add anything the Prosecution case. The fact that TF1-371, [REDACTED], would have been able to offer a more convincing explanation if it were true. This description does not amount to proof of enslavement.

b) Presence of a Two-Pile System

1309. The fact that there was there was a two-pile system in Kono District after the Lomé Accord is overwhelming. Each of TF1-071, DIS-063, DIS-065, DIS-066, and DIS-307 confirms that the existence of a two-pile system in Kono District after the Lomé Accord. After Foday Sankoh’s visit the mining expanded all over Kono.²⁶⁴⁷

1310. Sesay testified that Foday Sankoh arrived in Freetown in October 1999; subsequently Foday Sankoh came to Kono.²⁶⁴⁸ After this visit, Sesay became involved in the mining.²⁶⁴⁹ This explains why, when DIS-063, DIS-065, and DIS-066 arrived to Kono in late 1999, they arrived to see a two-pile system in operation throughout Kono District.

1311. Commensurate with the opening of the two-pile system was that guns should not be allowed in Koidu Town.^{2650 2651} This law was passed so that civilians would not be afraid.²⁶⁵² After the passage of this law, there were no longer armed guards watching

²⁶⁴⁶ TF1-371/Transcript, 21 July 2006, pp. 70, lines 8 – 18. [REDACTED]

²⁶⁴⁷ DIS-307/Transcript, 19 February 2008, pp. 94, line 24 – pp. 95, line 10.

²⁶⁴⁸ Sesay/Transcript, 26 June 2007, pp. 62, lines 20 – 23.

²⁶⁴⁹ DIS-307/Transcript, 19 February 2008, pp. 86, lines 13 – 24.

²⁶⁵⁰ DIS-065/Transcript, 26 February 2008, pp. 86, lines 23 – 26. This law was passed before DIS-065 arrived to Kono (DIS-065/Transcript, 26 February 2008, pp 103, lines 5 – 11).

²⁶⁵¹ DIS-065/Transcript, 26 February 2008, pp. 72, lines 5 – 9.

²⁶⁵² DIS-063/Transcript, 28 February 2008, pp. 20, line 14 – pp. 21, line 6.

the mining sites.²⁶⁵³ After the passage of this law, nobody was holding a gun in Koidu Town in 1999 or 2000.²⁶⁵⁴

1312. According to DIS-066, the two-pile system was everywhere.²⁶⁵⁵ According to DIS-065, “There was a two-pile system existing. It operated in all sectors.”²⁶⁵⁶ “As long as we've made the arrangement [with the owner of the plot or the mining commander], anywhere you want to work, you'd go and work there.”²⁶⁵⁷

1313. A two-pile system was operating, *inter alia*, in the following locations after the Lomé Accord: Gieya,²⁶⁵⁸ Yengema,²⁶⁵⁹ Kaisambo,²⁶⁶⁰ Tombodu,²⁶⁶¹ Bumpe,²⁶⁶² Masabendu,²⁶⁶³ Fitti Gieya.²⁶⁶⁴ Motema,²⁶⁶⁵ Bandafi,²⁶⁶⁶ Simbakoro,²⁶⁶⁷ Gbeko,²⁶⁶⁸ Karanko Ballop.²⁶⁶⁹ In addition, there was no news or a positive affirmation that there was a lack of force in, *inter alia*: Bumpe,²⁶⁷⁰ Boroma,²⁶⁷¹ or Motema,²⁶⁷² Chief Plot,²⁶⁷³

²⁶⁵³ DIS-063/Transcript, 28 February 2008, pp. 58, lines 7 – 9.

²⁶⁵⁴ DIS-066/Transcript, 3 March 2008, pp. 22, lines 17 – 25.

²⁶⁵⁵ DIS-066/Transcript, 3 March 2008, pp. 36, lines 5 – 7. DIS-066 states that nobody refused to give the owner pile because it was the law (DIS-066/Transcript, 3 March 2008, pp. 36, lines 8 – 10). Certainly, miners before the war or present day would not refuse to give the owner their pile. This is how the two-pile system works.

²⁶⁵⁶ DIS-065/Transcript, 26 February 2008, pp. 100, line 24 – pp. 101, line 3.

²⁶⁵⁷ DIS-066/Transcript, 3 March 2008, pp. 38, lines 16 – 17.

²⁶⁵⁸ DIS-065/Transcript, 26 February 2008, pp. 70, line 13 – pp. 71, line 17; DIS-063/Transcript, 28 February 2008, pp. 26, lines 7 – 18; DIS-063/Transcript, 28 February 2008, pp. 27, line 28 – pp. 28, line 17.

²⁶⁵⁹ DIS-065/Transcript, 26 February 2008, pp. 70, line 13 – pp. 71, line 17.

²⁶⁶⁰ DIS-066/Transcript, 3 March 2008, pp. 13, lines 3 – 14. This is entirely at odds with TF1-367's evidence concerning mining at Kaisambo. TF1-367 stated that the reason he first mentioned that 200-300 people being forced to mine at Kaisambo during his direct examination on 22nd June 2006 (at pp. 52) was because his memory was jogged. *See*, TF1-367/Transcript, 23 June 2006, pp. 89, lines 13 – 24; DIS-063/Transcript, 28 February 2008, pp. 28, line 24 – pp. 29, line 14.

²⁶⁶¹ DIS-065/Transcript, 26 February 2008, pp. 79, lines 3 – 5.

²⁶⁶² DIS-065/Transcript, 26 February 2008, pp. 76, line 28 – pp. 77, line 8; DIS-063/Transcript, 28 February 2008, pp. 27, line 28 – pp. 28, line 17.

²⁶⁶³ DIS-063/Transcript, 28 February 2008, pp. 27, line 28 – pp. 28, line 17.

²⁶⁶⁴ DIS-063/Transcript, 28 February 2008, pp. 27, line 28 – pp. 28, line 17.

²⁶⁶⁵ DIS-063/Transcript, 28 February 2008, pp. 100, lines 2 – 26.

²⁶⁶⁶ DIS-063/Transcript, 28 February 2008, pp. 100, lines 2 – 26.

²⁶⁶⁷ DIS-063/Transcript, 28 February 2008, pp. 100, lines 2 – 26.

²⁶⁶⁸ DIS-063/Transcript, 28 February 2008, pp. 100, lines 2 – 26.

²⁶⁶⁹ DIS-066/Transcript, 3 March 2008, pp. 21, lines 17 – 22.

²⁶⁷⁰ DIS-066/Transcript, 3 March 2008, pp. 25.

²⁶⁷¹ DIS-066/Transcript, 3 March 2008, pp. 25.

²⁶⁷² DIS-066/Transcript, 3 March 2008, pp. 25.

Number 3,²⁶⁷⁴ Congo Bridge,²⁶⁷⁵ Tombodu,²⁶⁷⁶ Sukudu,²⁶⁷⁷ Number 11,²⁶⁷⁸ Yardu,²⁶⁷⁹ Koidu,²⁶⁸⁰ Koakayima,²⁶⁸¹ Bandafi,²⁶⁸² Bakondo,²⁶⁸³ and Joe Bush.²⁶⁸⁴

1314. In addition to mining operations in the above locations, other peacetime activities had resumes. For example, there was a school functioning in Gieya²⁶⁸⁶ and Yengema,²⁶⁸⁷ medical care was available in Yengema,²⁶⁸⁸ people attended mosques in Yengema,²⁶⁸⁹ and markets were also operating in Yengema.²⁶⁹⁰

1315. By at least this point, it is entirely implausible that there was an organised system to force civilians to mine. Information in the diamond mining culture spreads fast. If one were to find a diamond, word of the find gets out quick. Miners talk to each other. This explains the reason for the presence of so many miners at so many different mining sites. For example, DIS-063 went to work in Gieya because he was told about diamonds having been found there from a friend.²⁶⁹¹

1316. On the contrary, if civilians were being forced to mine, this information would spread equally fast and, in all likelihood, faster than the discovery of diamonds. In

²⁶⁷³ DIS-066/Transcript, 3 March 2008, pp. 20, lines 28 – pp. 21, line 10. From the exchange on pages 33, lines 17 – 21, it may appear that DIS-066 was suggesting that he did not go to Chief Plot or Number 3 because there was force there. This is incorrect. In the context of DIS-066's evidence, which is that there was a two-pile system everywhere, it is clear that DIS-066 was stating that he didn't go to Chief Plot or Number 3 and therefore cannot answer any specific questions about those two mining sites.

²⁶⁷⁴ DIS-066/Transcript, 3 March 2008, pp. 20, lines 28 – pp. 21, line 10.

²⁶⁷⁵ DIS-066/Transcript, 3 March 2008, pp. 24, line 10 – pp. 25, line 1.

²⁶⁷⁶ DIS-066/Transcript, 3 March 2008, pp. 24, line 10 – pp. 25, line 1.

²⁶⁷⁷ DIS-066/Transcript, 3 March 2008, pp. 19, line 28 – pp. 20, line 17.

²⁶⁷⁸ DIS-066/Transcript, 3 March 2008, pp. 19, line 28 – pp. 20, line 17.

²⁶⁷⁹ DIS-066/Transcript, 3 March 2008, pp. 19, line 28 – pp. 20, line 17.

²⁶⁸⁰ DIS-066/Transcript, 3 March 2008, pp. 19, line 28 – pp. 20, line 17.

²⁶⁸¹ DIS-065/Transcript, 26 February 2008, pp. 79, lines 9 – 25.

²⁶⁸² DIS-065/Transcript, 26 February 2008, pp. 79, lines 9 – 25.

²⁶⁸³ DIS-065/Transcript, 26 February 2008, pp. 79, lines 9 – 25.

²⁶⁸⁴ DIS-066/Transcript, 3 March 2008, pp. 13, lines 15 – pp. 14, line 3.

²⁶⁸⁵ DIS-066/Transcript, 3 March 2008, pp. 13, lines 15 – pp. 14, line 3.

²⁶⁸⁶ DIS-066/Transcript, 3 March 2008, pp. 24, lines 5 – 9. The children attending the school wore uniforms.

²⁶⁸⁷ DIS-065/Transcript, 26 February 2008, pp. 80, line 11 – pp. 81, line 11.

²⁶⁸⁸ DIS-065/Transcript, 26 February 2008, pp. 81, lines 13 – 14.

²⁶⁸⁹ DIS-065/Transcript, 26 February 2008, pp. 81, lines 21 – 22.

²⁶⁹⁰ DIS-065/Transcript, 26 February 2008, pp. 81, lines 15 – 16.

²⁶⁹¹ DIS-063/Transcript, 28 February 2008, pp. 36, line 28 – pp. 37, line 9.

2000, civilians were coming to Kono to mine because they were receiving good information about Kono. There were no reports of forced mining to DIS-063 in 2000.²⁶⁹² In 1999, miners were already returned to depending on mining as their living.²⁶⁹³ In sum, there were no complaints about forced mining. The only complaints were that certain areas weren't productive of diamonds (diamonds weren't found there).²⁶⁹⁴

3. 2000 – Change to three-pile – Chiefs Want Their Share

1317. In 2000, the chiefs began to return to Kono District. As elders in the community with authority, they felt that they were entitled to some of the proceeds from the minings. As such, the two-pile system changed to a three-pile system.²⁶⁹⁵ The gravel was still equally divided into two piles; however, one pile went to the labourer/supporter while the other pile was further divided between the chiefs and the RUF.²⁶⁹⁶ Although some called this a three-pile system, the net-benefit for the labourer/supporter remained the same; the three-pile system was still taken by some labourer/supporters as a two-pile system.²⁶⁹⁷

1318. Should the Prosecution's case be true that Sesay was based in Lebanon, Kono in 1999 through 2000²⁶⁹⁸ and "that there was no two-pile system in Kono *ever*"²⁶⁹⁹ – implying that Sesay was responsible for forcing civilians to mine in Kono District from 1999-2000, why then would TF1-078 explain that when Sesay became the Interim Leader of the RUF that the civilians "were happy about it, because we liked him and he was always in our interest. He was always operating in our interests."²⁷⁰⁰

²⁶⁹² DIS-065/Transcript, 26 February 2008, pp. 90, lines 4 – 22.

²⁶⁹³ DIS-065/Transcript, 26 February 2008, pp. 79, line 26 – pp. 80, line 9.

²⁶⁹⁴ DIS-065/Transcript, 26 February 2008, pp. 79, lines 9 – 25. DIS-065 received these complaints from friend that worked in Koidu, Koakayima, Bandafi with whom he occasionally met.

²⁶⁹⁵ DIS-066/Transcript, 3 March 2008, pp. 26, line 25 – pp. 27, line 6.

²⁶⁹⁶ DIS-065/Transcript, 26 February 2008, pp. 89, lines 4 – 23.

²⁶⁹⁷ DIS-065/Transcript, 26 February 2008, pp. 89, line 28 – pp. 90, line 3.

²⁶⁹⁸ DIS-307/Transcript, 22 February 2008, pp. 7, lines 7 – 15.

²⁶⁹⁹ DIS-091/Transcript, 10 March 2008, pp. 72, lines 12 – 13; emphasis added. *See also*, TF1-063, Transcript, 28 Feb 2008, pp. 59, line 26 – pp. 60, line 5.

²⁷⁰⁰ TF1-078/Transcript, 25 October 2005, pp. 94, lines 17 – 23.

D. Complete lack of liabilities on Sesay's behalf

1319. The Defence notes that the Prosecution failed to cross-examine Sesay – *whatsoever* – on whether he planned, instigated, ordered, directed, committed, aided or abetted, prepared, or otherwise executed mining operations; whether he received information about diamond mining operations; whether he knew or should have known that persons were being enslaved; whether he knew or should have known that persons were beaten or killed for refusing to mine; whether any person conducting mining operations was under his command or effective control. This is notwithstanding the Prosecution's case that Sesay was "chief of mining for the RUF"²⁷⁰¹ during the junta and "was in charge of mining in Kono District"²⁷⁰² in 1998-2000.

