

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

Before: Judge Bankole Thompson, Presiding Judge
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

Registrar: Mr. Robin Vincent

Date filed: 2 March 2004

THE PROSECUTOR**Against**

SAMUEL HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA
CASE NO. SCSL-2004-14-PT

PROSECUTION'S PRE-TRIAL BRIEF**PURSUANT TO ORDER FOR FILING PRE-TRIAL BRIEFS****(UNDER RULES 54 and 73 bis) OF 13 FEBRUARY 2004**

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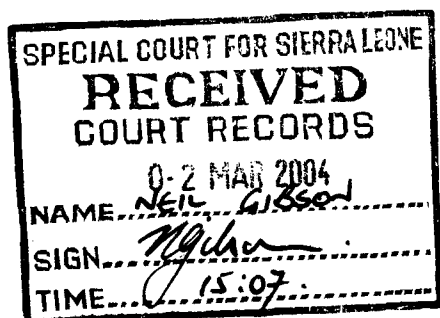
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The Prosecution hereby files a Pre-Trial Brief in the case of the Prosecutor Against Samuel *Hinga Norman, Moinina Fofana and Allieu Kondewa* in accordance with the "Order for filing Pre-Trial Briefs (Under Rules 54 and 73*bis*)" of 13 February 2004.

In accordance with Rule 73*bis*, the Prosecution would have expected to file its Pre-Trial Brief upon order from the Chamber after the holding of a Pre-Trial Conference. This would have allowed taking into consideration, inter alia, and admission of facts or law, undisputed issues and various matters which have been the object of any previous orders, discussions and decisions. Resolution of these issues will allow the Prosecution to be in a position to file a more complete Pre-Trial Brief along with a definitive overview of the witnesses to be called and the documents and exhibits to be tendered at trial.

Therefore, the Prosecution respectfully submits that it intends to seek permission, at the appropriate time, to file a more comprehensive Pre-Trial Brief, taking into account discussions from any future Status or Pre-Trial Conferences, as well as all appropriate annexes and lists in accordance with Rule 73*bis*.

Table of Contents

- A. Introduction and General Factual Background
- B. Overview of Charges
- C. Basic Factual Allegations
 - ◊ The Conflict
 - ◊ The Individuals Accused
- D. Summary of Prosecution's Theory
- E. Elements of Crimes Charged (Legal Analysis of Charges)
 - ◊ Crimes Against Humanity
 - ◊ Violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II
 - ◊ Other Serious Violations of International Humanitarian Law
- F. Criminal Responsibility Under Art. 6(1) and 6(3) – Legal Analysis
 - ◊ Concurrent Application of Art. 6(1) and 6(3)
 - ◊ Direct Criminal Responsibility Under Article 6(1)
 - ◊ Criminal Responsibility As A Superior Under Article 6(3)
- G. Admissibility and Assessment of Evidence
- H. Annexes
 - ◊ List of Authorities
 - ◊ Consolidated Indictment

A: Introduction

1. The Prosecutor respectfully submits this Pre-Trial Brief in compliance with the ORDER FOR FILING PRE-TRIAL BRIEFS (UNDER RULES 54 and 73 *bis*) of 13 February 2004, to provide a preliminary indication as to the factual allegations and the points of law and legal issues pertinent to the case against all three accused persons.

General Factual Background

2. Sierra Leone became independent on 27 April 1961. In 1968, Siaka Stevens became head of state after having been previously prevented from taking power by a military coup. In 1985, General Joseph Momoh was elected President in a one party election.
3. The organized armed group that became known as the Revolutionary United Front, (RUF), led by Foday Sabayana Sankoh, was founded about 1988 or 1989 in Libya with support and direction from the government of Muammar Al-Qadhafi.
4. Another of Libya's beneficiaries was Charles Taylor. After successfully assisting Blaise Campaore in a coup in Burkina-Faso Charles Taylor became one of the original founders of the group called the National Patriotic Front of Liberia (the NPFL) whose aim, supported by the Libyan government, was to overthrow the regime of Liberian President Samuel Doe. On 24 December 1989, the NPFL attacked government positions in Liberia from positions in Cote d'Ivoire, starting the Liberian civil war.
5. Foday Sankoh, who had formed an alliance with Taylor in Libya, also came to Liberia and assisted Taylor and the NPFL. In turn Taylor supported Sankoh due to his desire to retaliate against Sierra Leone for its support of the West African led intervention force in Liberia, known as Economic Community of West African States Cease-fire Monitoring Group (ECOMOG), led by Nigeria and which had kept Taylor's National Patriotic Front of Liberia (NPFL) from succeeding in taking control of Liberia. Taylor also supported the RUF in order to acquire access to Sierra Leone's diamond mining areas, in addition to preventing the country from being used by his opponents in Liberia. In March 1991, a small armed RUF contingent of Sierra Leoneans entered south-eastern Sierra Leone, accompanied by Liberian fighters and soldiers from Burkina Faso.
6. After RUF and NPFL forces made initial gains in Sierra Leone, the Sierra Leonean Army (SLA) was able to contain the RUF/NPFL forces in Kailahun and recapture large portions of Pujehun District.

7. On 29 April 1992, President Momoh was overthrown in a military coup by junior Sierra Leone Army officers. A new administration was established, the National Provisional Ruling Council (NPRC), headed by Captain Valentine Strasser.
8. By late 1992, RUF and NPFL forces successfully occupied Koidu town, Kono District, where a large share of Sierra Leone's diamond mining fields are located. Control of areas in Kono and Pujehun shifted between the RUF/NPFL and the SLA.
9. In 1992, the SLA started assisting civil militia groups to fight the RUF/NPFL forces, giving assistance first to the Donsos in Kono and the Tamaboros in Koinadugu. Prior to their formation into organized units these fighters had existed as local hunters in their various communities. In many cases, they were just a few descendants of famous warriors who had fought and defended the community in the past or were merely renowned game hunters. They were later formed into fighting groups with wider membership, enhanced by a process of recruitment known as an "initiation", which varied from tribe to tribe. This gave them the character of secret societies. Among the groups were Mendes [Kamajors], Temnes [Gbethis or Kapras], Korankos [Tamaboros] and Konos [Donsos]. The Kamajors, based mainly in the southern and eastern provinces and covering Bo, Bonthe, Moyamba, Pujehun, Kenema and Kailahun Districts emerged as the predominant group within this force.
10. Despite massive recruitment, it became evident that fighting was not being undertaken by the Army against the RUF. Indeed, evidence of rebels and soldier collaboration surfaced where both lived off of the country side, looting and abusing civilians. At this time, the term "sobel" surfaced, referring to "soldiers by day and rebels by night".
11. By 1995, having continually lost ground to the RUF, the NPRC hired a private military company, Executive Outcomes, mainly comprised of former South African soldiers. With assistance from local civil militias, the Executive Outcomes regained control of much territory earlier lost by the SLA to the RUF by the end of 1995. These gains in turn pushed the RUF out of strategic areas of the country and turned the war against the RUF.
12. In January 1996, NPRC deputy Julius Maada-Bio overthrew Valentine Strasser. Nonetheless, international and local pressure enabled democratic elections to proceed. Prior thereto, the RUF issued threats to civilians that peace should come before elections. In turn, on election day, the RUF attacked Kenema and Magburaka towns. On 26 February 1996, Ahmed Tejan Kabbah, a former civil servant with the United Nations, with the Sierra Leone Peoples Party (SLPP) was

elected to the Presidency.

13. Following the elections, the various civil militia forces defending local communities were united in a centralized force known as the “Civil Defence Forces” (CDF). The Kamajors came under the direction of Samuel Hinga Norman, who also became the National Coordinator of the CDF. At the time, Norman was the Deputy Minister of Defence within the newly elected SLPP government of Tejan Kabbah. By the end of 1996, CDF forces controlled almost the entire southern and eastern provinces of Sierra Leone.
14. On 30 November 1996, President Tejan Kabbah and RUF leader Foday Sankoh signed a peace agreement in Abidjan, known as the Abidjan Peace Accord. Under the Abidjan Peace Accord, Kabbah was required to terminate the Sierra Leonean government’s contract with Executive Outcomes by January 1997. This outcome critically tilted the military balance in Sierra Leone and hostilities recommenced shortly thereafter.
15. In March of 1997, while travelling, RUF leader Foday Sankoh was placed under house arrest in Nigeria for alleged arms smuggling. While under detention in Nigeria, Sankoh continued to communicate with RUF commanders from his hotel in Abuja.
16. In late 1996 and early 1997 the tensions between the SLA and the CDF were heightening with several incidents of armed confrontation. The CDF, which had gained momentum largely because of the ineffectual and undisciplined SLA, was now the source of resentment for certain elements within the SLA, which perceived favouritism by the new SLPP government toward the CDF. On 25 May 1997, these elements of the SLA overthrew the elected government of Tejan Kabbah and the coup d’tat resulted in the formation of the Armed Forces Revolutionary Council, (AFRC) led by retired Major Johnny Paul Koroma.
17. Almost immediately after seizing power, Koroma invited the RUF to join in power in a coalition government. Upon this invitation, RUF leader Foday Sankoh, who was appointed Vice-Chairman of the AFRC, issued an order over the radio to RUF commanders and soldiers to ‘come out of the bush’ and join ex-SLA soldiers in Freetown. Koroma appointed a number of prominent RUF members to his administration, including Sam Bockarie, Issa Sesay, Morris Kallon, Gibril Massaquoi, Mike Lamin and Eldred Collins. The combined group of RUF and ex-SLA called themselves “the People’s Army.” The AFRC/RUF formed a Supreme Council that was the sole executive and legislative authority within Sierra Leone during the junta period. The governing body included leaders of both the AFRC and RUF.

18. The CDF strongly opposed the coup and refused a call by the AFRC to side with the new leaders or to demobilise. Instead they retreated to their strongholds where they had previously shared control with the SLA. Every effort to reverse the coup or to challenge the authority of the new leaders was made by the CDF including encouraging widespread civil disobedience all over the country as well as intense diplomatic activity by the deposed civilian government in exile in the neighbouring Republic of Guinea. Persons known or suspected of working with the AFRC/RUF Junta or having remote links with them or even simply not opposing their rule within Sierra Leone were branded “Junta collaborators” by the CDF and were later targeted and killed, wounded, mutilated, raped, or had their property looted or their houses burnt, after the Junta was removed from power.
19. In July 1997, Charles Taylor became the President of Liberia after that country’s nearly 8 years of civil war. Taylor immediately but quietly established relations with the Junta regime in Freetown and assisted the AFRC/RUF with shipments of weapons and other supplies during the embargo. At this point, the AFRC/RUF had gained control of the Tongo diamond field in Kenema from the CDF. RUF field commander Sam “Mosquito” Bockarie travelled to Liberia on several occasions with diamonds and returned with supplies for the AFRC/RUF.
20. Around August-September 1997, Samuel Hinga Norman came from exile in Guinea through Liberia into Sierra Leone to provide much needed coordination, leadership and command to the largely individualized effort of the Kamajors, who in these early stages were led by among others, Moinina Fofanah and Allieu Kondewa.
21. Operating first from the border town of Gendema in Pujehun District eastern Sierra Leone and later the bush headquarters town of Talia Yorbeko (also known as Base Zero) Bonthe District in the south, the CDF under Samuel Hinga Norman, Moinina Fofanah and Allieu Kondewa mounted a strong challenge to AFRC/RUF rule mainly in the south and east of the country.
22. The AFRC/RUF engaged the Kamajors in several locations throughout the south and the east. They attacked villages and civilians that were seen to be collaborating or sympathetic to the Kamajors. Similarly, the Kamajors from about September 1997 successfully launched attacks on RUF/AFRC positions and in December of 1997, also launched Operation “Black December” to cut off the AFRC/RUF positions from Freetown. In addition, the CDF attacked villages and often targeted civilians who were alleged to be collaborating with the AFRC/RUF Junta forces in the southern and eastern provinces. These attacks continued until, and even after, the Junta was

forced from power in mid February 1998.

23. From about October 1997, under a national command structure comprised of Samuel Hinga Norman as the National Coordinator, Moinina Fofanah the National Director of War and Allieu Kondewa the High Priest/Chief Initiator and a number of paramount chiefs and senior citizens joined into a consultative body known as the War Council, the CDF, operating from Base Zero, was able to attract many young and able-bodied men as well as children below the age of 15 to its ranks through mass initiation/recruitment.
24. Following a wide range of international diplomatic acts of disapproval including, condemnation of the AFRC regime by the International community, significant international isolation, an economic embargo imposed by the Economic Community of West African States (ECOWAS), UNSC Resolution 1132 in October 1997 imposing a global arms and oil embargo on Sierra Leone and banning travel by AFRC/RUF members, the Organisation of African Unity (OAU) gave a mandate to ECOWAS to use whatever means necessary to restore the elected civilian government.
25. On 12 February 1998, an ECOMOG force launched an offensive and drove the AFRC/RUF regime out of Freetown in what became known as the "Intervention." AFRC/RUF forces retreated from Freetown and the Western Area to the provinces and soon thereafter regrouped in Kono. Similarly, in parts of the southern and eastern provinces about this time, CDF Kamajors, in some cases with the support of ECOMOG, attacked and drove AFRC/RUF forces from their positions. These towns included Bo, Koribondo, Kenema, Moyamba, Bonthe, and surrounding areas. The practice of screening of civilians and branding them as "junta" or "junta collaborators", together with the attendant summary justice that followed, became widespread. Punishment ranged from killing by hacking or beheading to looting and burning. Immediately after being ejected from Freetown and other major provincial towns, AFRC/RUF forces announced "Operation Pay Yourself" which was accompanied by wide-scale looting in all areas the AFRC/RUF passed through. On 10 March 1998, President Kabbah returned to Sierra Leone from Guinea and was reinstated.
26. Following the February 1998 intervention, AFRC/RUF forces primarily operated in the northern and eastern provinces. On or about late March or early April 1998, ECOMOG forces re-captured Koidu town, although AFRC/RUF rebels continued diamond mining operations in other areas of Kono District. During this time the bulk of AFRC/RUF forces operated in the north,

north-east and north-western parts of Sierra Leone. In the north, AFRC/RUF groups operated in Koinadugu and Bombali Districts, however, many AFRC/RUF forces were concentrated in Kono and Kailahun Districts.

