

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before: Justice Pierre Boutet, Presiding
Justice Bankole Thompson
Justice Benjamin Itoe

Registrar: Mr. Robin Vincent

Date filed: 27 September 2005

THE PROSECUTOR

Against

**Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa**

Case No. SCSL-04-14-T

**PUBLIC VERSION OF THE
PROSECUTION RESPONSE TO MOTION FOR JUDGEMENT OF ACQUITTAL OF
THE FIRST ACCUSED SAMUEL HINGA NORMAN**

Office of the Prosecutor:

Chris Staker
Luc Coté
James Johnson
Joseph Kamara
Mohamed Bangura
Marco Bundi
Bianca Suciú

Defence Counsel for Norman

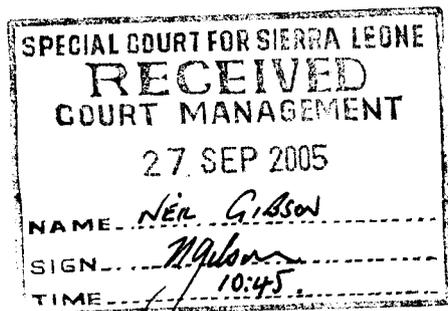
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Ibrahim Yillah
Clare da Silva

Defence Counsel for Fofana

Victor Koppe
Arrow J. Bockarie
Michiel Pestman
Andrew Ianuzzi

Defence Counsel for Kondewa

Charles Margai
Yada Williams
Ansu Lansana
Martin Michael



In accordance with the Order to the Prosecution on Filing, dated 20 September 2005, the Prosecution re-files the Prosecution Response to the Motion for Judgement of Acquittal of the First Accused Samuel Hinga Norman with redactions as necessary to protect the identity of the witnesses.

Filed in Freetown
27 September 2005
For the Prosecution



James C. Johnson

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before: Justice Pierre Boutet, Presiding
Justice Bankole Thompson
Justice Benjamin Itoe

Registrar: Mr. Robin Vincent

Date filed: 18 August 2005

THE PROSECUTOR

Against

Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa

Case No. SCSL-04-14-T

CONFIDENTIAL

**PROSECUTION RESPONSE TO MOTION FOR JUDGEMENT OF ACQUITTAL OF
THE FIRST ACCUSED SAMUEL HINGA NORMAN**

Office of the Prosecutor:

Chris Staker
Luc Coté
James Johnson
Joseph Kamara
Mohamed Bangura
Marco Bundi
Bianca Suci

Defence Counsel for Norman

Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Ibrahim Yillah
Clare da Silva

Defence Counsel for Fofana

Victor Koppe
Arrow J. Bockarie
Michiel Pestman
Andrew Ianuzzi

Defence Counsel for Kondewa

Charles Margai
Yada Williams
Ansu Lansana
Martin Michael

I. INTRODUCTION

1. The Prosecution files this Response pursuant to Rule 98 of the Rules of Procedure and Evidence ("Rules") to "Motion for Judgement of Acquittal of the First Accused Samuel Hinga Norman" ("Norman Motion") filed on 3 August 2005.
2. The Prosecution submits that the Defence has failed to demonstrate that there is no evidence capable of supporting a conviction on any count of the Indictment and that the Motion should be dismissed in its entirety.
3. The Prosecution notes that in accordance with the Rule 98 standard described below, the Defence is required to demonstrate a clear basis for its Motion by providing specific arguments as opposed to general claims of insufficiency of evidence. Accordingly, in this Response, the Prosecution addresses only those specific issues that have been raised in the Motion. In relation to all other issues, it must be taken for the purposes of this trial that no issue of Rule 98 arises. If the Trial Chamber should, *proprio motu*, question the sufficiency of evidence in relation to a particular Count, the Prosecution respectfully requests that it be afforded its right to respond.

II. STANDARD UNDER RULE 98

4. Rule 98 of the Rules (Motion for Judgment of Acquittal), as amended on 14 May 2005,¹ provides:

If, after the close of the case for the prosecution, there is no evidence capable of supporting a conviction on one or more of the counts of the indictment, the Trial Chamber shall enter a judgment of acquittal on those counts.

In its amended form, the Rule is almost identical to Rule 98*bis* of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), as amended on 8 December 2004, which reads:

At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

The amended ICTY Rule was applied for the first time in the case of *Prosecutor v Naser*

¹ The previous version of the Rule, as of 5-7 March 2003, provided: If, after the close of the case for the prosecution, the evidence is such that no reasonable tribunal of fact could be satisfied beyond a reasonable doubt of the accused's guilt on one or more counts of the indictment, the Trial Chamber shall enter a judgment of acquittal on those counts.

- Oric*,² wherein the Trial Chamber and both parties agreed that the amendment did not alter the standard of review to be applied as set out in the jurisprudence of the Tribunal.
5. The degree of proof was established and settled by the ICTY Appeals Chamber in *Prosecutor v Jelusic*. The test for determining whether the evidence is insufficient to sustain a conviction is “whether there is evidence (if accepted) upon which a tribunal of fact *could* be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question...; thus the test is not whether the trier of fact would in fact arrive at a conviction beyond reasonable doubt on the Prosecution evidence if accepted, but whether it could”.³ Or put differently, a Trial Chamber should only uphold a Rule 98*bis* Motion if it is “entitled to conclude that no reasonable trier of fact could find the evidence sufficient to sustain a conviction beyond reasonable doubt.”⁴
6. The standard to be applied in determining a Rule 98 motion reflects a number of important principles. First, a Rule 98 motion is not a process that is intended to involve a detailed consideration and evaluation of the evidence presented so far in the case. It is at the end of the trial that the Trial Chamber will be called upon to evaluate carefully all of the evidence as a whole. It would be unnecessarily time-consuming, inefficient, and contrary to the rights of the accused, for the Trial Chamber to undertake a detailed analysis of the evidence at the half-way stage. The purpose of Rule 98 is to save time, by ending the trial proceedings in respect of an indictment, or specific counts in an indictment, for which there is plainly no evidence on which a Trial Chamber could convict. Where there is any doubt as to the sufficiency of the evidence, the trial should proceed, and the question should be resolved by the Trial Chamber at the end of the trial. As has been said by a Trial Chamber of the ICTY:

It is worth noting the extent and frequency to which Rule 98 *bis* has come to be relied on in proceedings before the Tribunal, and the prevailing tendency for Rule 98 *bis* motions to

² IT-03-68-T, Oral Decision of 8 June 2005.

³ *Prosecutor v. Jelusic*, Case No. IT-95-10-A, “Judgement,” 5 July 2001 (“*Jelusic* Appeal Judgement”), para. 37.

⁴ *Id.*, para. 56. See also *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-T, “Decision on Kamuhanda’s Motion for Partial Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence,” 20 August 2002, paras 19 and 25; *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, “Decision on the Defence Motion for a Judgement of Acquittal in Respect of Laurent Semanza after Quashing the Counts Contained in the Third Amended Indictment (Article 98bis of the Rules of Procedure and Evidence) and the Decision on the Prosecutor’s Urgent Motion for Suspension of Time-Limit for Response to the Defence Motion for a Judgement of Acquittal,” 27 September 2001, para.14; and *Prosecutor v. Milosevic*, Case No. IT-02-54-T, “Decision on Motion for Judgement of Acquittal,” 16 June 2004, para. 13.

involve much delay, lengthy submissions, and therefore an extensive analysis of evidentiary issues in decisions. This is in contrast to the position typically found in common law jurisdictions from which the procedure is derived. While Rule 98 *bis* is a safeguard, the object and proper operation of the Rule should not be lost sight of. Its essential function is to bring an end to only those proceedings in respect of a charge for which there is no evidence on which a Chamber could convict, rather than to terminate prematurely cases where the evidence is weak.⁵

Accordingly, as a Trial Chamber of the ICTR has said:

... the object of the inquiry under Rule 98 *bis* is not to make determinations of fact having weighed the credibility and reliability of the evidence; rather, it is simply to determine whether the evidence – assuming that it is true – could not possibly sustain a finding of guilt beyond a reasonable doubt. That will only be the case where there is no evidence whatsoever which is probative of one or more of the required elements of a crime charged, or where the only such evidence is incapable of belief. To be incapable of belief, the evidence must be obviously incredible or unreliable; *the Chamber should not be drawn into fine assessments of credibility or reliability.*⁶

7. Secondly, in a Rule 98 motion, the Trial Chamber is not concerned with making any kind of determination as to the guilt of the Accused and not only should the Trial Chamber refrain from making evaluations of conflicting evidence, it should also refrain from considering evidence which might be favourable to the Accused. It is at the conclusion of the proceedings, and not at this mid-point, that the Trial Chamber will determine the extent to which any evidence is favourable to the Accused and make a ruling on the overall effect of such evidence in light of the other evidence in the case.⁷
8. Thirdly, at the Rule 98 stage, the Trial Chamber is only required to consider whether there is some Prosecution evidence that could sustain a conviction on each of the counts in the Indictment. Where a single count in the Indictment charges an Accused with criminal responsibility in respect of more than one incident, the Trial Chamber is not necessarily required to make a determination of whether there is sufficient evidence to sustain a conviction for each separate paragraph of the Indictment. Provided that there is evidence

⁵ *Prosecutor v. Hadžihasanović and Kubura*, “Decision on Motions for Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence,” Case No. IT-01-47-T, Trial Chamber, 27 September 2004, para. 20 (the *Hadžihasanović Rule 98bis Decision*) citing *Prosecutor v. Strugar, Decision on Defence Motion Requesting Judgement of Acquittal Pursuant to Rule 98 bis*, Case No. IT-01-42-T, Trial Chamber, 21 June 2004.

⁶ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, “Decision on Motions for Judgement of Acquittal,” 2 February 2005, (the “*Bagosora Rule 98bis Decision*”), para. 6 (emphasis added, footnotes omitted). See also *Prosecutor v. Kordic and Cerkez*, “Decision on Defence Motions for Judgment of Acquittal,” Case No. IT-95-14/2-T, 6 April 2000, at para. 28, “[g]enerally, the Chamber would not consider questions of credibility and reliability in dealing with a motion under Rule 98bis, leaving those matters to the end of the case. However, there is one situation in which the Chamber is obliged to consider such matters; it is where the Prosecution’s case has completely broken down, either on its own presentation, or as a result of such fundamental questions being raised through cross-examination as to the reliability and credibility of witnesses that the Prosecution is left without a case.”

⁷ *Hadžihasanović Rule 98bis Decision*, *supra* note 5, para. 18.

which could sustain a conviction for a particular *count*, the trial on that count as a whole can proceed, even if the evidence in relation to one or more paragraphs of the Indictment or one or more modes of liability might not necessarily rise to the standard of Rule 98.⁸

The Prosecution submits that this follows from the plain wording of Rule 98.

9. Fourthly, where the Defence files a Rule 98 motion, this does not place a burden on the Prosecution to establish that the evidence meets the Rule 98 standard in respect of all aspects of the Prosecution case. If the position were otherwise, this would be inconsistent with the purpose of Rule 98, as it would require the Prosecution and the Trial Chamber to undertake a comprehensive analysis of all of the evidence in the case at the half-time stage.
10. Rather, in a case where the Defence files a Rule 98 motion, the burden is on the Defence to identify the specific issues in respect of which it says that the evidence does not meet the Rule 98 standard. The Prosecution is then only called upon in its response to the Defence Rule 98 motion to address the specific matters raised by the Defence. The burden lies on the Defence to show that there is a clear basis for its Motion. "This involves providing the Chamber with detailed and specific allegations for its consideration: where only a general claim of insufficiency of evidence is made, the Chamber is not able to assess the strength of the case for acquittal".⁹ This is consistent with the general principle in international criminal litigation that where a party moves for some relief before a Trial Chamber, the burden is always on the moving party to establish the basis for the relief requested.¹⁰

III. GREATEST RESPONSIBILITY STANDARD

11. The Norman Motion submits that "the unique jurisdictional limitations of the SCSL requires that the Trial Chamber must also consider whether the Prosecution's evidence (if accepted) could suffice to prove beyond reasonable doubt not only the guilt of the accused, but also that the accused is indeed one of those bearing the greatest responsibility for the

⁸ *Bagosora* Rule 98bis Decision, *supra* note 6, paras. 8-9. However, it is noted that Trial Chambers of the ICTY have indicated that they *may* enter judgements of acquittal in relation to specific incidents or modes of liability where the evidence on that particular incident or mode of liability does not reach the Rule 98 standard: see, for instance, *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, "Judgement on Motions for Acquittal Pursuant to Rule 98bis," 5 April 2004, para. 16.

⁹ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, "Decision on Defence Motions for Acquittal," 15 December 2000, para. 14, also quoted in *Fofana* Motion, footnote 37.

¹⁰ See, for instance, by way of analogy, *Prosecutor v. Semanza*, Case No. ICTR-97-20-A, "Judgement," 20 May 2005, para 9; *Prosecutor v. Bagosora et al.*, Case No ICTR-98-41-T, "Decision on Admission of Statements of Deceased Witnesses," 19 January 2005, para. 7; *Prosecutor v. Karemera et al.*, Case No ICTR-98-44-T, "Decision on Motion by Karemera for Disqualification of Trial Judges," 17 May 2004, para. 10.

counts in question”.¹¹

12. The issue of personal jurisdiction has previously been canvassed before the Trial Chamber by Hinga Norman’s co-accused Moinina Fofana. In its “Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction on behalf of Accused Fofana” (“Decision on Personal Jurisdiction”), the Trial Chamber found that “the Special Court has personal jurisdiction over the Accused”.¹² The issue was not raised by Norman at the preliminary motion stage of proceedings and a motion for judgment of acquittal is not an appropriate vehicle for raising a jurisdictional matter.
13. The Trial Chamber also stated in its Decision on Personal Jurisdiction that the question “whether or not in actuality the Accused is one of the persons who bears the greatest responsibility for the alleged violations of international humanitarian law... is an evidentiary matter to be determined at the trial stage”.¹³ This must be taken to mean that the full extent of an accused’s liability, if any, can only be determined after all the evidence has been heard, while the jurisdictional issue must necessarily be determined on the basis of the Indictment and accompanying material. Even at the conclusion of a trial, the Court may be unable to determine precisely the ranking of an accused in terms of bearing the greatest responsibility against a pool of perhaps more than a hundred persons who could arguably qualify.