1320. The Prosecution's cross-examination of Sesay in connection with mining is whether the diamonds that he took to Monrovia in late March or early April 1998 were those that were taken from Johnny Paul Koroma in Buedu after the intervention.²⁷⁰³

1321. As such, the Defence still is uncertain of the Prosecution's case against Sesay in connection with enslavement for the purposes of mining. The Prosecution has not provided Sesay with notice of the material facts that underpin his alleged liability or the alleged mode of responsibility for enslavement. And significantly failed to challenge him on his account. It can be safely assumed that they have no real challenge to the defence case.

²⁷⁰¹ Supplemental Pre-Trial Brief, Para. 193(b).

²⁷⁰² Prosecution Supplemental Pre-Trial Brief, Para. 201(c).

²⁷⁰³ The Prosecution's cross-examination of Sesay as it relates to diamonds is the following:

With reference to Exhibit 36 (Salute Report): Michael Coomber was working with the Mining Unit in 1998 and 1999; he reported to Sam Bockarie with a parcel of diamonds from Kono. The diamonds with which Sesay lost in Monrovia in late March or early April 1998 were those that had been taken from Johnny Paul Koroma (and, by implication, not the ones that Coomber reported to Bockarie). Sesay/Transcript, 22 June 2007, pp. 88, line 5 – 89, line 26.

With reference to Exhibit 35 (Salute Report): The diamonds that Sesay took to Monrovia were taken from Johnny Paul Koroma. Those diamonds would have been from mining operations in Kono and Tongo during the junta. Sesay/Transcript, 26 June 2007, pp. 8, line 28 – pp. 13, line 24.

XVI. UNAMSIL: counts 15-18***A. Count 15 – 17: Attacks on UNAMSIL Personnel***

1322. It is submitted that the evidence does not support the Prosecution case that Sesay directed any attacks or participated in any attacks on UNAMSIL Personnel. The Defence will rely upon the submissions of the Co-Accused in support of that contention. The first Accused will limit its submissions to Count 18 which it is submitted is the only count with a case to answer.

B. Count 18: Abduction/holding of hostages**1. Prosecution's allegations**

1323. The Prosecution in Count 18 of the Indictment alleges that Issa Sesay is responsible for the abduction and holding as hostages, taking of hostages, a violation of Common Article 3 to the Geneva Convention and Additional Protocol II, punishable under Article 3.c of the Statute.²⁷⁰⁴

1324. Following the Rule 98 Decision²⁷⁰⁵, the Prosecution has alleged that Count 18 took place in Bombali, Tonkolili, Port Loko and the Kono and District.

2. Defective pleading

1325. It is submitted that the lack of particularity indicating which towns or villages the alleged attack occurred has prejudiced the defence and the charges should be dismissed for want of notice.

3. No criminal responsibility on Sesay's behalf

1326. The Prosecution has failed to prove that the seizure or detention was accompanied by a threat to kill, injure or continue to detain and in the alternative that Issa Sesay planned, instigated, ordered, incited, committed or aided and abetted the same.

1327. Moreover, there is no reliable evidence that :

²⁷⁰⁴ Para. 83, Corrected Amended Consolidated Indictment

²⁷⁰⁵ Rule 98 Decision/ Transcript 25 October 2006, pp. 44, line 28 – pp. 45, line 20.

- a. the accused seized, detained or otherwise held hostage any person with the awareness that the UNAMSIL troops were acting in a peacekeeping role at the time; and
- b. the accused acted with the purpose or intention of compelling any person or group of persons to act or refrain from acting, or in order to obtain any advantage, as a condition for the safety or release of the persons.

1328. Furthermore, the Prosecution has failed to prove that Issa Sesay was a party to a criminal plan to abduct hostages, his contribution was not therefore significant and there is no credible evidence that he shared the mens rea of the perpetrators. On the contrary there is evidence that he did not agree with the objectives and did his best to sort out the mess created by others including the misbehaviour of RUF commanders and UNAMSIL's negligence.

a) Issa Sesay was not aware that UNAMSIL was acting in a peacekeeping role at the time: reasonable belief that there was a conflict between UN and RUF

1329. It is submitted that Issa Sesay had a reasonable belief that there was a conflict between UNAMSIL and RUF, initiated by UNAMSIL troops in Bombali and Tonkolili, and therefore reasonable and necessary for him to take defensive action by removing UNAMSIL already arrested by other RUF from the area of combat and detaining them as Prisoners of War until such time as he was able to arrange for their release.

1330. It is submitted that the information available to Sesay by 3 May 2000 included the following:

- a. that ongoing disputes between Jetley and Sankoh were likely to lead to combat;
- b. that threats of violence had been exchanged between the UN and the RUF for several preceding months²⁷⁰⁶

²⁷⁰⁶Long standing issues between Sankoh and Jetley in relation to the location and rate of disarmament spilled over in to open threats to enforce disarmament as evidenced by the radio logs below.

- c. knowledge of the aggressive stance taken by the UN *vis-a-vis* digging trenches and threatening to deploy within RUF areas without agreement contrary to the Lomé Accord²⁷⁰⁷; and
- d. more immediate information given to him on the 1st and 2nd of May that the UN had attacked the RUF²⁷⁰⁸.

1331. It was, therefore, reasonable for Sesay to conclude firstly that there was a full-blown conflict between RUF and UN and that UNAMSIL personnel were now combatants and secondly that it was therefore reasonable and necessary for him to take defensive action. It was a fact that Sesay UNAMSIL peacekeepers had been arrested upon his arrival in Makeni. His conduct, in removing them from the immediate areas of danger, was entirely consistent.

1332. It is accepted that the Trial Chamber may consider the actions of UNAMSIL and in particular ZAMBATT's approach on Makeni in compliance with Chapter 7 of the UNAMSIL mandate but it is submitted that the actions of Issa Sesay must be judged on the basis of what he knew at the time and what actions he *could* reasonably have taken. Even if Issa Sesay was mistaken (or had been misled) about the fact that UNMASIL had not initiated or attacked the RUF, it is clear from the radio logs that this was the information he had received²⁷⁰⁹. The fact of this information – which is documented –

²⁷⁰⁷ Radio Log Book, Court Exhibit 212, p.18599, 12 February 2000, from Lt.Col. Alfred S. Touray to Kallon informing him, Sankoh and Sesay that “UNAMSIL are about to force themselves to Kono this morning” and stopped at checkpoints. “Secondly, they have started digging trenches all over their areas.”

²⁷⁰⁸ Issa Sesay/Transcript 25 May 2007, pp.45, lines 9-22

²⁷⁰⁹ Radio Log Book, Court Exhibit 212 pp.18602, February 2000. On 13 February 2000 Colonel Sheriff sent a message to FS copied to IS detailing a threat made by Field Commander Jetley that a convoy of UN officers would force their way through to Kono from Magburaka. At that time UNAMSIL were not deployed in Kono.

Radio Log Book, Court Exhibit 34 p.8104 On 3 April 2000, Sankoh sent a message to Sesay for the attention of all RUF stations stating that “The UNAMSIL field commander have come up to the air on Radio France International that they are going to use force to disarm us all and this will be effective tomorrow.”.

Sesay/Transcript 25 May 2000, pp.20, lines 13-15 and pp.21, lines 19-22 Sesay testified that this message made the RUF believe Jetley wanted to force them to disarm and from that point on he and others in the RUF became suspicious of UNAMSIL's operations in Sierra Leone.

is an objective basis for the belief and proof that it was genuinely held. Sesay did not believe that UNAMSIL had been acting in their capacity as peacekeepers.

b) No Intention on the Part of Sesay to Gain Concession or Advantage Through the Holding of the UN

(1) Context of Sesay's First Contact with the Peacekeepers

1333. Sesay arrived in Makeni on Sankoh's instructions at 7pm on 3 May 2000 having passed through Magburaka. On his arrival in Makeni, Sesay went to the MP Office and was briefed by Saidu Kallon, Morris Kallon and Gbao and others. The knowledge he received would have been that which was known or that which was selectively given. At this stage, correctly or not, Sesay formed the impression that the UN had attacked first at Makump DDR and that ZAMBATT were approaching to attack Makeni.

1334. The evidence of credible Prosecution and Defence witnesses supports Sesay's own account of his involvement with the peacekeepers. Sesay first came into contact with ZAMBATT on the evening of 3 May 2000 after they had been arrested on the Lunsar-Makeni highway as they approached Makeni. This is confirmed by Prosecution witness TF1-288 who described arriving at a house where he was taken to a man he later came to learn was Sesay.²⁷¹⁰ The first Accused does not recall this meeting but nonetheless this is significant.

1335. Komba Gbundema arrived shortly after Sesay with over 300 half-clothed Zambian soldiers captured in an ambush between Lunsar and Makeni. He was told that this was on the orders of Sankoh.²⁷¹¹ TF1-288 testified that some [REDACTED] [REDACTED] had been stripped of their shirts, boots and berets at Moria Village or on the way to Makeni²⁷¹².

²⁷¹⁰ TF1-288/Transcript 22 March 2006, pp.23, lines 28-29

²⁷¹¹ Sesay/Transcript 25 May 2007, pp.67, line 24-29

²⁷¹² TF1-165/Transcript 23 March 2006, pp.54, line 29; pp.55, line 1

1336. A very real concern was that civilians were in the town and unaware of what was going on. Sesay was not happy (about it).²⁷¹³ Makeni was a scene of chaos with firing in the streets. Sesay was of the view that the war had restarted²⁷¹⁴ and as a consequence of these arrests, further attacks by the UN were inevitable.²⁷¹⁵ It was thus both unsafe for the UN to remain²⁷¹⁶ and unwise for him to allow them to leave. Consequently when Sesay was informed that there were MILOBs and some Kenyans at Teko Barracks he ordered that they be brought to join the Zambians on the road to Kono at Matatoka.

c) Sesay motivated by concerns over safety of the UN

1337. It is submitted that, on the basis of the evidence set out below, Sesay's intention was to move the UN forces, who he considered thus POWs on the basis of the information he received, out of Makeni. Makeni had become unsafe. Sesay decided that the right approach was ensuring the safety of the UNAMSIL troops as POWs, an intention that he communicated both to RUF and to UNAMSIL troops. Sesay made it very clear to the RUF around him that the UNAMSIL troops were to be moved to Kono for their own safety. TF1-360, who was in Makeni at the time, agreed that when the UN in Makeni was attacked, it was a violent and chaotic scene in Makeni and the UN were not safe there.²⁷¹⁷ TF1-174 testified that on the 3 May 2000, he started to see RUF fighters riding around in UN vehicles in Makeni and were saying that they had captured UN soldiers and that the situation became very tense in Makeni.²⁷¹⁸

1338. The fact that DMK-444 confirmed that on the 3 May 2000 the violence "stopped absolutely, yes. It stopped"²⁷¹⁹ may perhaps be the most eloquent confirmation of Sesay's role in these unfortunate events.

1339. That Sesay was concerned the with safety of the UN who had not been disarmed and were at the centre of the chaotic scene in Makeni was publicly known. TF1-117, no

²⁷¹³ DIS-214/Transcript 17 January 2008, p. 43, line 3 – 24

²⁷¹⁴ TF1-360/Transcript 22 July 2005, pp. 57, line 5 and DIS/Transcript 25 May 2007, pp. 65, line 8-10

²⁷¹⁵ DIS/Transcript 25 May 2007, pp.82, line 1-4

²⁷¹⁶ TF1-360/Transcript 25 July 2005, pp.57

²⁷¹⁷ TF1-360/ Transcript 25 July 2005, pp. 57, lines 13-27.

²⁷¹⁸ TF1-174/ Transcript 21 March 2006, pp. 63, lines 12-25.

²⁷¹⁹ DMK-444, Transcript 19 May 2008, pp. 114 – 115.

stranger to implicating the first Accused, testified that on the day of the attacks on Mabanta and Mankneh (both in and around Magburaka) he learnt that Sankoh sent a message saying that Sesay had told him that the men should not have been attacked. Sankoh was arrested in Freetown shortly afterwards.²⁷²⁰ At the time of the attacks, TF1-117 said that they wanted to kill those they had captured, but Sesay said they should not kill them but release them and he arranged for them to be taken to Kailahun. The witness agreed that Sesay would not allow the killing of any of the UN and that they should all be gathered in a place of safety before being released and in fact Sesay tried to stop further attacks on the UN.²⁷²¹

1340. This witness is corroborated by DIS-214 who was at Tekko Barracks when he heard Sesay order Kailondo to take the ZAMBATT peacekeepers and MILOBs to Kono and that he must take great care of the captured soldiers and that nothing should be taken from them and belongings that had been taken should be given back²⁷²². Furthermore this witness understood that Sesay thought it wise, because the UN were diplomat soldiers, that they be treated as disciplined officers and that they should be sent to Kono.²⁷²³

1341. Significantly, this is corroborated by some the witnesses who were some of the UN being held by the RUF in Makeni at that time. TF1-042, a Malaysian arrested on 1 May 2000 at the DDR Camp in Makump, stated that he had been tied up and undressed and made to spend his first night in Tekko barracks. TF1-042 states while in a vehicle en route to Kono, the vehicle stopped and a man introduced himself as Major Roberts. Major Odiambo told him this was in fact Sesay. TF1-041 stated that Sesay then instructed the RUF who were with them that they should be untied and TF1-042 and his colleagues should be taken to a farm where their belongings would be returned to them.²⁷²⁴

²⁷²⁰ TF1-117/Transcript 30 June, pp.34 lines 3-8

²⁷²¹ TF1-117/Transcript 30 June 2006, pp. 33

²⁷²² DIS-214/Transcript 17 January 2008, pp.43, line 25 – pp.44, line 12

²⁷²³ DIS-214/Transcript 17 January 2008, p.44, lines 24-29.

