

470)

SCSL-04-14-T
(13946 - 13996)

13946

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 JUDGMENT OF ACQUITTAL OF
THE THIRD ACCUSED ALLIEU KONDEWA

Office of the Prosecutor:

Chris Staker
Luc Côté
James C. Johnson
Joseph F. Kamara
Mohamed Bangura
Marco Bundi
Bianca Suci

Defence Counsel for Norman

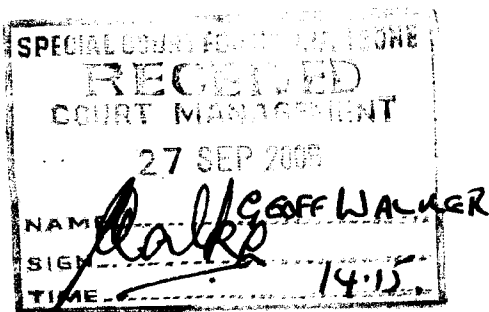
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Ibrahim Yillah
Clare da Silva

Defence Counsel for Fofana

Victor Koppe
Arrow J. Bockarie
Michiel Pestman
Andrew Ianuzzi

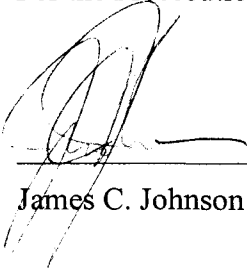
Defence Counsel for Kondewa

Charles Margai
Yada Williams
Ansu Lansana
Martin Michael



1. In accordance with the Order to the Prosecution on Filing, dated 20 September 2005, the Prosecution re-files the Prosecution Response to Motion for Judgment of Acquittal of the Third Accused Allieu Kondewa with redactions as necessary to protect the identity of the witnesses.
2. Footnotes 34, 35, 36, 124, 137 and 181 incorrectly refer to TF2-079's testimony as being in closed session. TF2-079 testified in open session with the usual witness protection measures in place. Footnote 119 incorrectly refers to TF2-005's testimony in open session, TF2-005 testified in closed session. Footnote 130 incorrectly refers to witness TF2-188; the proper reference should be TF2-222, 17 February 2005. Footnote 144 refers to witness TF2-210; the proper reference should be to witness TF2-201.

Filed in Freetown
27 September 2005
For the Prosecution



James C. Johnson

Martin Michael

CONFIDENTIAL

I. INTRODUCTION

1. The Prosecution files this Response pursuant to Rule 98 of the Rules of Procedure and Evidence ("Rules") to "Motion for Judgment of Acquittal of the Third Accused Allieu Kondewa" ("Kondewa Motion") filed on 4 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.

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.

13756
13950

CONFIDENTIAL

The amended ICTY Rule was applied for the first time in the case of *Prosecutor v Naser 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 98bis 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. In the Rule 98bis Decision in *Prosecutor v Milosevic*, the Trial Chamber determined that the test whether there is evidence, if accepted, on which a Trial Chamber could convict, would be applied on the following bases:
 - a) Where there is no evidence to sustain a charge, the Motion is to be allowed. This may also apply to *elements* of a charge.
 - b) Where there is some evidence, but it is such that, taken at its highest, a Trial Chamber could not convict on it, the Motion is to be allowed. This is true even if the weakness in the evidence derives from the *weight* to be attached to it.
 - c) Where there is some evidence, but it is such that its strength or weakness depends on the view taken of a witness’s credibility and reliability, and on one possible view of the facts a Trial Chamber could not convict on it, the Motion will not be allowed.⁵

² *Prosecutor v. Oric*, Case No. IT-03-68-T, “Oral Decision,” 8 June 2005, (“*Oric Decision*”), p. 8981-9032.

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

⁴ *Jelusic Appeal Judgement*, para. 56. See also *Prosecutor v. 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, para. 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.

