

iii)

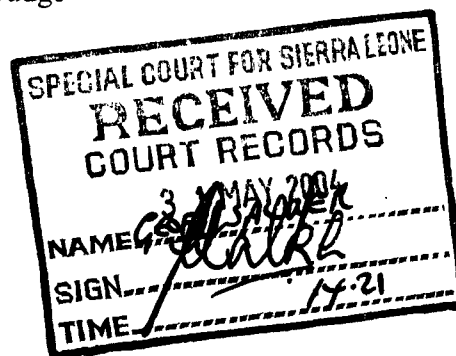
SCSL-2004-14-PT
(6935-6988)

6935

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

Registrar: Mr. Robin Vincent

Date filed: 31 May 2004



THE PROSECUTOR

Against

**Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa**

CASE NO. SCSL -2004 – 14 – PT

**DEFENCE PRE – TRIAL BRIEF
PURSUANT TO REVISED ORDER FOR THE FILING OF
DEFENCE PRE-TRIAL BRIEFS (UNDER RULES 54 and
73 bis) of 22nd March 2004**

Office of the Prosecutor

Luc Cote'
James C. Johnson
Charles A. Caruso
Mohamed Bangura
Kathryn Howarth
Joseph Kamara
Adwoa Wiafe
Bianca Suciu

Defence Counsel for Hinga Norman

James Blyden Jenkins-Johnston
Sulaiman Banja Tejan-Sie
Adiatu Bun-Tejan

Defence Counsel for Moinina Fofana

Michiel Pestman

Defence Counsel for Allieu Kondewa

Charles Margai

Table of Contents

- 1. Introduction**
- 2. Historical Background**
- 3. General Factual Background of the Armed Conflict**
- 4. Overview of Charges**
- 5. Basic Factual Allegations**
 - *The Conflict*
 - *The role of the accused*
- 6. Defence Rebuttal of Prosecution Theory**
- 7. Legal Analysis of Elements of Offences Charged**
- 8. Lack of Criminal Responsibility Under Art.6 (1) and 6(3) – Legal Analysis of Command responsibility**
- 9. Admissibility and General Assessment of Evidence**
- 10. Annexes**
 - *CD (SL) Organogram*
 - *List of Authorities.*
 - *Consolidated Indictment*

-1-

Introduction

1. The defence for Chief Samuel Hinga Norman submits this Pre-Trial Brief in compliance with the REVISED ORDER FOR THE FILING OF DEFENCE PRE-TRIAL BRIEFS (under Rules 54 and 73 bis) of 22nd March 2004 in to the factual allegations and legal issues raised by the prosecution and to provide a brief but healthy analysis of the accused's answer to the indictment and other relevant matters raised in their aforementioned brief.

-2-

Historical Background

2. The geographical area of Freetown then Sierra Leone was declared a British colony in 1808 and its hinterland which together forms present day Sierra Leone was declared a British Protectorate in 1876. The British governed Sierra Leone through its colonial system of indirect rule until April 27th 1961 when it won its independence through negotiations in Whitehall that culminated in the 1961 Independent Constitution of Sierra Leone. Sierra Leone adopted the British practice of liberal democracy established on the first past the post system until 1978 when it's then President, Siaka Stevens declared the country a one-party state by promulgating the now infamous 1978 One Party Constitution.

3. Sierra Leone's latter move to democracy was temporarily put on hold in 1992 when young officers of the Republic of Sierra Leone Armed Forces who became known as The National Provisional Ruling Council (NPRC) took power, suspended the Constitution and for the next four years ruled by decree. Pressure from Civil Society and the International Community at large forced the junta to relinquish power to the democratically elected government of Ahmad Tejan Kabbah who won the 1996 elections amidst intimidation, bloodshed, amputation and terror perpetuated by the RUF rebels and a reluctant army.

4. President Kabbah's several efforts at restoring peace in his first year proved futile and continued discontent within the rank and file in the army led to another coup this time by non-commissioned army officers who became known as the Armed Forces Revolutionary Council (AFRC). The coup was unpopular both within and outside Sierra Leone. No country recognized the junta. Both the Economic Committee for West Africa States (ECOWAS) and the then Organization of African Unity (OAU) empowered the military wing of the former namely the Economic Committee Monitoring Group (ECOMOG) to intervene and restore the democratically elected government of President Kabbah then in exile in Conakry, Guinea. With the support of the Civil Defence Forces of Sierra Leone and scattered remnants of the army and Special Security Forces who had surrendered to ECOMOG forces at the behest of their President and Commander in Chief; ECOMOG forces successfully took over Freetown and its environs thus restoring the Government of President Tejan Kabbah in March 1998.

Despite several failed attempts peace was finally brokered by the combined efforts of the United Nations and the international community notably the United States and the United Kingdom with all factions finally disarmed and the war declared to have ended in January 2000.