IV. GENERAL REQUIREMENTS FOR CRIMES CHARGED IN THE INDICTMENT

A. Article 2 of the Statute: Crimes against Humanity

14. Article 2 of the Statute lists offences which constitute crimes against humanity if committed as part of a widespread and systematic attack against any civilian population. The Norman Defence submits that the evidence in relation to Counts 1 and 3 of the Indictment does not demonstrate that the offences were widespread or systematic as opposed to sporadic.¹⁴ “Widespread” may be defined as a “massive, frequent, large scale action, carried out collectively with considerable seriousness” and directed against multiple

¹¹ Norman Motion, para. 15.

¹² *Prosecutor v Norman, Fofana and Kondewa*, Case No. SCSL-04-14-PT, “Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana,” 3 March 2004, para. 48.

¹³ *Id.*, para. 44.

¹⁴ Norman Motion, para. 103 and 118.

victims.¹⁵ “Systematic” consists of organized action pursuant to a preconceived plan or policy, following a regular pattern, but there is no requirement that this policy be adopted formally as the policy of a state.¹⁶ Members of the civilian population are people who are not taking any active part in the hostilities, including members of the armed forces who have laid down their arms and those persons placed *hors de combat* by sickness, wounds, detention or any other cause.¹⁷ It is not necessary for the entire population of a given territory to be targeted in order for the acts to constitute a crime against humanity.¹⁸ Furthermore, a population may be considered as ‘civilian’ even if certain non-civilians are present. The population must be “predominantly civilian in nature,”¹⁹ and the presence of soldiers within an intentionally targeted civilian population does not alter the civilian nature of that population.²⁰

15. The *mens rea* element is satisfied if the perpetrator has knowledge of the general context in which his acts occur and of the nexus between his action and that context²¹ in addition to the requisite *mens rea* for the underlying offence or offences with which he is charged.²²
16. There is evidence that CDF campaigns spread throughout Sierra Leone in identified geographic locations. There is evidence that the Kamajors, who were the dominant force within the CDF, had offensive and counter-offensive capacity within five of the twelve districts of Sierra Leone, namely, Bo, Kenema, Moyamba, Pujehun, and Bonthe. There is evidence that CDF campaigns were massive, frequent, large scale actions, directed against multiple victims. The attacks followed a clear pattern, spreading from Bonthe District throughout the country. While it is only necessary to prove that the crimes were systematic *or* widespread, the Prosecution contends that their widespread nature has been

¹⁵ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, “Judgement,” 2 September 1998, (“*Akayesu* Trial Judgement”), para. 580; *Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T and IT-96-23/1-T, “Judgement,” 22 February 2001, (“*Kunarac* Trial Judgement”) para. 428.

¹⁶ *Akayesu* Trial Judgement, *supra* note 15, para. 580; *Prosecutor v. Tadic*, Case No. IT-94-1-T, “Opinion and Judgement,” 7 May 1997, (“*Tadic* Trial Judgement”), para. 648; *Kunarac* Trial Judgement, *supra* note 15 para. 429.

¹⁷ *Akayesu* Judgement, *supra* note 15, para. 582; See also *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, “Judgement and Sentence,” 6 December 1999, para. 72; *Prosecutor v. Musema*, Case No. ICTR-96-13-T, “Judgement,” 27 January 2000, para. 207.

¹⁸ *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, “Judgement,” 7 June 2001, para. 80.

¹⁹ *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-T, “Judgement,” 26 February 2001, para. 180.

²⁰ *Prosecutor v. Blaskic*, Case No. IT-95-14-T, “Judgement,” 3 March 2000, (“*Blaskic* Trial Judgement”), para. 214.

²¹ *Id.* para. 247.

²² *Prosecutor v. Kunarac, Kovac and Vokovic*, Case No. IT-96-23 & IT-96-23/1-A, “Judgement,” 12 June 2002, para. 102; See also *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, “Judgement,” 15 March 2002, (“*Krnojelac* Trial Judgement,”) para. 59; *Prosecutor v. Vasiljevic*, Case No. IT-98-32-T, “Judgement,” 29 November 2002, (“*Vasiljevic* Trial Judgement”), para. 37.

established in the body of the entire evidence with respect to all the major crime base locations namely, Koribondo, Bo, Kenema, Tongo, Blama, Moyamba and Bonthe and surrounding areas.²³ For example, Witness TF2-006, a farmer, was chased by Kamajors in Bo and saw them amputate the limbs of five persons (civilians) before he was attacked personally.²⁴ TF2-073, a farmer from Sembehun, described how Kamajors came to his house, saying they were from their high priest, Allieu Kondewa, and had come from Talia, Tihun, Gbangbatoke and other villages around. The witness received a report of a brutal murder of two traders from a village called Kongonani, by local Kamajors, and attended a meeting where eight Kamajors confessed to killings.²⁵ TF2-151, a tailor from Kenema, witnessed the killing of a boy and was beaten up by Kamajors.²⁶ TF2-086 described how she was attacked and wounded by Kamajors in Bonthe.²⁷

17. The Prosecution submits that evidence has been presented to demonstrate that the First Accused had knowledge of the general context in which his acts occurred and of the nexus between those acts and the context. Political and military issues were discussed at meeting of the War Council and at Base Zero the planning, coordination and commanding of attacks throughout the country took place. Norman, Fofana and Kondewa were seen as being at the centre of the administration of the affairs of the Kamajors. Reports by commanders in the field were sent back to inform them of the execution of their orders and included accounts of the number of civilians killed.²⁸ Meetings were held in towns and villages and one witness described how Norman arrived in a helicopter bringing arms and ammunition for the attack on Kenema.²⁹

B. Articles 3 and 4 of the Statute: War Crimes

18. The existence of an armed conflict is a precondition to the applicability of Articles 3 and 4

²³ TF2-001, TF2-005, TF2-006, TF2-007, TF2-008, TF2-013, TF2-014, TF2-015, TF2-017, TF2-030, TF2-033, TF2-035, TF2-040, TF2-041, TF2-042, TF2-056, TF2-058, TF2-057, TF2-067, TF2-068, TF2-071, TF2-088, TF2-108, TF2-109, TF2-119, TF2-133, TF2-134, TF2-140, TF2-151, TF2-156, TF2-157, TF2-165, TF2-167, TF2-170, TF2-187, TF2-188, TF2-189, TF2-201, TF2-222, & TF2-223

²⁴ TF2-006, 9 February 2005, Open Session, pp. 10-11.

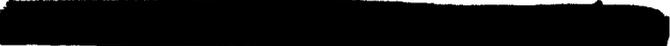
²⁵ TF2-073, 2 March 2005, Open Session, pp. 34, 46, 49.

²⁶ TF2-151, 22 September 2004, Open Session, pp. 16, 17.

²⁷ TF2-086, 8 November 2004, Open Session, pp. 94-95.

²⁸ TF2-190, 10 February 2005, p. 36-40.

²⁹ TF2-021, 2 November 2004, 62-64.

- of the Statute and has been judicially noticed in this case.³⁰ Article 3 common to the Geneva Conventions applies regardless of the international or internal character of the armed conflict, because the principles enshrined therein are so fundamental that they are regarded as governing both types of conflict.³¹ Thus, it is not necessary to prove the non-international nature of the conflict in relation to charges under Common Article 3.³²
19. The victim of a crime under Common Article 3 must be 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.³³ 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.³⁴
20. A nexus between the acts of the accused and the armed conflict must be established. The requirement that the acts of the accused be closely related to the armed conflict does not necessitate that the offence be committed whilst fighting is actually taking place or at the scene of combat. Furthermore, the armed conflict need not have been the cause of the commission of the crime but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed, or the purpose for which it was committed.³⁵
21. On the basis of the evidence, it would be open to a reasonable trier of fact to conclude that all the crimes were tied to the war effort and its goals, and the plan to commit them together with the manner of their commission establishes the nexus. For example, there is evidence of the following: 


³⁰ *Prosecution v. Norman et al.*, Case No. SCSL-04-14-PT, "Decision on Prosecution Motion for Judicial Notice and Admission of Evidence," 2 June 2004.

³¹ *Prosecutor v. Oric*, Case No. IT-03-68-T, "Trial Transcript," 8 June 2005, p. 8987.

³² Cf. *Norman Motion*, para. 52. See also *Prosecutor v. Fofana*, SCSL-2004-14-AR72(E), "Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Nature of the Armed Conflict," 25 May 2004, para. 23 and 25.

³³ *Prosecutor v. Tadic*, Case No. IT-94-I-A, "Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction," 2 October 1995, para. 69, 94, 134 and 143; *Prosecutor v. Delalic et al.*, Case No. IT-96-21-A, "Judgement," 20 February 2001, ("Celebici Appeal Judgement:"), paras. 124, 150-152, 160-174, 419.

³⁴ *Tadic Trial Judgement*, *supra* note 16, para. 616.

³⁵ *Prosecutor v. Oric*, Case No. IT-03-68-T, "Trial Transcript," 8 June 2005, p. 8986.

³⁶ TF2-005, TF2-201, TF2-222

[REDACTED] A radio announcement was made by the First Accused alerting the world and warning civilians about the attack and situation reports were received by him from the Tongo battlefield.³⁸ Witness TF2-027 stated that he observed a group of Kamajors coming over to one Shaka Lahai, and one had a wireless set on his back. They connected the set with a cable and a car battery. The witness heard the Kamajor operator ask to speak to Chief Hinga Norman. The witness heard the operator say, 'Chief, chief, we have taken Tongo' or 'held Tongo.'³⁹ Witness TF2-027 testified that in November-December 1997, the Kamajors attacked Tongo from the Panguma end. The Kamajors were not successful so they retreated. There were more attacks by the Kamajors. One day the witness heard the sounds of explosions from different parts of the town. At Tongola the witness saw the Kamajors coming into town. The witness heard shots, heavy fire, coming from the headquarters. The Kamajors came around and put people at gunpoint and asked all the civilians to go to the headquarters, around 4.30pm. At the entrance to HQ the witness saw 30 to 40 corpses. Some had bullet wounds in the back of the head.⁴⁰ The Prosecution submits that there can be no doubt as to the nexus between the acts of the accused as charged in the Indictment and the armed conflict and indeed, this aspect is not challenged in the Norman Motion.

V. SPECIFIC ELEMENTS OF CRIMES

A. Acts of terrorism and collective punishments

22. The Norman Motion argues that in order to establish acts of terrorism, "the Prosecution must establish that the perpetrator engaged in violent conduct of a dimension involving intense fear or anxiety and extreme danger to human light [sic] and that the conduct was both politically motivated and premeditated."⁴¹
23. The Prosecution makes its submissions as to the elements of the crime of terrorizing the civilian population with reference to the ICTY Judgement in the Galic case, and noting the Majority's view that it was only necessary to decide whether the Tribunal had jurisdiction

³⁷ TF2-201, 4 November 2004, closed session, p. 106-7; TF2-005 at p. 91

³⁸ *Id.*, TF2-222 at p.122

³⁹ TF2-027, 18 February 2005, open session, p.97-99

⁴⁰ *Id.* p.79-87

⁴¹ Norman Motion, para. 138.

- over the crime of terror to the extent relevant to the charge in that case.⁴² The accused Galic was charged before the ICTY with “Violations of the Laws or Customs of War (unlawfully inflicting terror upon civilians as set forth in Article 51 of Additional Protocol I and Article 13 of Additional Protocol II to the Geneva Conventions of 1949) punishable under Article 3 of the Statute of the Tribunal” and evidence of terrorization of civilians has been factored into convictions on other charges in ICTY cases.⁴³
24. The scope of the offence of terrorizing the civilian population is broad and encompasses both threats and acts of violence. 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,⁴⁴ including the civilian population’s way of life during the period, and the short and long term psychological impact. Since actual infliction of terror is not a constitutive legal element of the crime of terror, there is no requirement to prove a causal connection between the unlawful acts of violence and the production of terror.⁴⁵ Terror may be taken to connote extreme fear.⁴⁶
25. “Primary purpose” signifies the *mens rea* of the crime. The Prosecution must prove both that the accused accepted the likelihood that terror would result from the illegal acts (or, that he was aware of the possibility that terror would result) and that that was the result which he specifically intended.⁴⁷ The infliction of terror upon the civilian population need not have been the sole motivation for the attack but must have been the predominant purpose served by the acts of threats of violence.
26. Thus, according to the Prosecution, the elements of the crime are as follows:
- the Accused or his subordinate directed acts or threats of violence against the civilian population or individual citizens not taking a direct part in hostilities causing death or serious injury to body or health within the civilian population;

⁴² *Prosecutor v. Galic*, Case No. IT-98-29-T, “Judgement and Opinion,” 5 December 2003, (“*Galic* Trial Judgement”), para. 87.

⁴³ *Id.*, para. 66, footnote 114.

⁴⁴ W. Fenwick, “Attacking the Enemy Civilian as a Punishable Offence,” *Duke Journal of Comparative and International Law*, Vol. 7, 1997, 539 at 562.

⁴⁵ *Galic* Trial Judgement, *supra* note 42 para. 134.

⁴⁶ *Id.*, para. 137.

⁴⁷ *Id.*, para. 136; *See also* Additional Protocol II to the Geneva Convention, 12 August 1949, Article 13.

- the Accused wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts;
- the acts were committed with the primary purpose of spreading terror among the civilian population.⁴⁸

27. The Prosecution submits that it is not necessary to prove that the conduct was politically motivated and premeditated. The Norman Defence does not explain why these requirements constitute elements of the crime and does not provide any source in support of its argument. These elements would appear to derive from the US State Department's definition of terrorism as "[p]remeditated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents, usually intended to influence an audience." The Prosecution submits that in the context of the charges in this case, national definitions of "terrorism" that apply to situations outside the context of armed conflicts are not pertinent to the definition of "terrorism" in the Geneva Conventions and Additional Protocols. The expression "terrorism," when used in the Geneva Conventions or Additional Protocols, takes its meaning from the fact that the expression is used in the context of conduct occurring in an armed conflict. Terrorism is "a key element of IHL [international humanitarian law] rules governing the conduct of hostilities i.e. the way military operations are carried out. They prohibit acts of violence during armed conflict that do not provide a definite military advantage. It is important to bear in mind that even a lawful attack on military targets can spread fear among civilians. However, these provisions outlaw attacks that specifically aim to terrorise civilians, for example campaigns of shelling or sniping of civilians in urban areas."⁴⁹

B. Enlisting or using child soldiers

28. Count 8 of the Consolidated Indictment charges the First Accused with initiating or enlisting children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, using them to participate actively in hostilities. The Prosecution submits that "enlist" is a different activity from "conscript".⁵⁰ The Prosecution agrees with the

⁴⁸ *Prosecutor v Galic*, *supra* note 42, para. 133.