⁵ See *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2, in its “Decision on Defence Motions for Judgment of Acquittal,” 6 April 2000, (“*Kordic Decision*”), at para. 28 that, “[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

CONFIDENTIAL

- d) The determination whether there is evidence on which a tribunal could convict should be made on the basis of the evidence as a whole.
 - e) Whether evidence could lawfully support a conviction must depend on the applicable law of the Tribunal and the facts of each case.
 - f) A ruling that there is sufficient evidence to sustain a conviction on a particular charge does not necessarily mean that the Trial Chamber will, at the end of the case, return a conviction on that charge.
 - g) When the Trial Chamber makes a finding that there is sufficient evidence, that is to be taken to mean that there is evidence on which a Trial Chamber could be satisfied beyond reasonable doubt of the guilt of the accused.⁶
7. 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 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.⁷

questions being raised through cross-examination as to the reliability and credibility of witnesses that the Prosecution is left without a case."

⁶ *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-T, "Decision on Motion for Judgement of Acquittal," 16 June 2004, ("Milosevic Decision"), para. 13.

⁷ *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, para. 20 ("Hadžihasanović Rule 98bis").

CONFIDENTIAL

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.*⁸

8. 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.⁹
9. 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 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 98.¹⁰ The Prosecution submits that this follows from the plain wording of Rule 98.

Decision”); citing *Prosecutor v. Strugar*, “Decision on Defence Motion Requesting Judgement of Acquittal Pursuant to Rule 98 bis,” Case No. IT-01-42-T, 21 June 2004, para. 10-20.

⁸ *Prosecutor v. Bagosora et al.*, Case No ICTR-98-41-T, “Decision on Motions for Judgement of Acquittal,” 2 February 2005, (“*Bagosora* Rule 98bis Decision”), para. 6 (emphasis added, footnotes omitted).

⁹ *Hadžihasanović* Rule 98bis Decision, para. 18.

¹⁰ *Bagosora* Rule 98bis Decision, para. 8-9, “[h]owever, 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.*

CONFIDENTIAL

10. 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.
11. 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".¹¹ 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.¹²

III. GENERAL REQUIREMENTS FOR CRIMES ALLEGED IN THE INDICTMENT

A. Article 2 of the Statute: Crimes against Humanity

12. Article 2 of the Statute list offences which constitute crimes against humanity if committed as part of a widespread and systematic attack against any civilian population.

Blagojević and Jokić, Case No. IT-02-60-T, "Judgement on Motions for Acquittal Pursuant to Rule 98bis," 5 April 2004, ("*Blagojević* Rule 98bis Judgement"), para. 16.

¹¹ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, "Decision on Defence Motions for Acquittal," 15 December 2000, para. 14.

¹² See, for instance, by way of analogy, *Semanza v. Prosecutor*, Case No. ICTR-97-20-A, "Semanza Appeal Judgement," 20 May 2005, ("*Semanza* Appeal Judgement"), 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.

CONFIDENTIAL

An attack may consist of a combination of the enumerated crimes¹³ and is not limited to the use of armed force.¹⁴ When establishing the existence of an attack, it is not relevant that the other side in a conflict also committed atrocities against its opponent's civilian population. Each attack would be equally illegitimate and crimes committed as part of it could, all other conditions being met, amount to crimes against humanity.¹⁵ Although the act need not be committed at the same time and place as the attack or share all of the features of the attack, it must, by its characteristics, aims, nature, or consequence objectively form part of it.¹⁶ The attack may be either widespread or systematic and need not be both.¹⁷ "Widespread" may be defined as a "massive, frequent, large scale action, carried out collectively with considerable seriousness" and directed against multiple victims.¹⁸ "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.¹⁹

13. 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.²⁰
- It is not necessary for the entire population of a given territory to be targeted in order for

¹³ *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, "Judgement," 21 May 1999, ("Kayishema Judgement"), para. 122; "An attack may be non-violent in nature", see *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, "Judgement," 2 September 1998, ("Akayesu Judgement"), para. 581.

¹⁴ *Prosecutor v. Vasiljevic*, Case No. IT-98-32-T, "Judgment," 29 November 2002, ("Vasiljevic Trial Judgement"), para. 29-30.

¹⁵ *Prosecutor v. Kunarac, Kovac and Vokovic*, Case No. IT-96-23&23/1-A, "Judgement," 12 June 2002, ("Kunarac Appeal Judgement"), para. 87-88.