27. Sometime after ECOMOG attacks in Koidu, two major AFRC/RUF groups separately travelled north to connect with the AFRC/RUF group based in Koinadugu District. The first group proceeded from Koinadugu District to set up a base in the Bombali District, eventually known as “Rosos”. The second group, however, remained to join with the group based in Koinadugu for a good portion of 1998. Other AFRC/RUF forces remained concentrated in Kailahun District, where a major AFRC/RUF base was maintained in Beudu Town, located close to the Liberian border.
28. In July 1998, the United Nations (UN) established the United Nations Observer Mission in Sierra Leone (UNOMSIL).
29. In Freetown, the SLPP government began conducting treason trials against former leaders of the Junta regime. In August 1998, after the handover of Foday Sankoh by Nigerian authorities to the government in Freetown, RUF spokesman Eldred Collins announced over the BBC that the RUF would conduct “Operation Spare No Soul” if the government refused to release Sankoh. In October 1998, Foday Sankoh was sentenced to death after having been found guilty of treason. One week later, RUF commander Sam Bockarie publicly announced that the RUF would destroy “every living thing” should anything happen to their leader.
30. In December 1998, after a significant shipment of arms and supplies had arrived in Kailahun from Liberia, RUF/AFRC forces launched major attacks on towns and villages in several strategic areas of the country. In late December 1998, they recaptured Koidu Town, Kono District, and shortly thereafter they recaptured Makeni, the headquarters town for Bombali District. Thereafter, on 6 January 1999, AFRC/RUF forces entered Freetown and were not driven out of eastern Freetown completely until approximately the end of January 1999. The AFRC/RUF continued to hold much of the country, including Lunsar and Makeni and most of the Kono and Kailahun Districts, after being driven out of Freetown by ECOMOG and CDF forces. In Kono District, AFRC/RUF diamond mining accelerated and substantial portions of diamonds were sent to Liberia through Kailahun in exchange for weapons and supplies in support of AFRC/RUF operations.
31. Coupled with lagging political will, ECOMOG forces appeared increasingly incapable of

continued fighting in Sierra Leone. On 7 July 1999, President Tejan Kabbah and Foday Sankoh (acting on behalf of the AFRC/RUF) signed a peace agreement in Togo, known as the Lomé Peace Accord. Under the agreement, Sankoh was granted the chairmanship of the commission in charge of mineral resources and post-war reconstruction.

32. Pursuant to UN Security Council Resolution 1270, the United Nations Assistance Mission in Sierra Leone (UNAMSIL) was established in October 1999, initially with some 6,000 troops, empowered under Chapter Seven of the UN Charter to “ensure the security of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under immediate threat of violence.
33. On 3 October 1999, RUF leader Sankoh and AFRC leader Johnny Paul Koroma together arrived in Freetown from Liberia and announced their intentions to work for peace.
34. In late 1999 and early 2000 there were numerous ceasefire violations, missed deadlines and failure by the RUF/AFRC to comply with several commitments including the release of all civilian abductees. There were also significant mixed signals coming from the RUF leadership. Sankoh was publicly committed to the disarmament, but the rebels showed no signs of disarming in the diamond-rich areas of the country. Diamond mining continued in exchange for arms from Liberia. In late 1999, after a public disagreement with Sankoh, Sam Bockarie left for Liberia and in January of 2000, Issa Sesay was promoted to the position of Battlefield Commander.
35. In May 2000, AFRC/RUF forces began attacks and abductions against United Nations peacekeepers and humanitarian assistance workers. During the ensuing months, throughout the country, over 500 United Nations peacekeepers and humanitarian assistance workers were reported as having been taken hostage, while AFRC/RUF attacks resulted in deaths, bodily harm, and looting and destruction of official and personal properties.
36. In response to the failure of AFRC/RUF forces to comply with the terms of the Lomé Accord, especially a cessation of hostilities, on 8 May 2000, civilians demonstrated in Freetown in front of Foday Sankoh’s residence. AFRC/RUF soldiers fired on the crowd of demonstrators killing about nineteen people. On 17 May 2000, Sankoh was arrested.
37. By July 2000 overall hostilities had begun to decline and in August of 2000, AFRC/RUF forces surrendered to United Nations peacekeeping forces in Kabala, headquarters town for Koinadugu District. However, AFRC/RUF forces remained heavily engaged in mining activities in Kono District, mainly from Koidu Town.

38. Despite the decline in hostilities in Sierra Leone, AFRC/RUF forces launched attacks in Guinea in late 2000 and early 2001. These attacks though were quickly and successfully repelled by the Guinean government, who inflicted heavy casualties on the AFRC/RUF.
39. By 30 March 2001, UNAMSIL had increased its forces to 17,500. On 18 January 2002, Sierra Leone's civil war was declared over.

B: Overview of the Charges

The Crimes Charged

40. On the basis of various acts and omissions committed by each of the accused either alone or jointly with co-perpetrators or both as described in paragraphs 12-29 of the Consolidated Indictment, the Prosecutor charges all three individuals accused with the following Violations of Article 3 Common to the Geneva Conventions¹ and of Additional Protocol II,² punishable under Article 3 of the Statute: Acts of Terrorism; Collective Punishments; Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment; and, Pillage; [as described in the Consolidated Indictment in Counts 2, 4, 5, 6, 7].
41. Furthermore, the Prosecutor charges all three individuals accused with the following Crimes Against Humanity, punishable under Article 2 of the Statute: Murder; and Other inhumane acts; [as described in the Consolidated Indictment in Counts 1, 3].
42. In addition, the Prosecutor charges all three individuals accused with Other Serious Violations of International Humanitarian Law, punishable under Article 4 of the Statute: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, [as described in the Consolidated Indictment in Count 8].

Cumulative Charges

43. The three individuals accused are charged cumulatively with all offences on the basis of the same set of allegations/facts contained in paragraphs 22 to 29 of the Consolidated Indictment.

¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 ("Geneva Convention I"); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 ("Geneva Convention II"); Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 ("Geneva Convention III"); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 ("Geneva Convention IV"). (Collectively: "Geneva Conventions of 12 August 1949").

² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *adopted* June 8, 1977, 1125 U.N.T.S. 609 ("Additional Protocol II").

Under international law, such a cumulative charging approach is permissible provided the offences, as in the present case, contain different material elements.³ Cumulative charging is also allowed in cases where the provisions creating the offences protect different interests or where it is necessary to record a conviction for both offences in order to fully describe what the accused did.⁴

44. Moreover, the ICTY Appeals Chamber held that basing several charges on the same factual allegations is legitimate since prior to the presentation of all evidence, it is impossible to determine with certainty which of the charges brought against the accused will be proved.⁵ The ICTY Appeals Chamber concluded that a Trial Chamber “is better poised, after the parties’ presentation of evidence, to evaluate which of the charges may be retained upon the sufficiency of the evidence.”⁶
45. The international jurisprudence recognizes three different types of cumulative charges on which an accused may be convicted: 1. where the accused is charged with different criminal acts comprised of different elements extracted from the same factual allegations;⁷ 2. where the accused is charged with the same criminal act both as a war crime and as a crime against humanity;⁸ 3. where the accused is charged with the same crime both under Article 6(1) and under Article 6(3)⁹.

C: Basic Factual Allegations

The Conflict

46. Following is a description of the crimes committed by the CDF within those districts referred to in the indictment, namely districts within the Southern and Eastern Provinces, Sierra Leone being geographically divided into the Northern, Eastern and Southern Provinces and the Western

³ *Prosecutor v. Musema*, ICTR-96-13-A, Judgement, 16 Nov. 2001 (“*Musema* Appeal Judgement, 16 Nov. 2001”), para. 370; *Prosecutor v. Delalić et al.*, IT-96-21-A, Judgement, 20 Feb. 2001 (“*Čelebići* Appeal Judgement, 20 Feb. 2001”), para. 412. See also *Prosecutor v. Jelisić*, IT-95-10-A, Judgement, 5 July 2001, para. 78.

⁴ *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 2 Sept. 1998 (“*Akayesu* Trial Judgement, 2 Sept. 1998”), para. 468.

⁵ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 400. See also *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement, 7 June 2001 (“*Bagilishema* Trial Judgement, 7 June 2001”), para. 108.

⁶ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 400.

⁷ *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgement, 10 Dec. 1998 (“*Furundžija* Trial Judgement, 10 Dec. 1998”), paras. 264-275; *Prosecutor v. Musema*, ICTR-96-13-T, Judgement, 27 Jan. 2000 (“*Musema* Trial Judgement, 27 Jan. 2000”), paras. 891 and 903; *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/1-T, Judgement, 22 Feb. 2001 (“*Kunarac* Trial Judgement, 22 Feb. 2001”), para. 557.

⁸ *Musema* Trial Judgement, 27 Jan. 2000, para. 963; *Kunarac* Trial Judgement, 22 Feb. 2001, para. 556

⁹ *Musema* Trial Judgement, 27 Jan. 2000, paras. 891-895, 897-900, 903-906, 912-915, 917-920, 922-926, 951.

Area.

Southern Province

47. The Southern Province of Sierra Leone is divided into the districts of Bo, Pujehun, Bonthe and Moyamba. These districts encompass areas traditionally considered to be Kamajor, and therefore, CDF strongholds. Thus during the course of the conflict many of the engagements and activities which form the basis for the acts charged in the Consolidated Indictment refer to incidents occurring in and around towns and villages located within districts in the Southern Province.
48. The Southern Province is also important in understanding the conflict as it marks a part of Sierra Leone's border with Liberia through which the RUF forces of Foday Sankoh invaded after March of 1991. Further, all three Accused, Samuel Hinga Norman, Moinina Fofana and Alieu Kondewa, originate from this province and thus are familiar with the area and its inhabitants.

Bo District

49. Members of the CDF subordinate to and/or acting in concert with the Accused' carried out attacks and unlawful activities in many towns and villages in the Bo District, amongst them Kebbi Town, Kpeyama and Fengehun, between May, 1997 and March, 1998. The evidence will demonstrate that these attacks were carried out as part of a campaign to terrorize the civilian population in the Republic of Sierra Leone and to collectively punish the civilian population for failing to support the CDF or for allegedly supporting the AFRC/RUF. This pattern of behaviour was engaged in by the CDF not only in Bo District but also in the various towns and villages located in and around the Kenema, Bonthe and Moyamba Districts.
50. Bo District is centrally located in the Southern Province, sharing common borders with Kenema District to the east, with Pujehun District and Bonthe Districts to the south and with Moyamba District to the west. Within Bo District is Bo town, the second largest city in Sierra Leone. The District Headquarters of Bo District as well as the Provincial Headquarters of the Southern Province are located in Bo town. Thus Bo District was of great strategic importance to all sides during the conflict.
51. Following the coup of May 25 1997, the CDF retreated to the Southern and Eastern Provinces of Sierra Leone, areas from which many CDF originated. After the coup of May 25 1997 there were significant engagements between the CDF/Kamajors and the AFRC/RUF in the Southern Province, Bo District, including Bo town and the town of Koribundo.

Koribundo

52. Koribundo is located approximately 25 kilometres to the south of Bo town. Koribundo, a town of little more than several thousand residents, situated at a crossroads consisting of a few small business establishments and various block and mud residences, was the venue of activities characteristic of those engaged in by the CDF and its leadership. Of note is that the highway from Bo is primarily asphalt and thus passable at all times of the year. The intersection which creates the center of Koribundo is formed, in part, from the Bo/Koribundo road which runs from Bo to Koribundo and then continues south through the town and eventually leads to Liberia. The crossroad is known as the Blama/Sumbuya Road and runs from the west in Sumbuya, through Koribundo and east to Blama and on to Kenema in Kenema District. Of particular note is the fact that in 1998 the soldiers of the SLA had occupied, to a greater or lesser degree, this small town since 1991.
53. Following the coup and as forces loyal to the elected government sought to regain power in late 1997 and early 1998, the CDF began to expand its base of operations from Bonthe District, at their headquarters known as Base Zero, towards Bo. On February 13, 1998, one day following the overthrow of the AFRC/RUF backed government in Freetown, the CDF attacked SLA forces occupying Koribundo. Although their first efforts were repelled, the SLA forces withdrew from the village of Koribundo and left the citizenry which remained behind to the will of the CDF forces who then took the town. The Prosecution evidence will demonstrate that upon entry into Koribundo, the CDF committed widespread looting, killing, acts causing physical and mental injury and burning of houses on the theory that the townspeople had collaborated with the SLA against them. The evidence will demonstrate that this attack was part of a campaign to terrorize the civilian population in Sierra Leone and to collectively punish the civilian population for failing to support the CDF and for allegedly supporting troops loyal to the newly disposed government in Freetown. Moreover, the CDF ensured that this message of terror as to the destiny of suspected collaborators was communicated. Following the fall of Koribundo, a town meeting, attended by the townspeople and members of the CDF, was held at the Koribundo town barri. At this meeting the National Coordinator of the CDF explained that all of the acts committed by the CDF in Koribundo had been committed pursuant to his instructions and had been ordered on the basis that the people of Koribundo had collaborated with the enemy.

Bo

54. Following the CDF attack on Koribundo and during the February-March 1998 CDF campaign in the Southern Province, CDF forces took over Bo town as part of their campaign to terrorize the civilian population and to collectively punish them for failing to support the CDF for allegedly supporting the AFRC/ RUF. The evidence will demonstrate that in Bo the CDF committed multiple acts of killing and burning directed against the civilian population. The Kamajors, in retribution for the perceived collaboration of the non-Mende speaking members of the Bo community, killed and looted at random throughout Bo immediately following the ECOMOG intervention of 1998. In many instances friends and relatives were made to witness the mutilation of their friends and loved ones. The Prosecution evidence will demonstrate that the leadership of the CDF ordered and approved these acts as a part of a campaign of terrorism and punishment of those thought to have collaborated with the AFRC/RUF forces. The acts of murder, as well as the acts perpetrated to cause physical and mental suffering involve specific events including the mutilation and killing of four individuals on one of the main streets of Bo, and the beating and physical maiming of three individuals. Testimony of other individuals will demonstrate that the looting of the homes of non-Mende speaking residents was rampant and was condoned by the CDF leadership.