⁴⁹ International Committee of the Red Cross, "International Humanitarian Law and Terrorism: Questions and Answers," 5 May 2004,

<http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList488/0F32B7E3BB38DD26C1256E8A0055F83E>.

⁵⁰ See Prosecution's Pre-Trial Brief, 2 March 2004, paras 126-132.

Norman Motion that “conscript” implies some form of compulsory recruitment or forced participation.⁵¹ It contemplates the formal call-up of children, the process of training them as soldiers and/or subjecting them to military discipline. The common element in the targeted practices, 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. However, the offence of conscripting is not charged in this case. “Enlist” suggests a child’s voluntary enrolment, an interpretation that is borne out by Article 51 of Geneva Convention IV (which forbids any pressure or propaganda aimed at securing ‘voluntary enlistment’). The criminal act is similar to that contemplated in the crime of conscription, except that any volition on the part of a child would not be permitted to function as a justification or defence.

29. Using children to participate actively in hostilities is a more general offence than the other two and suggests the absence of any formal induction into a military unit. It is 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. The Norman Defence submits that active participation extends beyond merely having a weapon, acting as a guide or courier or manning checkpoints, and that it must mean participation in combative missions and using a firearm. According to the Norman Defence, the evidence only shows presence and the manning of checkpoints.⁵²
30. The Prosecution submits that the use of “hostilities” (as opposed to armed conflict) denotes the actual state of fighting. Therefore the child’s participation in the conflict must be active. The Commentary to Additional Protocol II states that a child is not allowed to take part in hostilities, i.e., by participating in military operations such as gathering information, transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage.⁵³ During the drafting of Article 8(2)(e)(vii) of the Statute of the International Criminal Court which is identical to Article 4(c) of the Special Court’s Statute, the Preparatory Committee provided a footnote to the delegates to help explain the scope of the provision, which read:

⁵¹ Norman Motion, para. 147.

⁵² Norman Motion, para. 148.

⁵³ See Commentary to Additional Protocol II, Par. 4557.

The words "using" and "participate" have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within this terminology.⁵⁴

31. According to the Prosecution, active participation entails actually arming a child⁵⁵ and sending him or her into battle, or sending the child to transport munitions, gather information or guard bases.⁵⁶ Manning checkpoints constitutes active participation.
32. As regards the *mens rea*, the Norman Defence submits that the Prosecution must prove that the accused both knew and *actively approved* of the conscripting, enlisting or use of child soldiers. This requirement does not appear in the elements of the equivalent crime in the Statute of the International Criminal Court⁵⁷ and the Defence does not explain where this proposed additional element derives from. A requirement of approval would be incompatible with the "ought to have known" standard. In any event, the Prosecution presented evidence that the First Accused actively approved the use of child soldiers.
- [REDACTED]
- [REDACTED]

33. The Prosecution submits that the elements of enlisting or using child soldiers are as follows:

- The Accused conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities;
- Such person or persons were under the age of 15 years;
- The Accused knew or should have known that such person or persons were under the age of 15 years.

VII. INDIVIDUAL CRIMINAL RESPONSIBILITY

34. The First Accused is charged with individual criminal responsibility under both Articles

⁵⁴ See Roy S. Leed (ed.) THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE, (2000), at 118.

⁵⁵ TF2-021, TF2-140 and TF2-080.

⁵⁶ TF2-013 and TF2-021.

⁵⁷ Elements of Crimes, U.N. Doc. ICC-ASP/1/3, 3-10 September 2002, Article 8(2)(e)(vii).

⁵⁸ TF2-017, 19 November 2004, closed session, pp. 89-90.

6(1) and 6(3) of the Statute for the eight counts in the Indictment on the basis that international law permits cumulative charging under different modes of liability. Article 6(1) covers planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of a crime referred to in the Statute, while Article 6(3) states that the commission of a crime by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so, and failed to take measures to prevent the acts or punish the perpetrators. Where the legal requirements pertaining to both of these heads are met, and the Trial Chamber chooses to convict only on the basis of Article 6(1), then the accused's superior position should be considered as an aggravating factor in sentencing.⁵⁹ Additionally, the First Accused is charged with committing the crimes charged in the Indictment by his participation in a joint criminal enterprise.

35. The Motion moves for a judgment of acquittal on all counts under joint criminal enterprise liability and superior responsibility. Furthermore, the Motion argues in relation to each Count of the Indictment that the evidence is insufficient to demonstrate that the First Accused planned, instigated, ordered, committed or otherwise aided and abetted any of the crimes.

A. Joint Criminal Enterprise

36. The jurisprudence of international tribunals has established that persons who contribute to the perpetration of crimes in execution of a common criminal purpose may be subject to criminal liability as a form of "commission" pursuant to Article 6(1) of the Statute.⁶⁰

37. The following elements establish the existence of a joint criminal enterprise:⁶¹

- a. A plurality of persons;
- b. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime listed in the Statute; and

⁵⁹ Celebici Appeal Judgement, *supra* note 33, para. 745; *Prosecutor v. Brdanin*, Case No. IT-99-36-T, "Judgement," 1 September 2004, ("*Brdanin* Trial Judgement"), paras 284-285.

⁶⁰ *Prosecutor v. Tadic*, Case No. IT-94-1-A, "Judgement," 15 July 1999, ("*Tadic* Appeal Judgement"), para. 190; *Prosecutor v. Vasiljevic*, Case No. IT-98-32-A, "Judgement," 25 February 2004 ("*Vasiljevic* Appeal Judgement"), para. 95; *Prosecutor v. Milutinovic et al*, Case No. IT-99-37-AR72, "Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction – Joint Criminal Enterprise," 21 May 2003, para. 20; *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, "Judgement," 17 September 2003, paras 28-32, and 73; *Brdanin* Trial Judgement, *supra* note 59, para. 258.

⁶¹ *Prosecutor v. Kvočka*, Case No. ICTY IT-98-30/1-T, "Judgement," 2 November 2001, ("*Kvočka* Trial Judgement"), para. 266; *See also*, *Tadic* Appeal Judgement, *supra* note 60, para. 227.

- c. The participation of the accused in the execution of the common plan.
 - d. Shared intent to commit a crime in furtherance of the common plan; or
 - e. Where the crime charged was a natural and foreseeable consequence of the execution of the enterprise, participation in the enterprise with the awareness that such a crime was a possible consequence of its execution.⁶²
38. The common plan, which must amount to or involve an understanding or agreement between two or more persons that they will commit a crime, need not have been pre-arranged and may “materialize extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put the plan into effect or from other circumstances.”⁶³ It must be demonstrated that the accused took action, broadly defined to include both direct and indirect participation, to contribute to the implementation of the common plan.⁶⁴ While the Prosecution must prove that the accused acted in furtherance of the common plan, it is not necessary to prove that the offence would not have occurred but for the accused’s participation.⁶⁵
39. The Norman Motion argues that there is no evidence to show a plurality of persons involved in a joint criminal enterprise.⁶⁶ The Prosecution submits that evidence describing meetings where the three accused were consistently in attendance, along with other members of the CDF, and where the implementation of the common plan was discussed,⁶⁷ is sufficient to satisfy the first element of the joint criminal enterprise.
40. The Indictment alleges that Norman, Fofana and Kondewa and other subordinate members of the CDF shared a common plan, purpose or design 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

⁶² *Brdanin* Trial Judgement, *supra* note 59, para. 265; *See also Tadic* Appeal Judgement, *supra* note 60, para. 228.

⁶³ *Tadic* Appeal Judgement, *supra* note 60, para. 227. *Krnojelac* Trial Judgement, *supra* note 22, para. 80; *Prosecutor v. Simic et al*, Case No. IT-95-9-T, “Judgement,” 17 October 2003, para. 158, (esp. footnote 288); *Prosecutor v. Furundzija*, Case No. IT-95-17/1-A, “Judgement,” 21 July 2000, para. 119.

⁶⁴ *Prosecutor v. Brdanin*, *supra* note 59, para. 263.

⁶⁵ *Id.*

⁶⁶ Norman Motion, para. 27.

⁶⁷ TF2-005, TF2-008, TF2-014, TF2-

CONFIDENTIAL

not actively resist the RUF/AFRC occupation of Sierra Leone.”⁶⁸ The Norman Motion argues that the common purpose of the CDF and the “organized system through which the Kamajors came to function” were to defend the homeland and liberate the country from the RUF and AFRC forces, and that there was no common plan to commit crimes.⁶⁹ The Prosecution submits that a liberation effort fuelled by both an intent to kill and the actual killing of innocent civilians labeled as sympathizers, collaborators or supporters, and involving the destruction and looting of towns with large civilian populations is clearly unlawful and entails criminal responsibility.

41. The evidence indicates that the prime leadership and effective control of the CDF was in the hands of Norman as National Coordinator, Fofana as Deputy Director of War, and Kondewa as High Priest. All three accused persons were sitting members of the War Council. At meetings of the War Council, political and military issues were discussed, including military operations, welfare and discipline of the Kamajors. [REDACTED]

[REDACTED]

Reports on how the war was being fought were submitted to the War Council. This body was gradually marginalized in terms of the real planning and was sidelined by Norman in March 1998. It was at Base Zero that the First Accused planned, coordinated, directed, trained and commanded the attacks on Tongo, Bo, Koribundo and Kenema.⁷¹ [REDACTED]

[REDACTED]

⁶⁸ Indictment, 4 February 2004, para. 19.

⁶⁹ Norman Motion, para. 27.

⁷⁰ TF2-005, 15 February 2005, closed session, p.102

⁷¹ TF2-005, TF2-008, TF2-011, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222

⁷² TF2-005, 15 February 15 2005, closed session, p.106.

[REDACTED]

42. [REDACTED]

The witness was told by Norman to go to Kenema and set up a Kamajor Base.⁷⁶

43. The Prosecution submits that it would be open to a reasonable trier of fact on the basis of the evidence to conclude that there was an agreement between the three accused and subordinate members of the Kamajors to use any means necessary, including the terrorization of the civilian population through killings, serious physical and mental injury, collective punishment and pillage, to meet the objective of eliminating the RUF/AFRC and its supporters and sympathizers. The plan included the use of child soldiers. The evidence shows that the National Coordinator, Director of War and the High Priest were at the centre in the implementation of the plans of the Kamajors.⁷⁷ The three accused utilised the CDF structure to achieve the strategic objectives of the CDF, in particular the Kamajors, in holding meetings and planning military operations with subordinates from Base Zero. Norman gave orders to subordinates that were carried out, and he received reports from subordinates about the execution of these orders.⁷⁸

44. The objectives of what was portrayed as a defensive policy and strategy could only be realised through the commission of war crimes and attacks against civilians amounting to crimes against humanity. This is evident from the widespread nature of the campaign of terror and the manner in which it was directed from Base Zero and organized from district

⁷³ TF2-223
⁷⁴ TF2-201, 4 November 2004, closed session, p.106-7.
⁷⁵ TF2-201, 5 November 2004, closed session, p.43.
⁷⁶ *Id.*, p. 56
⁷⁷ TF2-008, 16 November 2004, open session, p.82.
⁷⁸ TF2-014, TF2-017, TF2-079, TF2-223

to district.

45. As evidence of the agreement between the three accused and subordinate members of the Kamajors, Witness TF2-159 stated that he attended a meeting at the Koribundu barri held by the First Accused at which Fofana and Kondewa were introduced. The First Accused stated that he had authorized the Kamajors to burn the whole town and kill everyone in it.⁷⁹ Witness TF2-222 gave evidence that Norman addressed a passing out parade of Kamajor fighters, in the presence of Fofana and Kondewa, in which he stated that no Junta Forces or their collaborators must be spared in Tongo, since Tongo determines who wins the war.⁸⁰ Witness TF2-008 gave evidence that Norman, Fofana and Kondewa were seen at the centre of administering the affairs of the Kamajors and because of this, the Kamajors relied on these three men.⁸¹
46. Alternatively, the full extent of the crimes committed by Hinga Norman, his co-accused and individual Kamajors was objectively a natural and foreseeable consequence of the common plan to instil fear in the population and use criminal means to wipe out the RUF/AFRC and those perceived to be sympathizers.
47. Each accused participated in the joint criminal enterprise *inter alia* by attending and participating in CDF leadership and War Council meetings; using radio communications to coordinate troop and supply movements and supplying status reports; coordinating or directing troop movements; coordinating or directing weapons and supply distribution; organizing CDF recruitment, initiation and training; organizing financial and resource support; and organizing and/or participating in the initiation processes.
48. There is evidence that Norman, as the National Coordinator of the CDF, was the principal force in establishing, organizing, supporting, providing logistical support to, and promoting the CDF. As Deputy Minister of Defence he was able to enhance the capability and effectiveness of the CDF as a fighting force. He was the leader and commander of the Kamajors. He gave the order to launch the Black December operation and other attacks, with the intention that subordinates would commit unlawful killings, physical violence lootings and burnings, and that children would be enlisted to assist in the war effort. Alternatively, it would be open to a reasonable trier of fact to conclude that Norman

⁷⁹ TF2-159, 9 September 2004, open session, p. 52-57.

⁸⁰ TF2-222, 17 February 2005, open session, p.110.

⁸¹ TF2-008, 16 November 2004, open session, p.51.

participated in the enterprise with the awareness that such crimes were a foreseeable consequence of its execution.

49. The Prosecution submits that the evidence of a joint criminal enterprise as outlined here and when considered together with the evidence as a whole it is sufficient for the purposes of Rule 98.o sustain a conviction beyond reasonable doubt.

B. Superior Responsibility under Article 6(3)

50. The following elements establish superior responsibility under Article 6(3):

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

51. The existence of a superior-subordinate relationship is characterized by a direct or indirect,⁸² formal or informal hierarchical relationship, whether by virtue of a *de jure* or *de facto* position of authority, between the superior and subordinate in which the former has “effective control” over the latter.⁸³ “Effective control is defined as the material ability to prevent or punish the commission of the offence.”⁸⁴

52. As regards to the *mens rea*, it must be established that the superior had either actual knowledge, established through direct or circumstantial evidence, that his subordinates were about to commit or had committed crimes within the Court’s jurisdiction, or constructive knowledge in the sense of information that would put the superior on notice of the present and real risk of such crimes and alert him to the need for additional investigation into whether the crimes were about to be committed or had been committed by his subordinates.⁸⁵ “Knowledge may be presumed if a superior had the means to obtain

⁸² Celebici Appeal Judgement, *supra* note 33, para. 252.