¹⁶ *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, "Judgement and Sentence," 15 May 2003, ("Semanza Judgement and Sentence"), para. 326; *Prosecutor v. Naleilic and Martinovic*, Case No. IT-98-34-T, "Judgement," 31 March 2003, para. 234.

¹⁷ *Akayesu Judgement*, para. 579: "The attack must contain one of the alternate conditions of being widespread or systematic, not both, as in the French text of the Statute. Customary international law requires only that the attack be either widespread or systematic." See also *Kayishema Judgement*, para. 123; *Prosecutor v. Musema*, Case No. ICTR-96-13-T, "Judgement and Sentence," 27 January 2000, ("Musema Judgement"), para. 203; *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, "Judgement," 7 June 2001, ("Bagilishema Judgement"), para. 77; *Semanza Judgement and Sentence*, para. 328.

¹⁸ *Akayesu Judgement*, para. 580; *Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T&23/1-T, "Judgement," 22 February 2001, ("Kunarac Trials Judgement"), para. 431.

¹⁹ *Akayesu Judgement*, para. 580; *Prosecutor v. Tadic*, Case No. IT-94-1-T, "Opinion and Judgement," 7 May 1997, ("Tadic Opinion and Judgement"), para. 648; *Kunarac Judgement*, para. 429.

²⁰ *Akayesu Judgement*, para. 582; See also *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, "Judgement and Sentence," 6 December 1999, para. 72; *Musema Judgement*, para. 207.

CONFIDENTIAL

the acts to constitute a crime against humanity.²¹ Furthermore, a population may be considered as 'civilian' even if certain non-civilians are present. The population must be "predominantly civilian in nature,"²² and the presence of soldiers within an intentionally targeted civilian population does not alter the civilian nature of that population.²³

14. 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 context²⁴ in addition to the requisite mens rea for the underlying offence or offences with which he is charged.²⁵ The accused is not required to have identified himself with or supported the ideology, policy or plan in whose name the crimes were perpetrated.²⁶

15. The Kondewa Motion argues, recognizing the customary rule of warfare that civilians must not be attacked, that no evidence has been presented to demonstrate an attack against civilians, that to the extent that civilians were harmed they were being used unlawfully as human shields or fell into the category of legitimate collateral damage, that the attacks were proportionate to the military objective sought, that in some instances civilians spontaneously took up arms making them vigilantes or allowing the attacker to invoke the defence of self-defence, that some combatants feigned civilian status, and that civilians took a direct part in hostilities by engaging in espionage, sabotage or providing material support to a party to the conflict.²⁷ The Motion also presents an argument that the police were combatants.²⁸

16. The Kondewa Motion argues generally, with reference to its submissions relating to crimes against humanity, that the alleged victims of war crimes are not rightly classified

²¹ *Bagilishema* Judgement, para. 80

²² *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T, "Judgement," 26 February 2001, ("*Kordic* Judgement"), para. 180.

²³ *Prosecutor v. Blaskic*, Case No. IT-95-14-T, "Judgement," 3 March 2000, ("*Blaskic* Judgement"), para. 214.

²⁴ *Blaskic* Judgement, para. 247.

²⁵ *Kunarac* Appeal Judgement, para. 102; See also *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, "Judgement," 15 March 2002 ("*Krnojelac* Judgement"), para. 59; *Vasiljevic* Trial Judgement, para. 37.

²⁶ It must be proved, for example, that [a] the accused willingly agreed to carry out the functions he was performing; [b] that these functions resulted in his collaboration with the political, military or civilian authorities defining the ideology, policy or plan at the root of the crimes; [c] that he received orders relating to the ideology, policy or plan; and lastly [d] that he contributed to its commission through intentional acts or by simply refusing of his own accord to take the measures necessary to prevent their perpetration", *Blaskic* Judgement, para. 257.

²⁷ Kondewa Motion, para. 3-18.

²⁸ Kondewa Motion, para. 19-23.

CONFIDENTIAL

as civilians.²⁹ The Prosecution submits that it has demonstrated that numerous persons not directly involved in the hostilities were targeted. The question whether a particular victim was taking an active part in hostilities is a matter for factual determination on the basis of the specific circumstances surrounding that individual victim but does not detract from the evidence that numerous civilians were victims.