-3-

General Factual Background to the Armed Conflict

5. The organized armed group that later evolved into the Revolutionary United Front of Sierra Leone has its origin in the political cells that were prevalent in Sierra Leone in the early 1980's consisting mainly of university students, unemployed teachers, former policemen and service men and disgruntle lumpen youth, all eager for change and adventure. Through the radical student union politics of the time this loose group of so called aspiring revolutionaries established contact with the Libyan Jamahiriya and its leader Col. Muammar Gaddafi and sought his counseling, support, philosophical and military training. The initial link with Libya was short-lived as cracks between the leadership which was mostly campus based radicals and the rank and file who had volunteered for military training and were mainly violent youth activists started to emerge leading to the total abandonment of the project and the emergence of the Revolutionary United Front (RUF) who decided to take action now by forming a pact with Charles Taylor's National Patriotic Front of Liberia (NPFL). This group was led by Foday Sankoh (a former Army corporal and photographer), Abu Kanu a university graduate from Njala University College and member of the radical student club "future shock" and Rashid Mansaray an activist from the east end of Freetown with experience in guerilla warfare having fought alongside the MPLA in the Angolan Civil War.

6. On 23rd March 1991, this group (RUF) now exclusively led by Corporal Foday Sankoh who also doubled as its spokesman attacked and subsequently occupied the remote border town of Bomaru in the Kailahun district of the Eastern Province of Sierra Leone. Corporal Sankoh on that day declared on BBC's focus on Africa programme that his intention was to overthrow the centralized, corrupt and repressive All People Congress Party then in power and revamp the economy by wresting control of the national mineral wealth from foreigners.

7. This armed insurrection soon turned into reckless massacre which culminated in the mass displacement of the civilian population, food blockages, disruption of humanitarian supplies and the effective destruction of all income generating sectors of the national

economy.

8. The army which consisted mainly of inner-city unemployed youth who had been domiciled for the most part of their lives in cities and towns were always at a perpetual disadvantage and in regular danger of running into ambushes. The sweltering atmosphere of civilian mistrust for their professional misconduct exacerbated the already fluid situation in the country. The formation of the Kamajor counter-insurgency force therefore meant for the majority of rural dwellers in the front lines that the great tactical advantage enjoyed by the RUF over the army was lost.

9. Also, the Kamajors were local people, some of whom have been hunters and farmers and therefore had intimate knowledge of their local terrain. Some members of the Kamajoisia had been civilian captives who had been used by RUF combatants for the portage of loot and therefore had excellent knowledge of routes used by the RUF to evade the army and access their bases.

10. The NPRC era of Captain Strasser embarked on a mass recruitment of mainly urban unemployed youth to augment the dearth of manpower to resist and crush the rebellion. Like their deprived and depraved colleagues in the RUF, these new recruits who were sent to the frontline could hardly resist the temptation to appropriate the properties of civilians fleeing the fighting and to harvest cash crops and work alluvial diamond mines.

11. With the loss of faith in the army, succeeding governments since the NPRC sought solace in the Civil Defence Forces starting with a traditional hunter guild from the Koranko dominated Koinadugu District known as the Tamaboros. This group played a significant role in the 1993 offensive against RUF forces in Kailahun District. However, the movement was effectively destroyed when its headquarters at Kabala was attacked and its leader killed. The Tamaboro group was not significantly influential in the south and east of the country because it lacked the traditional support from the displaced civilians. Ethnic and cultural differences between the Tamaboro and the displaced

predominantly Mende population meant that their active participation in the counter-insurgency force could not be facilitated.

12. The increase in the size of the army as a result of the NPRC's policy of mass recruitment further compromised professionalism, with the result that some of their own troops either defected to the RUF or operated as self-ruling bands of renegade protecting only areas of economic interest to themselves. Civilian umbrage for this ineffectual army of deserters and looters was as extreme as it was for the RUF fighters, notwithstanding the several attempts made by the junta to change the leadership and management of the force and impose discipline by bringing deserters and renegade soldiers before a Court Marshall at Army headquarters.

13. The famished and displaced population became convinced that the notion of national defence and governance had collapsed and this subsequently galvanized them into effective resistance of both the RUF and the undisciplined national army. Hence the formation and later on government's avowed policy to legitimize the operations of these community based secret societies of hunters, farmers and descendants of warriors as auxiliary units first to the national army and after the overthrow of the Kabbah Government to ECOMOG forces securing Sierra Leone. These loose associations of community based pro government militias were brought under one umbrella in the wake of the AFRC coup to reinstate the legitimate government of President Kabbah and became known as The Civil Defence Forces of Sierra Leone (CDF/SL).