⁸³ *Prosecutor v. Delalic*, Case No. IT-96-21-T, “Judgement,” 16 November 1998, (“Celebici Trial Judgement”), para. 378; *Prosecutor v. Brdanin*, *supra* note 59, para. 276.

⁸⁴ *Prosecutor v. Brdanin*, *supra* note 59, para. 276.

⁸⁵ Celebici Appeal Judgement, *supra* note 33, paras 223, 241; *Prosecutor v. Brdanin*, *supra* note 59, para. 278.

the relevant information of a crime and deliberately refrained from doing so.”⁸⁶

53. The measures required of the superior to prevent the crimes or punish the perpetrators are limited to those within his material possibility in the circumstances.⁸⁷ The duty includes at least an obligation to investigate the crimes and to report them to the competent authorities, if the superior does not have the power to sanction himself, and may include measures which are beyond his formal powers if their undertaking is materially possible.⁸⁸ “The failure to take the necessary and reasonable measures to prevent an offence of which a superior knew or had reason to know cannot be remedied simply by subsequently punishing the subordinate for the commission of the offence.”⁸⁹ What constitutes such measures is not a matter of substantive law but of evidence.⁹⁰ It is not necessary that the superior’s failure to act caused the commission of the crime.⁹¹
54. Article 6(3) is applicable both to military and civilian leaders, be they elected or self-proclaimed, once it is established that they had the requisite effective control over their subordinates.⁹²
55. The Prosecution submits that there is evidence of a superior-subordinate relationship between Norman and the physical perpetrators of numerous crimes. On the basis of the evidence, it would be open to a reasonable trier of fact to conclude the following: In his position as National Coordinator of the CDF, Norman exercised effective command control over the CDF.⁹³ At “the strategic and operational level, command was highly effective.”⁹⁴ The CDF had a recognizable military structure and there was coherence between the strategic, operational and tactical levels.⁹⁵ Hinga Norman was the ultimate power, in a military sense in the CDF.⁹⁶ He was also head of the Kamajors. [REDACTED]

⁸⁶ *Prosecutor v. Brdanin*, *supra* note 59, para. 278.

⁸⁷ *Celebici Trial Judgement*, *supra* note 82, para. 395; *Prosecutor v. Stakic*, Case No. IT-97-24-T, “Judgement,” 31 July 2003, (“*Stakic Trial Judgement*”), para. 461; *Prosecutor v. Brdanin*, *supra* note 59, para. 279.

⁸⁸ *Kordic Trial Judgement*, *supra* note 19, para. 442; *Stakic Trial Judgement*, *supra* note 87, para. 461.

⁸⁹ *Prosecutor v. Brdanin*, *supra* note 59, para. 279.

⁹⁰ *Prosecutor v. Blaskic*, Case No. IT-95-14-A, “Judgement,” 29 July 2004, (“*Blaskic Appeal Judgement*”), para. 72; *Prosecutor v. Brdanin*, *supra* note 59, para. 279.

⁹¹ *Celebici Trial Judgement*, para. 398; *Kordic Trial Judgement*, *supra* note 19, para. 447; *Prosecutor v. Brdanin*, *supra* note 59, para. 279.

⁹² *Prosecutor v. Brdanin*, *supra* note 59, paras 281-283.

⁹³ TF2-005, TF2-008, TF2-014, TF2-017, TF2-068, TF2-079, TF2-190, TF2-201, TF2-222, TF2-223

⁹⁴ TF2-EW1, 14 June 2005, open session, p. 30.

⁹⁵ *Id.*, p. 39

⁹⁶ *Id.*, p. 40

- [REDACTED] Further, as Witness TF2-042 testified, Norman gave the orders to the Kamajors when they were in Kenema before ECOMOG arrived.⁹⁸ There was a meeting at the Kenema Police Station, some time before, when Norman was introduced as head of the Kamajors.⁹⁹ Witness TF2-008 gave evidence that Norman, Fofana and Kondewa, were the executive of the Kamajor Society. "They have the executive power of the Kamajor society. These people....nobody can take a decision in the absence of this group. Whatever happened, they come together because they are the leaders and the Kamajors look up to them."¹⁰⁰ He also testified that the final authority to send people to the war front was with Norman.¹⁰¹ War Council decisions were sent to Norman in his capacity as National Coordinator for his approval, then to the National Director of War Moinina Fofana, who channeled it to the National Director of Operations, J.S. Koroma, to the four Regional Operations Commanders.¹⁰²
56. Witness TF2-014 testified that he was appointed by Norman as National Deputy Director of Operations, and he was to take instructions from Norman, general and specific, and transmit them to the people at the war front. Secondly, he collected reports from the war front, compiled them, submitted them to the National Coordinator, Norman, through the Director of War, Moinina Fofana.¹⁰³
57. The evidence further reveals that the War Council was an administrative wing of the CDF. Everything had to go through the National Coordinator for his approval. Anything that did not have his approval was not carried out. Norman was above the War Council.¹⁰⁴ At a meeting held in Bo, after the attack, Norman said, "whatever Kamajors do or atrocity committed I am responsible."¹⁰⁵ Under cross-examination, witness TF2-008 reinforced the fact that the commanders would only take instructions from Norman, Fofana and Kondewa.¹⁰⁶

⁹⁷ TF2-005, 16 February 2005, closed session, p.28-30.

⁹⁸ TF2-042, 17 September 2004, open session, p.97.

⁹⁹ *Id.*, p.98.

¹⁰⁰ TF2-008, 16 November 2004, open session, p.51.

¹⁰¹ *Id.* p.58.

¹⁰² TF2-008

¹⁰³ TF2-014, 10 March 2004, open session, p.30.

¹⁰⁴ TF2-008, 17 November 17 2004, open session at p.77.

¹⁰⁵ *Id.* p.118

¹⁰⁶ TF2-008, 17 November 2004, open session p.49.

- 58. So integral was Norman to the formulation and execution of the CDF policies in both Sierra Leone and outside that he would represent their interests in meetings with members of the international community and during several peace and disarmament negotiations.¹⁰⁷
- 59. After March 1998, the First Accused sidelined the War Council, which he had already effectively marginalized, and operated the affairs of the Kamajors without making reference to that body. The First Accused later formed his own command structure without the approval of the War Council. The structures formed by him were new District Administrators and Directorates in the places of Regional Commanders and Battalion Commanders.¹⁰⁸
- 60. On the basis of the evidence there can be no doubt that Norman exercised effective control over his subordinates and was in a position to prevent or punish offences.
- 61. The evidence shows that many of the crimes were ordered directly by Norman. Where he did not directly order them, the Prosecution submits that he knew or had reason to know about their commission. Witness TF2-190 testified that he was the leader of the Death Squad which was responsible for security in and around Talia, Base Zero. The Death Squad was also involved in attacking the junta. The witness used to receive orders from "Pa Norman and not any other person else."¹⁰⁹ In 1998 he was at a meeting in which the First Accused spoke of an all-out attack. The First Accused gave the witness instructions that his group was to hold the Bo-Koribundu highway. The witness said that the ammunition was given by a Mr Lome, to Joe Tamidey, by orders of Norman.¹¹⁰

62. [REDACTED]

¹⁰⁷ *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-T, "Decision on Prosecution Request to Admit certain Documents pursuant to Rules 92bis and 89(c)," 4 July 2004, See Annex-N0.160 and 222.

¹⁰⁸ *Id*

¹⁰⁹ TF2-190, 10 February 2005, open session, p.34.

¹¹⁰ *Id*, p.48

¹¹¹ TF2-005, 15 February 15 2005, closed session p.102.

[REDACTED]

63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

64. Furthermore, the evidence of witnesses TF2-012, TF2-032, TF2-TF2-157, TF2-159, TF2-162, and TF2-198 directly implicates Norman under the theory of superior responsibility. These testimonies mirrored each other in the light of the witnesses being physically present in two meetings at Koribundo, in which the Accused himself acceded to responsibility for giving orders for the attack and the actions of the Kamajors.

65. As the person holding ultimate power in the CDF, Norman had central and effective control of the Kamajor militia, and had the necessary and reasonable measures to prevent atrocities by them, which he failed to do.¹¹⁷

66. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Witness TF2-079 testified that he gave Fofana a written situation report from Tongo and the environs which was prepared to inform Chief Norman about the way the war was being

¹¹² *Id.*, p.104
¹¹³ TF2-223, 28 September 2004, closed session, p.34.
¹¹⁴ *Id.*, p55.
¹¹⁵ *Id.*, p. 108
¹¹⁶ *Id.*, p.118-121
¹¹⁷ TF2-008, TF2-011, TF2-014, TF2-201, and TF2-222
¹¹⁸ TF2-005, 15 February 2005, closed session, p.87-88.
¹¹⁹ *Id.*, p.95

pursued. Exhibit tendered, a situation report, dated 16th, November 1997.¹²⁰ [REDACTED]

[REDACTED]

He was aware of reports of looting and burning in and around Base Zero and that the complaints were particularly against the notorious Death Squad, but he failed to take necessary and reasonable measures to prevent the offences.¹²² There were very similar incidents in all crime bases. Indeed, the evidence before the court is that the First Accused actively encouraged the continued perpetration of these crimes in that he refused to allow the perpetrators to be punished by the appropriate organs within the command structure.¹²³

C. Other Modes of Liability

67. 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; and (iii) the accused intended that the crime would materialize or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts.¹²⁴

The existence of a plan or order and the requisite *mens rea* may be proved by circumstantial evidence.¹²⁵ Committing means physical participation in a crime, directly or indirectly, or failing to act when such a duty exists, coupled with the awareness of the substantial likelihood that a criminal act or omission will occur as a consequence of the conduct.¹²⁶

68. In order to prove that an accused aided or abetted a crime as an accessory to the principal perpetrator, it must be demonstrated that the accused carried out an act or omission that consisted of practical assistance, encouragement or moral support to the principal, before

¹²⁰ TF2-079, 26 May 2005, open session, p. 25-27. Exhibit tendered, situation report dated 16 November 1997.

¹²¹ TF2-068, 17 November 2004, closed session, p. 88-89; See also TF2-017, 22 November 2004, closed session, p. 77, where he stated that [REDACTED]

¹²² TF2-008, 16 November 04, open session, p. 41, TF2-222

¹²³ TF2-005, TF2-008, TF2-014, TF2-079, TF2-201, TF2-222, & TF2-223

¹²⁴ *Prosecutor v. Brdanin*, *supra* note 59, para. 268-270; *Blaskic* Trial Judgement, *supra* note 20, para. 278.

¹²⁵ *Celebici* Trial Judgement, *supra* note 82, para. 326-8; *Blaskic* Trial Judgement, *supra* note 20, paras 279 and 281.

¹²⁶ *Kvočka* Trial Judgement, *supra* note 61, para. 251; *Tadic* Appeal Judgement, *supra* note 60, para. 188; *Simic* Trial Judgement, *supra* note 63, para. 137.

during or after the act of the principal.¹²⁷ The acts of the principal offender that the accused is alleged to have aided and abetted must be established.¹²⁸ The act of assistance must have a substantial effect on the commission of the crime by the principal offender but need not have caused the principal's act.¹²⁹ The presence of a superior at the scene of a crime may constitute encouragement or support.¹³⁰ The required *mens rea* is knowledge in the sense of awareness that the acts of the accused assisted in the perpetration of the crime.¹³¹ It is not necessary to show that aider and abettor knew of the precise crime that was intended or committed "as long as he was aware that one of a number of crimes would probably be committed, including the one actually perpetrated."¹³² The accused must also be aware of the basic characteristics of the crime, including its requisite *mens rea*, but need not share the intent of the principal offender.¹³³

69. The Prosecution submits that on the basis of the evidence, an overview of which is set out below in response to the Motion, a reasonable trier of fact could be satisfied of guilt under any of the modes of participation alleged in the Indictment and, with reference to the Rule 98 standard, should at this stage leave all modes of liability open.

(i) Evidence in support of Counts 1 and 2: Unlawful Killings

Tongo Field

70. The Defence submits that the witnesses that testified as relevant to the unlawful killings at or near Tongo Field and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembahun, namely, witnesses TF2-035, TF2-027, TF2-047, TF2-048, TF2-144, TF2-016, TF2-053, and TF2-073 make no mention whatsoever of the First Accused and that the requisite level of intent to kill has not been demonstrated. The Prosecution submits that the Defence failed to take into account the evidence provided by insider witnesses, (TF2-005, TF2-079, TF2-201, TF2-222) which substantiated the Prosecution

¹²⁷ *Tadic* Appeal Judgement, *supra* note 60, para. 229; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, "Judgement," 24 March 2000, ("Aleksovski Appeal Judgement"), paras 163-164; *Celebici* Appeal Judgement, *supra* note 83, para. 352; *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, 10 December 1998, para. 235 and 249; *Vasiljevic* Trial Judgement, *supra* note 22, paras 70-71; *Vasiljevic* Appeal Judgement, *supra* note 60, para. 102; *Prosecutor v. Naletilic*, Case No. IT-98-34-T, "Judgement," 31 March 2003, para. 63; *Simic* Trial Judgement, *supra* note 63.

¹²⁸ *Brdanin* Trial Judgement, *supra* note 59, para. 271.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Vasiljevic* Appeal Judgement, *supra* note 60, para. 102; *Blaskic* Appeal Judgement, *supra* note 90, para. 49.

¹³² *Brdanin* Trial Judgement, *supra* note 59, ICTY, IT-99-36-T, Judgement, 1 September 2004, para. 272.

¹³³ *Aleksovski* Appeal Judgement, *supra* note 127, para. 162.

theory of individual criminal responsibility with regards to the crime base of Tongo. The evidence indicates that the First Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of the unlawful killings as charged.