17. The Kondewa Motion relies on the ICTY Appeals Chamber judgement in the case of *Kunarac et al.* in its interpretation of “directed against a civilian population”.³⁰ The Prosecution agrees that it must be shown that the civilian population was the primary, rather than an incidental, target of the attack. However, it is sufficient to show that a significant number of individuals were targeted in the course of the attack, or that they were targeted in such a way as to demonstrate that the attack was directed against a civilian population rather than against a limited and randomly selected number of individuals.³¹ Witness TF2-027, for example, described how civilians were seized, rounded up and killed and how some civilians were ordered to dig mass graves.³² Witness TF2-015, a businessman, described how the Kamajors came to Tongo, lined civilians up, separated men and women and called five people out and shot them. The witness was told by Kamajors to follow the Kenema Road and together with a group of 65 civilians was taken to a house at Kamboma where eight men were shot and knives were used to kill the remaining men. The Kamajors stated that they “had been ordered to kill anyone that passed through Kamboma.”³³ Witness TF2-079 described how complaints were being made to Hinga Norman, Moinina Fofana and Kondewa, including the War Council members, that the Death Squad, the favoured group of the Third Accused, were killing people for their diamonds and looting properties.³⁴ Witness TF2-079 gave testimony that in the Black December operation Hinga Norman said, “collaborators, civilians, the police who were collaborators to the AFRC/RUF are to be treated like common enemies.”³⁵ The witness explained that the Third Accused supported

²⁹ Kondewa Motion, para. 28.

³⁰ Kondewa Motion, para. 3-4; See also *Kunarac* Appeal Judgement.

³¹ *Kunarac* Appeal Judgement, para. 90.

³² TF2-027, 22 February 2005, open session, p. 54, 68.

³³ TF2-015, 11 February 2005, open session, p. 12-15.

³⁴ TF2-079, 26 May 2005, closed session, p.44, 48.

³⁵ TF2-079, 26 May 2005, closed session, p. 51.

C O N F I D E N T I A L

Norman's statements.³⁶ The Third Accused ensured that those participating in such operations would attack the inhabitants of towns and villages fearlessly and indiscriminately.

18. The Defence does not cite any evidence that civilians were used as human shields and to the extent that there is evidence of this, it does not detract from the evidence showing deliberate attacks on civilians. In support of its arguments relating to collateral damage, the Defence makes reference to witness TF2-005 who agreed that the military attacks on Tongo, Bo and Kenema were legitimate attacks, but this comment was made in the context of the general motivation for CDF and Kamajor activities and not in the context of attacks against specific military targets. Entire towns and villages could not be described as military targets so as to legitimize collateral killings of civilians. Attacks on civilians and civilian objects are prohibited and incidental damage must be proportional to the anticipated military advantage. Moreover, collateral damage is not an issue where the military objective (legitimate or otherwise) has already been achieved and civilians are attacked during the mopping up and subsequent stages of an operation. In response to the Defence argument that the Kamajor attacks were not indiscriminate, the Prosecution submits that there is sufficient evidence to demonstrate the direct targeting of civilians and notes that the Defence does not specify which attacks should be deemed to be proportional, beyond an imprecise reference to the testimony of the military expert, witness TF2-EW1.³⁷ In the context of this case, evidence that warnings were given to civilians to leave their homes before an attack is as much evidence of the terrorization of the civilian population by flushing them out of their homes with threats to their lives should they stay behind during widespread and systematic attacks, as evidence of compliance with the laws of war.

19. As to the question whether the victims of the attacks were legally defined as civilians, the Prosecution reiterates that ample evidence has been presented confirming the civilian status of a large number of victims. It has been established in the jurisprudence that the fact that combatants may be present within a civilian population does not alter the civilian

³⁶ TF2-079, 26 May 2005, closed session, p. 53.

³⁷ Kondewa Motion, para. 7 and 9.