²⁷²⁴ TF1-042/Transcript 20 June 2006, p.39, line 4 – p. 40 line 4

1342. TF1-044, a Gambian MILOB based in Makeni, who was held with TF1-042 at Tekko barracks, testified that while being taken to Kono, they met with a man he knew to be Sesay. In cross-examination TF1-044 confirmed that Sesay ordered that they be untied and told them he would save their lives and take them to Kono for their safety and that he would deal with the Gambian authorities to have him released. The situation was fraught and on the information Sesay, the UN had attacked the RUF. It is significant that notwithstanding, Sesay welcomed the witness to his area.²⁷²⁵

1343. There is no evidence that Sesay created conditions for their release and it is submitted that Sesay's intention was always to release the UN unconditionally once his commander-in-chief, Sankoh, then in Freetown, made the appropriate political and diplomatic contacts. The fact that when Sankoh was arrested and Sesay *still* declined to use the UN troops as hostages rebuts any evidence of guilt.

d) No threats by Sesay

1344. The Prosecution case, as set out in the Pre-Trial Brief, was that on the way to Kono, Sesay addressed the peacekeepers and said he could have killed all of them without questions being raised²⁷²⁶.

1345. TF1-044, a MILOB based in Makeni, testified that Sesay shot in the air and said "you are now in my area. I can kill all of you and nothing would come of it, but because of reasons well known to me I will save your lives". He then ordered that the peacekeepers be untied.²⁷²⁷ It is submitted that even taken at its highest, this is not a threat to kill – the man that TF1-044 believes to be Sesay - expressly stated that he would save their lives and followed this by ordering that they be untied and making it clear that he would protect them.

1346. If the Trial Chamber is persuaded that the man these witnesses met on the road was Sesay, it is submitted that expressing such conditional sentiments after receive

²⁷²⁵ TF1-044/Transcript 27 June 2006, pp.46, line 6 – p.47, line 29

²⁷²⁶ Prosecution Supplemental Pre-trial Brief, Para 290.c.

²⁷²⁷ TF1-044/Transcript 27 July 2006, p.16 lines 12-14

reports that the UN had attacked the RUF, is not sufficiently grave to attract any liability. That Sesay, if the Trial Chamber believes it to be Sesay, reassures the UN of their safety and orders that they be untied demonstrates that Sesay's concern was to protect them.

e) Evidence of treatment of UNAMSIL by RUF fighters

(1) Yengema

1347. The Defence submit that while in the care of the RUF, the UN lived in the same living conditions as the RUF fighters, which while not perhaps as comfortable as they were used to, were certainly no worse than what the RUF fighters themselves lived under.

(a) DIS-310

1348. DIS-310, was one of the UN held in Yengema during this period. That this witness would fly from abroad to give evidence on behalf of Sesay is a very powerful statement about the treatment he received while under the care of Sesay. DIS-310 described his treatment as follows:

...Monica was with us throughout our stay there [in Yengema].

Q. How did she treat you?

She treated us very well. She was very caring. She was concerned with our welfare. At times, she was even concerned that we should -- in fact, she was not approving of our being held, first of all, and she did her best to ensure that we get the basics. We get food when it is available, our demands addressed; if anyone wants to take a bath, this is what was organised. If one falls sick, she would endeavour to try and raise a medical personnel, and My Lords, generally, I would say within her ability, she did the best she could have done.

Q. And did you receive the same or different treatment to the other three that you were staying with?

Yes, My Lords. It was to everybody and also to the troops, the soldiers.

Q. Were you able to visit the soldiers who were being held at the --

PRESIDING JUDGE: So she also treated the soldiers well?

THE WITNESS: Yes, My Lord.

PRESIDING JUDGE: The soldiers who were lodged in the school?

THE WITNESS: Yes, My Lords.

Q. Were you able to visit the soldiers at the school?

Yes, I did, almost on a daily basis. And, in fact, we would spend most of the time during the day together.

Q. And you said that Monica did the best she could for you and also the soldiers in the school, were the soldiers in the school, receiving the same or different treatment from what you observed?

The soldiers were receiving more or less same treatment because whatever food is available was shared amongst all the people there, RUF combatants, the soldiers, ourselves.

Q. So, were you able to observe from what you said -- well, please explain what you mean about shared. How did this work sharing between the RUF and the --

Yes, My Lords, cooking was done separately. When food is brought, which was scarce, the cooking for the soldiers would be done separately and whatever is cooked was served to all of them, our soldiers, RUF combatants who were there. In other words, they fed together. For the officers, that is four of us, Monica used to supervise our cooking separately and together with her, and other members of staff who would be around and ourselves, we would feed together too. Food was scarce and therefore it is only when it is available.

Q. Thank you. In terms of the kind of harassment you received in the vehicle on the way, can you comment on that in Yengema?

Let me be specific here. Yengema, there was no mistreatment.²⁷²⁸

1349. DIS-310 gave evidence about the RUF combatants with them in Yengema offering them food as food was scarce for everyone at that time:

Q. Do you recall an incident when you were short of food. Let me ask a different question. Were you ever offered food which you declined?

Once, yes. As I mentioned earlier, food was very scarce. Most of the time, there were no food, actually. And I remember one time RUF combatants who were guarding us went around looking for something to eat. And what they got were three small rats from the roof of the house. And when they descended they came and put the three rats, slaughtered them, prepared them nicely, put them on fire, roasted them and since we -- were there and they were ready for eating. The first offer was actually to us, to share. And we declined. We declined. And they enjoyed the meal.

²⁷²⁸ DIS-310/ 6 March 2008, pp. 36, line 17 – pp. 38, line 17.

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Q. Thank you. And you spoke to them about --

PRESIDING JUDGE: You say you declined and they did what? They enjoyed the meal.

THE WITNESS: They ate, yes, they proceeded and ate the rats.

Q. These were the guards, who -- or some of the guards who caught the rats?

Yes, some of the combatants who used to hang around, they caught the rats.

Q. And the combatants who used to hang around, did you observe their ages please?

They were grown-up people, over 18.²⁷²⁹

1350. DIS-310 also stated that the civilians who lived around Yengema seemed to have a friendly relationship with the combatants there. He stated that in theory civilians were not allowed access to them but civilians who were friends of Monica and other senior commanders would come to visit them so they would see them.²⁷³⁰ DIS-310 stated that he noted from his conversations with the combatants that they considered Sesay to be a strict disciplinarian and that he was liked by his people.²⁷³¹

1351. DIS-310 also stated that following the arrest of Sankoh in Freetown, Monica and some of the combatants in Yengema did threaten him that if anything happened to their leader, that he would be eliminated. DIS-310 says the situation was tense for a few days after Sankoh's arrest and then went back to normal.²⁷³² It is submitted that these threats were threats made as a result of the frustration of the RUF in Yengema because of the arrest of their leader. Sankoh. Sankoh was related to Monica. It is submitted that these threats were little more than posturing and there is no evidence to show that Sesay or any senior commanders were aware that these threats had been made.

1352. DIS-310 stated that while being transported towards the border from Yengema, the UN were asking questions about what was happening and their RUF escorts were getting annoyed and one drew a pistol and warned them to stop harassing him by asking him questions. Later DIS-310 said he spoke to the fighter and got some information about what was happening to relay to his men.²⁷³³ It is submitted that this also is

²⁷²⁹ DIS-310/ 6 March 2008, pp. 45, line 15 – pp. 46, line 15.

²⁷³⁰ DIS-310/ 6 March 2008, pp. 44, line 20 – pp. 45, line 14.

²⁷³¹ DIS-310/ 6 March 2008, pp. 53, lines 4-24.

²⁷³² DIS-310/ 6 March 2008, pp. 128, line 16 – pp. 131, line 18.

²⁷³³ DIS-310/ 6 March 2008, pp. 121, line 7 – pp. 123, line 4.

posturing on the part of the RUF fighter and an expression of annoyance rather than a genuine threat to kill. That DIS-310 approached him afterwards to get information from him is recognition of this fact. At best this was a temper tantrum, albeit an armed one, rather than a genuine expression of an intention to kill or injure. There is no evidence that Sesay knew about this incident.

(b) TF1-288

1353. TF1-288 was held at Yengema with DIS-310 but gives a very different account, stating that neither he nor DIS-310 were treated well and they were once subject to physical violence and and at various times they were threatened with torture or being killed²⁷³⁴ by RUF leadership in the area including Denis Lansana. The witness attributed this to tensions between RUF and the peacekeepers around the time of Sankoh's arrest. The only evidence offered by this witness of Sesay's involvement in mistreatment at Yengema is multiple-hearsay²⁷³⁵ and subsequently denied in cross-examination as the witness testified that he did not think he had ever told the Prosecution that Sesay ordered any maltreatment.²⁷³⁶ Furthermore he confirmed that Monica Pearson stopped or prevented violence directed towards them where she observed it and that she had told him that she acted under the orders of Sesay who she was not able to disobey.²⁷³⁷

1354. TF1-288 also testified that Monica Pearson had told them that their fate hinged on the release of Sankoh and, if he was not released, they may face execution.²⁷³⁸ There is absolutely no independent or direct evidence to suggest that Sesay had given her or anyone such orders or that he even agreed with this view. In fact it is clear from the evidence of TF-362 and DIS-310 that this must have been her personal sentiment²⁷³⁹.

²⁷³⁴ TF1-288/Transcript 22 March 2006, pp.41, line 28 – pp. 42, line 22.

²⁷³⁵ TF1-288/Transcript 22 March 2008, pp. 48, lines 10-12. This witness testified that he was told by his men housed at the school they had been stripped of their uniforms down to their underwear, had no bedding, were not allowed to take a bath and were occasionally beaten and that the RUF guarding them said they had instructions to treat them in that way. Monica Pearson indicated to this witness that “the strict instructions from their superior commander; Sesay, was to treat them the way they were being treated.”

²⁷³⁶ TF1-288/Transcript ,22 March 2006 pp.77, lines 28-29 and pp.78, lines 1-2

²⁷³⁷ TF1-288/Transcript 22 March 2006, pp. 77, lines 2 - 8

²⁷³⁸ TF1-288/Transcript 22 March 2006, pp.45, lines 14-18

²⁷³⁹ See para XXX and TF1-362/Transcript 22 April 2005, pp.76, line 10-15

1355. The evidence of DIS-310, an objective witness with no reason to testify for Sesay given the circumstances under which he met him, clearly undermines the credibility of TF1-362's account of how the UN were treated while being held at Yengema. It is submitted that TF1-362 in her evidence showed hostility towards Sesay and stated that he had disarmed leaving Sankoh in prison and had "ruined" Sankoh's revolution.²⁷⁴⁰ It also further undermines this unreliable witness on a range of issues.

(2) *Small Sefadu*

(a) TF1-044

1356. TF1-044 who was injured during a car accident on the move to Kono confirmed that he was given elephant grass to quench his thirst and basic medical treatment. When they arrived he was accommodated in a house in a village in Kono and a doctor attended. This witness was after two weeks moved to a clinic after money was raised by local resident Gambians for his treatment by Dr. Kamara at a civilian clinic who the witness believes "did everything in his power" to treat him.²⁷⁴¹ His release was orchestrated by Dr. Kamara and Sesay who arranged for his evacuation to Choitram Hospital.²⁷⁴²

(b) TF1-042

1357. This account is corroborated by TF1-042. Dr. Kamara offered to treat those injured in the accident and civilians attended them.²⁷⁴³ TF1-042 initially testified that the general conditions were not comfortable as there was little food however in cross-examination the witness confirmed that rebels provided clothes and dinner "which the witness presumed was similar to food eaten by the rebels" on the first day at Small Sefadu. The rebels gave them bread sardines, rice and drinks and food and provided the UNAMSIL commanders with rooms to sleep in.²⁷⁴⁴

²⁷⁴⁰ TF1-362/Transcript 22 April 2005, pp. 73, line 4 – pp. 76, line 7.

²⁷⁴¹ TF1-044/Transcript 27 June 2006, p.74, line 15-18

²⁷⁴² TF1-044/Transcript 27 June 2006, p.33, lines 18-25

²⁷⁴³ TF1-042/Transcript 20 June 2006, p.77, lines 6-16

²⁷⁴⁴ TF1-042/Transcript 20 June 2006, p79, line 1 -11

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(3) *Tombodu*

1358. The evidence of Prosecution RUF insider witnesses as to the treatment of UNAMSIL witnesses at Tombodu is summed up by TF1-304.

1359. TF1- 304 testified that 190 Zambian Peacekeepers were captured by the RUF in Makeni and were taken to Tombodu for one month. TF1-304 in direct evidence claimed that the UN did not have enough to eat or a nice place to sleep, that the RUF used to shout at the civilians not to give the peacekeepers food and that he witnessed some of the peacekeepers being beaten as they were put into vehicles to be released.²⁷⁴⁵ In cross-examination this witness clarified that every day people would take food to the peacekeepers; sometimes the Zambians would come to his house to eat as they were allowed to move around during the day. When the rebels realized that as they could not feed the peacekeepers themselves they allowed the townspeople to feed them. The peacekeepers were initially not allowed but later permitted to go looking for their own food.²⁷⁴⁶

f) No evidence of Any Demands or Conditions for the Return of UNAMSIL

1360. What perhaps is most striking about the facts – given the Prosecution case concerning the holding of the UN in Kono before they were released through Liberia - is the absence of any evidence of any purpose of intention by the RUF and/or Sesay to compel any third party to act or refrain from acting as an explicit or implicit condition for the safety or the release of the UN. There is no evidence of any demands being made for their release or indeed the RUF or Sesay gaining or attempting to gain from the release of the hostages.