71. Evidence of the physical acts of killing, which constitute the actus reus for the offence of unlawful killings for the Tongo crime base, is contained in the testimonies of witnesses TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, TF2-144. For example, Witness TF2-047 gave evidence that a Kamajor commander called Kamabote said to him, "you are the sanitary officer. I know you. To-day you are going to bury a lot of corpses until you become tired."¹³⁴ The witness saw people being killed by the Kamajors and Kamabote told him to get a wheelbarrow and bury the corpses in a pit. Bodies were lying in the compound. The witness observed that some of them had their heads chopped off, and he never saw their heads.¹³⁵ 150 corpses were buried.¹³⁶
72. The Defence submission that the Prosecution has not presented any evidence of alleged unlawful killings in Konia¹³⁷ is incorrect. Witness TF2-027 gave evidence that on the third day after the Kamajor attack on Tongo, the witness left for Yumbona. On the way to Yumbona the witness passed through and went to Konia. At Konia, the witness heard Kamajors say that a boy that has been killed was not a rebel. He also heard some Kamajors who came from the bush ask the other Kamajors if they should go and bury the 30 corpses under the Coffee Tree.¹³⁸
73. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Witness TF2-027 heard the Kamajor operator ask to speak to Chief Hinga Norman and say, 'Chief, chief, we have taken Tongo' or 'held Tongo'.¹⁴¹

¹³⁴ TF2-047, 22 February 2005, open session, at p.53.

¹³⁵ *Id.*, p.58

¹³⁶ *Id.*, p.61

¹³⁷ Norman Motion, Para.61

¹³⁸ TF2-027, 22 February 2005, open session, p.3-4.

¹³⁹ TF2-201, 4 November 2004, closed session, p. 106-7, TF2-005 p. 23

¹⁴⁰ TF2-201, 4 November 2004, closed session, p. 106-7, TF2-222 17 February 2005, open session, p.122.

¹⁴¹ TF2-027, 18 February, open session, p.97-99.

74. The evidence indicates that Norman intended to kill or inflict grievous bodily harm on civilians in Tongo in reckless disregard for human life.¹⁴² Witness TF2-222 stated that the First Accused said, on the air, that people who did not move away from the strongholds of the junta, “be prepared to suffer any consequence that would meet them...you decided to stay in Sierra Leone you’ll be looked upon as a collaborator or an effective participant of the junta rule.”¹⁴³
75. Witness TF2-079 testified that on the return of Kamajors from Gendema, Norman sent a message that “all those chiefs who are not in favour of the Kamajors should be killed.”¹⁴⁴ He also sent a message “that civilian collaborators, those who are sympathizing with the AFRC/RUF rebel should also be killed. And the paramount chiefs who are not in favour of the Kamajors should also be killed.”¹⁴⁵ The witness added that the paramount chief of Dama Chiefdom, Chief Dassama, was killed by Kamajors following the First Accused’s orders.¹⁴⁶
76. The Defence asserts that a speech made by the First Accused “merely demonstrates a desire to take back a town under the control of rebel forces, and that is a legitimate military objective.”¹⁴⁷ However, the Defence failed to raise the issue of what amounts to a legitimate military objective in the entire cross-examination of witness TF2-013. The Prosecution maintains that in the course of the pursuit of that military objective (legitimate or otherwise), and, notably, after its fulfillment, crimes against humanity were committed, particularly unlawful killings.¹⁴⁸
77. It is the Defence submission that providing logistical support to a civilian force does not equate to or imply support of unlawful killings.¹⁴⁹ This issue must not be read in isolation but rather within the context of the entire evidence thus far. The Prosecution maintains that where the First Accused (National Coordinator) of the Kamajor militia, with its membership largely illiterate¹⁵⁰ provides logistical support, coupled with instructions not to

¹⁴² TF2-005, TF2-079, TF2-201, TF2-222

¹⁴³ TF2-222, 17 February 2005, open session, p.105.

¹⁴⁴ TF2-079, 26 May 2005, open session at p.20.

¹⁴⁵ *Id*

¹⁴⁶ *Id*, p.23

¹⁴⁷ Norman Motion, Para. 58

¹⁴⁸ Statute for the Special Court, Art. 2a and 3a (Counts 1 and 2)

¹⁴⁹ Norman Motion, Para. 60.

¹⁵⁰ TF2-222 17 February 2005, open session, p.11.

spare AFRC, RUF and collaborators (persons not necessarily engaged in active hostilities) this clearly amounts to support of unlawful killings which may result from the pursuit of such a command. The First Accused had knowledge of the risk of unlawful killings when he placed in the hands of the Kamajor militia, ammunition for attacking cities, such as Tongo, (a mining town with strong civilian presence) and accepted the consequences of that risk.¹⁵¹

78. The Prosecution further maintains that the First Accused had actual knowledge of the unlawful killings by the Kamajors prior to his ordering and providing logistical support for the Tongo attack. Exhibit 86, which is a situation report inclusive of an incident of an unlawful killing, was shown to and read by the First Accused.¹⁵²

Kenema

79. The Defence submits that no substantive mention was made of the First Accused by witnesses TF2-152, TF2-154, TF2-188¹⁵³ in connection with killings in Kenema. It should be noted in this context that witness TF2-188 is not a Kenema crime base witness, but rather her evidence is in support of charges for the Bonthe crime base .
80. The Defence submits that witnesses TF2-041, TF2-042, TF2-190, and TF2-223 referred to the First Accused's actions as occurring in an administrative context.¹⁵⁴ The Prosecution submits that Norman's command position in the context of the conflict and the nature of the orders given are far removed from an administrative context. Witness TF2-041 testified that Kamajors said to him when he was arrested during the Kenema attack, that they were taking him to the ground commander at Blama, and was then told that Hinga Norman had instructed them to kill the Police, their wives and their children.¹⁵⁵ Under cross-examination, this piece of evidence was not challenged. It is open to a reasonable trier of fact to conclude that this was a directive to kill police officers on the part of the First Accused and consistent with evidence of police killings in Bo in pursuance of his command.¹⁵⁶
81. Witness TF2-014 gave evidence that at Base Zero, general orders came from the First

¹⁵¹ See footnote 10

¹⁵² TF2-079, 26 May 2005, open session, p.27-36.

¹⁵³ Norman Motion, Para. 63

¹⁵⁴ Norman Motion, para. 72

¹⁵⁵ TF2-041, 24 September 2004, open session, p.23.

¹⁵⁶ TF2-001, TF2-014

Accused. "It's from him that all directives emanated."¹⁵⁷ Orders were distributed to the Kamajors.¹⁵⁸ In these general orders, the First Accused was said to have identified who were the enemies of the Kamajors – "All AFRC fighters were our enemies, and collaborators and sympathizers who were also enemies."¹⁵⁹ There is also evidence that the First Accused said that the enemies included "sympathizers, collaborators, and those who refused deliberately to leave the AFRC and RUF zones, those were our enemies and that we should kill them, no problem".¹⁶⁰ There is evidence that Norman said that the police officers who used to work under the AFRC junta, they were all to be killed.¹⁶¹

82. The Norman Motion refers to a 'most telling testimony of all' from a Battalion Commander for the Kenema attack without any reference to the transcript.¹⁶² There is no evidence from any Battalion Commander for the Kenema attack [REDACTED]

[REDACTED]

[REDACTED] Further, there is no evidence to suggest that the police barracks was a legitimate military target. The targeting of unarmed policemen, not in anyway engaged in combat, is illegitimate.

Bo District

83. The Defence contends that there is insufficient evidence to link the First Accused with killings in Bo District. The Prosecution submits that this is incorrect. The Prosecution will highlight a sample of the evidence that establishes the elements for direct responsibility and also supports the allegation of superior responsibility.

84. The Prosecution submits that there is evidence on the basis of which a reasonable trier of fact could conclude that unlawful killings occurred in pursuance of the orders of the Accused.¹⁶⁴ Witness TF2-014 stated that Norman ordered him to destroy life and property. He instructed the witness to "kill PC Veronica Bagni of Valunia Chiefdom, the home town of—chiefdom of Chief Hinga Norman, because 'that woman was against our

¹⁵⁷ TF2-014, 10 March 2005, open session, p. 35.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*, p.37.

¹⁶⁰ *Id.*, p.37.

¹⁶¹ *Id.*, p.76.

¹⁶² Norman Motion, para. 76

¹⁶³ TF2-223, 30 September 2004, closed session, p.68.

¹⁶⁴ TF2-012, TF2-032, TF2-TF2-157, TF2-159, TF2-162 and TF2-198

movement”¹⁶⁵ Norman said that the witness should kill Joe Kpundoh Boima III, Paramount chief of Bo Kakua. He should also kill Tuma Alias, chairlady of Bo Town council, because she used to collect the market dues, therefore she was a collaborator. The witness was also instructed to kill Lansana Koroma who was there as Provincial Secretary.¹⁶⁶

85. Witness TF2-014 further testified that as Director of Operations, he was ordered by the First Accused to kill every living thing and destroy all properties at Koribundo. The witness gave evidence that Norman labeled residents of Koribundo as spies and collaborators and that the witness should ensure that no one should be left alive and house should be burnt. Petrol was given for that operation.¹⁶⁷ The witness was given further instructions by the First Accused to kill any soldier who had surrendered. The witness sent a message to Norman regarding a plea made to spare a surrendered soldier. Norman sent four Kamajors to kill the surrendered soldier in response. The surrendered soldier’s head was cut off.¹⁶⁸

86. Witness TF2-008 testified that at a meeting at Base Zero, Norman instructed the commanders present, that when they proceeded to attack Koribundo, they should not leave any living thing and should burn down houses if there was resistance. Commanders should only spare the Mosque, the School, and the Barray.¹⁶⁹ The witness also gave evidence that in the middle of 1998, a meeting was convened in Bo Town Hall wherein some senior members of the CDF were present including Moinina Fofana, in which Hinga Norman, made a declaration that “I am personally responsible for the excesses and atrocities of the Kamajors.”¹⁷⁰

87. [REDACTED]

¹⁶⁵ TF2-014, 10 March 2005, open session, p.71-72.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*, p.78

¹⁶⁸ *Id.* p.85-86

¹⁶⁹ TF2-008, 16 November 2004, p.79

¹⁷⁰ *Id.*, p.116-117

¹⁷¹ TF2-082, 15 September 2004, closed session, p.7.

¹⁷² *Id.*, p.60.

- [REDACTED]
88. Strangely, the Defence argues that the action of the First Accused in these instances should be interpreted as occurring in an administrative context. The Prosecution submits that it is inconceivable that issuing direct orders to kill and burn, and target the civilian population of Koribundo, could be viewed as an administrative act (although this is a matter to be decided at the end of the trial, rather than at the Rule 98 stage).
89. The Defence maintains that the Accused's acceptance of blame demonstrates nothing more than his concern for the well-being of civilians, and perhaps his desire to be seen as a leader with a greater degree of control than he actually had.¹⁷⁶ While this may be the Defence theory, there is certainly sufficient evidence on the basis of which a reasonable trier of fact could conclude to the contrary. Where more than one inference may be drawn from the evidence, it is not at the Rule 98 stage that the Trial Chamber decides which inference to draw. It would certainly be open to a reasonable trier of fact to conclude that this evidence is consistent with Norman's guilt. The evidence shows orders given by the Accused, the execution of those orders and the acceptance of responsibility for the outcome by the Accused himself.
90. The Defence submits that no evidence has been presented of any alleged unlawful killings in Kebbi Town, Kpeyama, Fengehun, and Mongere.¹⁷⁷ [REDACTED]
- [REDACTED]
- [REDACTED] Witness TF2-007 testified that in 1998, he was arrested in the bush by Kamajors who took him to town where he witnessed the killing of his father. Exhibit 37 is the document with the name of witness' town (Fengehun).¹⁷⁹ Witness TF2-088 testified that in April 1999, at a Kamajor checkpoint he saw a letter, which said that his son was to

¹⁷³ *Id.*, p.39.

¹⁷⁴ *Id.*, p.50.

¹⁷⁵ *Id.*, p.92-93

¹⁷⁶ Norman Motion, para. 83.

¹⁷⁷ *Id.*, para. 86.

¹⁷⁸ TF2-017, 19 November 2004, closed session p.97.

¹⁷⁹ TF2-007, p.58; Exhibit 37.

be killed immediately for his ash to be used in last initiation in Mongeray (Mongere) town in Hinga Norman's compound. The letter was addressed to a number of checkpoint commanders. On the 24th April 1999 the body was burned by Kamajors.¹⁸⁰

91. The Prosecution concedes that no evidence of unlawful killing was presented for the location of Kpeyama.

Moyamba District

92. The Defence contends that there is insufficient evidence to link the First Accused with killings in Moyamba District. That is incorrect. Witnesses TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 gave evidence of unlawful killings that occurred at the Moyamba crime base, carried out by the CDF under the leadership, direction and control of the Accused.

93. [REDACTED]

94. Witness TF2-014 testified that he told Norman and Fofana about the killing of the Chiefdom speaker of Ribbi Chiefdom, by Kamajor commander Abu Bawote. Norman replied that since the speaker was a collaborator he got what he deserved.¹⁸² The witness further gave evidence that he was sent by Moinina Fofana to investigate alleged killing, looting and burning of houses by Kamajors in Moyamba, but the mission was frustrated by the intervention of Hinga Norman. The witness reiterated that Hinga Norman released all the Kamajors implicated in the alleged excesses.¹⁸³

95. Witness TF2-014 testified that he received direct orders from Norman. He also conveyed arms and ammunition to Kamajors in the battlefield. The witness then submitted reports from the battlefield to Moinina Fofana for the attention of Norman.¹⁸⁴

96. The Prosecution concedes that no evidence of unlawful killing was presented for the

¹⁸⁰ TF2-088, p. 49-50.

¹⁸¹ TF2-017, 19 November 2004, closed session p. 82-84.

¹⁸² *Id.* p. 57.

¹⁸³ *Id.* p. 58-59.

¹⁸⁴ *Id.* p. 86.

location of Bylago.