CONFIDENTIAL

status of that population.³⁸ The ICTY Trial Chamber in the *Blaskic* Judgement stated that “it must be remembered that the specificity of a crime against humanity results not from the status of the victim but the scale and organisation in which it must be committed.”³⁹ In the *Akayesu* Judgement, the ICTR Trial Chamber stated that “[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character”.⁴⁰

20. The Prosecution submits that children and youths who take up arms to defend themselves and describe themselves as vigilantes do not become combatants. Civilians who engage in combat do not lose their legal status as civilians and may only be opposed for such time as they take a direct part on hostilities.⁴¹ “The mere fact of having engaged in hostilities does not confer the status of a combatant on a civilian, who remains a civilian with all corresponding rights and duties.”⁴² Moreover, the jurisprudence of international tribunals has interpreted the notion of a civilian population broadly, adjudging that “the presence of those actively involved in the conflict should not prevent the characterization of a population as civilian and those actively involved in a resistance movement can qualify as victims of crimes against humanity”.⁴³ Thus, crimes against humanity include acts committed against members of a resistance movement as well as former combatants, regardless of whether or not they wore uniform, if they were no longer taking part in hostilities when the crimes were perpetrated.⁴⁴ “The specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian.”⁴⁵ These principles apply to alleged saboteurs as well as to police officers. The Defence, by attempting to enlarge the scope of persons actively involved in combat and thereby diminish the scope of targeted civilians, has failed to establish that there is no evidence capable of satisfying the Court that a material element of crimes against humanity has been proved.

³⁸ *Blaskic* Judgement, para. 214.

³⁹ *Blaskic* Judgement, para. 208.

⁴⁰ *Akayesu* Judgement, para. 582.

⁴¹ Additional Protocol I to the Geneva Convention 12 August 1949, para. 51.

⁴² D. Fleck (ed), *The Handbook of Humanitarian Law in Armed Conflicts*, §501-5.

⁴³ *The Prosecutor v. Kupreskic*, Case No. IT-95-16-T, “Judgement,” 14 January 2000 (“*Kupreskic* Judgement”), para. 549.

⁴⁴ *Blaskic* Judgement, para. 214.

⁴⁵ *Blaskic* Judgement, para. 214.

~~13765~~
13959

CONFIDENTIAL

21. In relation to the widespread or systematic nature of the attack, the Prosecution points to the evidence that the CDF campaigns spread throughout Sierra Leone in identified geographic locations. 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. 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 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.⁴⁶ 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.⁴⁷ 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.⁴⁸ TF2-151, a tailor from Kenema, witnessed the killing of a boy and was beaten up by Kamajors.⁴⁹ TF2-086 described how she was attacked and wounded by Kamajors in Bonthe.⁵⁰
22. The Prosecution submits that evidence has been presented to demonstrate that the Third 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.⁵¹ Hinga Norman, Moinina

⁴⁶ See generally, 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 and TF2-223.

⁴⁷ TF2-006, 9 February 2005, open session, p. 10-11.

⁴⁸ TF2-073, 2 March 2005, open session, p. 34, 46, 49.

⁴⁹ TF2-151, 22 September 2004, open session, p. 16-17.

⁵⁰ TF2-086, 8 November 2004, open session, p. 94-95.

⁵¹ See TF2-005, TF2-008, TF2-014, TF2-068, TF2-079, TF2-201, TF2-222.

CONFIDENTIAL

Fofana and the Third Accused were seen as being at the centre of the administration of the affairs of the Kamajors and the Third Accused, in particular, supported the Death Squad. 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.⁵² Witness TF2-021 testified that Hinga Norman arrived in helicopter with arms and ammunition, which he explained at the barri were for them to go and kill everyone at Koribundo and burn their houses. All the 'big men' were present. The big men at Base Zero were Samuel Hinga Norman, Moinina Fofana, the Third Accused and Kosseh Hindowa. Witness TF2-021 testified that the Third Accused was the initiator at Base Zero.⁵³ According to witness TF2-190, the Third Accused chaired a meeting in a town called Tihun Sogbini. At this second meeting plans were discussed aimed at targeting the rebels. The Third Accused instructed that checkpoints must be mounted.⁵⁴ TF2-222 gave evidence that at one instance the Third Accused deployed Kamajors at Sumbuya and Koribundo.⁵⁵

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

23. The existence of an armed conflict is a precondition to the applicability of Articles 3 and 4 of the Statute and has been judicially noticed in this case.⁵⁶ 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.⁵⁷ Thus, it is not necessary to prove the non-international nature of the conflict in relation to charges under Common Article 3.⁵⁸
24. 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

⁵² TF2-190, 10 February 2005, open session, p. 36-40.