1361. There is evidence though that Sesay resisted huge pressure from stalwarts of Sankoh within the RUF to demand the release of Sankoh in exchange for the return of UNAMSIL peacekeepers. TF1-288 detained at Yengema testified that Monica Pearson

²⁷⁴⁵ TF1-304/Transcript 13 January 2005, pp.56, line – pp.57, line 11

²⁷⁴⁶ TF1-304/Transcript 13 January 2005, pp.119, line 20 – pp.121, line 12

had told him that “anything could happen to them in the process of Sankoh not being released”²⁷⁴⁷ and ██████████ made clear that “Foday Sankoh’s revolution was ruined by men like General Issa”. ██████████ angry with Sesay for failing to do enough to have Sankoh released from Freetown in 2000, ██████████ the advice taken from Ghanky Taylor to release the peace-keeping forces was “the cause for the failure of Foday Sankoh’s revolution.”²⁷⁴⁸ This sentiment was reflected in DIS-249’s evidence that Mike Lamin made clear to him that he considered the release of Sankoh as integral to disarmament. The animosity felt within RUF ranks towards Sesay for disarming the RUF has been a recurring feature of the testimony of Prosecution insider RUF witnesses. It is clear that Sesay rejected the calls to use the UNAMSIL peacekeepers as a bargaining chip for Sankoh’s release.

g) UN Held Safely While Sesay Finds the Means to Return Them

1362. It is agreed that Sesay was involved in taking the UN peacekeepers to Kono (but for reasons set out above) and ultimately in their release. This was a process interrupted by the arrest of Sankoh in Freetown on 8 May 2000. The last message Sesay received from Sankoh regarding the peacekeepers was at midday on 7 May 2000 when he ordered Sesay to meet with General Garba, deputy force commander with UNAMSIL at Lunsar where they discussed in the full glare of the world press, the welfare of the peacekeepers. At this time Sankoh was very much in command of negotiations as he indicated in his information message on 4 May 2000.²⁷⁴⁹

1363. Sankoh had been the main point of contact and the decision-maker in the disarmament process as set out but by 8 May 2000 Sankoh was incommunicado having been arrested in Freetown. This is corroborated by both General Opande and His Excellency Former President Kabbah in their evidence to the Court:

²⁷⁴⁷ TF1-288/Transcript 22 March 2006, pp.41, lines 16-17

²⁷⁴⁸ ██████████, pp.76, line 10-15

²⁷⁴⁹ Court Exhibit 212, Radio Log Book, p.18647 4 May 2000: “Infos from the leader that the hostages should not be molested because they are on negotiation for their release.”

1364. Former President Kabbah testified that Sankoh was held in a half built property at Aberdeen and he was not able to communicate by radio or any other means even up to the time Sesay was made Interim Leader.²⁷⁵⁰

1365. General Opande testified that he came to Sierra Leone to head UNAMSIL on a fact-finding mission following the incidents in the north and corroborated that he approached Sankoh at Pademba Road Prison who maintained that he was leader of the RUF and requested that he be released in order to negotiate the return of the peacekeepers. This suggestion was rejected by both Force Commander Jetley and President Kabbah.²⁷⁵¹

1366. The meeting with Gabba on 7 May 2000 was the first and only meeting Sesay had with the UN as following Sankoh's arrest the UN had no contact with the RUF or Sesay himself. General Opande confirmed that UNAMSIL had cut any direct communication with the RUF after the May 2000 activities, a situation that remained until he reopened communication lines in November 2000²⁷⁵².

1367. Sesay was in an impossible situation once he had taken responsibility for the welfare of the peacekeepers. He was unable to contact Sankoh or UNAMSIL and consequently there was no means to facilitate the return of the peacekeepers until he was contacted by Charles Taylor. Benjamin Yeaten brought a message to Pendembu at the end of May 2000 with a message for Sesay who was still in Kono. The following day Sesay travelled to Liberia and met with Charles Taylor who had an ECOWAS mandate to facilitate the return of the peacekeepers. This is confirmed by General Opande. Sesay having gathered the peacekeepers from Kono travelled by road though Kailahun to Liberia. This was Sesay's first opportunity to release the men – he did not hesitate.

²⁷⁵⁰ Ahmed Tejan Kabbah/Transcript 16 May 2008, pp.20, line 1 -29

²⁷⁵¹ DIS-249/Transcript 11 March 2008 pp. 92, lines 11-17

²⁷⁵² DIS-249/Transcript 11 March 2008, pp.96, lines 11-16

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h) Sesay's Failure to Punish Those Involved in the Initial Attack

1368. Sankoh's arrest in the midst of the crisis with the UN threatened to splinter the RUF. Following the release of the hostages, Sesay was head of the RUF with *de jure* command responsibility. It is clear that he was attempting to hold the peace process, governed by the Lomé Accord, together and have the RUF fulfil its obligations under the Accord but moving forward with the disarmament, despite Sankoh's imprisonment. It is submitted that it was not within Sesay's material ability to investigate or take steps to punish those thought responsible for the attacks. It was simply not possible at such a sensitive stage in the peace process for Sesay, a character not as charismatic as Sankoh and not receiving the same unconditional loyalty from the rank and file, to pursue the arrest of what could have been many RUF combatants involved in the UN incident, many of whom were predicating their cooperation with the peace process on the Pardon and Amnesty provision of the Lomé Accord (Article IX). The fragile peace was more important. This would have been damaged irretrievably if, instead of working with those commanders, he had tried to affect their arrests. This would not have been in the interests of the Republic of Sierra Leone, which had seen too much blood shed.

(1) Sesay's Subsequent Involvement in Disarmament

1369. Once made Interim Leader, Sesay was better positioned to protect the disarmament process. General Opande testified that in his dealings with Sesay as interim leader from late 2000 Sesay conducted himself honourably, he was honest and determined to see an end to the conflict.²⁷⁵³ He also confirmed that Sesay never to his knowledge many any request for anything in exchange for bringing the RUF to the disarmament.²⁷⁵⁴

1370. In the words of General Opande, "Mr Sesay did not change his demeanor or attitude towards the entire peace process after disarmament. He remained, I believe, loyal member of the team who wanted to see peace returned to this country"²⁷⁵⁵. He did

²⁷⁵³ DIS-249/Transcript 11 March 2008, pp.7, line 25 – pp.8, lines 2-3

²⁷⁵⁴ DIS-249/Transcript 11 March 2008, pp..6, lines 1-3

²⁷⁵⁵ DIS-249/Transcript 11 March 2008, pp.5 line 22 – pp.6, line 3

not to this witness's knowledge request anything in exchange for his cooperation in bringing the RUF to the disarmament – "I think he (Sesay) conducted himself honourably, honest and he was determined to see to it that the conflict came to an end under his watch".²⁷⁵⁶

1371. General Hassan stated in evidence "Mr Sesay was certainly a young man. Unlike the other veterans, rebels, that I came across he was always moderate, soft spoken, and I had never seen him showing arrogance. Rather, he would be time and again express his concern on the peace process and discussion with me on the on-going peace process... one day I saw him suddenly bust into tears in front of me or sensitize I used to regularly visit him in Makeni. He burst into tears and said he was very concerned about the internal dynamics. He was also concerned about internal dynamics of the RUF and also concerned about what would happen after disarmament of the soldiers because he was concerned with it, if rehabilitation was not done, he thought he would be blamed for disarmament so he was very concerned about this. But, again he reiterated that he would go all out with me for disarmament. I can recollect one thing." Ahmed Tejan Kabbah's impression of Sesay was that he was committed to disarmament. "When it came to disarmament...Issa was very cooperative... He looked like a harmless young man.. and I saw the tendency for someone who would want to be obedient". He found Issa Sesay "credible because he agreed to do something and he did it"²⁷⁵⁷

XVII. Conclusion

1372. For the reasons referred to in this Closing Brief, the Defence strongly submits that Mr. Sesay should be found Not Guilty in each and every count.

1373. There is compelling evidence that terrible crimes were committed by individuals and small groups associating themselves under the banner of the RUF and AFRC. The Prosecution's case has never attempted to define which groups, led by which men, may be responsible for these crimes. Instead the Prosecution has simply described a

²⁷⁵⁶ DIS-249/Transcript 11 March 2008, pp.7, line 25 –pp.8, line 2

²⁷⁵⁷ Ahmed T. Kabbah, 16 May 2008, pp.35

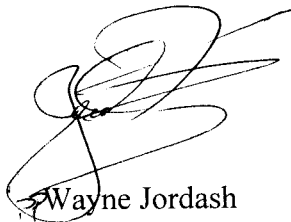
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multitude of crimes and attributed them generally to the RUF before finally pointing the finger of blame at Mr. Sesay and the other two Accused. In the absence of direct rebuttals, it should be assumed that each and every crime which may have, finally, been particularised in the Prosecution Closing Brief is roundly rejected.

1374. The overwhelming civilian support for Mr. Sesay is the best description of who, in their view, is not responsible for these crimes. In contrast, the almost complete absence of civilian evidence in Prosecution's case against Mr. Sesay, particularly in the areas where Mr. Sesay lived throughout the conflict, is the reasonable doubt which should be applied to each and every Count in the Indictment. It is reasonable to assume that if Mr Sesay was responsible for these crimes as have been enumerated in the Indictment, that these civilians would know that to be the case. In fact as the evidence suggests they are convinced it is not. We urge the Trial Chamber to find Sesay Not Guilty on all counts and allow him to return to his community.

1375. For the reasons aforementioned, it is submitted that Mr. Sesay should be found not guilty pursuant to article 6(1) and 6(3) of the Statute.

Dated 30th July 2008



Wayne Jordash

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80648

Book of Authorities

SCSL

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CONFIDENTIAL ANNEX A

*Material Factual Allegations (From Prosecution Insider Witnesses)
Disclosed to the Defence Prior to 26 April 2004*

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COUNT 1

Indictment – The Republic of Sierra Leone (Count 1)

Para. 44:

Members of the AFRC/RUF subordinate to the Accused committed the crimes set forth in Counts 3-14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.

Pre-Trial Brief – The Republic of Sierra Leone

[No locations and no crimes specified: reliance upon crimes alleged in Counts 1-14]

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COUNT 2

Indictment – The Republic of Sierra Leone (Count 2)

Para. 44:

Members of the AFRC/RUF subordinate to the Accused committed the crimes set forth in Counts 3-14, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF. [No Location specified]

Pre-Trial Brief – Kenema, Bo, Kailahun Districts

- i) The crimes were committed during attacks in various villages in Kenema, Bo, and Kailahun Districts where it was perceived that the civilians were supporting and/or harbouring the CDF/Kamajors.

Pre-Trial Brief – Freetown, Bombali, Kono, and Koinadugu Districts

- i) The amputation of limbs by members of the AFRC/RUF in Freetown, Bombali, Kono and Koinadugu Districts where the civilian victims were told to “go to Kabbah” for new hands.

Pre-Trial Brief – Bombali District

- i) The crimes were committed during attacks on Moyambo, Bonoyo (or Bonyoyo), Daraya and Karina in Bombali District carried out in a single day because it was believed that the inhabitants belonged to the Mandingo ethnic group, the same ethnic group as President Kabbah.

Pre-Trial Brief – Freetown and Western Area

- i) The burning of civilian property performed as part of the attacks on many villages throughout the various Districts of Sierra Leone and in Freetown and the Western Area.

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COUNTS 3-5

Indictment – Bo District (Counts 3-5)

Para. 46:

Unlawful Killing (unknown no. civilians) Bo District, 1st June 1997 – 30th June 1997.

Pre-Trial Brief – Bo District (Counts 3-5)

- i) Unlawfully killed many civilians, Bo District (Sembehun, Tinkoko, Mambona, Gerihun, Telu), June 1997.
- ii) Shot family of 11, Tinkoko, June 1997.
- iii) SLAs kill 19 civilians, Tinkoko.
- iv) Killed father of former VP Demby, Gerihun, June 1997.
- v) At least 8 civilians killed, Sembehun, June 1997.
- vi) At least 3 civilians killed, Mambona, June 1997.
- vii) Paramount chief of Bo District killed, June 1997.

Witness Statements – Pre-April-April 2004

[None]

Indictment – Kenema District (Counts 3-5)

Para. 47: Unlawful Killing (unknown no. of civilians) Kenema District, 25th May 1997 – 19th February 1998.

Pre-Trial Brief – Kenema District

- i) Community leaders detained and ill-treated at AFRC secretariat Kenema Town, 25th May 1997 – 19th February 1998. Beaten with tires and pistols, tied-tightly with rope. Several detainees killed.
- ii) Alleged CDF/Kamajor supporter beaten to death with rubber tire, sometime 25th May 1997 – 19th February 1998.
- iii) Known CDF/Kamajors executed, 25th May 1997 – 19th February 1998.
- iv) Civilians killed, open fire, main street in Kenema Town, 25th May 1997 – 19th February 1998.
- v) 4 civilians executed extra-judicially Kenema Police station, sometime 25th May 1997 – 19th February 1998.
- vi) At least 5 civilians tortured and killed on Bockarie's orders, sometime 25th May 1997 – 19th February 1998.
- vii) Civilians shot while mining Cyborg pit, sometime 25th May 1997 – 19th February 1998.
- viii) BS Massaquoi tortured and killed.

Witness Statements – Pre-April-April 2004

TFI-036 [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

- i) Bockarie orders killing of B.S Massaquoio and other prominent citizens of Kenema 1997/1998.
- ii) Civilians killed by RUF SBUs and RUF commanders, mining sites 1998.

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003)

- i) Civilians killed by RUF commanders, Tongo Field, October 1997.

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Civilians killed by RUF, Mano Junction & Kenema 1999.

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Indictment – Kono (Counts 3-5)

Para. 48:

Unlawful Killing (several hundred civilians) Kono District, 14th February 1998 – 30th June 1998.

Pre-Trial Brief – Kono District

- i) Widespread and systematic attacks on civilian population, 14th February – December 1998.
- ii) Widespread killing of civilians, throughout 1998, “Operation No Living Thing” in towns and villages (including Bumpeh, Farandu, Foender, Kindea, Sawa, Somoya and Wandedu).
- iii) Mass civilian killings in Foender, Koidu Town, Mortema and Tombodu Town, 1998.
- iv) 32 people shot in a house in Mortema.
- v) Over 100 civilians massacred in Koidu Town, 1998.
- vi) Tombodu Town known as “the killing zone,” dead bodies thrown into Savage Pit.
- vii) Group of civilians beheaded in Foender, 1998.
- viii) Group of civilians beheaded in Foindu, 1998 and heads carried in a bag to Tombodu.
- ix) Civilians forced in houses and massacred, burnt alive throughout Kono, including Koidu Town and Tombodu Town.
- x) Scores of civilians died due to amputations of limbs.
- xi) Many civilians killed through indiscriminate shooting in the diamond mines.
- xii) Issa Sesay told civilians that diamonds were to be mined to finance the movement, civilians must cooperate and disciplinary measures would be taken against those working in the mines including execution.
- xiii) Issa Sesay established rules for the civilian mining workforce which included that no one was to be paid, laziness would be punished by public flogging and anyone caught stealing a diamond would be executed.
- xiv) Widespread and systematic looting of civilian and public property throughout Kono District – “Operation Pay Yourself.” Looting causing starvation in some areas.
- xv) Brutal mining operations, captives stripped naked and beaten, killed if tired, not fed and unpaid.
- xvi) Issa Sesay present at a meeting in Tombodu Town when 4 civilian men and 2 civilian women were killed in front of the crowd.
- xvii) Issa Sesay present at a meeting when Koroma told commanders that people of Koidu were bad and should be killed.
- xviii) Issa Sesay present in Koidu town when older men had their hands tied behind their backs and then shot.
- xix) Issa Sesay frequently present at diamond mines when civilians were indiscriminately fired upon.