Moyamba District

55. Members of the CDF subordinate to and/or acting in concert with the Accused' carried out attacks and unlawful activities in Moyamba District, between 1997 and into 1998. These attacks were carried out against civilians in Moyamba town, but also against civilians from and in other areas of Moyamba District outside of Moyamba town. This pattern of behaviour was engaged in by the CDF not only in Moyamba District but also in and around the various towns and villages in Kenema, Bonthe and Bo.
56. Moyamba District is in the South-West of Sierra Leone, bordering on Port Loko District to the North-West, Tonkolili District to the North, Bo District to the East, and Bonthe District to the South. The central town of Moyamba was the base for CDF activities in the Moyamba District. The road between Songo on the Freetown highway and Moyamba Junction, passing through Moyamba town, was the main route to Freetown from CDF held areas during much of the time period relevant to the indictment.

57. Moyamba town was the focal point of contention between the CDF and the AFRC/RUF during much of the conflict. Possession of the town changed hands between the warring factions several times in 1997 and into 1998. Following each exchange of control, the CDF engaged in a campaign of violence targeting those presumed to have collaborated with the AFRC/RUF. Alleged collaborators were arbitrarily arrested and beaten mercilessly, tortured, threatened, and in some cases killed. This pattern of atrocities committed against civilians accused of collaborating was consistent with the practice and policy of the CDF/Kamajors throughout all the regions they captured from the AFRC/RUF. In one particularly egregious case, a prominent community member was beheaded in the center of Moyamba town, his head displayed for all to see. In another incident the ears of three men were cut off in public and the men were subsequently burnt to death.
58. Civilians from all over Moyamba district including the towns of Sembehun, Taiama, Bylogo, Ribbi and Gbangbatok were arrested and forcibly carried to Moyamba town where they received varying degrees of punishment at the hands of the CDF authorities. Local officials such as police, government representatives, and chiefdom authorities were powerless against the total control of the CDF in Moyamba, and any who stood in their way were assumed to be collaborators with the enemy. No distinction was made between combatants and non-combatants; the most severe acts of violence were committed in Moyamba against the civilian population. Lists were circulated of persons accused by CDF of having collaborated with the AFRC/RUF, causing widespread terror among the civilian population.
59. In other areas of Moyamba District outside Moyamba town, the CDF continued their campaign of terror against civilians, collectively punishing alleged collaborators, engaging in acts of physical violence against them, looting their belongings, and murdering many, often in front of their families and communities.

Bonthe District

60. Members of the CDF subordinate to and/or acting in concert with the Accused' carried out attacks and unlawful activities in Bonthe District. These attacks were carried out against civilians in Talia village (where the CDF established a base) as well as the surrounding villages, and also Bonthe Island. This pattern of behaviour was engaged in by the CDF not only in Bonthe District but also in the various towns and villages and other locations in Kenema, Moyamba and Bo.

61. Bonthe District is comprised of a mainland and an island component, and includes many islands, inlets, and streams. It is bordered on the North West by Moyamba District, to the North East by Bo District, and to the South West by Pujehun District.
62. Following the AFRC coup in May 1997, the CDF established a base in Talia village, Yawbeko Chiefdom, Bonthe mainland. It was from this base that all CDF/Kamajor operations were launched, and it was in Talia that all the military planning, training, preparations and instructions took place by the Accused. The evidence will show that the civilians in Talia village and surrounding villages were subjected to a comprehensive and systematic pattern of violence consequent to the arrival of thousands of Kamajors, who effectively occupied the area for a period up to nine months. The evidence will demonstrate that their daughters and wives were systematically raped and held in sexual slavery, their property looted, and their young boys recruited into the CDF fighting forces. The evidence will show that the population was terrorized into compliance with the Kamajor movement.
63. The civilian population of Bonthe Island fell victim to the widespread CDF campaign of terror as well. The Prosecution evidence demonstrates that members of the CDF, acting under instructions and as part of the plan of the Accused, launched several attacks against the civilian population of Bonthe Island in conjunction with the offensives in Bo, Kenema and Moyamba districts. The evidence will show that in Bonthe Island, Kamajors engaged in widespread killing, physical violence, looting and burning of civilian property. Civilians fled to seek shelter from the reign of terror en masse; those that were discovered by the CDF were attacked by Kamajors, who intentionally inflicted serious bodily harm and serious physical suffering against them, unlawfully killing them in numbers on accusation of having collaborated with the rebels.

Eastern Province

64. The Eastern Province of Sierra Leone is comprised of the Districts of Kenema, Kono and Kailahun, of which, the former was the location of the greatest activity by CDF forces.

Kenema District

65. Members of the CDF subordinate to and/or acting in concert with the Accused' carried out attacks and unlawful activities in Kenema District between November 1997 and about August 2000. This pattern of behaviour was engaged in by the CDF not only in Kenema District but also in the various towns, villages and other locations in Bo, Bonthe and Moyamba.

66. Kenema District is located in the Eastern Province and shares borders with Liberia and Pujehun District in the South, Bo District on the West, Tonkolili and Kono Districts on the North and Kailahun on the East. There are 16 chiefdoms in Kenema District. Kenema Town, the District's headquarters and the Provincial Capital, is found in Nongowa chiefdom, which is in the centre of the District. The Tongo diamond fields are located in Kenema District approximately 25 miles north of Kenema Town. The town of Tongo, the Tongo diamond fields, and the surrounding areas are collectively referred to as Tongo Field.
67. Following the May 1997 coup, AFRC forces asked the CDF to surrender their weapons to the nearest police station and to suspend all of their activities. Despite this request, the CDF regrouped, increased their numbers and withdrew from the battlefronts in order to regroup in the villages. CDF forces began launching attacks on AFRC/RUF positions and vice versa.
68. As the AFRC/RUF forces had control of the Tongo diamond fields, the CDF launched a series of attacks between November 1997 and January 1998 in an attempt to oust them. On or about January 14, 1998 the CDF successfully captured Tongo Field.
69. The Prosecution's evidence will demonstrate that upon entering Tongo Field, the CDF found that most civilians had sought refuge at the National Diamond Mining Company headquarters. The CDF occupied the National Diamond Mining Company headquarters and detained the civilians. There they intentionally inflicted serious mental harm and suffering on civilians by screening them in an attempt to identify collaborators. Thereafter, those considered to be collaborators, identified by tribe or otherwise, were systematically and brutally killed, often through torture in view of friends and relatives.
70. In conjunction with and simultaneous to the CDF taking of Kenema, an unknown number of civilians attempting to flee Tongo were killed at CDF checkpoints. The evidence will show that in or near the town of Kamboma, located along the main highway between Tongo and Kenema, CDF shot and/or hacked to death a large group of people. The evidence will further show that one of those persons the CDF attempted to kill in this incident survived and will testify that all of those killed were civilians.
71. In and around mid February 1998, ECOMOG entered Kenema District and, along with the CDF, headed for Kenema town. Upon arriving in Kenema town the CDF continued their campaign of terror and collective punishments by seeking out alleged collaborators.

72. In Kenema Town and in the town of Blama, west of Kenema Town, the CDF took up a campaign to punish all Sierra Leone police officers. The evidence will show that the CDF occupied the police barracks and unlawfully killed an unknown number of police officers. As well as constituting unlawful killing, the targeting of police officers was a form of collective punishment.
73. CDF activities throughout Kenema District included the intentional infliction of serious bodily harm and serious physical suffering particularly in Kenema Town and Tongo Field, the areas which saw the most CDF activity. In addition, the Prosecution will adduce evidence showing that unlawful killings also occurred in Konia, Talama, Panguma and Sembehun. The prosecution will also show that looting and burning by the CDF took place throughout Kenema District during the course of its operations between November 1997 and August 2000; particularly in Kenema town, Tongo Field, and surrounding areas.

The Individuals Accused

74. The Prosecutor charges the following individuals with the crimes described in paragraphs 22-29 of the Consolidated Indictment: (a) **SAMUEL HINGA NORMAN**; (b) **MOININA FOFANA**; (c) **ALLIEU KONDEWA**.
75. Paragraphs 12 through 21 of the Consolidated Indictment are incorporated by reference.

D: Summary of The Prosecution's Theory

76. **SAMUEL HINGA NORMAN, MOININA FOFANA, ALLIEU KONDEWA** and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
77. All offences alleged herein were committed within the territory of Sierra Leone after 30 November 1996.
78. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
79. All acts or omissions charged as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.

80. The words civilian or civilian population used herein refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.
81. At all times relevant to this Indictment, **SAMUEL HINGA NORMAN** was the National Coordinator of the CDF and also leader and Commander of the Kamajors, **MOININA FOFANA** was the National Director of War of the CDF and **ALLIEU KONDEWA** was the High Priest of the CDF. As such, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA** were seen and known as the top leaders of the CDF. They took part in high level policy, planning and operational decisions of the CDF. **MOININA FOFANA** and **ALLIEU KONDEWA** took directions from and were directly answerable to **SAMUEL HINGA NORMAN**.
82. In the positions referred to in the aforementioned paragraph, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, individually or in concert, exercised authority, command and control over all subordinate members of the CDF.
83. The plan, purpose or design of **SAMUEL HINGA NORMAN**, **MOININA FOFANA**, **ALLIEU KONDEWA** and subordinate members of the CDF was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included gaining complete control over the population of Sierra Leone and the complete elimination of the RUF/AFRC, its supporters, sympathizers, and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone. They acted individually and in concert with subordinates, to carry out the said plan, purpose or design.
84. In this regard, the CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone – to include, but not limited to the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and Bonthe. Civilians, including women and children, who were suspected to have supported, sympathized with, or simply failed to actively resist the combined RUF/AFRC forces were termed “**Collaborators**” and specifically targeted by the CDF. Once so identified, these “Collaborators” and any captured enemy combatants were unlawfully killed. Victims were often shot, hacked to death, or burnt to death. Other practices included human sacrifices and cannibalism.
85. These actions by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten

and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.

86. In respect to these crimes and the responsibility of the three accused, **SAMUEL HINGA NORMAN, MOININA FOFANA** and **ALLIEU KONDEWA**, by their acts or omissions are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this indictment, which crimes they planned, instigated, ordered, committed, or in whose planning, preparation or execution they otherwise aided and abetted, or which crimes were within a common purpose, plan or design in which they participated or were a reasonably foreseeable consequence of the common purpose, plan or design in which they participated.
87. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **SAMUEL HINGA NORMAN, MOININA FOFANA** and **ALLIEU KONDEWA**, while holding positions of superior responsibility and exercising command and control over their subordinates, are individually criminally responsible for the crimes referred to in Articles 2, 3, and 4 of the Statute. **SAMUEL HINGA NORMAN, MOININA FOFANA** and **ALLIEU KONDEWA** are responsible for the criminal acts of their subordinates in that they knew or had reason to know that the subordinates were about to commit such acts or had done so and they failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

E: Elements of Crimes Charged (Legal Analysis of Charges)

88. All three individuals accused in this case entered pleas of not guilty to all crimes with which they are charged, thereby placing every element of the crime in issue. Below, the Prosecutor makes submissions on the elements of these crimes.

a. Crimes Against Humanity

89. Article 2 states that the Special Court shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; (h) persecution on political, racial, ethnic or religious grounds; and (i) other inhumane acts.
90. In accordance with international jurisprudence, these categories are not exhaustive. “Any act

which is inhumane in nature and character may constitute a crime against humanity, provided the other elements are met. This is evident in (i) which caters for all other inhumane acts not stipulated in (a) to (h) of Article 3”.¹⁰

91. The elements common to all crimes defined as Crimes Against Humanity under Article 2 of the Statute are the following: (a) the *actus reus* must be committed as part of a widespread or systematic attack; (b) the *actus reus* must be committed against the civilian population; (c) the *actus reus* must be inhumane in nature and character, causing great suffering or serious injury to the body or to mental or physical health.¹¹
92. The *actus reus* cannot be a random inhumane act, but rather is an act committed as part of an attack. The attack may be either widespread or systematic and need not be both.¹²
93. “Widespread”, as an element of crimes against humanity, may be defined as a “massive, frequent, large scale action, carried out collectively with considerable seriousness” and directed against multiple victims.¹³
94. “Systematic”, consists of organized action, following a regular pattern, on the basis of a common policy and involves substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.”¹⁴
95. “Attack”, may be defined as an unlawful act of the kind enumerated in Articles 3(a) to (i) of the Statute. An attack, “can be described as a course of conduct involving the commission of acts of violence”,¹⁵ or, alternatively, can be “non-violent in nature.”¹⁶
96. The *actus reus* for any of the enumerated acts in Article 2 of the Statute must be directed against the civilian population defined as predominately people who were “not taking any active part in

¹⁰ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 585 [Article 3 of the ICTR Statute is similar to Article 2 of the SCSL Statute].

¹¹ See for e.g.: *Musema* Trial Judgement, 27 Jan. 2000, para. 201.

¹² *Report of the International Law Commission on the Work of Its Forty-Eighth Session, Draft Code of Crimes Against the Peace and Security of Mankind*, U.N. GAOR, 51st Sess., Supp. No. 10, art. 6, at 34, U.N. Doc A/51/10 (1996) (“ILC Draft Code of Crimes Against the Peace and Security of Mankind”). Article 18 therein requires that the act be committed “in a systematic manner or on a large scale” and explicitly states that these are two alternative requirements; See for e.g.: *Akayesu* Trial Judgement, 2 Sept. 1998, para. 579;

¹³ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 580; *Kunarac* Trial Judgement, 22 Feb. 2001, para. 431.

¹⁴ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 580; *Prosecutor v. Tadić*, IT-94-1-T, Opinion and Judgment, 7 May 1997 (“*Tadić* Trial Judgement, 7 May 1997”), para. 648; *Kunarac* Trial Judgement, 22 Feb. 2001, para. 429.

¹⁵ See for e.g.: *Kunarac* Trial Judgement, 22 Feb. 2001, para. 415.