14. The accused Chief Samuel Hinga Norman then Deputy Minister of Defence was appointed by President Kabbah to co ordinate and liaise between these CDF/SL forces and ECOMOG forces based in Sierra Leone to restore the democratically elected government back in power. This executive decision had the mandate and support of members of Parliament in exile and the majority of Sierra Leoneans both within Sierra Leone and in exile. The restoration of democracy in Sierra Leone and the protection and defence of our rural and urban communities from the threat and barbarism of marauding

rebels by the CDF/SL the evidence will demonstrate were perhaps the greatest and only heroic acts in Sierra Leone's ten years civil war.

-4-

Overview of Charges

15. The accused **Sam Hinga Norman** stands jointly charged alongside **Moinina Fofana** and **Allieu Kondewa** on an eight-count consolidated indictment charging them with war crimes, crimes against humanity and other violations of international humanitarian law committed within the territory of Sierra Leone from 31st November 1996. The prosecution based its indictment on various acts and omissions committed by each of the accused either severally or jointly with co- perpetrators or both. This is described at paragraphs 12-29 of the consolidated indictment attached hereto.

16. Counts 1 and 2 charges the accused persons with unlawful killing. Specifically count 1 charges Murder, a CRIME AGAINST HUMANITY, punishable under Article 2(a) of the Statute of the Court: while count 2 charges in addition or in the alternative with violence to life, health and physical or mental well-being of persons, in particular murder, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTION AND OF ADDITIONAL PROTOCOL II, punishable under Article 3(a) of the Statute.

17. Counts 3 and 4 charges Physical Violence and Mental Suffering. In particular count 3 charges the accused persons with inhumane acts, a CRIME AGAINST HUMANITY, punishable under Article 2(i) of the Statute; while count 4 charges 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 the Statute.

18. Count 5 charges all three accused persons with LOOTING and BURNING. The count exclusively charges the accused with pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTION AND OF ADDITIONAL PROTOCOL II, punishable under Article 3(f) of the Statute.

19. The accused also stands charged in counts 6 and 7 with TERRORIZING THE CIVILIAN POPULATION AND COLLECTIVE PUNISHMENTS. Count 6 charges the accused persons with: Acts of terrorism, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTION AND OF ADDITIONAL PROTOCOL II, punishable under Article 3 (b) of the Statute, and count 7 charges them with: Collective Punishment, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTION AND OF ADDITIONAL PROTOCOL II, punishable under Article 3 (d) of the Statute.

20. The final count 8 charges the accused for the first time in an International Criminal Tribunal with the USE OF CHILD SOLDIERS in an armed conflict. Count 8 states: Enlisting children under the age 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.

-5-

Basic Factual Allegations

The Conflict

21. What started in March 1991 as a rebel incursion from neighboring Liberia had by November 1996 when the Abidjan Peace Accord was signed engulfed most of the Southern and Eastern Provinces of Sierra Leone with parts of the Northern Province under severe threat.

22. The Civil Defence Forces (CDF) was a legitimate auxiliary unit that operated and worked closely with both the Armed Forces of Sierra Leone and other pro- Government forces especially ECOMOG forces that restored democracy in Sierra Leone in the wake of the 1997 putsch.

23. In this regard the CDF was never an armed faction as it had the authority and approval of both the legislature and executive branches of the government of Sierra Leone to put down an insurrection and as such acted on the constitutional premise of Section 16 of the 1991 Constitution of Sierra Leone which Section decriminalizes the actions of legitimate groups called upon to put down an insurrection within the territory of Sierra Leone.

24. The emergence of the Civil Defence Forces was spontaneous and borne out of a genuine desire of the local people in isolated rural areas of Sierra Leone to defend themselves, their families (particularly their wives and female children) and properties from the devastating attacks of RUF rebels, who had since 1991 made it their policy to target civilians who lacked protection from an army that was either unable or unwilling to protect them.

25. In effect the Kamajorsia never recruited or embarked on any recruitment drive or conscripted people into its movement, but rather the villagers and young men in almost all rural areas in the South and East of the country volunteered to join the ranks of the

movement. They saw this as a duty to help protect their homes and families always at risk and the mercy of RUF rebels.

27. The defence contends that there was no widespread or systematic attack by the CDF directed against the civilian population of Sierra Leone; but rather that the CDF defended their communities against marauding rebels and their AFRC partners and fought for the restoration of democracy. In this regard Sam Hinga Norman never committed Crimes against Humanity and cannot be referred to as one who bore the greatest responsibility for the war in Sierra Leone from November 1996.