⁵³ TF2-021, 2 November 04, open session, p. 48, 60.

⁵⁴ TF2-190, 10 February 05, open session, p. 14-15.

⁵⁵ TF2-222, 17 February 05, open session, p. 93.

⁵⁶ *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-PT, "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence," 2 June 2004.

⁵⁷ *Oric* Decision, p. 8987.

⁵⁸ See *Prosecutor v. Fofana*, Case No. SCSL-2004-14-AR/72(E), "Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict," 25 May 2004.

CONFIDENTIAL

their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause.⁵⁹ 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.⁶⁰

25. 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. The laws of war apply and continue to apply to the whole of the territory under the control of one of the parties to the conflict whether or not actual combat takes place there until a general conclusion of peace or a peaceful settlement is achieved. 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.⁶¹

26. 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 proves the nexus. The Kondewa Motion submits that in the context of the deaths of Kamajors taking part in initiation ceremonies, it cannot reasonably be argued that such acts were in the context of or associated with an armed conflict.⁶² The Prosecution submits that since the initiation ceremonies were carried out in an extensive manner precisely to render Kamajors fearless in battle, the nexus with the conflict is readily apparent. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Third Accused was the Chief initiator and attained the status of High Priest because of the mystical powers he possessed, and as

⁵⁹ *Prosecutor v. Tadic*, Case No. IT-94-1-A, "Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction," 2 October 1995, para. 94, 134 and 143; *Prosecutor v. Delalic et al.*, Case No. IT-96-21-A, "Judgement," 20 February 2001, ("Delalic Judgement"), para. 150-152, 160-174.

⁶⁰ *Tadic* Opinion and Judgement, para. 616.

⁶¹ *Oric* Decision, p. 8986-87.

⁶² Kondewa Motion, para. 29.

⁶³ TF2-201, 4 November 2004, closed session, p. 107.

CONFIDENTIAL

such, no Kamajor would ever go to war without his blessings.⁶⁴ Witness TF2-190 stated that the Third Accused, in the presence of Hinga Norman and Moinina Fofana, said that the Kamajors should never be afraid at the battle front as the Third Accused's spiritual power was with them.⁶⁵ Witness TF2-014 stated that Moinina Fofana and the Third Accused decided in a meeting at Base Zero that Mustapher Ngobeh must lead the attack on Bo.⁶⁶ [REDACTED]

[illegible]

_____ Witness TF2-021 testified that after being initiated, he was sent for a first mission to Masiaka, where they started shooting at the rebels.⁷⁰ The Prosecution submits that there can be no doubt as to the nexus between the acts of the Third Accused as charged in the Indictment and the armed conflict.

IV. GENERAL LEGAL AND EVIDENTIARY ISSUES

(i) Acts of terrorism and collective punishments

27. The Kondewa Motion argues that additional elements, not included in the Prosecution Pre-Trial Brief which is cited as a source, are required to prove the crime of terrorizing the civilian population. These include: “The accused or a subordinate engaged in violent conduct of a dimension involving intense fear or anxiety and extreme danger to human life”; and “The conduct of the accused or a subordinate was premeditated and motivated by a political, ethnic, religious or ideological goal”.⁷¹

⁶⁴ TF2-008, 16 November 2004, open session, p. 38-40, 49.

⁶⁵ TF2-190, 10 February 2005, open session, p. 45.

⁶⁶ TF2-014, 14 Mach 05, open session, p. 20-21.

⁶⁷ TF2-068, 17 November 2004, closed session, p. 87-88.

⁶⁸ TF2-005, 15 February 2005, closed session at p. 105-106.

⁶⁹ TF2-082, 17 September 2004, closed session, p. 19.

⁷⁰ TF2-021, 2 November 2004, open session, p. 43-45.

⁷¹ Kondewa Motion, p. 17-18.