¹⁶ See for e.g.: *Musema* Trial Judgement, 27 Jan. 2000, para. 205.

the hostilities.”¹⁷

CRIMES AGAINST HUMANITY—Murder (Article 2(a)):

97. The elements of this offence are as follows: (a) the Accused committed an act or omission with respect to the victim that precipitated the following results: i) the victim is dead and ii) the death resulted from an unlawful act or omission of the Accused or a subordinate; and (b) at the time of the killing the Accused or a subordinate had the intention to kill or inflict grievous bodily harm or inflicted grievous bodily harm on the victim having known that such bodily harm is likely to cause the victim’s death or is reckless as to whether or not death ensues.”¹⁸
98. Extra-judicial killings, that is, “unlawful and deliberate killings carried out with the order of a Government or with its complicity or acquiescence”,¹⁹ are included in this category.
99. Given the nature of the acts giving rise to a charge of Crimes Against Humanity, death may be proved either directly or circumstantially. The relevant standard is one of sufficiency of proof rather than a strict regimen by which death may be established. As long as the conduct of the accused was causative of death, it need not be a *sine qua non*.²⁰
100. The necessary *mens rea* for murder is wilfulness; i.e. direct intent to kill or recklessness that death may ensue as a foreseeable consequence of the conduct of the accused. According to the case law, this is demonstrated by “an intention on the part of the accused to kill or inflict serious injury in reckless disregard of human life”.²¹

CRIMES AGAINST HUMANITY—Other Inhumane Acts (Article 2(i)):

101. The elements of this offence are as follows: (a) the Accused or a subordinate inflicted through an act or omission or any series of acts or omissions serious mental or physical suffering or injury, or a serious attack on human dignity; and (b) the accused or a subordinate intended to inflict such suffering or to attack human dignity.
102. The sub-characterisation ‘other inhumane acts’ laid down in Article 2(i) of the Statute is a generic charge which encompasses a series of criminal activities not explicitly enumerated.

¹⁷ See for e.g.: *Akayesu* Trial Judgement, 2 Sept. 1998, para. 582. *Akayesu* Trial Judgement, 2 Sept. 1998 para. 582. *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Judgement, 26 Feb. 2001 (“*Kordić and Čerkez* Trial Judgement, 26 Feb. 2001”), para. 180, citing from *Tadić* Trial Judgement, 7 May 1997, para. 638.

¹⁸ See for e.g.: *Akayesu* Trial Judgement, 2 Sept. 1998, paras. 589 and 590.

¹⁹ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgement, 21 May 1999 (“*Kayishema and Ruzindana* Trial Judgement, 21 May 1999”), para. 140.

²⁰ *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999 (“*Tadić* Appeal Judgement, 15 July 1999”), para. 199.

²¹ *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgement, 16 Nov. 1998 (“*Čelebići* Trial Judgement, 16 Nov. 1998”), para. 439.

“Other inhumane acts include those crimes against humanity that are not otherwise specified in Article 3 the Statute, but are of comparable seriousness.”²²

103. In addition, sexual violence falls within the scope of ‘other inhumane acts’ set forth in Article 2(i) of the Court’s Statute and ‘outrages upon personal dignity’, set forth in Article 3(e) of the Statute and can be prosecuted either alternatively or cumulatively.²³
104. The elements of “other inhumane acts” under Article 2(i) are the same as those for the breach of the obligation to provide “humane treatment” contained in Common Article 3 of the Geneva Conventions.²⁴
105. The requisite *mens rea* is wilfulness; i.e. the accused must have intentionally or recklessly inflicted such suffering or attack upon human dignity.

b. Violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II

106. Pursuant to Article 3 of the Statute, the Special Court has the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations include: (a) Violence to life, health and physical or mental well-being of persons in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) Collective punishments; (c) Taking of hostages; (d) Acts of terrorism; (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) Pillage; (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples; and (h) Threats to commit any of the foregoing acts.
107. The rules set forth in Common Article 3 reflect customary international law, and enunciate a set of minimum standards or “elementary considerations of humanity”, applicable in all armed

²² *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 150. [Article 3 of the ICTR Statute is similar to Article 2 of the SCSL Statute].

²³ See e.g. *Akayesu* Trial Judgement, 2 Sept. 1998, para 468 and para. 697, where acts of forced undressing of women held in the circumstances to be “inhumane acts” under ICTR Statute, Article 3(i).

²⁴ *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement, 24 Mar. 2000 (“*Aleksovski* Appeal Judgement, 24 Mar. 2000”), para. 26; *Prosecutor v. Jelusic*, IT-95-10-T, Judgement, 14 Dec. 1999, para. 52; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 543; *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 151.

conflicts.²⁵ Hence, the character of the conflict is irrelevant,” and all that is required is that the perpetrator was aware of the factual circumstances establishing the existence of an armed conflict.

108. The common requirements for the crimes contained in Common Article 3 may be defined as follows: (a) one of the enumerated acts or omissions listed in Common Article 3 of the Geneva Conventions was committed; (b) the victim was a person taking no active part in hostilities, which includes civilians, members of the armed forces who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause; (c) there is a nexus between the unlawful act or omission and the armed conflict.²⁶
109. Common Article 3 extends its protection to all those taking no active part or no longer taking active part in the hostilities.²⁷
110. Determining whether a victim is taking an active part in hostilities is a matter for factual determination on the basis of specific circumstances surrounding the individual victims.²⁸
111. The offences alleged must be closely related to the armed conflict.

Elements Specific to Offences Charged under Article 3 of the Statute

Murder – Article 3(a)

112. The elements for this offence are as follows: (a) the Accused or a subordinate, killed one or more persons; (b) the act or omission was intended to kill or to cause such bodily harm as might result in death.

Cruel Treatment – Article 3(a)

113. The elements of this offence are as follows: (a) the Accused or a subordinate, by act or omission, caused serious mental or physical suffering or injury or constitutes a serious attack on the victim’s human dignity; (b) the condition was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person or person’s

²⁵ *Case concerning Military and Paramilitary Activities in and Against Nicaragua (Merits)* (1986) I.C.J. Reports, paras. 21, 172-190, 218-220; See also for e.g.: *Prosecutor v. Tadić*, IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct. 1995 (“*Tadić Appeals Chamber Jurisdiction Decision*, 2 Oct. 1995”), para. 102.

²⁶ *Tadić Appeals Chamber Jurisdiction Decision*, 2 Oct. 1995, paras. 94, 134 and 143; *Čelebići Appeal Judgement*, 20 Feb. 2001, paras. 150-152, 160-174.

²⁷ See Article 3(1) common to all four 1949 Geneva Conventions. Also see *Tadić Appeals Chamber Jurisdiction Decision*, 2 Oct. 1995, para. 69.

²⁸ *Tadić Trial Judgement*, 7 May 1997, para. 616.

interest; (d) the act or omission was intentional.²⁹

Collective Punishment – Article 3(b)

114. The elements of this offence are as follows: (a) the Accused or a subordinate inflicts punishment on a group of persons in the form of severe physical or mental pain or suffering or destroys property as a reprisal or deterrent; and (b) the act was intentional.

Acts of Terrorism – Article 3 (d)

115. The elements of this offence are as follows: (a) the Accused or his subordinate directed acts or threats of violence against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population; (b) the Accused wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts; (c) the acts were committed with the primary purpose of spreading terror among the civilian population.³⁰
116. Both Additional Protocol I and Additional Protocol II to the Geneva Conventions, encompass “threats” as well as “acts” of violence.³¹ The scope of the offence’s *actus reus* of unlawfully inflicting terror upon civilians is accordingly broad.
117. Whether or not unlawful acts do in fact spread terror among the civilian population can be proved either directly or inferentially. It can be demonstrated by evidence of the psychological state of civilians at the relevant time,³² including the civilian population’s way of life during the period, and the short and long-term psychological impact.
118. The ICTY in *Galic* held that “[p]rimary purpose” signifies the mens rea of the crime of terror...the Prosecution is required to prove not only that the Accused accepted the likelihood that terror would result from the illegal acts – or, in other words, that he was aware of the possibility that terror would result – but that that was the result which he specifically intended. The crime of terror is a specific-intent crime.”³³
119. The phrase “primary purpose” requires that the infliction of terror upon the civilian population

²⁹ *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 265, referring to *Čelebići* Trial Judgement, 16 Nov. 1998 para. 550-552.

³⁰ *Prosecutor v. Galic*, IT-98-29-T, Judgement and Opinion, 5 Dec. 2003 (“*Galic* Trial Judgement, 5 Dec. 2003”), para. 133.

³¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977, 1125 U.N.T.S. 3, Art. 51; Additional Protocol II, Article 13.

³² W. Fenwick, ‘Attacking the Enemy Civilian as a Punishable Offence’, *Duke Journal of Comparative and International Law*, Vol. 7. 1997, 539 at 562.

³³ *Galic* Trial Judgement, 5 Dec. 2003, para. 136.

was the predominant purpose served by the acts or threats of violence. It need not have been the sole or only motivation for the attack. Accordingly, the fact that other motivations may have co-existed simultaneously with the intent to terrorize the civilian population would not disprove this charge, provided that the intent to inflict terror was principal among the aims.

120. The *mens rea* of “the offence of outrages upon personal dignity requires (i) that the accused intentionally committed or participated in an act or omission which would be generally considered to cause degrading, humiliating and/or otherwise violating the victim’s dignity, and (ii) that he knew that the act or omission could have that effect.”³⁴

Pillage – Article 3(f)

121. The elements of this offence are: (a) the Accused or his subordinate by act or omission unlawfully destroyed, took, or obtained any public or private property; (b) the destruction, taking, or obtaining by the accused of such property was committed with the intent to deprive the owner or any other person of the use or benefit of the property, or to appropriate the property for the use of any person other than the owner; (c) the destruction, taking, or obtaining was without the consent of the owner; (d) the act or omission was intentional.
122. There is no requirement that the destruction, taking or obtaining was done in a violent manner or was the result of violent action³⁵ and the offence should be understood to embrace 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”.
123. There is an additional requirement that the property pillaged be of sufficient monetary value that the pillage of the property would involve grave consequences for the victim.³⁶
124. The prohibition against unjustified appropriation of public and private enemy property is general in scope, 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.

c. Other Serious Violations of International Humanitarian Law

125. Pursuant to Article 4 of the Statute, the Special Court has the power to prosecute persons who committed the following serious violations of international humanitarian law: (a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking

³⁴ *Kunarac* Trial Judgement, 22 Feb. 2001, para. 514.

³⁵ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 591.

³⁶ *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para 352.

direct part in hostilities; (b) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (c)

Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Article 4(c))

126. The elements of this offence are as follows: (a) the Accused conscripted or enlisted one or more person into an armed force or group or used one or more persons to participate actively in hostilities; (b) such person or persons were under the age of 15 years; (c) the Accused knew or should have known that such person or persons were under the age of 15 years; (c) the conduct took place in the context of and was associated with an armed conflict not of an international character; (d) the Accused was aware of the factual circumstances that established the existence of an armed conflict.
127. The terms “conscript” and “enlist” presented in the alternative clearly shows they are two different activities. “Conscript” implies some form of forced participation. It contemplates the formal call-up of children, the process of training them as soldiers or subjecting them to military discipline - or all three of these activities. The common element in the targeted practices, however, which vary from official acts of conscription, to press-ganging, to abduction, is simply making under-age persons members of an armed force against their will.
128. By contrast, “enlist” would suggest a child’s voluntary enrollment, an interpretation that is borne out by Article 51 of the Fourth Geneva Convention (which forbids any pressure or propaganda aimed at securing “voluntary enlistment”). The criminal act would presumably be similar to that contemplated in the crime of conscription, with one difference: that any volition on the part of a child would not be permitted to function as a justification or defence.
129. Conscription and enlistment are supplemented by a third offence: using children to “participate actively in hostilities”. This offence is more general than the other two. Unlike the previous crimes, using children to participate in hostilities suggests the absence of any formal induction into a military unit. It would be unnecessary to prove that a child was put into uniform, subjected to military discipline, made to bear arms or subjected to any of the traditional means of

marking an individual as a soldier rather than a civilian. The criminal act would therefore be employing a child in hostilities regardless of what tasks the child had to perform.

130. The consent of the child is not a defence under this offence. It submits that all under-age children must be deemed incapable of forming a proper consent. This is the case in most systems of municipal law which refuse children the capacity to give valid consent to legal transactions without their guardians' approval.
131. The offence does not refer to an "armed conflict" - which was the phrase used in the Geneva Conventions and Protocol I – but instead refers to "hostilities" used in art 4(3) of Geneva Protocol II. The use of "hostilities" clearly denotes the actual state of fighting.
132. The Child's participation in the conflict must be active. This entails actually arming a child and sending him or her into battle, or sending the child to transport munitions, gather information or guard bases.

F: Criminal Responsibility Under Articles 6(1) and 6(3) Concurrent **Application of Articles 6(1) and 6(3)**

133. The Consolidated Indictment charges all three individuals accused with criminal responsibility under both Article 6(1) and Article 6(3) of the Statute.
134. International law allows charging with, and convicting for, alternative forms of responsibility, as long as the factual allegations are sufficiently precise to permit the accused to prepare his defence on either or both alternatives.³⁷
135. The Prosecutor submits that it is in the interest of justice that the Trial Chamber considers both forms of criminal responsibility in order to fully reflect the criminal culpability of the three accused persons. However, should the Chamber choose to convict only under Article 6(1), it is submitted that the position of the accused as superior should be considered as an aggravating element.³⁸

Direct Criminal Responsibility Under Articles 6(1)

136. Under Article 6(1), not only those who directly commit a crime described in the Statute are

³⁷ *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 210; *Prosecutor v. Blaškić*, IT-95-14-PT, Decision on the Defence Motion to Dismiss the Indictment Based Upon Defects in the Indictment (Vagueness/Lack of Adequate Notice of Charges), 4 April 1997, para. 32; *Čelebići* Trial Judgement, 16 Nov. 1998, paras. 1221-1223.