Bonthe

- 97. The Defence contends that there is insufficient evidence to link the First Accused with killings in Bonthe. That is incorrect. Witnesses TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189 gave evidence of unlawful killings that occurred at the Bonthe crime base carried out by the CDF under the leadership, direction and control of the Norman.
- 98. Witness TF2-014 testified that he knew Mustapha Fallon who was executed in the Poro Bush at Talia, in the presence of Hinga Norman, Moinina Fofana, Allieu Kondewa and others. Mustapha Fallon who was also a Kamajor was killed because Allieu Kondewa wanted human sacrifice in order to guarantee the protection of the fighters. The brother of Mustapha Fallon pleaded for his life with Norman but to no avail. Hinga Norman gave three hundred thousand Leones to the deceased brothers appealing to them not to tell anyone what transpired.¹⁸⁵
- 99. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the First Accused. Defence cross-examination was unable to undermine or dispute the occurrence. In his testimony, the witness said that he knew Alpha Dauda Kanu, a Kapra. He was killed in an palm oil plantation when going towards Mokusi. Kanu was killed by Dr Allieu Kondewa, Hinga Norman and Moinina Fofana. "He was hacked to death, and we took off his skin." The witness was present. Some of Kanu's body parts were taken and "They said that they are going to prepare a garment and a walking stick for Chief Hinga Norman and a fan, which is called a "controller", so as to use those things in order to become very powerful"¹⁸⁶

100. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁸⁵ TF2-014, 10 March 2005, open session, p.59.
¹⁸⁶ *Id.* at p. 55.

[REDACTED]

101. The Defence submission that no evidence has been presented of unlawful killings in Mobayeh and Makose¹⁸⁸ is incorrect. Witness TF2-071 gave evidence that the Chief of Mobayei (Mobayeh) Keinechawa, told him that Kamajors led by one Momoh Sitta had attacked the town of Mobayei and killed an old woman, Musu Fai and a pregnant woman, Jebbeh Kpaka who were unable to escape.¹⁸⁹ Witness TF2-109 testified that saw the killing of Lahai Lebbie, Baggie, Ngor Jusu. They were killed in Makosi (Makose), on the way to Talia. Lahai Lebbie was killed by the Kamajors-he was tied up and a tire was used to burn him.¹⁹⁰

Black December

102. The Defence contends that there is insufficient evidence to link the First Accused with the Black December killings. The Prosecution submits that that is incorrect.

103. [REDACTED]

104. [REDACTED]

105. Witness TF2-222 testified that he attended a meeting about Black December, sometime in December 1997. Norman went on the air to explain Black December and said that people

¹⁸⁷ TF2-017, 19 November 2004, closed session, p. 58-77.

¹⁸⁸ Norman Motion, para. 97.

¹⁸⁹ TF2-071, 11 November 2004, open session, p. 70.

¹⁹⁰ TF2-109, 30 May 2005, open session, p. 34.

¹⁹¹ TF2-005, 15 February 2005, closed session, p.102.

¹⁹² *Id.*, p. 104.

who did not move away from the strongholds of the junta, “be prepared to suffer any consequence that would meet them...you decided to stay in Sierra Leone you’ll be looked upon as a collaborator or an effective participant of the junta rule.” Black December was launched from Base Zero and reports were received back.¹⁹³

106. [REDACTED]

107. The Defence submission that evidence of unlawful killing in Gumahun has not been presented¹⁹⁶ is incorrect. The Prosecution presented evidence of unlawful killing in Gumahun through the testimony of witness TF2-088 who gave evidence that on November 29, 1997, Kamajors were in Gumahun. One day they moved from the barri and went to the Taia River, and they took his young son. Later that son came back to the house and asked him if he had heard 4 gunshots. The son said the first gunshot had killed his brother and one Sundifu Samuka was the Kamajor that killed him.¹⁹⁷ The witness saw a Kamajor battalion commander called Philip Mboma, under the instructions of the senior Kamajors, shoot a woman called Janeba, because she had cooked for the rebels after they had captured her. He then used a cutlass on the woman.¹⁹⁸ The witness further gave evidence that he saw his nephew killed, by being decapitated, by Philip Mboma.¹⁹⁹

108. The Prosecution concedes that no evidence of unlawful killing has been presented for the location of Jembeh.

¹⁹³ TF2-222,17 February 2005, open session, p. 108.
¹⁹⁴ TF2-017, 17 November 2004, closed session, p.55-57.
¹⁹⁵ *Id.*, p. 82-84
¹⁹⁶ Norman Motion, para. 101.
¹⁹⁷ TF2-088, 25 November 2004, open session, p. 104.
¹⁹⁸ TF2-088, 26 November 2004, open session, p. 22.
¹⁹⁹ *Id.*, p. 25-28.

109. The Norman Motion asserts that none of the evidence presented suggests that the alleged crimes were committed by an entity known as the CDF, nor is there any evidence to suggest how CDF could kill civilians.²⁰⁰ On the contrary, the Prosecution submits that the Defence assertion is a misconception and misapprehension of the theory of the Prosecution, and perhaps also, a mischaracterization of the evidence. Paragraph six of the Indictment is illustrative in this instance as it states: “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.” The Prosecution has presented detailed evidence of the composition and structure of the CDF.²⁰¹ Even the Defence through cross-examination had confirmed the nexus between the CDF and the Kamajor militia, and how the movement had undergone systemic changes over the years. Thus, the Prosecution submits that it is clear that the issue is the criminal responsibility of Norman and his co-accused, as the key superiors who held most of the power of the CDF in their hands.

(ii) Counts 3-4: Physical Violence and Mental Suffering

110. The Defence contends that there is insufficient evidence to link the First Accused with acts of physical violence and infliction of mental harm or suffering alleged in Counts 3 and 4 of the Indictment. The Prosecution refers to the evidence that has already been set out in relation to superior responsibility and the widespread and systematic nature of the attacks. There is evidence of Norman’s role as commander of the Kamajors and on the basis of the evidence in relation to unlawful killings referred to above, it would be open to a reasonable trier of fact to conclude that Norman planned, instigated, ordered, committed or aided and abetted the infliction of physical or mental harm and suffering as well as, or resulting in, killings.

111. The Prosecution submits that evidence has been presented from many witnesses who made specific mention of the First Accused in relation to the offences charged under Counts 3

²⁰⁰ Norman Motion, para. 102.

²⁰¹ TF2-005, TF2-008, TF2-014, TF2-017, TF2-068, TF2-079, TF2-190, TF2-201, TF2-222

and 4, in particular, witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222. These witnesses gave evidence of direct orders from the First Accused for the attack on civilian collaborators of the AFRC/RUF. Witness TF2-014 gave evidence that the First Accused stated at Base Zero that “sympathisers, collaborators and those who refuse deliberately to leave the AFRC/RUF Zone” were enemies and ordered that they should be killed.²⁰²

There is clear, unambiguous and unchallenged evidence before the Court from Prosecution witnesses who indicate that the First Accused gave orders directly to subordinates for various attacks on locations across the Southern and Eastern Provinces, and that he specifically ordered subordinates to kill captured AFRC/RUF combatants, their agents, friends, families and sympathisers, otherwise known as “collaborators.” These orders to kill captured enemy combatants and civilians carry with them the requisite mental element for the infliction of serious bodily harm and physical suffering on such victims. The testimonies of Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222, TF2-223, referred to earlier apply.

112. The Defence submits that no evidence has been presented of any physical violence or mental suffering in Kamboma.²⁰³ The Prosecution avers that this submission by the First Accused emanates from an oversight as there is clear, unchallenged evidence before the court by witness TF2-015 about gruesome killings in Kamboma from which the witness (the 65th victim) is the only survivor. The witness testified that he still bears visible scars of the machete blows he received during that attack, which he showed to the court.²⁰⁴
113. Many other witnesses described how they suffered at the hands of the Kamajors and the evidence indicates the widespread nature of the attacks. Witness TF2-006 testified to inhumane acts when he said that during the Bo attack, Kamajors used a cutlass to amputate his fingers. The Court observed that four out of the five fingers were amputated.²⁰⁵ Witness TF2-007 gave evidence that at Fengehun, he saw Kamajors tie his father with a rope and part of his right ear was cut.²⁰⁶ Witness TF2-041 gave evidence that Kamajors during the Kenema attack put a knife to his neck and stabbed him all over. They left him

²⁰² TF2-014, 10 March 2005, open session, p. 34.

²⁰³ Norman Motion, para. 113, 176.

²⁰⁴ TF2-015, 11 February 2005, open session, p. 16.

²⁰⁵ TF2-006, 9 February 2005, open session, p. 11-12.

²⁰⁶ TF2-007, 2 December 2004, open session, p. 51.

believing he was dead.²⁰⁷ Witness TF2-073 stated that as the Kamajors intensified their looting spree around the towns and villages surrounding Moyamba, his brother-in-Law was beaten severely by Kamajors and he later died as a result.²⁰⁸ TF2-157 gave evidence that on a Sunday, during the Kamajor attack, he saw a lot of people mutilate two persons, 'mutilating them, individually and sequentially.' Those persons had cutlasses, dressed in Kamajor clothing. The persons killed were Sarah Binkolo and Sarah Lamina.²⁰⁹

114. Witness TF2-086 provided further evidence of physical violence and mental suffering when she gave evidence that she was caught by a Kamajor called Abu Jakineh whilst in Bonthe. The witness was wounded on the wrist. She was also stabbed in the stomach with a stick and then she was struck on the neck with a machete.²¹⁰ The Prosecution led further evidence of physical violence and mental suffering through the testimony of TF2-198. In that evidence, it was stated that the witness was identified by Kamajors that he was a resident of Koribundo, he was beaten and his brother was accused of being a junta, and the two of them were tied up. The Accused was able to show the marks sustained from the wounds to the Court.²¹¹
115. Evidence of cruel or inhumane treatment was portrayed through the testimony of witness TF2-151 when he testified that whilst in Kenema, he was stripped and put into a cell by Kamajors and beaten.²¹²

(iii) Count 5: Looting and Burning

116. The Defence contends that there is no direct or indirect evidence to show that the Accused had the requisite intent for pillage. The Defence further submits that witnesses TF2-001, TF2-032, TF2-140, TF2-144, TF2-152 and TF2-154 make no substantive mention of the First Accused and that their testimony cannot constitute evidence that the Accused planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of the looting and burning at issue.²¹³
117. The Prosecution submits that there is evidence on the basis of which a reasonable trier of

²⁰⁷ TF2-041, 24 September 2004, open session, p. 27, 30, 31.

²⁰⁸ TF2-073, 2 March 2005, open session p. 38-39.

²⁰⁹ TF2-157, 16 June 2004, open session, p. 15.

²¹⁰ TF2-086, 8 November 2004, open session, p. 93-96.

²¹¹ TF2-198, 15 June 2004, open session, p. 20-22.

²¹² TF2-151, 23 September 2004, open session, p. 33-35.

²¹³ Norman Motion, para. 126.

fact could conclude that Norman is criminally responsible by way of orders and expressed intention for looting and burning. The requisite elements for establishing the superior responsibility of Norman for the acts of the Kamajors have already been set out. The Prosecution notes that the Defence did not challenge the fact of a number of lootings and burnings in the evidence within the relevant period in the Indictment.

118. Witnesses TF2-151, TF2-154, TF2-223, and TF2-021 reported looting and burning incidents, carried out by Kamajors, in *Kenema*. Witnesses TF2-048, TF2-144, TF2-022, TF2-222 gave evidence on looting and burning in *Tongo*, likewise carried out by Kamajors. Witnesses TF2-119, TF2-030, TF2-156, TF2-088, TF2-057, TF2-067, TF2-058, TF2-056, TF2-190 and TF2-001 described looting and burning in *Bo*. Amongst others, witnesses TF2-198, TF2-157, TF2-176, TF2-012, TF2-162, TF2-159, TF2-032, TF2-0140, TF2-190 and TF2-082 testified about looting and burning activities carried out by Kamajors in *Koribundu*. Witness TF2-073 testified about lootings carried out by Kamajors in *Sembehun*. Furthermore, witnesses TF2-073, TF2-168, TF2-173, TF2-165, TF2-170, TF2-167, TF2-166 and TF2-014 told about looting and burning incidents in *Moyamba*. Witnesses TF2-096, TF2-086, TF2-116, TF2-147, TF2-071, TF2-008 and TF2-017 described similar incidents of lootings and burnings in *Bonthe*. [REDACTED]

119. The Prosecution concedes that no direct evidence of looting was led in relation to the locations of *Gbangbatoke* and *Mobayeh* and that no direct evidence of burning was led in relation to *Gbangbatoke*, *Mobayeh*, *Sembehun* and *Talia*.

120. While witnesses TF2-001, TF2-144, TF2-152 and TF2-154 do not mention Norman expressly, they all made statements of lootings and burnings in their townships, caused by Kamajors – the physical perpetrators - and therefore described the crime base for which the First Accused is responsible under one or more of the relevant modes of participation.

121. The Prosecution submits that there is evidence of a direct nexus between the acts of the First Accused and the offences as charged. [REDACTED]

At [REDACTED]

²¹⁴ TF2-005, 17 February 05, closed session, p. 110.

this time the Accused authorized and ordered the commandeering of properties.²¹⁵ Direct criminal responsibility for looting and burning for the Bo crime base were made manifest in the testimonies of several witnesses.²¹⁶ In Koribuno, at least two meetings were held by the First Accused where he admonished the Kamajors for not having burnt down the entire village of Korribundu, except three specific premises. He took full responsibility for their actions.²¹⁷

122. The hand of command of the First Accused was apparent in the evidence that Norman gave direct orders to burn down houses and loot big shops and pharmacies in Bo.²¹⁸ There is evidence that the First Accused said at a parade in Bo, that the Kamajors deceived him as he was told they had burnt down the barracks, but now there were still barracks left.²¹⁹
123. There is evidence that Norman encouraged the Kamajors by releasing them after they had been apprehended for alleged killings, lootings and burnings of houses.²²⁰
124. Witness TF2-032 clearly testified that he attended a meeting in the Court Barray, Koribundo, where the Accused said, *inter alia*, “and if they were to spare anything, it could be the mosque, the barri and that house at the junction, but they did not do that.”²²¹
125. The Defence submits that witnesses Witnesses TF2-012, TF2-157, TF2-159, TF2-162, TF2-176, TF2-190 and TF2-198 mention the First Accused only in an administrative context, completely distinct from their testimony about the facts of looting and burning they witnessed. The Defence argues that as these witnesses do not provide any direct evidence, the Accused cannot be held liable.²²² On the contrary, the Prosecution submits that there is evidence that TF2-012, TF2-157, TF2-159, TF2-162 and TF2-198 attended a meeting called by the Accused where he accepted responsibility for the atrocities the Kamajors wreaked on the civilian population of Koribundo. The meeting was not

²¹⁵ TF2-014, 10 March 2005, open session, p. 66, where the witness stated that “[w]e got the Honda from the Jiama Bongor Chiefdom from Africare. We commandeer it and took it from there, from the NGOs. That was done on an order.”