The Role of the Accused

28. The accused Sam Hinga Norman during the temporal jurisdiction of the Court at the dawn of the 1997 AFRC putsch was appointed Coordinator of the Civil Defence Forces and doubled as Deputy Minister of Defence. The accused denies that he had command and control of the CDF forces at anytime after November 1996. Rather the accused will assert that his role was purely administrative and that for the most part of his tenure as a public official he was resident and working in Freetown. The defence further contends that he never acted in concert with any subordinate and or the leadership of the CDF to perpetrate the heinous offences charged nor was he in a position to instill discipline as there were structures in place to address those anomalies which structures were pro active during the course of the insurrection. In the circumstances the accused denies each and every allegation of fact and the described crimes allegedly committed by members of the CDF and /or the accused Sam Hinga Norman. The accused agrees with the prosecutor that the Kamajors (mende for hunters) for the most part defended their communities in the Southern and Eastern provinces of Sierra Leone.

Southern and Eastern Provinces

29. The accused accepts the prosecution's geographical demarcation of the Southern Province into the districts of Bo, Pujehun, Bonthe and Moyamba. These districts were defended by Kamajors who were for the most part refugees from those areas. The Eastern and Southern Provinces of Sierra Leone were the first to suffer the wrath of the marauding rebels. The rebels first attacked the border town of Bomaru in the Kailahun District in the Eastern Province in March 1991. The accused do not deny the fact that he hails from the Southern province and also served as Regent Chief before taking public office with the democratically elected government of President Kabbah. The accused established the seat of his Regency at Telu-Bongor.

30. In this regard the accused denies command responsibility for all allegations relating to atrocities committed in the districts and towns of: - Bo, Koribondo, Moyamba and Bonthe in the South of Sierra Leone and in Kenema District and in particular Kenema Town, Tongo Field, Blama, Konia, Talama, Panguma and Sembehun in the East of Sierra Leone. In addition, and in the alternative, the accused will argue that Section 16 (2) of the Constitution of Sierra Leone decriminalizes the deprivation of life in quelling an insurrection; and further the accused will rely on the defence of self-defence, collective self-defence and will reserve the right to plead a special defence pursuant to Rule 67 of the Special Court Rules and vis á vis all counts in the indictment. The latter is also further protected in section 16 (2) mentioned above.

31. In conclusion the accused denies the basic factual allegations in the Prosecution's pre-trial brief and will put the prosecution to strict proof beyond reasonable doubt of each and every allegation stated therein.

-6-

Defence Rebuttal of Prosecution Theory

Summary of Defence theory

32. Chief Sam Hinga Norman was the coordinator of the Civil Defence Forces which was an auxiliary to pro-government forces fighting to restore democracy and defend their communities from marauding rebels. In this regard, like all other pro-government forces in whose command, control and authority they served they abided by international humanitarian law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of August 1949 and additional protocol of the Geneva Convention acceded to on 21 October 1986, by the Government of Sierra Leone.

33. All offences charged in the Indictment are robustly denied and the prosecution is required to prove each and every allegation of fact to support its theory beyond reasonable doubt. The defence denies any act or omission charged herein as violations of Article 3 common to Geneva Convention and of additional Protocol II and as serious violations of international humanitarian law.

34. The accused is erroneously charged with acts or omissions amounting to alleged crimes against humanity as there were no widespread or systematic attacks by members of CDF (SL) directed against the civilian population of Sierra Leone.

35. The defence acknowledges the popularly-accepted definition of the reference to '*civilian or civilian population*' as referring to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.

36. At all material times relevant to this indictment Samuel Hinga Norman doubled as Deputy Minister of Defence and National Co-ordinator of the Civil Defence Forces. He was not the leader or commander of those forces and he did not have superior authority over their conduct.

37. As such Samuel Hinga Norman was a liaison between the CDF and the government, which has ultimate control, and between the CDF and ECOMOG forces under whose command and direction they operated during the temporal jurisdiction of this Court. In this regard, the Defence denies the Prosecution's theory attributing leadership and high level planning, policy and operational decisions to the accused, Norman.

38. Consequently, the accused did not individually or in concert exercise authority, command or control over subordinate members of the CDF. Rather the CDF had a decentralized command structure where discipline, command and direction were granted to several groups including the Chiefs, local commanders, local war councils, ECOMOG, the Sierra Leonean Armed Forces, the National Co-ordinating Committee of the CDF, and the Ministry of Defence. This list is not exhaustive.

39. The accused did not have military or civilian authority or command to give directions to either of his co-accused. He supervised logistics operations of the Co-ordinating Committee of the CDF/SL and implemented decisions of the government of Sierra Leone regarding the containment of the RUF uprising and the restoration of the democratically elected government of Sierra Leone.

40. Samuel Hinga Norman denies that by himself or in concert with alleged subordinate members of the CDF/SL his plan, purpose, or design was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone.