³⁸ *Galić* Trial Judgement, 5 Dec. 2003, para. 177; *Prosecutor v. Stakić*, IT-97-24-T, Judgement, 31 July 2003 ("Stakić Trial Judgement, 31 July 2003"), para. 463-6. *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement, 15 Mar. 2002 ("Krnojelac Trial Judgement, 15 Mar. 2002"), paras. 173 and 496.

accountable for its perpetration, but also those who plan, order, instigate, or aid and abet its perpetration.³⁹ Such persons are also responsible for any act “that naturally results” from the crime in which they participated.⁴⁰

137. Article 6(1) should be interpreted purposively to achieve its object.⁴¹

PARTICIPATION THROUGH OMISSION

138. International law recognizes that the *actus reus* of a crime may be performed either by positive action or through omission.⁴² This principle is applicable to the forms of participation stipulated in Article 6(1).

MODES OF PARTICIPATION EXPLAINED

a. Planning, Instigating and Ordering

139. “Planning” is the contemplation of a crime and the undertaking of steps to prepare and arrange for its execution.⁴³ “Instigating” is “prompting another to commit an offence”.⁴⁴ “Ordering” a crime entails responsibility as long as the accused has “authority to order”, even absent a formal superior-subordinate relationship.⁴⁵

140. To establish that the accused planned, instigated or ordered a crime, it must be proved that: (i) the crime was physically performed by a person other than the accused; (ii) the conduct of that person was in furtherance of the plan, instigation or order of the accused; (iii) the accused was aware that the crime could materialize consequent to his acts (i.e. *mens rea* of intent or recklessness).⁴⁶

141. Circumstantial evidence may be used to prove the *mens rea*.⁴⁷ Circumstantial evidence may also be used to establish the existence of a plan or order.⁴⁸

³⁹ *Čelebići Trial Judgement*, 16 Nov. 1998, para. 319.

⁴⁰ *Tadić Trial Judgement*, 7 May 1997, para. 692.

⁴¹ Hence, membership in a joint criminal enterprise is considered as implicitly included in Article 6(1). See *Tadić Appeal Judgement*, 15 July 1999, para. 190; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement, 7 June 2001 (“*Bagilishema Trial Judgement*, 7 June 2001”), para. 27.

⁴² *Tadić Appeal Judgement*, 15 July 1999, para. 188.

⁴³ *Akayesu Trial Judgement*, 2 Sept. 1998, para. 480.

⁴⁴ *Akayesu Trial Judgement*, 2 Sept. 1998, para. 482; *Prosecutor v. Blaškić*, IT-95-14-T, Judgement, 3 Mar. 2000 (“*Blaškić Trial Judgement*, 3 Mar. 2000”), para. 280.

⁴⁵ *Kordić and Čerkez Trial Judgement*, 26 Feb. 2001, para. 388.

⁴⁶ *Blaškić Trial Judgement*, 3 Mar. 2000, para. 278. If an order is general (e.g. to abuse civilians), the *mens rea* of recklessness or gross negligence is sufficient. See A. Cassese, *International Criminal Law* (N.Y., Oxford University Press, 2003), 194.

⁴⁷ *Tadić Trial Judgement*, 7 May 1997, para. 676; *Čelebići Trial Judgement*, 16 Nov. 1998, para. 326-8.

⁴⁸ *Blaškić Trial Judgement*, 3 Mar. 2000, paras. 279 and 281.

142. An “instigation” could be express or implied, or achieved through an omission.⁴⁹
143. An “order” need not be formal and may be oral, implicit, or indirect.⁵⁰
144. The Prosecution submits that an accused may be found guilty of “planning” or “ordering” even if the planned or ordered crime was not executed.⁵¹
145. In the case of “instigating”, the crime must be completed in order to hold the instigator accountable.⁵² However, the Prosecution submits that it is sufficient to prove that the instigation contributed, rather than constituted a *sine qua non* condition, to the perpetration of the crime.⁵³

b. Committing

146. “Committing” refers to physically participating in a crime, directly or indirectly, or failing to act when such a duty exists, coupled with the requisite knowledge.⁵⁴

c. Aiding and Abetting

147. The aider and abettor is an accessory to a crime perpetrated by another person (the ‘principal’).⁵⁵ His acts assist or facilitate the crime, and must have a “substantial effect” on its perpetration.⁵⁶ It is not required, however, that his acts have a causal effect on the act of the principal;⁵⁷ nor that he have an agreement with the principal (the latter may not even know about the accomplice’s contribution).⁵⁸
148. The relationship between the accused and the perpetrator should be considered in determining whether the conduct of the former assisted or facilitated the crime.⁵⁹
149. The *actus reus* may take place geographically and temporally removed from the crime.⁶⁰ It may be performed through an omission which “had a decisive effect on the commission of the crime and ... was coupled with the requisite *mens rea*.”⁶¹

⁴⁹ *Blaškić Trial Judgement*, 3 Mar. 2000, para. 280.

⁵⁰ *Blaškić Trial Judgement*, 3 Mar. 2000, para. 281-2.

⁵¹ Regarding “ordering”, see discussion in A. Cassese, *International Criminal Law* (N.Y., Oxford University Press, 2003), 194. Regarding “planning”, see *Kordić and Čerkez Trial Judgement*, 26 Feb. 2001, para. 386 and *contra Akayesu Trial Judgement*, 2 Sept. 1998, para. 473.

⁵² *Akayesu Trial Judgement*, 2 Sept. 1998, para. 482; *Blaškić Trial Judgement*, 3 Mar. 2000, para. 278.

⁵³ *Kordić and Čerkez Trial Judgement*, 26 Feb. 2001, para. 387.

⁵⁴ *Tadić Appeal Judgement*, 15 July 1999, para. 188; *Prosecutor v. Simić et al.*, IT-95-9-T, Judgement, 17 Oct. 2003 (“*Simić Trial Judgement*, 17 Oct. 2003”), para. 137.

⁵⁵ *Akayesu Trial Judgement*, 2 Sept. 1998, para. 484, *Contra Furundžija Trial Judgement*, 10 Dec. 1998, para. 249.

⁵⁶ *Furundžija Trial Judgement*, 10 Dec. 1998, para. 249; *Blaškić Trial Judgement*, 3 Mar. 2000, para. 283.

⁵⁷ *Blaškić Trial Judgement*, 3 Mar. 2000, para. 284; *Kayishema and Ruzindana Trial Judgement*, 21 May 1999, para. 201.

⁵⁸ *Kordić and Čerkez Trial Judgement*, 26 Feb. 2001, para. 399.

⁵⁹ See *Akayesu Trial Judgement*, 2 Sept. 1998, para. 693.

⁶⁰ *Simić Trial Judgement*, 17 Oct. 2003, para. 162; *Akayesu Trial Judgement*, 2 Sept. 1998, para. 484.

⁶¹ See *Simić Trial Judgement*, 17 Oct. 2003, para. 165.

150. The required *mens rea* is knowledge that the acts of the accused assist in perpetrating the crime, coupled with his intention to assist or at least his awareness that assistance may be a foreseeable consequence of his acts.⁶² The accused must also be aware of the basic characteristics of the crime, including its requisite *mens rea*.⁶³ The Prosecution submits that the aider and abettor need not know the *precise* crime to be committed, but rather that one of a number of crimes would probably be committed, including the one which was in fact committed.⁶⁴
151. Circumstantial evidence may be used to prove the *mens rea*.⁶⁵

d. “Aiding and Abetting” vs. “Joint Criminal Enterprise”

152. Aiding and abetting differs from membership in a joint criminal enterprise:⁶⁶
- (a) *Common Plan Requirement* - the existence of a common plan between the accused and the actual perpetrator of the crime is not required in the case of aiding and abetting, as opposed to cases of joint criminal enterprises.
 - (b) *Effects of Acts on Perpetration of Crime* – While the acts of an aider and abettor must have a *substantial effect* upon the crime’s perpetration, acts of members in a joint criminal enterprise must simply *further* the common plan or purpose.
 - (c) *State of mind* – While an aider and abettor need only be *aware* of the crime’s requisite *mens rea*, a joint criminal enterprise member must generally *possess* it.⁶⁷

JOINT CRIMINAL ENTERPRISE

153. International crimes are often committed by a multitude of persons who all participate in the furtherance of a large-scale criminal scheme, or a “joint criminal enterprise”. Under international law, a member of such a criminal enterprise is regarded as having “committed” the crimes resulting from it, as long as he contributed to their perpetration and intended either that they be committed or that the criminal enterprise be furthered while foreseeing that these crimes

⁶² *Blaškić* Trial Judgement, 3 Mar. 2000, para. 286.

⁶³ *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 162.

⁶⁴ See *Furundžija* Trial Judgement, 10 Dec. 1998, para. 246 (repeated in *Kvočka* Trial Judgement, 2 Nov. 2001, para. 255; *Blaškić* Trial Judgement, 3 Mar. 2000, para. 287). *Contra Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 399. See also *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 162; *Prosecutor v. Milutinović et al.*, IT-99-37-AR72, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003 (*Ojdanić* Appeal Decision on JCE, 21 May 2003”), Separate Opinion of Judge David Hunt, para. 29.

⁶⁵ *Tadić* Trial Judgement, 7 May 1997, para. 676; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 326-8.

⁶⁶ *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement, 17 Sept. 2003 (“*Krnojelac* Appeal Judgement, 17 Sept. 2003”), para. 33, *Ojdanić* Appeal Decision on JCE, 21 May 2003, Separate Opinion of Judge David Hunt, para. 29.

⁶⁷ *Simić* Trial Judgement, 17 Oct. 2003, para. 160

were likely to be committed.⁶⁸ Accordingly, membership in a joint criminal enterprise is regarded as implicitly included in Article 6(1).⁶⁹ Accountability in these cases is not for mere membership in the joint criminal enterprise, but rather for *participation* in the crime resulting from the enterprise.⁷⁰

a. Joint Criminal Enterprise - Categories:

154. Three different categories of joint criminal enterprise have been recognised:⁷¹

- a. *Same criminal intention* - cases where each enterprise member voluntarily participates in one aspect of the common design and intends the resulting crimes.⁷²
- b. *Acting pursuant to concerted plan* – cases where there exists an organized system to commit the alleged crimes and where the accused actively participates in its enforcement; is aware of its nature; and, intends to further its purpose.⁷³ This *mens rea* may be “inferred from the position of authority” of the accused within the system.⁷⁴ Existence of a formal or informal agreement between the members is not required;⁷⁵ nor is their presence at the time or place of the crime.⁷⁶
- c. *Foreseeable conduct outside the common design* – cases involving a common criminal plan where one of the participants commits a crime which is outside the common plan, but nevertheless a natural and foreseeable consequence of its execution.⁷⁷ Such a non-envisaged crime is considered ‘foreseeable’ when the participants, although not intending this result, were “able to predict” it and regardless continued to participate in the plan.⁷⁸

b. Joint Criminal Enterprise - Elements:

155. The following elements establish the existence of a joint criminal enterprise:

⁶⁸ *Ojdanic* Appeal Decision on JCE, 21 May 2003, para. 20; *Tadić* Appeal Judgement, 15 July 1999, para. 188; *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 29; *Simic* Trial Judgement, 17 Oct. 2003, para. 138.

⁶⁹ *Tadić* Appeal Judgement, 15 July 1999, para. 190; *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 203-204; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 328.

⁷⁰ *Ojdanic* Appeal Decision on JCE, 21 May 2003, para. 44; *Stakic* Trial Judgement, 31 July 2003, para. 433; *Simic* Trial Judgement, 17 Oct. 2003, para. 158.

⁷¹ *Tadić* Appeal Judgement, 15 July 1999, para. 220; *Stakic* Trial Judgement, 31 July 2003, para. 426.

⁷² *Simic* Trial Judgement, 17 Oct. 2003, para. 157; *Tadić* Appeal Judgement, 15 July 1999, paras. 196 and 200.

⁷³ *Tadić* Appeal Judgement, 15 July 1999, paras. 202-203.

⁷⁴ *Tadić* Appeal Judgement, 15 July 1999, para. 203.

⁷⁵ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 96; *Simic* Trial Judgement, 17 Oct. 2003, para. 158.

⁷⁶ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 81; *Simic* Trial Judgement, 17 Oct. 2003, para. 158.

⁷⁷ *Tadić* Appeal Judgement, 15 July 1999, para. 206.

⁷⁸ *Tadić* Appeal Judgement, 15 July 1999, paras. 220 and 228; *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 398; *Prosecutor v. Brdanin (or Brđjanin) and Talic*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 30; *Prosecutor v. Krstić*, IT-98-33-T, Judgement, 2 Aug. 2001 (“*Krstić* Trial Judgement, 2 Aug. 2001”), para. 613.

- a. *A plurality of persons* (not necessarily organized in a military manner);⁷⁹
- b. *The existence of a common plan, design or purpose* which involves the commission of a crime provided for in the Statute. It is not necessary for this plan, design or purpose to have been pre-arranged, and it may “materialize extemporaneously and be inferred from that fact that a plurality of persons acts in unison to put in effect a joint criminal enterprise”, or from other circumstances.⁸⁰
- c. *Participation of the accused in the common plan, design or purpose* which amounts to taking actions in its furtherance.⁸¹ The accused does not have to commit the specific crime, but rather may act to assist in, or contribute to, the execution of the joint criminal enterprise.⁸² The degree of participation required must be “significant”, as to render the enterprise “efficient or effective”.⁸³
- d. *Shared intent of the participants to further the common plan, design or purpose*.⁸⁴
- e. *The accused intended the resulting crime* or was at least aware of its likelihood while regardless continuing his participation in the common plan (see discussion above).

Criminal Responsibility As A Superior Under Article 6(3)

156. The Prosecutor charges all three accused persons under Article 6(3) of the Statute with all charges in the Consolidated Indictment for the criminal acts of their subordinates.
157. Article 6(3) imputes individual criminal responsibility to a superior for crimes perpetrated by his subordinates, when the superior knew or had reason to know that his subordinates committed or are about to commit crimes and yet failed to prevent the crimes or punish the perpetrators.⁸⁵
158. To establish superior responsibility under Article 6(3), the following must be proved:
- (a) the existence of a *superior-subordinate relationship* between perpetrator and accused;
 - (b) that the superior *knew or had reason to know* that the crime was committed or about to be committed by the subordinate;

⁷⁹ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 366; *Tadić* Appeal Judgement, 15 July 1999, paras. 227-228; *Simić* Trial Judgement, 17 Oct. 2003, para. 156.