CONFIDENTIAL

28. The Prosecution makes its submissions as to the elements of the crime of terrorizing the civilian population with reference to the *Galic* Judgement, and noting the Majority's view in that case that it was only necessary to decide whether the Tribunal had jurisdiction over the crime of terror to the extent relevant to the charge in that case.⁷² 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." Evidence of terrorization of civilians has also been factored into convictions on other charges in ICTY cases.⁷³
29. 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,⁷⁴ 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.⁷⁵ Terror may be taken to connote extreme fear.⁷⁶
30. "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.⁷⁷ 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.

31. Thus, according to the Prosecution, the elements of the crime are as follows:

⁷² *Prosecutor v. Galic*, Case No. IT-98-29-T, "Judgement and Opinion," 5 December 2003, ("*Galic* Judgement"), para. 87.

⁷³ See *Galic* Judgement, para. 66, footnote 114.

⁷⁴ W. Fenwick, 'Attacking the Enemy Civilian as a Punishable Offence', *Duke Journal of Comparative and International Law*, Vol. 7, 1997, 539 at 562.

⁷⁵ *Galic* Judgement, para. 134.

⁷⁶ *Galic* Judgement, para. 137.

⁷⁷ *Galic* Judgement, para. 136; See also Additional Protocol II to the Geneva Convention 12 August 1949, Article 13.

CONFIDENTIAL

- 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;
- 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.⁷⁸

32. The Prosecution submits that it is not necessary to prove that the conduct was politically motivated and premeditated. 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."⁷⁹ 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. For instance, as is stated on the website of the International Committee of the Red Cross (ICRC):

"These provisions [referring to "terrorism"] are 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

⁷⁸ *Galic* Judgement, para. 133.

⁷⁹ For example, the UK Terrorism Act of 2000 defines terrorism as "(a) the use or threat of action where the action falls within subsection (2) and (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause." Black's law dictionary defines terrorism as: "the use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct".

CONFIDENTIAL

terrorise civilians, for example campaigns of shelling or sniping of civilians in urban areas.”⁸⁰

33. The Kondewa Motion also cites an article appearing in the ILSA Journal of International and Comparative Law which, although informative, does not explain the inclusion of the elements proposed in the context of a violation of Common Article 3 and Additional Protocol II.⁸¹

(ii) Ransom Evidence

34. The Kondewa Defence submits that it is not clear what inference should be drawn from evidence of the Third Accused taking part in a number of schemes to extort money from family members of persons in his custody and under which crime of the indictment such acts are alleged.⁸²

35. While a Rule 98 Motion is not the place to raise questions of clarification of the Indictment, the Prosecution submits that the “ransom evidence” concerned fits under both looting under Count 5 and terrorizing the civilian population under Count 6. The prerequisites of the former are fulfilled as soon as the perpetrator appropriated certain private or public property and the appropriation was without the consent of the owner; the latter encompasses both threats and acts of violence. The Prosecution has provided evidence of similar “ransom” or “blackmailing” incidents where the civilian population were threatened by Kamajors and, as a consequence, deprived of their property. These incidents followed a similar pattern, spreading throughout the south eastern parts of the country.

36. Witness TF2-147 testified that he had to pay Kamajors money to protect people in his compound. If he failed to pay, they threatened that they would be killed. Money was

⁸⁰ See International Committee of the Red Cross, “International humanitarian law and terrorism: questions and answers”, <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/0F32B7E3BB38DD26C1256E8A0055F83E>.

⁸¹ The full citation is S. Tiefenbrun, “A Semiotic Approach to a Legal Definition of Terrorism”, ILSA J. INT’L & COMP. L., vol. 9, 2003, 357, 362. Notably, the author states that attempts by scholars to define the term can be reduced to five basic elements which do not include the elements put forward by the Defence. The five elements are: 1) The perpetration of violence by whatever means; 2) The targeting of innocent civilians; 3) With the intent to cause violence or with wanton disregard for its consequences; 4) For the purpose of causing fear, coercing or intimidating an enemy; 5) In order to achieve some political, military, ethnic, ideological, or religious goal.

⁸² Kondewa Motion, para. 38.