41. The CDF did not embark on a campaign to gain complete control over the population of Sierra Leone and completely eliminate members of the RUF/AFRC alliance, their supporters, sympathizers and anyone who did not actively resist the RUF/AFRC insurgency in Sierra Leone. The accused did not act alone or in concert with alleged subordinate members of the CDF to carry out the said plan, purpose or design.

42. In short the accused's role was to co-ordinate the CDF as an auxiliary force attached to ECOMOG forces struggling to restore democracy and normalcy to Sierra Leone in the aftermath of the breakdown of law and order. In this regard, the Accused denies each and every other allegation of fact stated in the Summary of the Prosecution's Theory as if the same were set out and denied *seriatim*.

43. Finally the Defence argues that the Prosecution's theory that the accused held a position of superior responsibility and exercised command and control over his subordinates, and as such has criminal responsibility for crimes referred to in Articles II, III and IV is erroneous, untenable and is not supported by the evidence so far disclosed by the Prosecution to prove any of the counts charged in the Indictment.

-7-

Legal Analysis of Elements of Offences Charged

44. The Defence maintains that the Prosecution has failed to disclose evidence supporting each and every element of the crimes alleged in the Indictment pursuant to Article 2 of the Statute of the Special Court “*shall have power to prosecute*”¹ individuals responsible only for “*widespread and systematic attacks against civilian population.*”²

45. The Defence acknowledges the definition of “*widespread*,” “*systematic*” and “*attack.*” Although, as is expected during armed conflicts, loss of human life and property is inevitable, and war is broadly an indiscriminate event, the evidence disclosed does not establish that the actions of the accused were anything short of a valiant and legitimate effort to defend the civilian population of Sierra Leone.

46. Contrary to the Prosecution’s allegations, the accused was engaged in efforts to restore the democratically-elected government of President Kabbah.

47. The Accused was not in control or command of the CDF.

48. The CDF was tactically controlled by a combination of groups including, but not limited to, the Sierra Leone Army and ECOMOG. The accused’s role was that of Co-ordinator and logistical facilitator of the auxiliary local militia that assisted ECOMOG forces, who were the forerunners in the quest to restore the democratically elected government following the coup d’état of 1997.

49. The Defence reserves comment on the argument in respect of the conscription of child soldiers in light that the Appeals Chamber is yet to deliberate and decide the preliminary application on this issue.

50. The Defence submits that the prosecution in its pre-trial brief and other evidence so far disclosed has not established a relationship between the Accused and alleged

¹ Statute 1, Special Court of Sierra Leone.

² *Id.*

violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II, and or other serious violations of international humanitarian law.

-8-

**Lack of Criminal Responsibility under
Art.6 (1) and 6(3) – Legal Analysis of
Command Responsibility**

51. The accused denies criminal responsibility under Articles 6(1) and 6(3) and challenges the prosecution to strict proof of the mens rea for the offences charged under the consolidated indictment attached to this brief.

52. The defence further argues that the factual allegations so far disclosed are imprecise, and as such the prosecution cannot attach alternative forms of responsibility which in the circumstances deprives the accused of his right to a clear-cut definition of the case against him; to adequately prepare his defence against specific act or acts and the specific responsibility attached thereto both of which are crucial to the primary task of the prosecution in proving its case beyond reasonable doubt.

53. The defence therefore submits that the accused never “...*planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present statute...*” and as such cannot be individually responsible for the commission of crimes under article 6 (1) of the Statute.

54. Further the accused argues that the evidence disclosed and the factual allegations contained in the Prosecution’s brief do not in anyway support or prove direct criminal responsibility under article 6(1) either in aiding or abetting the commission of any offence charged in the indictment or as part of a joint criminal enterprise to commit any crime.

55. In this regard the accused rejects the Prosecution’s argument of a common plan between him and any alleged actual perpetrator to commit any offence anywhere within the territory of Sierra Leone during the period under review. The accused was not a member of any criminal enterprise or scheme and he did not participate in any crime resulting from the said enterprise.

56. In the alternative, the accused restates his refutation of the attachment of command responsibility to his role within the CDF and the existence of *superior-subordinate relationship* between himself and volunteers within the CDF.

57. The defence submits that the accused lacks criminal responsibility as a superior under article 6(3) of the Statute.

58. In addition, neither the factual allegations contained in the prosecution pre-trial brief nor the documentary evidence, witness statements and exhibits disclosed so far proves effective control and the elements of the mens rea for command responsibility. In this regard the defence relies on the tests laid down in the judgments of the ICTR decision in *Akayesu*³. The defence now refers to the ICTY decisions in *Celebici* and in *Hadzihasanovic* on the doctrine of *command responsibility* and makes appropriate submissions.

Celebici

59. Command responsibility is the term commonly used to refer to a superior's criminal responsibility for the illegal acts of his subordinates.