Witness Statements – Pre-April-April 2004

TFI-036 [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

- i) Civilians killed by RUF SBUs and RUF commanders, mining sites 1998.

TFI-071 [REDACTED] (witness statement 12 February 2003)

- i) RUF commander murders chief, Nimikoro (*unclear when*).
- ii) 60+ civilians executed by RUF, Hill Station Kono 1997/1998.

- TFI-141** [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)
- i) Civilians unlawfully killed by RUF commander, Koidu Town February 1998.
 - ii) Civilians killed, houses burnt and women sexually assaulted by RUF, Talisma village 1999. (Location unknown; possibly Kono District)
 - iii) Morris Kallon orders houses to be burnt (with civilians inside), Pimbi Lane, Koidu 1999.
 - iv) Morris Kallon cuts open pregnant woman, Koidu Town 1999. [*unclear if unlawful killing*]
 - v) "Operation No Living Thing" by RUF, Sandaru & Koidu 1998/1999. [*unclear if unlawful killing*]
- TFI-167**, Johnson (witness interviews May, October 2003)
- i) Unlawful killing (over vehicle disputes) by RUF, Kono, retreat from Freetown. [*unclear if soldiers or civilians killed*]
 - ii) Execution of 4 civilians by Issa Sesay (for stealing gravel), Kono 1998.
 - iii) Unlawful killing of over 30-40 civilians by RUF commander Savage, Tombodu 1998.
 - iv) Pa Demba killed by RUF, Koidu 1998.
- TFI-168** [REDACTED] (witness statements/interviews 11 April 2003)
- i) Civilians killed and amputated by RUF commanders, Kono, retreat from Freetown 1998.
 - ii) "Operation No Living Thing" ordered by RUF command, 1998. [*unclear if unlawful killings*]
- TFI-184** [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003).
- i) Savage kills many civilians in Kono, 1998.
- TFI-334** [REDACTED] (witness interview 5 November 2003)
- i) Over 20 bodies in Savage pit, Tombodu 1998.
- TFI-366** [REDACTED] (witness statement 5 February 2004)
- i) Sesay shoots two combatants, Kono 1998.
 - ii) Morris Kallon kills three female civilians, Kono 1998.
 - iii) Civilians burnt to death in houses by RUF commanders, Tombodu, retreat from Freetown 1998.

Indictment – Kailahun (Counts 3-5)

Para. 49:

Unlawful Killing (unknown no of civilians) Kailahun District, 14th February 1998 – 30th June 1998.

Pre-Trial Brief – Kailahun District

- i) Attacks on civilian population, 14th February 1998 – 30th September 1998.
- ii) Killing of civilians.
- iii) Mass civilian execution, Kailahun Town.
- iv) Killing of 10 civilians in Buedu.
- v) About 60 civilians accused of being Kamajors were killed in the presence of Issa Sesay.
- vi) Shooting of 2 abducted boys because they were unable to carry loads.

Witness Statements – Pre-April-April 2004

TFI-036 [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

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- i) Bockarie and Sesay kill Pa Foday, Buedu, 1998/1999.
- TFI-108** [REDACTED] (witness statements: 30 March 2003 & 04 February 2004)
- i) Two civilians shot by RUF, for not being able to carry loads, between Ngiema and Pendembu [*unclear when*].
- ii) 67 Kamajors killed, by RUF commanders, Kailahun [*unclear when*].
- TFI-113** [REDACTED] (witness statements: 27 March 2003 & 04 April 2004).
- i) 67 Kamajors shot by RUF commanders, Kailahun Town 1998.
- TFI-114** Denis Koker (witness statement 26 March 2003 & 4 February 2004)
- i) Reports of conscripts dying at training bases in Kailahun due to poor conditions.
- ii) Execution of 3 ex-soldiers by RUF Mike Lamin, MP Office, Kailahun May 1999.
- iii) Execution of civilian medic, Pa Kamara, by RUF Mike Lamin, MP Office, Kailahun, sometime 1998-2000.
- iv) Shooting of civilian trader called Zainab, by RUF commander, MP Office, Kailahun, sometime 1998-2000.
- TFI-117** [REDACTED] (witness statements: 17 January 2003 & 28 February 2004)
- i) Civilians randomly shot, on RUF commander Gbao's orders, Kailahun (unclear when).
- TFI-141** [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)
- i) Civilians killed by RUF commander, Bunumbu Training base, February/March 1998.
- ii) Fonti Kanu shot by Sesay, Buedu 1998.
- iii) Morris Kallon orders "Operation Born Naked": burning houses, abducting & killing civilians, Joru Kailahun 1998/1999.
- TFI-168** [REDACTED] (witness statements/interviews 11 April 2003)
- i) 65 suspected Kamajors executed by RUF command, Kailahun 1998.
- ii) Sesay executed three AFRC, Buedu Kailahun 1998.
- TFI-330** [REDACTED] (witness statements: 27 March 2003 & 4 February 2004)
- i) Execution of alleged Kamajors, on order of Sesay and Bockarie, Kailahun [*unclear when*].
- TFI-366** [REDACTED] (witness statement 5 February 2004)
- i) Sesay shoots Foday Kallon and a doctor, Kailahun 1998.

Indictment – Koinadugu (Counts 3-5)

Para. 50:

Unlawful Killing (unknown no of civilians) Koinadugu District, 14th February 1998 – 30th September 1998.

Pre-Trial Brief – Koinadugu District

- i) Widespread killing, physical and sexual violence, looting and destruction of property, abduction and forced labour, from 4th February 1998, throughout Koinadugu (Fadugu, Heremakono, Kabala, Kamadugu, Katombo, Koinadugu Town, Kumalu, Kurunbola, Moriya, Seraduyu, Serekolia, Sokorola, Yiffin).
- ii) Widespread civilian killing in towns/villages throughout Koinadugu district. (Including: indiscriminate shooting, placing civilians in burning houses, amputations, splitting open pregnant women's bellies, killing crying babies).
- 48 people locked in house and burned to death in Koinadugu Town.
 - 41 people locked in one house and burned to death in Yifin.
 - In Katombo II 2 police men were killed and gutted and their intestines were pulled across the road as a checkpoint.

Witness Statements – Pre-April-April 2004

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003).

- i) RUF commander shoots civilian trainee, Koinadugu 1998.

Indictment – Bombali (Counts 3-5)

Para. 51:

Unlawful Killing (unknown no of civilians) Bombali District, 1st May 1998 – 30th November 1998.

Pre-Trial Brief – Bombali District

- i) Intentional civilian killing Bonyono, Karina Mafabu, Mataboi, Pendembu, Malama, Gbundema (Gbundembu)- 1st May 1998 – 30th November 1998.
- ii) Civilians killed with Machetes in Karina and Bonyoyo.
- iii) 8 civilians in Karina were burned alive in a house.
- iv) The throats of a mother and son were cut in Daraya village.
- v) A suckling mother abducted and killed from Daraya village.
- vi) 11 civilians shot in Gbundembu Town.
- vii) A pregnant woman's stomach slit open.
- viii) Civilians killed during attacks on Kamakwie Town.
- ix) Alex Tamba Brima's orders under "Operation fearful the Area" included human sacrifices.
- x) Alex Tamba Brima ordered that all civilians be killed in Batmis.

Witness Statements – Pre-April-April 2004

TFI-117 [REDACTED] (witness statements: 17 January 2003 & 28 February 2004)

- i) Shooting on Lebanese owned home, by RUF commander, Rogbaneh Road 1999 [unclear if unlawful killings]

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Sesay orders "Operation Spare No Soul," civilians amputated, Sanda, Makeni, Magburaka, 1998/1999. [unclear if unlawful killings]

TFI-167, Johnson (witness interviews May, October 2003)

- i) Civilians executed (for trying to escape) by SLA commanders, Camp Rosos 1998.
- ii) Unlawful killing of civilians in Mosque, by RUF/SLA, Karina 1998.
- iii) Civilians of Mateboi village, including the chief, unlawfully killed by RUF, 1998.
- iv) About 20 civilians abducted by RUF/SLA, Mateboi 1998.
- v) Two abducted civilians executed for trying to escape, Camp Rosos 1998.

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003).

- i) Commander Gullit launches "Operation Fearful the area": numerous civilians killed, amputated and villages burnt, Rosos area, Karina and Batkanu, late 1998.
- ii) SLA Gullit orders execution of nuns (unclear when).
- iii) Civilians killed, amputated and beheaded, Mamusa, march to Freetown late 1998.

Indictment – Freetown and Western Area (Counts 3-5)

Para. 52:

Unlawful killing (civilians) Freetown, Western Area. 6th January 1999 – 28th February 1999.

Pre-Trial Brief – Freetown and Western Area

- i) Killing civilians, 6th January 1999 – 28th February 1999. Killed 3,000 – 5,000 civilians during invasion and retreat Freetown 1999. (included: individual executions in street/civilian houses, burning alive families in their houses, large scale civilian executions, amputations causing death).
- ii) 15 babies killed in front of their mothers on the retreat from Freetown.
- iii) At least 70 civilians shot & killed, Kissy Mosque sometime between 6th January 1999 – 28th February 1999.
- iv) RUF/AFRC senior commanders orders to kill and burn as much as possible.

Witness Statements – Pre-April-April 2004

TFI-093 [REDACTED] (witness video transcripts, 14 January 2004)

- i) Approximately seven civilians killed (in burning houses), by RUF commanders, Freetown 1999.

TFI-167, Johnson (witness interviews May, October 2003)

- i) RUF commander Mosquito orders “Operation No Living Thing”: unlawful killing of civilians, burning of houses by RUF/SLA forces, Freetown early 1999.
- ii) Student strikers attacked by AFRC/RUF, Cockerill 1997-1998: students raped, beaten and unlawfully killed. [*outside indictment period*]
- iii) Civilians executed in front of State House, on Gullit’s orders, Freetown early 1999.
- iv) Foday Bah Marah rapes and kills a group of nuns, retreat from Freetown 1999.
- v) Civilians amputated and killed by SLA/RUF, Ferry Junction and surrounding area, Freetown pull-out, 1999.
- vi) Civilians killed and raped, Fourah Bay/Up Gun 1999.

Indictment – Port Loko (Counts 3-5)

Para. 53:

Unlawful Killing (unknown no of civilians) Port Loko, February 1999 – April 1999.

Pre-Trial Brief – Port Loko District

- i) Attacks in February – April 1999. Unknown number of civilians killed.
- ii) Civilians killed in Waterloo, Masiaka, Tendakum and Manaarma.
- iii) Attack on Tendakum and Nonkoba early-mid 1999. Civilians killed.
- iv) 40 villagers killed in Tendakum and buried in a mass grave.
- v) Villagers hacked to death.
- vi) An infant was pushed into a cooking fire in Nonkoba.
- vii) 70 -73 people burnt alive in house during attack on Manaarma.
- viii) Killings occurred during the retreat from Freetown towards Masaika.

Witness Statements – Pre-April-April 2004

TFI-167, Johnson (witness interviews May, October 2003)

- i) Civilian women killed machete by RUF/SLA Keforkeh Port Loko 1999.
- ii) Seven civilians killed at Mafari, by SLA commander Cyborg, Port Loko 1999.
- iii) Civilians killed by commander Blood, Magbuntuso 1999.
- iv) SLA Bazy orders sacrifice of a young RUF called Dakwa, West Side, 1999.
- v) Women sexually assaulted and killed for allegedly being witches, nr. Rochin 1999.
- vi) Civilians killed by SLA/RUF, Mamamah, 1999.
- vii) SLA commander Alabama kills 12 young civilians girls, retreat from Freetown 1999.

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TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003).

- i) Many civilians killed by SLA's in Lunsar [*unclear when*]

COUNTS 6-9**Indictment – Kono District (Counts 6-9)**

Para. 55:

Rape (hundreds of women & girls) Kono District, 14th February 1998 – 30th June 1998.
 Abduction, sexual slavery, forced marriage (unknown no. of women & girls) Kono District, 14th February 1998 – 30th June 1998.

Pre-Trial Brief – Kono District (Counts 6-9)

- i) Scores of abducted women and girls routinely raped and forced to marry.
- ii) Gross acts of sexual violence, sexual abuse in public, in front of families, raping with foreign objects, suckling mothers, virgins and young girls targeted.
- iii) Women abducted and taken to Superman Camp for distribution amongst rebels.
- iv) Women were gang raped in Koidu Town.
- v) A woman was raped in Koidu Town 23 days after she had given birth.
- vi) 7 women raped at Sawa.
- vii) Women and girls were raped in the District.
- viii) Women and girls rampantly sexually abused at the Cyborg Mining Pit.
- ix) Captured girls used as “wives”

Witness Statements – Pre-April-April 2004**TFI-071** [REDACTED] (witness statement 12 February 2003)

- i) Girl raped by RUF commander, Sando chieftain, 1999/2000.

TFI-334 [REDACTED] (witness interview 5 November 2003)

- i) Forced marriage by RUF soldiers/commanders, Kono 1998.

TFI-366 [REDACTED] witness statement 5 February 2004)

- i) Morris Kallon rapes civilian woman, Kono 1998.

Indictment – Koinadugu District (Counts 6-9)

Para. 56:

Rape (unknown no. of women & girls) Koinadugu District, 14th February 1998 – 30th September 1998.

Abduction, sexual slavery, forced marriage (unknown no. of women & girls) Koinadugu District, 14th February 1998 – 30th September 1998.