⁸⁰ *Tadić* Appeal Judgement, 15 July 1999, para. 227; *Simić* Trial Judgement, 17 Oct. 2003, para. 158 (esp. footnote 288). *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement, 21 July 2000, para. 119.

⁸¹ *Ojdanić* Appeal Decision on JCE, 21 May 2003, para. 23; *Simić* Trial Judgement, 17 Oct. 2003, para. 158, fn. 292.

⁸² *Tadić* Appeal Judgement, 15 July 1999, para. 227.

⁸³ *Kvočka* Trial Judgement, 2 Nov. 2001, paras. 309 and 311; *Simić* Trial Judgement, 17 Oct. 2003, para. 159.

⁸⁴ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 100 (participants need not be enthusiastic about furthering the plan); *Simić* Trial Judgement, 17 Oct. 2003, para. 157.

⁸⁵ *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 76; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 346; *Bagilishema* Trial Judgement, 7 June 2001, para. 37; *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 217.

- (c) the superior failed to take the *necessary and reasonable measures* to prevent the crime or to punish the perpetrator thereof.⁸⁶

SUPERIOR-SUBORDINATE RELATIONSHIP

a. Effective Control Test

159. The ICTY Appeals Chamber in *Čelebići* held that a superior-subordinate relationship exists when there is a hierarchical relationship between the accused and the perpetrator, in which the former has ‘effective control’ over the latter.⁸⁷
160. The accused need not have a *formal* position in relation to the perpetrator, but rather that he has the ‘material ability’ to punish the perpetrator or to prevent the crime.⁸⁸
161. Hence, a superior-subordinate relationship may be consequential to the superior’s *de jure* or *de facto* position of authority over the subordinate.⁸⁹ However, since there may be cases where the accused has *de jure* authority over the perpetrator but lacks effective control, the ICTY held that the existence of *de jure* authority alone merely creates a presumption that effective control exists.⁹⁰
162. In ascertaining whether the required ‘effective control’ standard is met, various factors may be taken into consideration. The ICTR in *Musema*, for example, considered the influence a superior has on his subordinates due to psychological pressure, to be indicative of effective control.⁹¹

b. Relationship May be of Indirect Nature

163. The ICTY Appeals Chamber held that subordinate need not be directly under the command of the superior.⁹² For example, the relationship between a commander of one unit and troops

⁸⁶ *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 76; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 346; *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 189-198, 225-226, 238-239, 256, 263. (The Appeal Chamber confirmed the Trial Chamber’s conclusions as to the first two elements.) Also see: *Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgement, 25 June 1999 (“*Aleksovski* Trial Judgement, 25 June 1999”), para. 69; *Blaškić* Trial Judgement, 3 Mar. 2000, para. 294; *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 401; *Kunarac* Trial Judgement, 22 Feb. 2001, para. 395; *Krstić* Trial Judgement, 2 Aug. 2001, para. 604; *Kvočka* Trial Judgement, 2 Nov. 2001, para. 314; *Prosecutor v. Brdjanin (or Brdanin)*, IT-99-36-T, Decision on Motion for Acquittal Pursuant to Rule 98 Bis, 28 Nov. 2003, para. 39; *Galic* Trial Judgement, 5 Dec. 2003, para. 173.

⁸⁷ *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 197, 255, 256 and 303. Also see *Stakić* Trial Judgement, 31 July 2003, para. 421; *Galic* Trial Judgement, 5 Dec. 2003, para. 173.

⁸⁸ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 197, 256, 266 and 303. See also *Stakić* Trial Judgement, 31 July 2003, para. 421 and *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgement (Reasons), 1 June 2001, (“*Kayishema and Ruzindana* Appeal Judgement, 1 June 2001”), para. 302.

⁸⁹ *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 192-3; repeated and endorsed in *Galic* Trial Judgement, 5 Dec. 2003, para. 173. See also *Stakić* Trial Judgement, 31 July 2003, para. 421.

⁹⁰ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 197; *Galic* Trial Judgement, 5 Dec. 2003, para. 173.

⁹¹ *Musema* Trial Judgement, 27 Jan. 2000, para. 140.

⁹² *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 252. *Stakić* Trial Judgement, 31 July 2003, para. 421.

belonging to other units that are temporarily under his command, constitutes the hierarchic relationship of superior-subordinate.⁹³

MENS REA: THE SUPERIOR KNEW OR HAD REASON TO KNOW

164. Regarding the required *mens rea* for command responsibility, the ICTR in *Akayesu* held that “where the objective is to ascertain the individual criminal responsibility of a person Accused of crimes falling within the jurisdiction of the Chamber...it is certainly proper to ensure that there has been malicious intent, or, at least, ensure that negligence was so serious as to be tantamount to acquiescence or even malicious intent.”⁹⁴

a. The Superior Knew

165. The ICTY in *Čelebići* and in *Galic* held that, in the absence of direct evidence, circumstantial evidence may be used to establish the superior’s actual knowledge of the offences committed, or about to be committed, by his subordinates.⁹⁵ For instance, the fact that crimes were committed frequently and notoriously by subordinates of the accused, indicates that the superior had knowledge of the crimes.⁹⁶ In addition, the ICTY held in *Aleksovski* that “an individual’s superior position *per se* is a significant indicium that he had knowledge of the crimes committed by his subordinates”.⁹⁷
166. Generally, circumstantial evidence may include details such as the number and type of illegal acts as well as their scope and wide spread occurrence; the time during which the illegal acts occurred and their geographical location; the *modus operandi* of similar illegal acts; the logistics and tactical tempo of operations involved; the number and type of troops, officers and staff involved; the location of the commander at the time.⁹⁸

b. The Superior Had Reason to Know

167. The ICTY Appeals Chamber in *Čelebići* held that the standard ‘had reason to know’ is met when *general* information regarding the crime was available to the superior; i.e. the superior

⁹³ This essentially was the view expressed in the post-World War II trial of the Japanese General Tomoyuki Yamashita, by the U.S. Military Commission (subsequently affirmed by the U.S. Supreme Court). *Trial of General Tomoyuki Yamashita Before U.S. Military Commission* (Oct. 7–Dec. 7, 1945), summarized in 4 U.N. War Crimes Commission, Law Reports of Trials of War Criminals 1, 33-35 (1948).

⁹⁴ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 489. This view was also repeated in *Musema* Trial Judgement, 27 Jan. 2000, para.131.

⁹⁵ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 386. *Galic* Trial Judgement, 5 Dec. 2003, para. 174.

⁹⁶ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 770.

⁹⁷ *Aleksovski* Trial Judgement, 25 June 1999, para. 80. See also *Blaškić* Trial Judgement, 3 Mar. 2000, para. 308.

⁹⁸ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 386, quoting the U.N. Commission of Experts, *Final Report*, S/1994/627, 27 May 1994 (“U.N. Commission of Experts Report”), p. 17.

need not have possessed knowledge of the *specific* details of the crime.⁹⁹

168. The Appeals Chamber in *Krnojelac* concurred with *Čelebići* that ‘general knowledge’ suffices to fulfil the required *mens rea* of ‘had reason to know’.¹⁰⁰ At the same time it added, however, that this ‘general knowledge’ must pertain to the specific crime committed (or intended to be committed).¹⁰¹ If the general knowledge concerns a crime that is different than the one actually committed, and the latter contains all the elements of the former in addition to other elements, then the required *mens rea* standard is met only with respect to the ‘lesser’ crime.¹⁰² Inferring otherwise, the Tribunal held, “is not admissible with regard to the principles governing individual criminal responsibility.”¹⁰³
169. In *Čelebići*, the ICTY Appeals Chamber held that “knowledge may be presumed ... if [the superior] had the *means* to obtain the knowledge but deliberately refrained from doing so.”¹⁰⁴ Hence, the superior need not be *personally* familiar with the information, as long as it was *available* to him.
170. In *Bagilishema*, the ICTR held that in cases where the accused had no actual knowledge of the crime, the required *mens rea* is still fulfilled in one of two cases. The first case is when the superior “...had information which put him or her on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such offences were about to be committed, were being committed, or had been committed, by subordinates.”¹⁰⁵ The second case is when “...the absence of knowledge [of the accused] is the result of negligence in the discharge of the superior’s duties; that is, where the superior failed to exercise the means available to him or her to learn of the offences, and under the circumstances he or she *should* have known.”¹⁰⁶
171. In addition, the ICTY Appeals Chamber stressed that there are no formal requirements pertaining to the information available to the accused; it could be in writing or in oral form, and

⁹⁹ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 238; *Galic* Trial Judgement, 5 Dec. 2003, para. 175.

¹⁰⁰ *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 155.

¹⁰¹ *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 155.

¹⁰² *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 153.

¹⁰³ *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 155.

¹⁰⁴ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 226. This is also repeated in *Stakic* Trial Judgement, 31 July 2003, para. 422.

¹⁰⁵ *Bagilishema* Trial Judgement, 7 June 2001, para. 46. Also see *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 390-393.

¹⁰⁶ *Bagilishema* Trial Judgement, 7 June 2001, para. 46. Also see *Blaškić* Trial Judgement, 3 Mar. 2000, paras. 314-332; *Aleksovski* Trial Judgement, 25 June 1999, para. 80.

may even be implicit.¹⁰⁷ Such knowledge, for example, may concern a subordinate who has an unstable character, a violent past behaviour or even that is drunk while on a mission.¹⁰⁸

c. Standard of Proof

172. In accordance with the ICTY Appeals Chamber decision in *Čelebići*, the standard of proof necessary to establish the existence of the required *mens rea* varies according to the circumstances of each case.¹⁰⁹ In *Galic* the ICTY held that when an accused exercises informal authority over the perpetrator, the standard of proof (with respect to the knowledge element) is higher than that which applies to an accused who holds an official position of command and serves within a formal and structured system or organization.¹¹⁰ As mentioned above, the evidence must indicate that the accused had general information of all the elements of the crime which was, or is about to be, perpetrated. Evidence demonstrating that the information available to the accused related to only *some* of the elements of the crime, will not suffice.¹¹¹ The evidence may be circumstantial.¹¹²

NECESSARY AND REASONABLE MEASURES

173. The ICTY in *Galic* stressed that it must be decided on an *ad hoc* basis whether the superior has taken the ‘necessary and reasonable measures’ to prevent the crime or to punish the subordinate who perpetrated it.¹¹³ It also concurred with its decision in *Čelebići*, that the superior should not be held accountable for failure to take measures he was realistically unable to employ.¹¹⁴
174. Nonetheless, the ICTY in *Krnjelac* and in *Stakić* held that the superior must take all available measures under the circumstances, and will be held criminally responsible for the crimes committed by his subordinates in the event he fails to do so.¹¹⁵ Such ‘available’ measures have been held to include measures which are beyond the legal authority of the superior, if their undertaking is materially possible.¹¹⁶ For instance, reporting crimes to competent authorities

¹⁰⁷ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 238.

¹⁰⁸ *Galic* Trial Judgement, 5 Dec. 2003, para. 175; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 238.

¹⁰⁹ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 239; *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 156.

¹¹⁰ *Galic* Trial Judgement, 5 Dec. 2003, para. 174

¹¹¹ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 155.

¹¹² *Čelebići* Trial Judgement, 16 Nov. 1998, para. 386, quoting the U.N. Commission of Experts Report, p. 17.

¹¹³ *Galic* Trial Judgement, 5 Dec. 2003, para. 176.

¹¹⁴ *Galic* Trial Judgement, 5 Dec. 2003, para. 176, citing from *Čelebići* Trial Judgement, 16 Nov. 1998, para. 395.

¹¹⁵ *Krnjelac* Trial Judgement, 15 Mar. 2002, para. 95; *Stakić* Trial Judgement, 31 July 2003, para. 423; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 770.

¹¹⁶ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 395. *Stakić* Trial Judgement, 31 July 2003, para. 461

may, under certain circumstances, amount to taking ‘necessary and reasonable measures’.¹¹⁷ At the same time, however, mere punishment by the superior of a subordinate, subsequent to having committed the crime, cannot remedy the superior’s failure to take ‘necessary and reasonable measures’ in advance aimed at preventing the crime.¹¹⁸

G: Admissibility and Assessment of Evidence

175. The rules of evidence applicable to this case are stipulated in Rules 89-98. The basic principle, stipulated in Rule 89(C), is that any relevant evidence is admissible. In deciding which evidence is “relevant”, wide discretion is granted to the Trial Chamber.¹¹⁹
176. International jurisprudence embodies the principle of “extensive admissibility of evidence”.¹²⁰ Underlying this principle is the competence of the professional judges to hear evidence and to subsequently evaluate it according to its contents, credibility, the manner in which it was obtained, and in light of all other evidence.¹²¹
177. Hence hearsay, “self-serving” and unauthenticated documentary evidence have all been held to be admissible, although the nature of such evidence may bear on the weight it is accorded.¹²² Additionally, Rules 71 and 85(D) provide for admission of depositions and introduction of evidence via communications media (e.g. video, closed-circuit television).
178. Under Rule 92 *bis*, “information in lieu of oral testimony” may be admitted as evidence “if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.” Since the language of the parallel ICTY and ICTR Rule is significantly different, the jurisprudence of those Tribunals is inapplicable as such. Nonetheless, the fact that the SCSL Rule differs from the Rule on which it is based, is a teaching factor in understanding its scope.
179. Considering the object and purpose of the Special Court and in light of its limited temporal

¹¹⁷ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 335. *Stakić* Trial Judgement, 31 July 2003, para. 461

¹¹⁸ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 336. *Stakić* Trial Judgement, 31 July 2003, para. 461.

¹¹⁹ *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 Sept. 2003 (“*Bagosora* Trial Chamber Evidence Decision, 18 Sept. 2003”), para. 18.

¹²⁰ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 34; see also Rule 95.

¹²¹ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 35; *Prosecutor v. Delalić et al.*, IT-96-21-T, Decision on the Motion of the Prosecutor for the Admissibility of Evidence, 19 Jan. 1998 (“*Čelebići* Evidence Decision, 19 Jan. 1998”), para. 20.