60. Pursuant to Article 7(3) of the Geneva Conventions there are three requirements to command responsibility.⁴ They are as follows:

- The superior must exercise direct and/or indirect command or control whether *de jure* and/or *de facto*, over the subordinates who commit serious violations of international humanitarian law, and/or their superiors.
- The superior must know or have reason to know, which includes ignorance resulting from the superior's failure to properly supervise his subordinates, that these acts were about to be committed, or had been committed, even before he assumed command and control.

³ *Prosecutor v. Akayesu*, ICTR 96-4-T, Judgment, 2 September 1998. para. 471-491.

⁴ *Prosecutor v. Delalic*, ICTR IT-96-21-Abis, (*"The Celebici Case"*), Trial Chamber, 16 November 1998.

- The superior must fail to take the reasonable and necessary measures that are within his power, or at his disposal in the circumstances, to prevent or punish these subordinates for these offences.

61. The Defence maintains that the accused, Sam Hinga Norman, cannot be individually held to be criminally responsible for the actions of members of the Civil Defence Forces, (“CDF”), under Article 7(3), as a matter of fact and law.

62. The Tribunal in the Celebici case made a distinction between superior-*subordinate relationship*.

63. The Court established that an “*essential requirement of the doctrine of command responsibility is proof of the commander’s control over his subordinates.*” To begin with, the evidence shows that at no time relevant to this indictment was the accused ever the commander of the CDF. This auxiliary force was under the control of a coalition of organizations, including, but not limited to, Economic Community of West African States Monitoring Group (“ECOMOG”), Sierra Leone Army, and various local chiefs and war councils.

64. The Court notes that a superior-subordinate relationship, leading to command responsibility can be formed by either *de facto* or *de jure* command. The Court held that “*the mere absence of formal legal authority to control the actions of subordinates should therefore not be understood to preclude the imposition of such responsibility.*”⁵

65. The accused did not exert *de jure* command over the CDF. He was given no formal authority to command the troops, whether “*operationally, tactically, administratively, executively,*”⁶ or otherwise. The evidence shows that Sam Hinga Norman was not present at the construction, organization or initiation of the

⁵ *Id.* at 354.

⁶ *Id.* at 349.

Kamajor sector of the CDF. Evidence shows that the Kamajors were created by the local tribal councils and it was not until after the exile of President Kabbah in 1997, and the appointment of Sam Hinga Norman as the National Coordinator of the CDF, that the accused was even introduced to a substantial number of the Kamajor fighters.

66. Additionally, Norman did not have *de facto* control of the CDF. Because his role as National Coordinator of the CDF was that of a liaison between the CDF and the then exiled President Kabbah, the accused was not in the position to "*prevent and punish the crimes of persons who are in fact under their control.*"⁷ The evidence shows that the Kamajors had a strict code of conduct, which adhered to international rules of war, but were based primarily on traditional beliefs. These traditional codes were explained at the initiation of the Kamajors, initiation ceremonies which Norman was not a party to.

67. Finally, Norman did not have *de facto* or *de jure* control of the CDF's superiors. There is certainly no evidence that the accused was in command of the chiefs who "*executively*" controlled the Kamajors, the Sierra Leone Army or ECOMOG, both of whom "*tactically*" and "*operationally*" controlled the CDF.

68. ***Hadzihasanovic***

The *Hadzihasanovic* Court followed the *Celebici* precedent on the issue of command responsibility, with one noticeable addition. The Court held that there is an important distinction between command responsibility and responsible command. According to Article 3 common to the 1949 Geneva Conventions, "*it is evident that there can not be an organized military force save on the basis of responsible command.*"⁸ Responsible command looks to "*the duties comprised in the idea of command.*"⁹ Whereas, command responsibility "*looks at liability flowing from breach of those duties.*"¹⁰ So, following this premise, command responsibility is a result of the military force being under

⁷ *Id.* at 354.

⁸ *Prosecutor v. Hadzihasanovic*, IT-01-47-AR72 16, Appeals Chamber, 16 July 2003, para. 16.

⁹ *Id.* at 22.

¹⁰ *Id.*

responsible command, and in turn once responsible command has been established, then command responsibility can be formed from the established structure and the relationship that exists between its officials. The Court also held that responsible command also applies to military forces involved in internal armed conflict.

69. Applying *Hadzihasanovic* to the instant case, Norman cannot be held individually responsible for the criminal activities of any members of the CDF as a matter of policy.

70. The CDF (SL) was organized in 1997 by President Kabbah who was then in exile in Guinea but continued as the legitimate and recognized President of Sierra Leone. The CDF (SL) was involved in suppressing an armed insurrection, which means that responsible command was present.