²¹⁶ i.e. TF2-198, 15 June 2004, open session, p. 37-38; TF2-157, 16 June 2004, open session, p. 20-22.

²¹⁷ TF2-157, TF2-159, TF2-032, TF2-162

²¹⁸ TF2-017, closed session, 19 November 2004, p. 94; see also TF2-014, open session, 10 March 2005, p. 70-71, where the First Accused told the Witness “[w]hen you go down to Bo the southern pharmacy should be looted and bring all the medicines to me.”

²¹⁹ TF2-001, 14 February 2005, open session, p. 99.

²²⁰ See Evidence given by TF2-014, 10 March 2005 open session, p. 64 ; See also Evidence of witness TF2-021., 2 November 2004, open session, p. 105, where he insisted that no punishment was meted out to them for looting properties and the killings of innocent people.

²²¹ TF2-032, 13 September 2004, open session, Page 62.

²²² Norman Motion, para. 127.

convened in order to attend to administrative matters of Koribundo or the welfare of the residents, but rather to showcase a stamp of conquest and ensure the dominance of the Kamajors over the civilian population of Koribundo.

126. The Defence submits that witnesses TF2-012 and TF2-082 testified to the fact that orders were not followed, which suggested the absence of the superior-subordinate relationship involving effective control required to establish command responsibility under Statute Article 6(3).²²³ The Prosecution submits that the mere fact of not burning all houses contrary to the clear orders of the First Accused does not exclude the effective control required to establish command responsibility.

127.

[REDACTED]

[REDACTED] which clearly indicates that the First Accused's effective control was still intact. The fact that a commander in charge suddenly backslides during a specific military operation, does not imply automatically the lack of command responsibility in respect of the Accused. The fact that the looting and burning orders were carried out to a great extent is sufficient under Art. 6(3) of the Statute.

(iv) Counts 6-7: Terrorizing the Civilian Population and Collective Punishments

128. The Defence contends that there is no direct or indirect evidence to show that the Accused had the requisite intent to terrorize or to collectively punish the civilian population. The Defence further submits that witnesses TF2-027 and TF2-047 make no substantive mention of the Accused and that their testimony cannot constitute evidence that he planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of terrorizing and collective punishment of the civilian population and burning at issue.²²⁶

129. On the contrary, the Prosecution submits that the evidence indicates that the First Accused planned, instigated or otherwise aided and abetted in the planning, preparation, or

²²³ Norman Motion, para. 129 and 130.

²²⁴ TF2-082, 15 September 04, closed session, p. 34, 35-36.

²²⁵ *Id.* p. 35.

²²⁶ Norman Motion, para. 142.

execution of terrorizing and collectively punishing the civilian population. The Defence analysis of the Indictment failed to take into account the additional evidence offered by Insiders, (TF2-005, TF2-008, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222) which substantiated the Prosecution theory of individual criminal responsibility with regards to the offences as charged in the Indictment.

130. Evidence of physical acts of terrorizing the civilian population and collective punishment through means of violent threat of intimidation, physical violence, mental suffering and looting was presented through the testimony of witnesses TF2-014, TF2-022, TF2-033, TF2-039, TF2-040, TF2-041, TF2-079, TF2-151, TF2-154, TF2-159, and TF2-176.
131. In his testimony, TF2-022 gave evidence that while in open field at the NDMC headquarters, the Kamajors had people in line. There were 20 people who the Kamajors said were captured SLA soldiers and four women who were the wives of soldiers. The witness knew one of the soldiers as Cobra. The Kamajors took these people to an open place, to an area called MP office, "they took them one after another and they hacked all of them." After they were hacked they were all dead.²²⁷ He further testified that the day after the attack, the civilians were told to go to Kenema by the Kamajors. One CO had told them to leave and he left. Then another CO turned up and gave the order that they should be shot, and so the Kamajors open fire. The shooting had been random, without aiming, but as there were so many people they were struck by bullets. The firing stopped and the witness saw a Kamajor chop a person who had been hit by a bullet; that person died.²²⁸
132. Witness TF2-027 testified that in November-December 1997, the Kamajors attacked Tongo from the Panguma end. The Kamajors were not successful so they retreated. There were more attacks by the Kamajors. One day the witness heard the sounds of explosions from different parts of the town. At Tongola the witness saw the Kamajors coming into town. The witness heard shots, heavy fire, coming from the headquarters. The Kamajors came around and put people at gunpoint and asked all the civilians to go to the headquarters, around 4.30pm. At the entrance to HQ the witness saw 30 to 40 corpses. Some had bullet wounds in the back of the head.²²⁹ One of the Kamajor commanders BJK Sei ordered him to bury the corpses at the entrance to the security compound. 20 civilians

²²⁷ TF2-022, 11 February 2005, open session, p. 51-53.

²²⁸ *Id.* p.57.

²²⁹ TF2-027, 18 February 2005, open session, p.79-87.

were picked to dig a pit at the back of the compound. One of the corpses was Joski Mboma, who had been hacked in the back.²³⁰

133. The evidence further indicates that a lady called Fatmata Kamara, was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces. The witness buried seventy-five corpses in a day. The witness continued the burial of these corpses the subsequent day amounting to one hundred and fifty.²³¹ At Olumatic, the witness saw 25 corpses of juntas. They were not buried but were burnt by tyres. He said he buried 40 corpses at the Methodist Primary School.²³²
134. The witness testified also the Kamajors proffered three reasons why people were killed indiscriminately in Tongo. The first was in retaliation to the killings committed by Akim, a Lieutenant in the S.L.A. on their fellow Kamajors. The others were that Limbas were tapping palm wine for the Junta Forces and finally because the Temnes were supporting the Junta Forces.²³³
135. Witness TF2-159 testified that on Sunday, during the Kamajor attack on Koribundo, the witness went to the Koribundo junction, where he saw the Kamajors with 5 Limba people. The witness knew them as they used to sell palm wine. They were Sofiana, Sarrah, Momoh, Kamara and Karoma. The Kamajors said the 5 persons were junta. They were cut into pieces and some were shot with guns. Two were killed with guns and 3 with cutlasses. Sarrah and Momoh had their heads cut off.²³⁴ On the following Monday, he went to Koribundu again, from his hiding place in the bush, to go to the Kamajor HQ, to see Joe Timedie. At HQ he saw Kamajors singing, as they had captured 8 people. There were 5 men and 3 women; witness knew the women as the wives of soldiers – Amie, Jainaba and Esther. “They were singing on them, they were taking them to be killed.” Witness followed the Kamajors along Blama Road; they were beating them and mutilating them and telling them they were going to be killed. Two of the women were killed by a stick (“right through them”) and one by a gun (and by a cutlass, her head was cut off). The men, four were killed by a gun and one man by a cutlass to his neck. He saw them disembowel

²³⁰ *Id.*, p. 105-7.

²³¹ TF2-047, 22 February 2005, open session, 61.

²³² *Id.*, p. 68.

²³³ *Id.*, p. 64-66.

²³⁴ TF2-159, 9 September 2004, open session, p. 32.

- the women and place the entrails in a bucket. Their guts were turned into a checkpoint²³⁵
136. Witness TF2-033 gave evidence that Jambawai, a Kamajor leader was chief coordinating officer. Jambawai said that the reason Kamajors were killing Police was “you were in the bush fighting (for) the RUF”. Witness was told that there had been spies taking their names.²³⁶ On the 15th February 1998 the Kamajors came into town, down the street, Hangha Road. They were armed with guns, knives and cutlasses. The witness went to his barracks and he saw Sgt. Mason running, being chased by two Kamajors, armed with a gun and cutlass. The witness was about 30 metres away when he saw Mason shot and when he was on the ground and the other Kamajor chopped his hand and head.²³⁷ He further testified that from the veranda of a friend’s house, the witness saw Corporal Fandai going to his home, with a bible. Two Kamajors approached him and told him they wanted to kill him. Fandai asked to pray and when he said ‘Lord if it is they will, let it be done’, he was shot three times.²³⁸
137. Witness TF2-079 testified that, on the return of Kamajors from Gendema, Norman sent a message that “all those chiefs who are not in favour of the Kamajors should be killed.” Norman also sent a message “that civilian collaborators, those who are sympathising with the AFRC/RUF rebel should also be killed. And the paramount chiefs who are not in favour of the Kamajors should also be killed.”²³⁹ The witness said also, that paramount chief at Dama Chiefdom, Chief Dassama was killed by Kamajors following Norman’s orders.²⁴⁰
138. Witnesses TF2-187 presented evidence that the Kamajors made preparation for Norman’s visit. Kondewa’s boys captured pregnant women and took them to the court barri. The women were tied up standing. When they heard the sound of the plane, the Kamajors slit the stomach of the women and then the cut off the head of the foetus. That was done one after another. The Kamajors put each of the head on a separate stick. The three women died. The three sticks with the heads were tied together; when that was done it was like a flag and was placed at the junction. The junction was the junction to Mattru. When the

²³⁵ *Id* p. 33-38.

²³⁶ TF2-033, 20 September, 2004, open session, p. 30.

²³⁷ *Id* p. 12.

²³⁸ *Id*, p. 15.

²³⁹ TF2-079, 26 May 2005, open session, p. 20.

²⁴⁰ *Id*, p. 23.

women were killed at the barri, there were civilians present as well as Kamajors. Bombowai was present. When the pole was planted at the junction, Norman came by helicopter. Norman came out of the helicopter and the witness saw rice, medicine, bullets and arms taken from the helicopter. After the items were taken from the helicopter, the 'flag' was taken to the barri and the heads were removed. After the women had been killed, "then they smeared the blood on their bodies, on their faces and they took their corpses and buried them in one grave." The Kamajors then sang a song that they had got their medicine from pregnant women.²⁴¹

(v) **Count 8: Use of Child Soldiers**

139. The Defence submits there is no evidence to demonstrate that the First Accused both knew and actively approved of the use of child soldiers or that child soldiers were conscripted through some form of compulsory recruitment.²⁴²
140. On the issue that no evidence was presented by the Prosecution that shows that child soldiers were conscripted through some form of compulsory recruitment, the Prosecution reiterates that the Consolidated Amended Indictment does not contain a charge of conscription, but rather one of initiating or enlisting children under the age of 15 years into armed forces or groups and in addition, or in the alternative, using them to participate actively in hostilities.²⁴³ Nonetheless, the Prosecution witnesses TF2-004, TF2-021, TF2-140 gave unchallenged viva voce evidence of coercive recruitment and direct participation in active hostilities.
141. The Prosecution further submits that "enlistment" refers to a voluntary act on the part of the enlistee, not requiring force on the perpetrator's part.²⁴⁴ It is the Accused's intent that forms the basis for his criminal liability, not that of the victims. Participation in hostilities covers both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys,

²⁴¹ TF2-187, 2 June 2005, open session, p. 17-37.

²⁴² Norman Motion, para. 153, 154, & 161.

²⁴³ Consolidated Amended Indictment, March 5, 2004.

²⁴⁴ See, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed., 2002) ("to engage (persons or a person) for service in the armed forces; to engage the support or cooperation of; to enter the armed forces; to participate actively in a cause or enterprise); and WEBSTER'S REVISED UNABRIDGED DICTIONARY (1996) ("voluntary enrollment to serve as a soldier or a sailor").

couriers or at military checkpoints.²⁴⁵ Sufficient evidence has been presented to show the varying tasks related to the pursuit of the war assigned to child soldiers, while engaged with the CDF, largely the Kamajors.

142. Witness TF2-014 gave unchallenged and uncontroversial evidence that at Base Zero, there were Kamajors as young as six years of age.²⁴⁶ Witness knew a Kamajor called Junior Spain, who was between twelve to fifteen years old. Kamajors would go to war at an early age, so long as they had been initiated into the Kamajor society.²⁴⁷
143. Evidence of child enlistment and use of child soldiers was presented by the Prosecution through the testimony of witness TF2-021. The witness was in Ngeihun when the Kamajors attacked and he was captured by a Kamajor named German. There were seven boys, the oldest being 15, and 3 women. The Kamajors looted and then burnt the houses. Boys carried the property to Kenema.²⁴⁸ At the Moa River, the Kamajors shot the three women. They were shot because they were the wives of rebels.²⁴⁹ The witness was initiated, and German gave him a two pistol-grip gun, and he was shown how to use it.²⁵⁰ Then the witness would go on mission to attack surrounding villages and catch people – women.²⁵¹
144. The evidence further revealed that witness' first mission was to Masiaka, where they started shooting at the rebels. The boy next to the witness was shot and he became vexed. He saw a woman running towards him and he shot her in the stomach, and she fell down.²⁵² They then went into the town and looted it, taking things of value.²⁵³
145. The Prosecution submits that there is evidence that the First Accused had actual knowledge of children engaged in active hostilities by the Kamajors. TF2-021 gave evidence that after fighting he went back to Base Zero. There is evidence that the Accused came to Base Zero

²⁴⁵ Report of the Preparatory Committee on the Establishment (14 April 1998), See Human Rights Watch, International Legal Standards Governing Child Soldiers, available at <http://www.hrw.org/campaigns/crp/int-law.htm>; and R. LEE, ed., THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE, ISSUES, NEGOTIATIONS, RESULTS 117 (1999).

²⁴⁶ TF2-014, 11 March 2005, open session, p. 15.

²⁴⁷ *Id.*, p. 16.

²⁴⁸ TF2-021, 2 November 2004, p. 33.

²⁴⁹ *Id.*, p. 35.

²⁵⁰ *Id.*, p. 43.

²⁵¹ *Id.*, p. 44.

²⁵² *Id.*, p. 45.