Pre-Trial Brief – Koinadugu District (Counts 6-9)

- i) Widespread rampant sexual violence: pregnant women raped until they miscarried, suckling mothers, virgins and young girls targeted, young boys ordered to carry out rapes, older women raped, rapes performed openly in front of senior commanders, forced marriages, girls used as sex slaves.
- ii) Gang rape of one woman in Kabala resulting in her death.
- iii) Forced marriage of 50 girls abducted from Katombo.
- iv) Sexual slavery of many women around Kurubonla.

Witness Statements – Pre-April-April 2004

[none]

Indictment – Bombali District (Counts 6-9)

Para. 57:

Rape (unknown no. of women & girls) Bombali District, 1st May 1998 – 31 November 1998.
 Abduction, sexual slavery, forced marriage (unknown no. of women & girls) Bombali District, 1st May 1998 – 31 November 1998.

Pre-Trial Brief – Bombali District (Counts 6-9)

- i) Rape, sexual slavery, throughout Bombali (including Mandaha and Rosos), 1st May 1998 – 30th November 1998.
- ii) Women were abducted and used as sex slaves and subjected to other forms of sexual violence.
- iii) Women from Mandaha captured and raped.
- iv) Young suckling mothers publicly raped in Batmis.
- v) Women and girls in Rosos gang raped.
- vi) Women from Karina abducted, stripped, tied together and taken to Rosos where they were forced to marry rebels.

Witness Statements – Pre-April-April 2004

TFI-117 [REDACTED] (witness statements: 17 January 2003 & 28 February 2004)

- i) Woman raped by RUF commander Gbao, Rogbaneh Road, 1999

TFI-167 George Johnson (witness interviews May, October 2003)

- ii) Student strikers attacked by AFRC/RUF, Cockerill 1997-1998: students raped, beaten and unlawfully killed.
- iii) Women sexually assaulted, on orders of SLA commander Gullit, Karina 1998.
- iv) Forced marriage by RUF commanders, Karina, Mandaha 1998.
- v) Forced marriage by SLA/RUF commanders, Camp Rosos 1998.
- vi) Women sexually assaulted by RUF/SLA commanders, Camp Rosos 1998.

Indictment – Kailahun District (Counts 6-9)

Para. 58:

Sexual violence (unknown no. of women & girls) Kailahun District, 30th November 1996 – onwards.

Abduction, sexual slavery, forced marriage (unknown no. of women & girls) Kailahun District, 30th November 1996 – onwards.

Pre-Trial Brief – Kailahun District (Counts 6-9)

- i) Hundreds of women abducted and brought to Kailahun, 1997, 1998, 1999.
- ii) Rape & forced marriage, 1997, 1998, 1999.
- iii) Women were used as “wives” by rebels in Beudu.

Witness Statements – Pre-April-April 2004

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003)

- i) Sesay rapes Johnny Paul Koroma’s wife, Kailahun 1998.

TFI-108 [REDACTED] (witness statements: 30 March 2003 & 04 February 2004)

- i) Forced marriage by RUF commanders, Baima 1998-1999.

TFI-113 [REDACTED] (witness statements: 27 March 2003 & 04 April 2004)

- i) Possible forced marriages by RUF commanders, Kailahun 1998 – onwards.

TFI-114 Denis Koker (witness statement 26 March 2003 & 4 February 2004)

- i) Sexual abuse of women by RUF commanders, Kailahun from 1998.
- ii) Victor Kallon, forces woman called Baby to be his wife.
- iii) Forced marriages, by RUF commanders (including Victor Kallon & Akisto), Kailahun 1998-2000.

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Forced marriage by RUF commanders, Kailahun 1998/1999.

TFI-168 [REDACTED] (witness statements/interviews 11 April 2003)

- ii) Johnny Paul Koroma’s wife sexually assaulted by RUF, Kailahun 1998.

Indictment – Freetown and the Western Area (Counts 6-9)

Para. 59:

Rape (hundreds of women & girls) Freetown & Western area, 6th January 1999 – 28th February 1999.Abduction, sexual slavery, forced marriage (hundreds of women & girls) Freetown & Western area, 6th January 1999 – 28th February 1999.**Pre-Trial Brief – Freetown and the Western Area (Counts 6-9)**

- i) Rape, sexual violence, abduction, forced marriage, forced labour of women during Freetown invasion, retreat and months afterwards.
- ii) Hundreds of women and girls captured and raped in Freetown.
- iii) Many women and girls gang raped at Beguima.
- iv) Hundreds of women and girls abducted and forced into “marriages”.
- v) Girls raped and sexually abused in front of senior commanders, Statehouse, AFRC/RUF HQ, during Freetown invasion.

Witness Statements – Pre-April-April 2004**TFI-167** George Johnson (witness interviews May, October 2003)

- i) Female soldiers raped, Freetown early 1999.
- ii) Foday Bah Marah rapes and kills a group of nuns, retreat from Freetown 1999.
- iii) Civilians killed and raped, Fourah Bay/Up Gun 1999.

Indictment – Port Loko District (Counts 6-9)

Para. 60:

Rape (unknown no. of women & girls) Port Loko District, February – April 1999.

Abduction, sexual slavery, forced marriage (unknown no. of women & girls) Port Loko District, February – April 1999.

Pre-Trial Brief – Port Loko District (Counts 6-9)

- i) Women were subjected to sexual slavery at the camp at Lunsar where senior commanders including Superman were based.
- ii) Issa Sesay visited Superman at this camp in Lunsar where women were subjected to sexual slavery.
- iii) Following a complaint of rape made to Issa Sesay by girls in Masiaka his reply was that the men were their “husbands”.

Witness Statements – Pre-April-April 2004**TFI-167** George John son (witness interviews May, October 2003)

- i) Girls raped by SLA/RUF commanders, village near Port Loko 1999.
- ii) Women sexually assaulted and killed for allegedly being witches, nr. Rochin 1999.

Indictment – Bo District [not pleaded]

[none]

Pre-Trial Brief – Bo District [not pleaded]

[none]

Witness Statements – Pre-April-April 2004

[none]

Indictment – Kenema District [not pleaded]

[none]

Pre-Trial Brief – Kenema District [not pleaded]

[none]

Witness Statements – Pre-April-April 2004

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003)

- i) Women physically and sexually abused by RUF commanders, Kenema 1997.
- ii) Forced marriage by RUF commanders, Kenema 1997 RUF commanders use SBUs, throughout conflict.

[unspecified or unknown locations]

TFI-036 [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

- i) Rape of women by RUF, RUF front line areas.[no locations specified]

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Women raped by RUF commander, Kataoya April/May 1998.

TFI-366 [REDACTED] (witness statement 5 February 2004)

- i) Forced marriage by Sesay and RUF commanders.[no location]

COUNTS 10-11**Indictment – Kono District (Counts 10-11)**

Para. 62:

Mutilation (unknown no. of civilians) Kono District, 14th February 1998 – 30th June 1998.**Pre-Trial Brief – Kono District (Counts 10-11)**

- i) Widespread and systematic attacks on civilian population, 14th February-December 1998
- ii) Group of civilians beheaded in Foindu, 1998 and heads carried in a bag to Tombodu.
- iii) Scores of civilians died due to amputations of limbs.
- iv) Issa Sesay told civilians that diamonds were to be mined to finance the movement, civilians must cooperate and disciplinary measures would be taken against those working in the mines including execution.
- v) Issa Sesay established rules for the civilian mining workforce which included that no one was to be paid, laziness would be punished by public flogging and anyone caught stealing a diamond would be executed.
- vi) Widespread physical violence in Kono 1998 – civilians beaten upon capture, civilian men and boys marked with “RUF”, amputations.
- vii) Brutal mining operations, captives stripped naked and beaten, killed if tired, not fed and unpaid.
- viii) Civilians mutilated by having their limbs cut off or AFRC/RUF carved on their bodies.
- ix) 6 men from Sawa had their limbs amputated. Women were forced to watch, laugh and clap.
- x) 15 captives in Yomandu were marked with AFRC/RUF using sword blades.
- xi) 10-15 civilians who attempted to escape Tombodu were marked with RUF using a razor blade.

Witness Statements – Pre-April-April 2004**TFI-071** [REDACTED] (witness statement 12 February 2003)

- i) Forced mining, Koidu, Tombodu & Bumpe, 2000. Civilians ill-treated at mining sites.

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Morris Kallon cuts open pregnant woman, Koidu Town 1999.
- ii) Civilians amputated by RUF commander, en route to Daru 1999.

TFI-167 George Johnson (witness interviews May, October 2003)

- i) Physical violence (beating, amputations) used towards civilians by RUF commander Savage, Tombodu 1998.
- ii) Civilians flogged with canes by RUF commander Staff Alhaji, Tombodu 1998.

TFI-168 [REDACTED] (witness statements/interviews 11 April 2003)

- i) Civilians killed and amputated by RUF commanders, Kono, retreat from Freetown 1998.

TFI-334 [REDACTED] (witness interview 5 November 2003)

- i) 8 civilians amputated by commander Savage, Tombodu 1998

TFI-366 [REDACTED] (witness statement 5 February 2004)

- i) Civilians physically abused (beaten) mining sites, Kono 1998.

Indictment – Kenema District (Counts 10-11)

Para. 63:

Beatings & ill-treatment (no. of civilians in custody) Kenema District, 25th May 1997 – 19th February 1998.

Pre-Trial Brief – Kenema District (Counts 10-11)

- i) Killing, physical violence, ill-treatment of civilians, 25th May 1997 – 19th February 1998
- ii) Civilian miners subject to physical discipline.
- iii) Community leaders detained and ill-treated at AFRC secretariat Kenema Town, 25th May 1997 – 19th February 1998. Beaten with tires and pistols, tied-tightly with rope. Several detainees killed.
- iv) Alleged CDF/Kamajor supporter beaten to death with rubber tire, sometime 25th May 1997 – 19th February 1998.
- v) At least 5 civilians tortured and killed on Bockarie's orders, sometime 25th May 1997 – 19th February 1998.
- vi) Issa Sesay assaulted a prominent member of town council after they were arrested on the order of Bockarie (October 2007).

Witness Statements – Pre-April-April 2004

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003)

- i) Women physically and sexually abused by RUF commanders, Kenema 1997.

Indictment – Koinadugu District (Counts 10-11)

Para. 64:

Mutilation (unknown no. of civilians) Koinadugu District, 14th February 1998 – 30th September 1998.

Pre-Trial Brief – Koinadugu District (Counts 10-11)

- i) Widespread killing, physical and sexual violence, looting and destruction of property, abduction and forced labour, from 4th February 1998, throughout Koinadugu (Fadugu, Heremakono, Kabala, Kamadugu, Katombo, Koinadugu Town, Kumalu, Kurunbola, Moriya, Seraduyu, Serekolia, Sokorola, Yiffin).
- ii) Widespread civilian killing in towns/villages throughout Koinadugu district. (Including: indiscriminate shooting, placing civilians in burning houses, amputations, splitting open pregnant women's bellies, killing crying babies).
- iii) Widespread physical violence, including amputations & carvings.
- iv) Civilians who suffered amputations were given a letter stating "Go to Kabbah" or told to "go to Kabbah" to ask for their limb back.
- v) A 6 year old girl in Koneibaia was amputated.
- vi) 3 men had their foreheads marked with "RUF" in Koneibaia.
- vii) Hundreds of children underwent military training at Koinadugu Town and Serekolia many of whom were given markings of "AFRC/ RUF".
- viii) In Katombo II 2 police men were killed and gutted and their intestines were pulled across the road as a checkpoint.

Witness Statements – Pre-April-April 2004

[none]

Indictment – Bombali District (Counts 10-11)

Para. 65:

Mutilation (unknown no. of civilians) Bombali District, 1st May 1998 – 31 November 1998.

Pre-Trial Brief – Bombali District (Counts 10-11)

- i) The throats of a mother and son were cut in Daraya village.
- ii) After civilians had been killed in Gbendembu, Alex Tamba Brima ordered that an audio cassette be given to an amputated man who was then sent to Makeni to warn civilians that they would meet the same fate as the people of Gbendembu.
- iii) A pregnant woman's stomach slit open.
- iv) Mutilations & amputations, Lohondi, Malama, Mamaka, Rosos, 1st May 1998 – 30th November 1998.
- v) Amputation of villagers in Lohondi, at least one of whom was told to go to Kabbah who would give him a new hand.
- vi) Beating of civilians with a rubber "cobra" in Makeni.
- vii) Amputation of 4 men near Batkanu.
- viii) Double amputation of a woman in Batmis on Bockarie's orders as punishment for the escape of other civilians.
- ix) Double amputation of 2 men in the bush between Makeni and Mateboi.
- x) Amputation of 7 men in Karina village.
- xi) AFRC/RUF attacked the Batkuna and Sanda areas where the hands of civilians were amputated.

Witness Statements – Pre-April-April 2004

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Sesay orders "Operation Spare No Soul," civilians amputated, Sanda, Makeni, Magburaka, 1998/1999.

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003).

- i) Commander Gullit launches "Operation Fearful the area": numerous civilians killed, amputated and villages burnt, Rosos area, Karina and Batkanu, late 1998.
- ii) Civilians killed, amputated and beheaded, Mamusa, march to Freetown late 1998.

Indictment – Freetown and Western Area (Counts 10-11)

Para. 66:

Mutilation (unknown no. of civilians) Freetown & Western Area, 6th January 1999 – 28th February 1999.

Pre-Trial Brief – Freetown and Western Area (Counts 10-11)

- i) Amputating civilians, 6th January 1999 – 28th February 1999
- ii) Killing civilians, 6th January 1999 – 28th February 1999. Killed 3,000 – 5,000 civilians during invasion and retreat Freetown 1999. (included: individual executions in street/civilian houses, burning alive families in their houses, large scale civilian executions, amputations causing death).
- iii) Civilians mutilated throughout Freetown.
- iv) AFRC/RUF executed "Operation Cut Hand" and "Operation Cut Limbs" in Freetown.
- v) Hundreds of civilians amputated in the Freetown streets in groups.
- vi) 10 men amputated at a rebel base on Fararama St.
- vii) On the retreat from Freetown to Kambia a pregnant woman was cut with a pair of scissors between her anus and her vagina.