71. However, the question then becomes *who* was responsible for the CDF. The evidence so far relied on by the Prosecutor shows that Norman was not responsible for the actions of the CDF. He was there to provide communication between the various sectors of the CDF and the exiled government. Norman did not command the units, administratively or otherwise. The policy behind the idea of responsible command is that violations of international law can “*be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.*”¹¹ Holding Norman responsible *ex post facto* for crimes that he was never in a position to prevent or punish in no way furthers the public policy reasoning. Therefore, according to the *Hadzihasanovic* logic, the accused cannot have command responsibility for the CDF.

72. Finally, in the *Hadzihasanovic* matter, the Prosecution made an alternative argument that the question was not *who* was in control when the violations occurred, “*but when a commander became aware of the crime, yet failed to take the ‘reasonable and necessary measures’ to punish the violation.*”¹² The Court did not agree with this argument, but even if there were some validity to the fact that there could be command responsibility

¹¹ *Id.* at 23.

¹² *Id.* at 43.

before the establishment of a superior-subordinate relationship, once again, Norman was not in command of the CDF at any time relevant to this indictment, so the argument is inapplicable.

-9-

ADMISSIBILITY AND ASSESSMENT OF EVIDENCE

73. The Defence acknowledges the Rules of Evidence stipulated in section 89 through to section 98 of the Rules of Procedure and Evidence of the Court and in particular will stress on the relevance, reliability and probative value of evidence the prosecution seeks to rely on pursuant to the above-mentioned provisions.

74. International jurisprudence pertaining to the type of grave allegations made in the instant case requires that the Chamber exercise extra precautions to prevent an inequitable outcome for the accused parties.

75. Hence, although unauthenticated evidence “*may*” be admitted by the Tribunal, it is up to the discretion of the Court, which may at its discretion apply a balancing standard to weigh the probative value of the evidence with the prejudicial effect it may have upon the accused against whom the evidence is presented. “*It is emphasized, however, that the Trial Chamber... always retains the competence to request verification of the authenticity.*”¹³

76. Rule 94(A) does facilitate the expedition of the trial process by admitting evidence based on common knowledge. “*A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.*”¹⁴ This choice of syntax, in addition to the fact that the phrase “*common knowledge*,” is inherently ambiguous and requires a modicum of judicial discretion.

77. Furthermore, although it has been established that “*there is no requirement that a matter be universally accepted in order to qualify for judicial notice,*”¹⁵ the Tribunal emphasizes that “*Disputed facts, necessarily do not belong to that realm of indisputability as historical facts, and other matters of common knowledge as would properly place them within the reach of the Chamber’s power to take judicial notice.*”¹⁶

¹³ *Prosecutor v. Blaskic*, 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. 12.

¹⁴ Rules of Evidence and Procedure for the Special Court for Sierra Leone, 94(A).

¹⁵ *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 31.

¹⁶ *Id.*

Additionally, the Court noted that if the Defence had disputed the facts presented by the Prosecution as that would have been an *“impediment to taking judicial notice of those matters.”*¹⁷

78. Rule 94(B) allows for the Chambers to take “judicial notice of adjudicated facts and documentary evidence,” only if the Prosecution has “demonstrated their relevancy”...because often times *“the Prosecution relies on various authorities and/or judgments that, more often than not, support only approximately the facts recited therein.”*¹⁸

79. Moreover, Rule 94(B) also establishes that the interest in expedition, which may give rise to *“a presumption,”*¹⁹ can rightfully be challenged at trial...because, *“it is inappropriate to impose rebuttable presumptions of fact in favour of the prosecution which carries the onus of proof in relation to that fact.”*²⁰ Even in international tribunals, the accused still enjoy the right to be presumed innocent until proven guilty. The Tribunal goes on to emphasize that *“proof by way of presumptions of fact such as will be permitted by the majority decision offends against that basic right. It should only be where a fact is not the subject of reasonable dispute that judicial notice may be taken of it, and thus it cannot be challenged”*²¹

80. Furthermore, international jurisprudence accommodates the effect that the passage of time and the trauma of war can have upon the consistency of witness testimony, specifically that witness statements need not be rendered unreliable based simply upon inconsistent statements. However, in the interest of fairness, Tribunals have wide discretion concerning the admissibility and weight of evidence. *“The specific features of international criminal proceedings require courts to be flexible and to be guided primarily by the need to ensure a fair and expeditious trial. It follows that...a Trial*

¹⁷ *Id.* at 32.

¹⁸ *Nyiramasuhuko* Decision on Judicial Notice, 15 May 2002, para. 92.

¹⁹ *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 October 2003, para. 14.