¹²² *Prosecutor v. Rutaganda*, ICTR-96-3-A, Judgement, 26 May 2003 (“*Rutaganda* Appeal Judgement, 26 May 2003”), paras. 148 and 184; *Musema* Trial Judgement, 27 Jan. 2000, para. 61-62. *Prosecutor v. Blaškić*, IT-95-14-T, Decision on the Defence Motion for Reconsideration of the Ruling to Exclude from Evidence Authentic and Exculpatory Documentary Evidence, 30 Jan. 1998, para. 10.

existence and resources, it was necessary to promulgate rules which effectuate expedited proceedings to ascertain the truth, while at the same time safeguard the rights of the accused. Hence, at the first Plenary, the Special Court judges exercised their authority to amend the Rules and discarded the elaborate ICTR Rule (which was applicable at the time) in favour of a simplified version that widens the scope of written material which may be admitted as evidence instead of oral testimony.¹²³

180. Rule 94 also expedites proceedings, by allowing the court to take judicial notice of certain facts,¹²⁴ thus establishing “a well-founded presumption” for their accuracy”.¹²⁵
181. Under Rule 94(A) the Chamber *must* take judicial notice of ‘facts of common knowledge’. These include “...those facts which are not subject to reasonable dispute...such as general facts of history, generally known geographical facts and the laws of nature.”¹²⁶ It is emphasised that “there is no requirement that a matter be universally accepted in order to qualify for judicial notice.”¹²⁷ In addition, historical facts qualify as facts of common knowledge, if they are “...susceptible to determination by reference to readily obtainable and authoritative source...”¹²⁸ Accordingly, judicial notice of various United Nations documents was taken by the ICTR.¹²⁹
182. Rule 94(B) grants the Court *discretion* to take judicial notice of “adjudicated facts”.¹³⁰ Facts not within the scope of Rule 94(A), may be judicially noticed under Rule 94(B) “if they are indeed

¹²³ See Judge Robertson’s comment regarding the parallel ICTR Rule: “this proposed Rule, while well-intentioned, will in practice prove counterproductive” (Minutes of First Plenary, SCSL Registry). The ICTY and ICTR adopted their parallel Rule also with the intention to facilitate speedy trials (see ICTR Press Release ICTR/INFO-9-13-22.EN of 8 July 2002, p. 3), following several decisions where written material was admitted as evidence instead of oral testimony. See e.g. *Blaškić* Trial Judgement, 3 Mar. 2000, para. 36.

¹²⁴ *Prosecutor v. Simić et al.*, IT-95-9-PT, Decision on the Pre-trial Motion by the Prosecution Requesting the Trial Chamber to take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 25 Mar. 1999, para. 17; *Prosecutor v. Sikirica et al.*, IT-95-8-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 27 Sept. 2000.

¹²⁵ *Prosecutor v. Milosevic*, IT-02-54-AR73.5, Decision on the Prosecution’s Interlocutory Appeal against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 Oct. 2003, para. 14.

¹²⁶ *Prosecutor v. Semanza*, ICTR-97-20-T, Decision on the Prosecutor’s Motion for Judicial Notice and presumption of Facts Pursuant to Rules 94 and 54, 3 Nov. 2000 (“*Semanza* Decision on Judicial Notice, 3 Nov. 2000”), para. 23; *Prosecutor v. Nyiramasuhuko and Ntahobali* (ICTR-97-21-T), *Prosecutor v. Nsabimana and Nteziryayo* (ICTR-97-29A and B-T), *Prosecutor v. Kanyabashi* (ICTR-96-15-T), *Prosecutor v. Ndayambaje* (ICTR-96-8-T), 98-42-T, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence, 15 May 2002 (“*Nyiramasuhuko* Decision on Judicial Notice, 15 May 2002”), para. 38.

¹²⁷ *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 31

¹²⁸ *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 25-26.

¹²⁹ *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 29.

¹³⁰ This provision was added to the ICTY Rules in July 1998 and to the ICTR Rules in Nov. 2000.

adjudicated facts and relate to the present proceedings.”¹³¹

183. Under Rule 94(B), judicial notice may also be taken of “documentary evidence from other proceedings of the Special Court”. This stipulation was interpreted by the ICTY Appeals Chamber to relate to “discrete items of evidence such as the testimony of a witness or a trial exhibit, not an entire judgement.”¹³²
184. Under SCSL Rule 93 “[e]vidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice.”¹³³ It is emphasised that Rule 93 relates to evidence proving a consistent practice, and *not* to evidence establishing the good character of the accused.¹³⁴
185. Accordingly, pursuant to Rule 93, it is possible to introduce evidence of instances not necessarily covered by the Consolidated Indictment, which demonstrates ‘a consistent pattern of conduct’ in order to prove elements such as the intent, motive, knowledge, identity, opportunity, preparation, plans, mode of operation, position of authority, etc.¹³⁵
186. The *burden* of proof relating to the admissibility of documentary evidence lies on the party seeking to rely on the document; the *standard* of proof generally required is a “balance of probabilities” standard.¹³⁶
187. The reliability and credibility of evidence usually affect the weight it is given, as opposed to bearing on its admissibility.¹³⁷
188. Once evidence is admitted, it is assessed and given weight by the Trial Chamber.¹³⁸ In assessing evidence, the Trial Chamber may adopt any approach it deems suitable.¹³⁹
189. According to international jurisprudence, inconsistencies in statements made by the same

¹³¹ *Nyiramasuhuko* Decision on Judicial Notice, 15 May 2002, para. 92.

¹³² *Prosecutor v. Kupreškić et al.*, IT-95-16-A, 8 May 2001, para. 6.

¹³³ *Prosecutor v. Bagosora et al.*, ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Decision on Prosecutor’s Interlocutory Appeals Regarding Exclusion of Evidence, 19 Dec. 2003 (“*Bagosora* Appeals Chamber Evidence Decision, 19 Dec. 2003”), para. 13.

¹³⁴ Judge Cassese in ICTY Transcripts, 15 Feb. 1999, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, p. 6889, lines 5-15. See also *Bagosora* Appeals Chamber Evidence Decision, 19 Dec. 2003, para. 14.

¹³⁵ *Kayishema and Ruzindana* Appeal Judgement, 1 June 2001, para. 159; *Bagilishema* Trial Judgement, 7 June 2001, paras. 50 and 63.

¹³⁶ *Musema* Trial Judgement, 27 Jan. 2000, paras. 55, 56 and 58; *Prosecutor v. Delalić et al.*, IT-96-21-T, Decision on Zdravko Mucic’s Motion for the Exclusion of Evidence, 2 Sept. 1997, para. 42.

¹³⁷ *Čelebići* Evidence Decision, 19 Jan. 1998, para. 20; *Musema* Trial Judgement, 27 Jan. 2000, para. 57.

¹³⁸ *Musema* Appeal Judgement, 16 Nov. 2001, para. 18; *Rutaganda* Appeal Judgement, 26 May 2003, para. 207.

¹³⁹ *Kayishema and Ruzindana* Appeal Judgement, 1 June 2001, para. 119; See *Prosecutor v. Kamuhanda*, ICTR-99-54A-T, Judgment, 22 Jan. 2004 (“*Kamuhanda* Trial Judgement, 22 Jan. 2004”), para. 33; *Prosecutor v. Blaškić*, IT-95-14-T, Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 26 Jan. 1998, para. 5.

witness need not render the evidence unreliable, as they are often explained by the time that passed between taking the statements or the impact of trauma on the witnesses.¹⁴⁰

190. Moreover, social and cultural factors may affect the content of evidence.¹⁴¹ Such factors often explain the difficulties witnesses have in identifying exhibits such as photographs and maps, or in testifying as to dates, times, distances, colours and motor vehicles.¹⁴²

191. Similarly, language barriers and translations may lead to unclear statements or testimonies.¹⁴³ Hence, inconsistencies against prior statements and internal contradictions should be considered with caution when an interpreter is involved.¹⁴⁴

192. Regarding evidence deriving from different witnesses, “inconsistencies may, in certain circumstances, indicate truthfulness and the absence of interference with witnesses.”¹⁴⁵

193. Other factors bearing on the weight given to evidence include the fact that testimony is given by a former co-Accused,¹⁴⁶ and the indirect nature of hearsay (discussed above).

194. Corroboration of evidence is not a requirement in international law.¹⁴⁷ The ICTR Appeals Chamber held that the specification in the ICTR Rules that in cases of sexual offences corroboration of the victim’s testimony is not required *does not* indicate that corroboration of evidence *is* required in proving other offences.¹⁴⁸ The ICTR Appeals Chamber concurred with this view.¹⁴⁹ While the SCSL Rules do not address the issue of corroboration, the Prosecution submits that the principle adopted by the ICTY and ICTR, that corroboration is not required, applies to proceedings before the Special Court.¹⁵⁰

¹⁴⁰ *Čelebići* Appeal Judgment, 20 Feb. 2001, para. 496; *Musema* Appeal Judgment, 16 Nov. 2001, para. 63; *Rutaganda* Appeal Judgment, 26 May 2003, para. 215; *Kamuhanda* Trial Judgment, 22 Jan. 2004, para. 34-37.

¹⁴¹ *Musema* Trial Judgment, 27 Jan. 2000, para. 103; *Akayesu* Trial Judgment, 2 Sept. 1998, para. 155-156.

¹⁴² *Rutaganda* Appeal Judgment, 26 May 2003, para. 222; *Musema* Trial Judgment, 27 Jan. 2000, para. 104.

¹⁴³ See *Rutaganda* Appeal Judgment, 26 May 2003, para. 222; *Musema* Trial Judgment, 27 Jan. 2000, para. 102.

¹⁴⁴ *Akayesu* Trial Judgment, 2 Sept. 1998, para. 137; *Rutaganda* Appeal Judgment, 26 May 2003, para. 222-225.

¹⁴⁵ *Furundžija* Trial Judgment, 10 Dec. 1998, para. 113.

¹⁴⁶ *Simić* Trial Judgment, 17 Oct. 2003, para. 21.

¹⁴⁷ *Tadić* Trial Judgment, 7 May 1997, paras. 256, 535-539. *Akayesu* Trial Judgment, 2 Sept. 1998, para. 135.

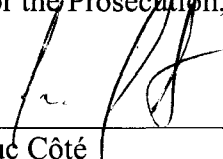
¹⁴⁸ *Rutaganda* Appeal Judgment, 26 May 2003, para. 184, referring to the *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgment and Sentence, 6 Dec. 1999 (“*Rutaganda* Trial Judgment, 6 Dec. 1999”), para. 18.

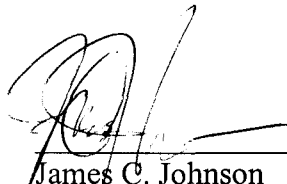
¹⁴⁹ *Rutaganda* Appeal Judgment, 26 May 2003, para. 184, citing *Rutaganda* Trial Judgment, 6 Dec. 1999, para. 18.

¹⁵⁰ There are, obviously, instances when corroboration will be required. See *Bagilishema* Trial Judgment, 7 June 2001, para. 532. *Bagilishema* Appeal Judgment, 3 July 2002, para. 73.

Done in Freetown, on this 2nd day of March 2004.

For the Prosecution,



Luc Côté
Chief of Prosecution

James C. Johnson
Senior Trial Counsel

ANNEXES

- 1. List of Authorities**
- 2. Consolidated Indictment**

Annex 1: LIST OF AUTHORITIES

ICTY CASES:

Prosecutor v. Aleksovski, IT-95-14/1-A, Judgement, 24 Mar. 2000 (“*Aleksovski Appeal Judgement*, 24 Mar. 2000”)

Prosecutor v. Aleksovski, IT-95-14/1-T, Judgement, 25 June 1999 (“*Aleksovski Trial Judgement*, 25 June 1999”)

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Prosecutor v. Galic, IT-98-29-T, Judgement and Opinion, 5 Dec. 2003 (“*Galic* Trial Judgement, 5 Dec. 2003”)

Prosecutor v. Jelusic, IT-95-10-A, Judgement, 5 July 2001

Prosecutor v. Jelusic, IT-95-10-T, Judgement, 14 Dec. 1999

Prosecutor v. Kordić and Čerkez, IT-95-14/2-T, Judgement, 26 Feb. 2001 (“*Kordić and Čerkez* Trial Judgement, 26 Feb. 2001”)

Prosecutor v. Krnojelac, IT-97-25-A, Judgement, 17 Sept. 2003 (“*Krnojelac* Appeal Judgement, 17 Sept. 2003”)

Prosecutor v. Krnojelac, IT-97-25-T, Judgement, 15 Mar. 2002 (“*Krnojelac* Trial Judgement, 15 Mar. 2002”)

Prosecutor v. Krstic, IT-98-33-T, Judgement, 2 Aug. 2001 (“*Krstic* Trial Judgement, 2 Aug. 2001”)

Prosecutor v. Kunarac et al., IT-96-23-T and IT-96-23/1-T, Judgement, 22 Feb. 2001 (“*Kunarac* Trial Judgement, 22 Feb. 2001”),

Prosecutor v. Kupreškić et al., IT-95-16-T, ICTY Transcripts, 15 Feb. 1999

Prosecutor v. Kupreškić et al., IT-95-16-A, 8 May 2001

Prosecutor v. Milosevic, IT-02-54-AR73.5, Decision on the Prosecution’s Interlocutory Appeal against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 Oct. 2003

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

Prosecutor v. Bagosora et al., ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Decision on Prosecutor’s Interlocutory Appeals Regarding Exclusion of Evidence, 19 Dec. 2003 (“*Bagosora* Appeals Chamber Evidence Decision, 19 Dec. 2003”)

Prosecutor v. Bagosora et al., ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 Sept. 2003 (“*Bagosora* Trial Chamber Evidence Decision, 18 Sept. 2003”)

Prosecutor v. Kamuhanda, ICTR-99-54A-T, Judgment, 22 Jan. 2004 (“*Kamuhanda* Trial Judgement, 22 Jan. 2004”)

Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-A, Judgement (Reasons), 1 June 2001, (“*Kayishema and Ruzindana* Appeal Judgement, 1 June 2001”)

Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-T, Judgement, 21 May 1999 (“*Kayishema and Ruzindana* Trial Judgement, 21 May 1999”)

Prosecutor v. Musema, ICTR-96-13-A, Judgement, 16 Nov. 2001 (“*Musema* Appeal Judgement, 16 Nov. 2001”)

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U.N. Commission of Experts, *Final Report*, S/1994/627, 27 May 1994 (“Commission of Experts Report”)

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 (“Geneva Convention I”)

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 (“Geneva Convention II”)

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Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3516; 75 U.N.T.S. 287 (“Geneva Convention IV”)

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MISCELLANEOUS:

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ICTR Press Release ICTR/INFO-9-13-22.EN dated 8 July 2002

2. Consolidated Indictment

SCSL - 2004 - 14 - PT
C11 - 217
THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL - 03 - 14 - I

THE PROSECUTOR

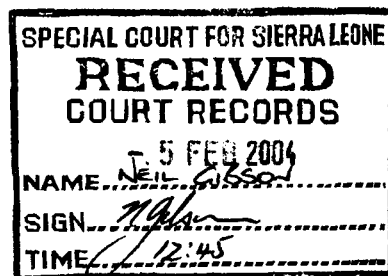
Against

SAMUEL HINGA NORMAN

MOININA FOFANA

ALLIEU KONDEWA

INDICTMENT



The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute), charges:

SAM HINGA NORMAN

MOININA FOFANA

ALLIEU KONDEWA

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW** in violation of Articles 2, 3 and 4 of the Statute, as set forth below:

THE ACCUSED

1. **SAMUEL HINGA NORMAN**, was born on 1 January 1940, in Ngolala Village, Mongeri (or Monghere), Valunia Chiefdom, Bo District, in the Southern Province of the Republic of Sierra Leone. He served in the Armed Forces of the Republic of Sierra Leone from about 1959 to 1972 rising to the rank of Captain. In 1966 he

graduated from the Mons Officer Cadet School in Aldershot, United Kingdom. He has served as the Liaison Representative and Chiefdom Spokesman, Mongeri, Valunia Chiefdom, as Regent Chief of Jaiama Bongor Chiefdom, and as Deputy Minister of Defence for Sierra Leone. He is currently serving as the Minister of the Interior for Sierra Leone.

2. **MOININA FOFANA**, is believed to have been born in 1950, in Nongoba Bullom Chiefdom, Bonthe District, in the Republic of Sierra Leone. He currently resides in the town of Gbap, Nongoba Bullom Chiefdom, Bonthe District and is the Chiefdom Speaker for the Nongoba Bullom Chiefdom.
3. **ALLIEU KONDEWA, also known as (aka) King Dr Allieu Kondewa, (aka) Dr Allieu Kondewa**, is believed to have been born in the Bo District, in the Republic of Sierra Leone. He currently resides in the Bumpeh Chiefdom, Bo District, and his occupation is that of a farmer and herbalist.

GENERAL ALLEGATIONS

4. At all times relevant to this Indictment, a state of armed conflict existed in Sierra Leone. For the purposes of this Indictment the organized armed factions involved in this conflict included the Civil Defence Forces (CDF) fighting against the combined forces of the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC).
5. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
6. The CDF was an organized armed force comprising various tribally-based traditional hunters. The Kamajors were comprised mainly of persons from the Mende tribe resident in the South and East of Sierra Leone, and were the predominant group within the CDF. Other groups playing a less dominant role were the Gbethis and the Kapras, both comprising mainly of Temnes from the north; the Tamaboros,

comprising mainly of Korankos also from the north; and the Donsos, comprising mainly of Konos from the east.

7. The RUF was founded about 1988 or 1989 in Libya and began organized armed operations in Sierra Leone in or about March 1991. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army comprised the majority of the AFRC membership. Shortly after the AFRC seized power, the RUF joined with the AFRC.
8. The **ACCUSED** and all members of the CDF were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
9. All offences charged herein were committed within the territory of Sierra Leone after 30 November 1996.
10. All acts or omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
11. The words civilian or civilian population used in this indictment refer to persons who took no active part in the hostilities, or were no longer taking an active part in the hostilities.

INDIVIDUAL CRIMINAL RESPONSIBILITY

12. Paragraphs 4 through 11 are incorporated by reference.
13. At all times relevant to this Indictment, **SAMUEL HINGA NORMAN** was the National Coordinator of the CDF. As such he was the principal force in establishing, organizing, supporting, providing logistical support, and promoting the CDF. He was also the leader and Commander of the Kamajors and as such had *de jure* and *de facto* command and control over the activities and operations of the Kamajors.

14. At all times relevant to this Indictment, **MOININA FOFANA** was the National Director of War of the CDF and **ALLIEU KONDEWA** was the High Priest of the CDF. As such, together with **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA** were seen and known as the top leaders of the CDF. **MOININA FOFANA** and **ALLIEU KONDEWA** took directions from and were directly answerable to **SAMUEL HINGA NORMAN**. They took part in policy, planning and operational decisions of the CDF.
15. **MOININA FOFANA** acted as leader of the CDF in the absence of **SAMUEL HINGA NORMAN** and was regarded as the second in command. As National Director of War, he had direct responsibility for implementing policy and strategy for prosecuting the war. He liaised with field commanders, supervised and monitored operations. He gave orders to and received reports about operations from subordinate commanders, and he provided them with logistics including supply of arms and ammunition. In addition to the duties listed above at the national CDF level, **MOININA FOFANA** commanded one battalion of Kamajors.
16. **ALLIEU KONDEWA**, as High Priest had supervision and control over all initiators within the CDF and was responsible for all initiations within the CDF, including the initiation of children under the age of 15 years. Furthermore, he frequently led or directed operations and had direct command authority over units within the CDF responsible for carrying out special missions.
17. **SAMUEL HINGA NORMAN**, as National Coordinator of the CDF and Commander of the Kamajors knew and approved the recruiting, enlisting, conscription, initiation, and training of Kamajors, including children below the age of 15 years. **SAMUEL HINGA NORMAN**; **MOININA FOFANA**, as the National Director of War of the CDF; and **ALLIEU KONDEWA**, as the High Priest of the CDF, knew and approved the use of children to participate actively in hostilities.
18. In the positions referred to in the aforementioned paragraphs, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, individually or in concert, exercised authority, command and control over all subordinate members of the CDF.

19. The plan, purpose or design of **SAMUEL HINGA NORMAN, MOININA FOFANA, ALLIEU KONDEWA** and subordinate members of the CDF was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included gaining complete control over the population of Sierra Leone and the complete elimination of the RUF/AFRC, its supporters, sympathizers, and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone. Each **Accused** acted individually and in concert with subordinates, to carry out the said plan, purpose or design.
20. **SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**, by their acts or omissions are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this indictment, which crimes each of them planned, instigated, ordered, committed, or in whose planning, preparation or execution each **Accused** otherwise aided and abetted, or which crimes were within a common purpose, plan or design in which each **Accused** participated or were a reasonably foreseeable consequence of the common purpose, plan or design in which each **Accused** participated.
21. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**, while holding positions of superior responsibility and exercising command and control over their subordinates, are individually criminally responsible for the crimes referred to in Articles 2, 3, and 4 of the Statute. Each **Accused** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and each **Accused** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

CHARGES

22. Paragraphs 4 through 21 are incorporated by reference.
23. The CDF, largely Kamajors, engaged the combined RUF/AFRC forces in armed conflict in various parts of Sierra Leone – to include the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas and the Districts of Moyamba and

Bonthe. Civilians, including women and children, who were suspected to have supported, sympathized with, or simply failed to actively resist the combined RUF/AFRC forces were termed “**Collaborators**” and specifically targeted by the CDF. Once so identified, these “Collaborators” and any captured enemy combatants were unlawfully killed. Victims were often shot, hacked to death, or burnt to death. Other practices included human sacrifices and cannibalism.

24. These actions by the CDF, largely Kamajors, which also included looting, destruction of private property, personal injury and the extorting of money from civilians, were intended to threaten and terrorize the civilian population. Many civilians saw these crimes committed; others returned to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property. Typical CDF actions and the resulting crimes included:
 - a. Between 1 November 1997 and about 1 April 1998, multiple attacks on Tongo Field and surrounding areas and towns during which Kamajors unlawfully killed or inflicted serious bodily harm and serious physical suffering on an unknown number of civilians and captured enemy combatants. Kamajors screened the civilians and those identified as “**Collaborators**,” along with any captured enemy combatants, were unlawfully killed.
 - b. On or about 15 February 1998 Kamajors attacked and took control of the town of Kenema. In conjunction with the attack and following the attack, both at and near Kenema and at a nearby location known as SS Camp, Kamajors continued to identify suspected “**Collaborators**,” unlawfully killing or inflicting serious bodily harm and serious physical suffering on an unknown number of civilians and captured enemy combatants. Kamajors also entered the police barracks in Kenema and unlawfully killed an unknown number of Sierra Leone Police Officers.
 - c. In or about January and February 1998, the Kamajors attacked and took control of the towns of Bo, Koribondo, and the surrounding areas. Thereafter, the practice of killing captured enemy combatants and suspected “**Collaborators**” continued and as a result, Kamajors unlawfully killed or inflicted serious bodily harm and serious physical suffering on an unknown number of civilians and enemy

combatants. Also, as part of these attacks in and around Bo and Koribondo, Kamajors unlawfully destroyed and looted an unknown number of civilian owned and occupied houses, buildings and businesses.

- d. Between about October 1997 and December 1999, Kamajors attacked or conducted armed operations in the Moyamba District, to include the towns of Sembehun and Gbangbatoke. As a result of the actions Kamajors continued to identify suspected “Collaborators” and others suspected to be not supportive of the Kamajors and their activities. Kamajors unlawfully killed an unknown number of civilians. They unlawfully destroyed and looted civilian owned property.
- e. Between about October 1997 and December 1999, Kamajors attacked or conducted armed operations in the Bonthe District, generally in and around the towns and settlements of Talia, Tihun, Maboya, Bolloh, Bombay, and the island town of Bonthe. As a result of these actions Kamajors identified suspected “Collaborators” and others suspected to be not supportive of the Kamajors and their activities. They unlawfully killed an unknown number of civilians. They destroyed and looted civilian owned property.
- f. In an operation called “Black December,” the CDF blocked all major highways and roads leading to and from major towns mainly in the southern and eastern Provinces. As a result of these actions, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants.

COUNTS 1 – 2: UNLAWFUL KILLINGS

25. Unlawful killings included the following:
- a. between about 1 November 1997 and about 30 April 1998, at or near Tongo Field, and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
 - b. on or about 15 February 1998, at or near the District Headquarters town of Kenema and at the nearby locations of SS Camp, and Blama, Kamajors

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

- c. on or about 15 February 1998, at or near Kenema, Kamajors unlawfully killed an unknown number of Sierra Leone Police Officers;
- d. in or about January and February 1998, in locations in Bo District including the District Headquarters town of Bo, Kebi Town, Koribondo, Kpeyama, Fengehun and Mongere, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants;
- e. between about October 1997 and December 1999 in locations in Moyamba District, including Sembehun, Taiama, Bylago, Ribbi and Gbangbatoke, Kamajors unlawfully killed an unknown number of civilians;
- f. between about October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, Makose and Bonthe Town, Kamajors unlawfully killed an unknown number of civilians;
- g. between about 1 November 1997 and about 1 February 1998, as part of Operation Black December in the southern and eastern Provinces of Sierra Leone, the CDF unlawfully killed an unknown number of civilians and captured enemy combatants in road ambushes at Gumahun, Gerihun, Jembeh and the Bo-Matotoka Highway.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 1: Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute of the Court;

In addition, or in the alternative:

Count 2: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA**

CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.a. of the Statute.

COUNTS 3 – 4: PHYSICAL VIOLENCE AND MENTAL SUFFERING

26. Acts of physical violence and infliction of mental harm or suffering included the following:
- a. between about 1 November 1997 and 30 April 1998, at various locations, including Tongo Field, Kenema Town, Blama, Kamboma and the surrounding areas, the CDF, largely Kamajors, intentionally inflicted serious bodily harm and serious physical suffering on an unknown number of civilians;
 - b. between November 1997 and December 1999, in the towns of Tongo Field, Kenema, Bo, Koribondo and surrounding areas, and the Districts of Moyamba and Bonthe, the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by the actions of the CDF, largely Kamajors, including screening for “**Collaborators**,” unlawfully killing of suspected “**Collaborators**,” often in plain view of friends and relatives, illegal arrest and unlawful imprisonment of “**Collaborators**”, the destruction of homes and other buildings, looting and threats to unlawfully kill, destroy or loot.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 3: Inhumane Acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute;

In addition, or in the alternative:

Count 4: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of Statute.

COUNT 5: LOOTING AND BURNING

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

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crime alleged below:

Count 5: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f. of the Statute.

COUNTS 6 – 7: TERRORIZING THE CIVILIAN POPULATION and COLLECTIVE PUNISHMENTS

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

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 6: Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute;

And:

Count 7: Collective Punishments, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.b. of the Statute.

COUNT 8: USE OF CHILD SOLDIERS

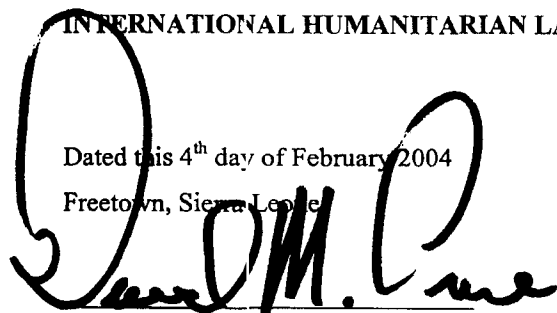
29. At all times relevant to this Indictment, the Civil Defence Forces did, throughout the Republic of Sierra Leone, initiate or enlist children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, use them to participate actively in hostilities.

By their acts or omissions in relation to these events, **SAMUEL HINGA NORMAN**, **MOININA FOFANA** and **ALLIEU KONDEWA**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crime alleged below:

Count 8: Enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

Dated this 4th day of February 2004

Freetown, Sierra Leone



David M. Crane

The Prosecutor