Witness Statements – Pre-April-April 2004

TFI-093 [REDACTED] (witness video transcripts, 14 January 2004)

- i) Civilians beaten by RUF commanders, Freetown 1999.

TFI-167 George Johnson (witness interviews May, October 2003)

- Civilians amputated by RUF/SLA commanders, Freetown and surrounding area, early 1999.
- Student strikers attacked by AFRC/RUF, Cockerill 1997-1998: students raped, beaten and unlawfully killed.
- Civilians amputated and killed by SLA/RUF, Ferry Junction and surrounding area, Freetown pull-out, 1999.

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003).

- SLA Gullit instructs civilians to be amputated, retreat from Freetown.
- Commander Gullit orders civilian amputations, Freetown late 1999.

Indictment – Port Loko (Counts 10-11)

Para. 67:

Mutilation (unknown no. of civilians) Port Loko District, February – April 1999.

Pre-Trial Brief – Port Loko District (Counts 10-11)

- ix) Forced amputations carried out.
- x) Civilians amputated in Manaarma.
- xi) RUF was marked on the chest of a civilian in Tendakum.

Witness Statements – Pre-April-April 2004

TFI-167 George Johnson (witness interviews May, October 2003)

- i) Civilian girl's hands amputated by SLA commander Cyborg, village near Port Loko 1999.
- ii) Civilians amputated by SLA commander Cyborg, Mafori Port Loko 1999.
- iii) Civilians amputated by commander Blood, Magbuntuso 1999.
- iv) Two young women amputated by Adama Cuthand, Madina Junction.

Indictment – Kailahun District [Counts 10-11 not pleaded]

[none]

Pre-Trial Brief – Kailahun District [not pleaded]

[none]

Witness Statements – Pre-April-April 2004

TFI-108 [REDACTED] (witness statements: 30 March 2003 & 04 February 2004)

- i) Civilians ill-treated (flogged with rubber tyres) by RUF commander, for not providing palm oil, Kailahun 1996-1997.

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Civilians ill-treated by RUF commanders, Kailahun 1998-2000.

TFI-330 [REDACTED] (witness statements: 27 March 2003 & 4 February 2004)

- i) Civilians physically abused (beaten, detained) by RUF commanders, Kailahun (*unclear when*).

COUNT 12**Indictment – The Republic of Sierra Leone (Count 12)**

Para. 68:

Use child soldiers – throughout Sierra Leone, from 30th November 1996.**Pre-Trial Brief – The Republic of Sierra Leone (Count 12)**

- i) Thousands of children abducted.
- ii) Thousands of children underwent military training at AFRC/RUF camps.
- iii) Children formed into Small Boys and Small Girls Units.
- iv) Armed Small Boys and Small Girls were used in combat.
- v) Children used to carry ammunition for troops during attacks.
- vi) Drugging of child soldiers.
- vii) Issa Sesay present at camps where children underwent military training.
- viii) Issa Sesay present during attacks when child soldiers used.

*[Locations not specified]***Witness Statements – Pre-April-April 2004****TFI-117** [REDACTED] (witness statements: 17 January 2003 & 28 February 2004)

- i) Use of child soldiers, by RUF command, 1998-1999. *[location unclear]*

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003)

- i) RUF commanders use SBUs, throughout conflict.

Pre-Trial Brief – Kenema District (Count 12)

- i) Use of child soldier to guard mines, 25th May 1997 – 19th February 1998.

Witness Statements – Pre-April-April 2004**TFI-036** [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

- i) SBUs used by RUF to guard miners, Tongo, Kenema district 1998.

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003)

- i) SBUs used as armed guards by RUF commanders, mining sites, Kenema 1997.

Pre-Trial Brief – Koinadugu District (Count 12)

- i) Hundreds of children underwent military training at Koinadugu Town and Serekolia many of whom were given markings of “AFRC/ RUF”.
- ii) Abduction of young boys to be used as child soldiers during Northern jungle operations, 1998. Hundreds of children militarily trained at Koinadugu Town and Serekolia.
- iii) Hundreds of children underwent military training at Koinadugu Town and Serekolia many of whom were given markings of “AFRC/ RUF”

Witness Statements – Pre-April 2004**TFI-184** [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003)

- i) 20-25 Children militarily trained by SLA/RUF commanders, Koinadugu Town April/May 1998.

Pre-Trial Brief – Kono District (Count 12)

- i) Issa Sesay requested 24 member Small Boys Unit be prepared for him while he was in Kono in 1998.

- ii) Issa Sesay present at Cyborg Pit in Kono where child soldiers used to guard and discipline civilian workforce.
- iii) Issa Sesay's use of SBU during attack on Koidu in December 1998.
- iv) Captives laboured under gunpoint by SBU's.
- v) Under 15 year old boys abducted, forcibly conscripted.

Witness Statements – Pre-April-April 2004

TFI-167 George Johnson (witness interviews May, October 2003)

- i) Children militarily trained by RUF commanders, Koidu, Kono district 1998

Pre-Trial Brief – Port Loko District (Count 12)

- i) No Allegations specified in Pre Trial Brief or witness statements pre April 2004.

Witness Statements – Pre-April-April 2004

[none]

Pre-Trial Brief – Bombali District (Count 12)

- i) Forced Labour, use of child soldiers, Rosos April/May 1998.
- ii) Children used in “Food Finding Missions” in Bombali.

Witness Statements – Pre-April-April 2004

TFI-167 George Johnson (witness interviews May, October 2003)

- i) 30-40 child soldiers trained and used to fight by SLA, Camp Rosos, Bombali district 1998.

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003)

- i) Use of child soldiers by RUF/SLA commander, Rosos, Bombali 1998.

Pre-Trial Brief – Freetown and the Western Area (Count 12)

- i) Use of child soldiers, Freetown 6th January 1999 – 28th February 1999 and retreat.

Witness Statements – Pre-April-April 2004

[none]

Pre-Trial Brief – Bo District (Count 12)

[none]

Witness Statements – Pre-April-April 2004

[none]

Pre-Trial Brief – Kailahun District (Count 12)

- i) Issa Sesay present when child soldiers as young as 10 used in Kailahun.

Witness Statements – Pre-April-April 2004

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Children militarily trained by RUF commanders, Bunumbu training base, February/March 1998, Kailahun district

TFI-114 Denis Koker (witness statement 26 March 2003 & 4 February 2004)

- i) Children forced to undergo military training by RUF commanders, Bunumbu Training base, Kailahun.

TFI-330 [REDACTED] (witness statements: 27 March 2003 & 4 February 2004)

- i) Children military trained by RUF commanders, Bayama, Bunumbu Kailahun.
[unclear when]

TFI-168 [REDACTED] (witness statements/interviews 11 April 2003)

- i) Children militarily trained by RUF commanders, Bunumbu Kailahun 1998.

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COUNT 13

Indictment – Kenema District (Count 13)

Para. 70:

Forced labour (unknown no of civilians) Kenema District, mine Cyborg pit, Tongo Field, 1st August 1997 – 31st January 1998.

Pre-Trial Brief – Kenema District (Count 13)

- i) Forced labour under armed guard (Tongo mines), 25th May 1997 – 19th February 1998.
- ii) Armed guards would fire randomly at Cyborg Pit to terrorize civilians.
- iii) Civilian miners subject to physical discipline.
- iv) Community leaders detained and ill-treated at AFRC secretariat Kenema Town, 25th May 1997 – 19th February 1998. Beaten with tires and pistols, tied-tightly with rope. Several detainees killed.

Witness Statements – Pre-April-April 2004

TFI-036 [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

- i) Forced labour by RUF commanders, Tongo and Kono 1998.

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003)

- i) Forced labour, by RUF commanders, Kenema 1997.
- ii) Forced mining by RUF commanders, Tongo Field 1997.
- iii) Over 500 civilians under RUF control, Kenema 1997.
- iv) Forced mining by RUF commanders, Cyborg 1997-1998.

TFI-330 [REDACTED] (witness statements: 27 March 2003 & 4 February 2004)

- i) Civilians abducted from Kono and Tongo and brought to Kailahun, by RUF commanders. [*unclear when*]

Indictment – Kono District (Count 13)

Para 71:

Abduction (hundreds of civilians), Kono District, used as forced labour, incl. to mine in Tombodu area, 4th February 1998 – January 2000.

Pre-Trial Brief – Kono District (Count 13)

- i) Civilians were captured from Sulukundu and taken to Koidu town where they were forced to perform domestic labour.
- ii) Civilians including children abducted from Farandu were forced to carry looted items.
- iii) Issa Sesay established rules for the civilian mining workforce which included that no one was to be paid, laziness would be punished by public flogging and anyone caught stealing a diamond would be executed.
- iv) Issa Sesay ordered the forcible use of civilian workers whenever there was a loss of "manpower" in the mines.
- v) Hundreds abducted and forced into labour from locations throughout Kono, including, Baima, Duwadu, Foender, Kaima, Koindu, Tomandu, Tombodu and Wonedu.
- vi) Brutal mining operations, captives stripped naked and beaten, killed if tired, not fed and unpaid.
- vii) Captives laboured under gunpoint by SBU's

Witness Statements – Pre-April-April 2004

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TFI-036 [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

- i) Forced labour by RUF commanders, Tongo and Kono 1998.

TFI-071 [REDACTED] (witness statement 12 February 2003)

- i) Forced mining, Koidu, Tombudu & Bumpe, 2000. Civilians ill-treated at mining sites.

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) 15 civilians abducted by RUF commander, Koidu Town February 1998.

TFI-167 George Johnson (witness interviews May, October 2003)

- v) Children militarily trained by RUF commanders, Koidu 1998.
- vi) Civilians abducted by RUF, Koidu, retreat from Freetown 1998.

TFI-334 [REDACTED] (witness interview 5 November 2003)

- i) Forced labour of civilians, food-finding missions, Kono 1998.
- ii) Civilians abducted by RUF, Koidu Town 1998.
- iii) Forced carrying of loads, Kono 1998.

TFI-366 [REDACTED] (witness statement 5 February 2004)

- i) Forced mining of civilians by RUF commanders, Kono 1998.

Indictment – Koinadugu District (Count 13)

Para 72:

Abduction (unknown no. of civilians) used as forced labour, Koinadugu District, 14th February 1998 – 30th September 1998.

Pre-Trial Brief – Koinadugu District (Count 13)

- i) Widespread killing, physical and sexual violence, looting and destruction of property, abduction and forced labour, from 4th February 1998, throughout Koinadugu (Fadugu, Heremakono, Kabala, Kamadugu, Katombo, Koinadugu Town, Kumalu, Kurunbola, Moriya, Seraduyu, Serekolia, Sokorola, Yiffin).
- ii) Hundreds of men, women & children abducted from Koinadugu and used as forced labour and forcibly conscripted.
- iii) Civilians captured near Kasimbeck forced to carry looted food and pound rice.
- iv) About 10 civilians captured near Kasimbeck Sokurala village.
- v) A number of civilians were captured from Koneibaia village and forced to carry food and other items.
- vi) Training bases at Kinadugu and Serekolia used forced labour.
- vii) Attacks carried out in the district used forced labour to carry goods and ammunition.

Witness Statements – Pre-April-April 2004

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003)

- i) Over 100 civilians abducted and forced to carry loads by RUF/SLA/STF forces, Kabala April 1998.

Indictment – Bombali District (Count 13)

Para 73:

Abduction (unknown no. of civilians), used as forced labour, Bombali District, 1st May 1998 – 31st November 1998.

Pre-Trial Brief – Bombali District (Count 13)

- i) Children used in “Food Finding Missions” in Bombali.

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- ii) Civilians abducted from Daraya village and forced to carry goods.
- iii) During the attack on Kamabai the AFRC/RUF rebels had about 100 abducted civilians with them.
- iv) Civilians captured at Malama brought to Batmis and forced to pound rice and fetch water.
- v) During attack on Karina civilians abducted and forced to carry goods from village to village.
- vi) Abducted men and women were sent on "Food finding missions" from Rosos camp.
- vii) Abducted men and women used to clean and carry out all domestic duties at Rosos camp.
- viii) Forced Labour, use of child soldiers, Rosos April/May 1998.

Witness Statements – Pre-April-April 2004

TFI-167 George Johnson (witness interviews May, October 2003)

- i) Forced labour of civilians (food-finding missions) by SLA commanders, Camp Rosos, Camp Rosin, Kambia 1998. (*actually in Bombali*)
- ii) 520 civilians forcibly conscripted, militarily trained by SLA, Camp Rosos 1998.
- iii) Civilians abducted by RUF/AFRC, Masofinia to Rosos, 1998.
- iv) About 20 civilians abducted by RUF/SLA, Mateboi 1998.

Indictment – Kailahun District (Count 13)

Para. 74:

Used captured civilians as forced labour, Kailahun District, 30th November 1996 – onwards.

Pre-Trial Brief – Kailahun District (Count 13)

- i) Forced labour, 1997, 1998, 1999, 2000 (carrying loads, road work, farming plantations).
- ii) Abductions.
- iii) Civilians forced to work in military camps.
- iv) Issa Sesay had unpaid civilians forcibly farm cocoa, coffee and palm oil for him.
- v) Issa Sesay ordered fighters to capture civilians.
- vi) Over 200 civilians captured in Pendembu and forced to work.
- vii) Over 500 civilians brought to Kailahun and forced to carry loads, ammunition, work on rice farms and perform domestic labour.

Witness Statements – Pre-April-April 2004

TFI-108 [REDACTED] (witness statements: 30 March 2003 & 04 February 2004)

- i) Over 400 captured civilians brought from Kono to Kailahun, sometime 1997-1998.
- ii) Civilians captured by RUF commander Gbao, Baima 1998-1999.
- iii) Forced labour by RUF commanders, Baima 1998-1999.
- iv) Forced carrying of loads by RUF commanders, Kailahun 1996-1998.
- v) Civilians captured and ill-treated by RUF commanders, Kailahun 1997-February 1998.

TFI-113 [REDACTED] (witness statements: 27 March 2003 & 04 April 2004)

- i) Civilians abducted in Padembu, brought to Ngiehun & Pendembu. [*unclear when*]
- ii) Over 500 civilians from Freetown, Makeni & Kono abducted by RUF commanders, and brought to Kailahun, after Freetown intervention.
- iii) Forced labour of civilians, by RUF commanders, Kailahun 1998.