²⁰ *Id.*

²¹ *Id.*

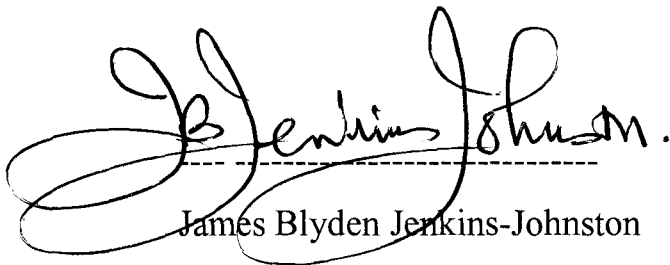
Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial."²¹

81. The Defence acknowledges that cultural, religious, and sociological differences may affect the content of evidence. In spite of that, uncorroborated evidence, based upon disputed facts should not be admitted against the interest of justice. According to Rule 95 "*no evidence shall be admitted if its admission would bring the administration of justice into serious disrepute.*"²²

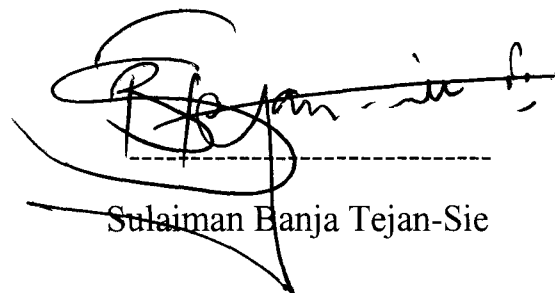
82. In closing, one of the fundamental principles of international jurisprudence, a principle which separates international proceedings from other forms of jurisprudence, is that "*courts are not bound by strict and 'technical' rules of evidence but enjoy great flexibility and should be guided, rather than by formal standards, by general principles of fairness.*"²³

Done in Freetown, on this 31st day of May 2004.

For the Accused



James Blyden Jenkins-Johnston



Sulaiman Banja Tejan-Sie

²¹ International Criminal Law, 2003, pg. 422.

²² Rule 95, Special Court for Sierra Leone.

²³ International Criminal Law, 2003, pg. 421.

-10-

ANNEXES

- 1. CDF(SL) ORGANOGRAM**
- 2. LIST OF AUTHORITIES**
- 3. CONSOLIDATED INDICTMENT**

-11-

CDF (SL) ORGANOGRAM

-12-

LIST OF AUTHORITIES

LIST OF AUTHORITIES

1. Statute 1, Special Court of Sierra Leone.
2. *Prosecutor v. Akayesu*, ICTR 96-4-T, Judgment, 2 September 1998. para. 471-491.
3. *Prosecutor v. Delalic*, ICTR IT-96-21-Abis, (“*The Celebici Case*”), Trial Chamber, 16 November 1998.
4. *Prosecutor v. Hadzihasanovic*, IT-01-47-AR72 16, Appeals Chamber, 16 July 2003, para. 16.
5. *Prosecutor v. Blaskic*, 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. 12.
6. Rules of Evidence and Procedure for the Special Court for Sierra Leone, 94(A).
7. *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 31.
8. *Nyiramasuhuko* Decision on Judicial Notice, 15 May 2002, para. 92.
9. *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 October 2003, para. 14.
10. International Criminal Law, 2003, pg. 422.
11. Rule 95, Special Court for Sierra Leone.
12. International Criminal Law, 2003, pg. 421.

-13-

CONSOLIDATED INDICTMENT

003

6718
11

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

CASE NO. SCSL - 03 - 14 - I

THE PROSECUTOR

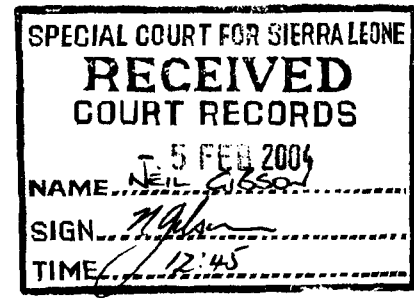
Against

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 Bumpah 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, Bembay, 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, Mabayeh, 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

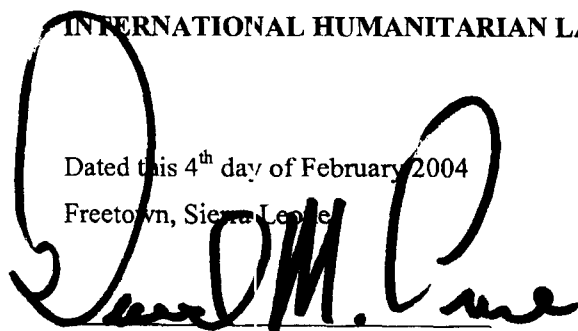
29. At all times relevant to this Indictment, the Civil Defence Forces did, throughout the Republic of Sierra Leone, initiate or enlist children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, use them to participate actively in hostilities.

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

A large, stylized handwritten signature in black ink, appearing to read 'David M. Crane', is written over the date and location text.

David M. Crane

The Prosecutor