²⁵³ *Id.*, p. 46.

to say they should go to Freetown.²⁵⁴ A few days later the witness went in a helicopter with GA Gobey, which went to Freetown. They disembarked at Cockerill, it was the First Accused' secretary, Moses, who took down their names and gave them guns. They went to Congo Cross where there was heavy firing and then to the Brookfield's Hotel.²⁵⁵

146. According to the evidence, in Koribundu, the witness arrived just after the attack, witness then spoke about going to the first checkpoint at Koribundu, and then onto HQ. He saw houses on fire and corpses of persons who had been beheaded. He was told the corpses were rebels.²⁵⁶ Kamajor Joe Tamidey had four boys as security, who were younger than the witness.²⁵⁷ Whilst at Bo, he met Moinina Fofana, his former commander, and Chief Norman was also there. Witness joined the security.²⁵⁸ On return to Freetown, he stayed at 13 Spur Road, with Hinga Norman. There were a number of small boys younger the witness, one 11 years old being guarded. Witness said, "shortly after we left Guinea, Chief Norman had a decision to say that all small boys were exempted from the war and, as such, he was trying to re-organize us in our numbers so that he could hand us over to programs"

259

147. [REDACTED]

²⁵⁴ *Id.*, p. 84.

²⁵⁵ *Id.*, p. 86.

²⁵⁶ *Id.*, p. 78.

²⁵⁷ *Id.*, p. 83.

²⁵⁸ *Id.*, p. 86.

²⁵⁹ *Id.*, p. 96.

²⁶⁰ TF2-218, 7 June 2004, closed session, p. 14.

148.

[REDACTED]

149.

[REDACTED]

150.

[REDACTED]

151.

[REDACTED]

²⁶¹ *Id.*, p. 15.

²⁶² *Id.*, p. 17.

²⁶³ *Id.*, p. 19.

²⁶⁴ TF2-EW2, 16 June 2005, closed session, p. 17

²⁶⁵ *Id.*, p. 18.

²⁶⁶ *Id.*, p. 68

[REDACTED]

152. The Prosecution submits that over and above the presentation of testamentary evidence, documentary evidence was presented in support of the charges under Count 8 of the Indictment. The Trial Chamber admitted into evidence the relevant documents for their authenticity and contents.²⁶⁹

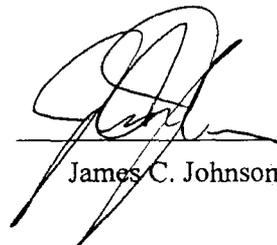
Conclusion

153. The Prosecution submits that on the basis of all the evidence presented during its case, a representative portion of which has been set out in these submissions, it would be open to a reasonable tribunal of fact to be satisfied beyond reasonable doubt of the guilt of the Accused under all counts of the Indictment. The Prosecution reiterates that the Trial Chamber is not called upon to undertake a detailed consideration and evaluation of the evidence at this stage and submits that it has dispelled any doubt about the sufficiency of the evidence with respect to all the issues raised by the Defence. On the basis of the evidence, a reasonable trier of fact could conclude that the Accused was a party to an orchestrated campaign extending systematically to diverse geographical crime bases. It is open to a reasonable trier of fact to conclude that each of the jointly charged defendants participated in the campaign to the full extent alleged in the Indictment.

154. For all of the aforementioned reasons, the Prosecution submits that the Defence Motion should be dismissed in its entirety.

Filed in Freetown
18 August 2005
For the Prosecution


Luc Côté


James C. Johnson

Joseph F. Kamara

²⁶⁷ *Id.*, p. 82

²⁶⁸ *Id.*, p. 91

²⁶⁹ *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-T, "Decision on Prosecution Request to Admit certain Documents pursuant to Rules 92bis and 89(c)."

PROSECUTION INDEX OF AUTHORITIES

Special Court Cases

1. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, 'Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana', 3 March 2004.
2. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, 'Prosecution Prosecution's Pre-Trial Brief', 2 March 2004.
3. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, 'Indictment', 5 February 2004.
4. *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, 'Decision on Prosecution Request to Admit certain Documents pursuant to Rules 92bis and 89 (c)' 14 July 2005.
5. *Prosecutor v. Fofana*, SCSL-2004-14-AR/72(E), 'Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Nature of the Armed Conflict', 25 May 2004.
6. Consolidated Amended Indictment, dated March 5, 2004

Cases From The Ad Hoc Tribunals

7. *Prosecutor v Naser Oric*, IT-03-68-T, 'Oral Decision', 8 June 2005.
<http://www.un.org/icty/transe68/050608IT.htm>
8. *Prosecutor v. Jelusic*, IT-95-10-A, 'Judgment', 5 July 2001.
<http://www.un.org/icty/jelusic/appeal/judgement/index.htm>
9. *Prosecutor v. Jean de Dieu Kamuhanda*, ICTR-99-54-T, 'Decision on Kamuhanda's Motion for Partial Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence', 20 August 2002.
<http://www.ictr.org/ENGLISH/cases/Kamuhanda/decisions/200802.htm>
10. *Prosecutor v Semanza*, ICTR-97-20-T, 'Decision on the Defence Motion for a Judgment of Acquittal in Respect of Laurent Semanza after Quashing the Counts Contained in the Third Amended Indictment (Article 98bis) of the Rules of Procedure and Evidence and Decision on the Prosecutor's Urgent Motion for Suspension of Time-Limit for Response to the Defence Motion for a Judgment of Acquittal', 27 September 2001.
<http://www.ictr.org/ENGLISH/cases/Semanza/decisions/270901.htm>

11. *Prosecutor v Semanza*, ICTR-97-20-T, 'Judgment and Sentence', 15 May 2003.
<http://www.ictr.org/ENGLISH/cases/Semanza/judgement/index.htm>
12. *Prosecutor v Kordic and Cerkez*, IT-95-14/2, 'Decision on Defence Motions for Judgment of Acquittal', of 6 April 2000.
<http://www.un.org/icty/kordic/trialc/decision-e/00406DC512861.htm>
13. *Prosecutor v Kordic and Cerkez*, IT-95-14/2-T, 'Judgment', 26 February 2001.
<http://www.un.org/icty/kordic/trialc/judgement/index.htm>
14. *Prosecutor v Slobodan Milosevic*, IT-02-54-T, 'Decision on Motion for Judgment of Acquittal', 16 June 2004.
<http://www.un.org/icty/milosevic/trialc/judgement/index.htm>
15. *Prosecutor v Kvočka et al.*, IT-98-30/1-T, 'Decision on Defence Motions for Acquittal', 15 December 2000.[not on website// not on westlaw].
16. *Prosecutor v. Kvočka et al.*, ICTY IT-98-30/1-T, 'Judgment', 2 November 2001.
<http://www.un.org/icty/kvočka/trialc/judgement/index.htm>
17. *Prosecutor v. Hadžihasanović and Kubura*, "Decision on Motions for Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence," Case No. IT-01-47-T, 27 September 2004.
<http://www.un.org/icty/hadzahas/trialc/judgement/index.htm>
18. *Prosecutor v. Strugar*, "Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98 bis," Case No. IT-01-42-T, 21 June 2004.
<http://www.un.org/icty/strugar/trialc1/judgement/index.htm>
19. *Prosecutor v. Bagosora et al.*, Case No ICTR-98-41-T, "Decision on Motions for Judgment of Acquittal," 2 February 2005.
<http://www.ictr.org/ENGLISH/cases/Bagosora/decisions/020205.htm>
20. *Prosecutor v Kayishema and Ruzindana*, ICTR-95-1-T, 'Judgment', 21 May 1999.
<http://www.ictr.org/ENGLISH/cases/KayRuz/judgement/index.htm>
21. *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-T, "Judgment on Motions for Acquittal Pursuant to Rule 98bis," 4 April 2004.
<http://www.un.org/icty/blagojevic/trialc/judgement/040405.htm>
22. *Semanza v. Prosecutor*, Case No. ICTR-97-20-A, "Semanza Appeal Judgement," 20 May 2005.
<http://www.ictr.org/ENGLISH/cases/Semanza/judgement/appealsjudgement/index.pdf>

23. *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, "Decision on Admission of Statements of Deceased Witnesses," 19 January 2005;
<http://www.ictr.org/ENGLISH/cases/Bagosora/decisions/190105.htm>
24. *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, "Decision on Motion by Karemera for Disqualification of Trial Judges," 17 May 2004.
<http://www.ictr.org/ENGLISH/cases/Karemera/decisions/040517b.html>
25. *Prosecutor v. Akayesu*, ICTR-94-4-T, 'Judgment', 2 September 1998.
<http://www.ictr.org/ENGLISH/cases/Akayesu/judgement/akay001.htm>
26. *Prosecutor v Vasiljevic*, IT-98-32-T, 'Judgment', 29 November 2002.
<http://www.un.org/icty/vasiljevic/trialc/judgement/index.htm>
27. *Prosecutor v Vasiljevic*, IT-98-32-T, 'Appeal Judgment', 25 February 2004.
<http://www.un.org/icty/vasiljevic/appeal/judgement/index.htm>
28. *Prosecutor v Kunarac et al*, IT-96-23 & IT-96-23/1-A, 'Judgment', 12 June 2002.
<http://www.un.org/icty/kunarac/appeal/judgement/index.htm>
29. *Prosecutor v Kunarac et al.*, IT-96-23-T and IT-96-23/1-T, 'Judgment', 22 February 2001.
<http://www.un.org/icty/kunarac/trialc2/judgement/index.htm>
30. *Naletilic and Martinovic*, IT-98-34-T, 'Judgment', 31 March 2003.
<http://www.un.org/icty/naletilic/trialc/judgement/index.htm>
31. *Prosecutor v Musema*, ICTR-96-13-T, 'Judgment', 27 January 2000.
<http://www.ictr.org/ENGLISH/cases/Musema/judgement/index.htm>
32. *Prosecutor v Bagilishema*, ICTR-95-1A-T, 'Judgment', 7 June 2001.
<http://www.ictr.org/ENGLISH/cases/Bagilishema/judgement/index.htm>
33. *Prosecutor v Rutaganda*, ICTR-96-3-T, 'Judgment and Sentence', 6 December 1999.
<http://www.ictr.org/ENGLISH/cases/Rutaganda/judgement/index.htm>
34. *Prosecutor v Kupreskic*, IT-95-16-T, 'Judgment', January 14, 2000,
<http://www.un.org/icty/kupreskic/trialc2/judgement/index.htm>
35. *Prosecutor v Delalic et al.*, IT-96-21-A, 'Judgment', 20 February 2001.
<http://www.un.org/icty/celebici/appeal/judgement/index.htm>
36. *Prosecutor v Delalic et al.*, IT-96-21-T, 'Judgment', 16 November 1998.
<http://www.un.org/icty/celebici/trialc2/judgement/index.htm>

37. *Prosecutor v. Brdanin*, IT-99-36-T, 'Judgment', 1 September 2004.
<http://www.un.org/icty/celebici/appeal/judgement/index.htm>
38. *Prosecutor v Stakic*, IT-97-24-T, 'Trial Judgment', 31 July 2003.
<http://www.un.org/icty/stakic/trialc/judgement/index.htm>
39. *Prosecutor v Blaskic*, IT-95-14-A, 'Appeal Judgment', 29 July 2004.
<http://www.un.org/icty/blaskic/appeal/judgement/index.htm>
40. *Prosecutor v Blaskic*, IT-95-14-T, 'Judgment', 3 March 2000.
<http://www.un.org/icty/blaskic/trialc1/judgement/index.htm>
41. *Prosecutor v Krnojelac*, IT-97-25-A, 'Judgment', 17 September 2003.
<http://www.un.org/icty/krnojelac/appeal/judgement/index.htm>
42. *Prosecutor v Simic et al.*, IT-95-9-T, 'Judgment', 17 October 2003.
<http://www.un.org/icty/simic/trialc3/judgement/index1.htm>
43. *Prosecutor v Aleksovski*, IT-95-14/1-A, 'Judgment', 24 March 2000.
<http://www.un.org/icty/aleksovski/appeal/judgement/index.htm>
44. *Prosecutor v Furundzija*, IT-95-14/1-T, 'Trial Judgment', 10 Dec 1998.
<http://www.un.org/icty/furundzija/trialc2/judgement/index.htm>
45. *Prosecutor v Ojdanic et al.*, IT-99-37-A, 'Appeal Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction- Joint Criminal Enterprise', 21 May 2003.
<http://www.un.org/icty/milutinovic/appeal/decision-e/030521.pdf>
46. *Prosecutor v Krnojelac*, IT-97-25-T, 'Judgment', 15 March 2002.
<http://www.un.org/icty/krnojelac/trialc2/judgement/index.htm>
47. *Prosecuto v Furundzija*, IT-95-17/1-A, 'Judgment', 21 July 2000.
<http://www.un.org/icty/furundzija/appeal/judgement/index.htm>
48. *Prosecutor v Tadic*, IT-94-1-A, 'Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction', 2 October 1995.
<http://www.un.org/icty/tadic/appeal/decision-e/51002.htm>
49. *Prosecutor v Tadic*, IT-94-1-T, 'Opinion and Judgment', 7 May 1997.
<http://www.un.org/icty/tadic/trialc2/judgement/index.htm>
50. *Prosecutor v Tadic*, IT-94-1-A, 'Judgment', 15 July 1999.
<http://www.un.org/icty/tadic/appeal/judgement/index.htm>

51. *Prosecutor v Galic*, IT-98-29-T, 'Judgment and Opinion', 5 December 2003.
<http://www.un.org/icty/galic/trialc/judgement/index.htm>

52. *Prosecutor v Mucic et al.*, IT-96-21-T-A, 'Judgment', 20 February 2001.
<http://www.un.org/icty/celebici/appeal/judgement/index.htm>

Other authorities

53. Statute for the Special Court, Art. 2a and 3a.

54. Commentary to Additional Protocol II, Par. 4557.

55. Elements of Crimes, ICC-ASP/1/3, Article 8(2)(e)(vii).

56. *The International Criminal Court: The Making of the Rome Statute*,
(Roy S. Lee ed. 2000), at 118

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

58. Casesse, Antonio. *International Criminal Law* .(N.Y., Oxford University Press, 2003), 194.

59. S. Tiefenbrun, "A Semiotic Approach to a Legal Definition of Terrorism", *ILSA J. INT'L & COMP. L.*, vol. 9, 2003, 357, 362.

60. D. Fleck (ed), *The Handbook of Humanitarian Law in Armed Conflicts*, §501-5.

61. *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* (4th ed., 2002).

62. *WEBSTER'S REVISED UNABRIDGED DICTIONARY* (1996).

63. *Black's Law Dictionary*, Garner, McDaniel and Schultz, (7th ed.).

64. Human Rights Watch. 'International Legal Standards Governing Child Soldiers',
available at <http://www.hrw.org/campaigns/crp/int-law.htm>

65. International Committee of the Red Cross, "International humanitarian law and terrorism: questions and answers", *available at*
<http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E>