TFI-114 Denis Koker (witness statement 26 March 2003 & 4 February 2004)

- i) Over 500 captured civilians brought to Buedu, 1998 – 2000. Kallon and Sesay brought most of the civilian captives to Kailahun.

- ii) Forced labour of civilians by RUF Mosquito, Kailahun 1998-2000.
 - iii) Sesay takes civilian captives to Buedu office (unclear when).
 - iv) Forced domestic labour, by RUF commanders, Kailahun 1998-2000.
 - v) Reports of conscripts dying at training bases in Kailahun due to poor conditions.
- TFI-141** [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)
- i) Forced labour of civilians by RUF commanders, Buedu, Kailahun 1998/1999.
- TFI-168** [REDACTED] (witness statements/interviews 11 April 2003)
- iv) Civilians held against their will, by RUF commanders, Kono 1998.
- TFI-330** [REDACTED] (witness statements: 27 March 2003 & 4 February 2004)
- i) Forced carrying of loads, forced labour by RUF commanders, Kailahun up to 2000.
 - ii) Sesay forces civilians to work on his farm, Kailahun. [*unclear when*]
 - iii) Civilians physically abused (beaten, detained) by RUF commanders, Kailahun (*unclear when*).
 - iv) Civilians abducted from Kono and Tongo and brought to Kailahun, by RUF commanders. [*unclear when*]

Indictment – Freetown and Western Area (Count 13)

Para. 75:

Abduction (hundreds of civilians), used forced labour, Freetown & Western Area, 6th January 1999 – 28th February 1999.

Pre-Trial Brief – Freetown and Western Area (Count 13)

- i) Abductions and forced labour, 6th January 1999 – 28th February 1999 and onwards.
- ii) Thousands of civilians abducted and used as forced labour – to carry ammunition and looted goods and to perform domestic labour.

Witness Statements – Pre-April-April 2004

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Forced carrying of loads by RUF commanders, retreat from Freetown 1998.

TFI-167 George Johnson (witness interviews May, October 2003)

- i) Civilians abducted by RUF commanders, used as human shields, Waterloo, advance on Freetown 1998/1999.

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003)

- i) Father Mario abducted by SLA, advance to Freetown 1998.
- ii) Abduction of many civilians by SLA commanders, pull-out from Freetown 1999.

Indictment – Port Loko District (Count 13)

Para. 76:

Used civilians as forced labour, Port Loko, February 1999.

Pre-Trial Brief – Port Loko District (Count 13)

- i) Civilians abducted and used as forced labour.
- ii) Hundreds of girls and women were abducted from Freetown and forced to accompany the retreating AFRC/RUF forces.

Witness Statements – Pre-April-April 2004

TFI-167 George Johnson (witness interviews May, October 2003)

- i) Civilians abducted by SLA/RUF, Port Loko district 1999.

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TFI-334 [REDACTED] (witness interview 5 November 2003)

- iii) Abduction of two doctors from Lunsar, by Soldiers, Masiaka 1998.

Indictment – Bo District [not pleaded]

[none]

Pre-Trial Brief – Bo District [not pleaded]

[none]

Witness Statements – Pre-April-April 2004

[None]

[unspecified locations]

TFI-036 [REDACTED] (Witness statements: 12, 14 October 2002, 14 August & 11 November 2003)

- i) Civilians abducted by RUF, attacks on various villages, towns, 1998.

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Civilians abducted by RUF, en route to Buedu 1999.
- ii) Civilians forced to carry loads by RUF commanders, Kataoya April/May 1998.

TFI-366 [REDACTED] (witness statement 5 February 2004)

- iv) Abduction of civilians by RUF, whenever town was attacked.
- v) Forced labour of civilians (farms) by Sesay, 1998.

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Indictment – Bo District (Count 14)

Para. 78:

Looted and burned unknown no of civilian houses, Bo District, 1st June 1997 – 30 June 1997.

Pre-Trial Brief – Bo District (Count 14)

- i) Burned & looted many houses, Bo District (Sembehun, Tinkonko, Mambona, Gerihun, Telu), June 1997.
- ii) 50 civilian houses burnt in Telu, Bockarie gave orders, June 1997.
- iii) Bockarie led attack against Sembehun, soldiers looted items on trucks and burnt at least 47 civilian houses, June 1997.
- iv) At least 26 civilian houses burnt in Mambona and goods looted, June 1997.
- v) Items looted and civilian houses burnt in attack on Tikonko, June 1997.
- vi) Kallon looted bank property, June 1997.

Witness Statements – Pre-April-April 2004

[none]

Indictment – Koinadugu District (Count 14)

Para. 79;

Widespread looting and burning of civilian homes, Koinadugu District, 14th February 1998 – 30th September 1998.

Pre-Trial Brief – Koinadugu District (Count 14)

- i) Widespread looting of civilian property, widespread destruction of public buildings and private houses, entire villages routinely burnt down.
- ii) Many houses in Kabala Town burnt.
- iii) Food taken by RUF from Kasimbeck village.
- iv) Houses burnt down and goods looted from Koinadugu Town.
- v) Many houses in Yifin burnt.
- vi) All the houses in Koidu Town, except the mosque, burnt down.
- vii) Organised “food finding missions:” items taken from civilians and taken to RUF bases.
- viii) Many houses in Kabala Town burnt.
- ix) Food taken by RUF from Koneibaia.

Witness Statements – Pre-April-April 2004

[none]

Indictment – Kono District (Count 14)

Para. 80:

Widespread looting and burning of civilian homes, Kono District, 14th February 1998 – 30th June 1998.

Pre-Trial Brief – Kono District (Count 14)

- i) Widespread and systematic looting of civilian and public property throughout Kono
- ii) District – “Operation Pay Yourself.” Looting causing starvation in some areas.
- iii) Villages of Baima, Biaya, Duwadu, Foindu, Tombudu, Sandu, Yardu burnt.
- iv) “Operation Pay Yourself” took place in Kono District.
- v) Many villages in Kono District looted.

Witness Statements – Pre-April-April 2004

TFI-141 [REDACTED] (witness statements: 31 January, 2, 23, 24 February & 6 April 2003)

- i) Civilians killed, houses burnt and women sexually assaulted by RUF, Talisma village (location unknown) 1999.
- ii) Morris Kallon orders houses to be burnt (with civilians inside), Pimbi Lane, Koidu 1999.
- iii) Morris Kallon leads attack on Sierra Leone national bank, items looted, Koidu 1999.
- iv) Morris Kallon instructs houses to be burnt by RUF, Hill Station Koidu 1999.
- v) Items looted by RUF, Koidu 1998/1999.
- vi) Morris Kallon orders "Operation Born Naked": burning houses, abducting & killing civilians, Joru Kailahun 1998/1999.

TFI-366 [REDACTED] (witness statement 5 February 2004)

- i) Civilians burnt to death in houses by RUF commanders, Tombodu, retreat from Freetown 1998.

TFI-334 [REDACTED] (witness interview 5 November 2003)

- i) Sesay and JPK order burning of Koidu Town, many houses burnt, 1998.

Indictment – Bombali District (Count 14)

Para. 81:

Burning, unknown no of civilian homes, Bombali District, 1st March 1998 – 31st November 1998.

Pre-Trial Brief – Bombali District (Count 14)

- i) Burning of houses and looting, throughout Bombali (including Karina and Mateboi).
- ii) Karina frequently looted and many houses burnt.
- iii) Many houses burnt during attacks on Mandaha, Lohondi, Mateboi, Mafabu, Malama & en route to Rosos.
- iv) Dwellings in Gbundema burnt.

Witness Statements – Pre-April-April 2004

TFI-117 [REDACTED] (witness statements: 17 January 2003 & 28 February 2004)

- i) Looting "Operation Pay Yourselfs" by RUF soldiers, Makeni, after 1997 coup.

TFI-167, Johnson (witness interviews May, October 2003)

- i) Civilian property looted by RUF forces, Makeni, retreat from Freetown 1998.
- ii) Houses burnt down, on order of RUF/AFRC commander, Karina 1998.
- iii) Mateboi village burnt on SLA commander Gullit's instructions, 1998.

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003)

- i) Commander Gullit launches "Operation Fearful the area": numerous civilians killed, amputated and villages burnt, Rosos area, Karina and Batkanu, late 1998.

TFI-334 [REDACTED] (witness interview 5 November 2003)

- i) Indiscriminate looting of houses, businesses & banks, by RUF, Makeni 1998.

Indictment – Freetown and Western Area (Count 14)

Para. 82:

Widespread looting and burning, Freetown & Western Area, 6th January 1999 – 28th February 1999.

Pre-Trial Brief – Freetown and Western Area (Count 14)

- i) Large sections of Eastern Freetown burnt.
- ii) "Operation No Living Thing"- everything in Freetown should be burnt.
- iii) RUF/AFRC senior commanders orders to kill and burn as much as possible.

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- iv) RUF/AFRC senior commanders engage in looting.

Witness Statements – Pre-April-April 2004

TFI-167, Johnson (witness interviews May, October 2003)

- i) “Operation Pay Yourself”: looting of civilian property by RUF/SLA forces, Freetown, early 1999.
ii) Hospital looted in Lunsar Town.

TFI-117 [REDACTED] (witness statements: 17 January 2003 & 28 February 2004)

- i) Looting civilian property, by RUF soldiers, Freetown, after 1997 coup.

TFI-334 [REDACTED] (witness interview 5 November 2003)

- i) “Operation Pay Yourself” - orders to loot by RUF commanders, retreat from Freetown Masiaka 1998.

TFI-093 [REDACTED] (witness video transcripts, 14 January 2004)

- i) Various civilian houses burnt by RUF commanders, on Superman’s command, Freetown, January 1999.
ii) Approximately seven civilians killed (in burning houses), by RUF commanders, Freetown 1999.
iii) RUF commanders loot civilian property, Freetown 1999.

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003)

- i) Civilian property looted by Gullit and SLA commanders, Lunsar 1999.
ii) Civilian houses burnt by RUF/SLA commanders, Kissy, Freetown January 1999.

Indictment – Kailahun District [not pleaded]

[none]

Pre-Trial Brief – Kailahun District [not pleaded]

[none]

Witness Statements – Pre-April-April 2004

TFI-113 [REDACTED] (witness statements: 27 March 2003 & 04 April 2004)

- i) Looting of civilian property by RUF commander Gbao, Kailahun. [*unclear when*]

TFI-330 [REDACTED] (witness statements: 27 March 2003 & 4 February 2004)

- i) Civilians property looted by RUF combatants, Kailahun. [*unclear when*]

Indictment – Kenema District [not pleaded]

[none]

Pre-Trial Brief – Kenema District [not pleaded]

[none]

Witness Statements – Pre-April-April 2004

[none]

Indictment – Port Loko District [not pleaded]

[none]

Pre-Trial Brief – Port Loko District [not pleaded]

[none]

Witness Statements – Pre-April-April 2004

TFI-184 [REDACTED] (witness statements: 30 June 2003, 7 August 2003 & 22 September 2003)

- i) Civilian property looted by Gullit and SLA commanders, Lunsar 1999.

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Witness Statements – Pre-April-April 2004

[no locations specified]

TFI-071 [REDACTED] (witness statement 12 February 2003)

- i) RUF commander Superman orders “Operation No Living Thing.”

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Indictment – Attacks on UNAMSIL Personnel (Counts 15-18)

Para. 83:

Widespread attacks (unlawful killing, abduction) on UNAMSIL personnel within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts between about 15th April 2000 – 15th September 2000.

Pre-Trial Brief

- i) Attacks on peacekeepers (abductions, killings, beatings and ill treatment), from May 2000 in various locations within Sierra Leone.

Witness Statements – Pre-April-April 2004

[Locations unclear]

TFI-167 George Johnson (witness interviews May, October 2003)

- i) UNAMSIL peacekeepers held hostage by RUF, 2000.

TFI-041 [REDACTED] (witness statement 16 January 2003)

- i) Abduction of UNAMSIL personnel by AFRC/RUF.

TFI-108 [REDACTED] (witness statements: 30 March 2003 & 04 February 2004)

- i) UNAMSIL personnel captured, by RUF commanders, 2000.

TFI-330 [REDACTED] (witness statements: 27 March 2003 & 4 February 2004)

- i) UNAMSIL personnel captured, on Sesay's orders.

Pre-Trial Brief – Bombali District (Counts 15-18)

- ii) 15 April – 15 September 2000 UNAMSIL attacked in Makeni and Makoth. Over 300 peacekeepers abducted, detained, mistreated and number of peacekeepers killed.

Witness Statements – Pre-April-April 2004

TFI-366 [REDACTED] (witness statement 5 February 2004)

- i) Abduction and ill-treatment of UNAMSIL personnel by RUF commanders, Makeni 2000.

TFI-045 [REDACTED] (witness statement 31 January 2003 & witness interviews February/ March 2003.

- i) UNAMSIL personnel taken hostage by RUF commanders, Makeni.

Pre-Trial Brief – Tonkolili District [not pleaded]

- i) 15 April – 15 September 2000 UNAMSIL attacked in Magburaka. Over 300 peacekeepers abducted, detained, mistreated and number of peacekeepers killed.

Witness Statements – Pre-April-April 2004

[none]

Pre-Trial Brief – Kailahun District (Counts 15-18)

- i) Abduction, threats, physical violence, ill treatment of UNAMSIL and looting and destruction of UNAMSIL property, from May 2000 (over 10 week period). Led to death and serious bodily injury.

Witness Statements – Pre-April-April 2004

TFI-114 Denis Koker (witness statement 26 March 2003 & 4 February 2004)

- i) UNAMSIL personnel abducted, ill-treated, property looted, by RUF commanders, May 2000.(Kailahun)

Pre-Trial Brief – Port Loko District (Counts 15-18)

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- i) From 4 – 10 August 1999 32 UNAMSIL, ECOMOG officers, aid officials and journalists were held hostage by the “West Side Boys” made up of ex-SLAs and RUF.

Witness Statements – Pre-April-April 2004

[none]