CONFIDENTIAL

given by the witness to protect one Koroma and the Third Accused was present when the money (600,000 Leones) was handed over. Later the Third Accused took Koroma away. The witness also paid money to protect others, including Chief Bureh Kalo.⁸³

37. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

38. Witness TF2-088 testified that the Kamajors took 41,000 Leones from the witness. He was then lashed by ten different Kamajors as well as beating him. A woman came and paid another 5,000 Leones for his release. She also cut off the FM rope.⁸⁵

39. Witness TF2-056 gave evidence that he found the Limba man being beaten in front of Hindowa, a Kamajor commander. Hindowa said if he was paid 100,000 Leones they would release the man. The witness paid the 100,000 Leones. The witness paid another Kamajor commander, Moses Sandy, the sum of 110,000 Leones for the release of the two men; and 10 bushels of rice. The witness also paid for the release of another Limba man, a neighbor, who was arrested as junta. The man was beaten and made to roll on the ground. Later, the witness paid 300,000 Leones to the Kamajor leader, Abu Tawa, for the man's release. The witness paid for the release of a woman who had been the cook for Mosquito.⁸⁶

40. Witness TF2-166 testified that the Kamajors took 500,000 Leones offered by the witness' father and refused to let him free and they threatened to kill him.⁸⁷

41. Finally, witness TF2-096 testified that by the time she arrived at Nyandehun her friend was in a cage. The Third Accused and Kamajors were present. People gathered to try and help the girl. The witness's husband said that the Third Accused wanted 40,000 Leones to release the girl. The money was given by the husband to the Third Accused.⁸⁸

⁸³ TF2-147, 10 November 2004, open session, p. 54, 56, 60-62.

⁸⁴ TF2-071, 11-12 November 2004, closed session, p. 46-48.

⁸⁵ TF2-088, 26 November 2004, open session, p. 35-37.

⁸⁶ TF2-056, 6 December 2004, p. 69-70, 76, 79-80, 82-83.

⁸⁷ TF2-166, 8 March 2005, open session, p. 64.

⁸⁸ TF2-096, 8 November 2004, open session, p. 35-40.

CONFIDENTIAL

(iii) Inferences from Circumstantial Evidence

42. The Kondewa Defence argues with respect to several counts of the Indictment, including Counts 1, 2 and 5, that "there are other inferences possible from circumstantial evidence" apart from the one the Prosecution is asking the Trial Chamber to draw and that on this basis the Trial Chamber should find that there is insufficient evidence for a finding of guilt.⁸⁹ The Prosecution reiterates that under Rule 98 the Trial Chamber should not assess the reliability or credibility of witnesses or evaluate the weight to be given to evidence. Thus, this is not the time for the Trial Chamber to assess which inference to draw where two or more reasonable inferences may be drawn from credible evidence.⁹⁰ In any event, the Prosecution asserts that it has presented credible evidence capable of supporting a conviction on all counts of the Indictment. The evidence has shown, for example, that crimes were committed by members of the CDF, largely Kamajors. Amongst others, witness TF2-188 gave evidence a Kamajor killed her mother; "She was tied up and hit with a stick."⁹¹ [REDACTED] TF2-189 witnessed that a Kamajor cut her husband's throat and remove his head.⁹³ More evidence can be found in the tendered documents, where, amongst others, Human Rights Watch documented numerous abuses, including killings and torture, by members of the Civilian Defence Forces, frequently referred to in local dialects "traditional hunters."⁹⁴ Many witnesses testified of abuses committed by Kamajors spoke of the grotesque nature of killings, at times including disembowelment followed by consumption of vital organs, such as the heart.⁹⁵
43. The Defence submits that regarding Count 8, the Prosecution failed to distinguish among the very different activities engaged in by initiators, namely that some ceremonies were

⁸⁹ Kondewa Motion, para. 26-29, 34.

⁹⁰ See *Blagojević* Rule 98bis Judgement, para. 14-15.

⁹¹ TF2-188, 31 May 2005, p. 17.

⁹² TF2-223, 28 September 2004, closed session, p. 79-86.

⁹³ TF2-189, 3 June 2005, open session, p. 12.

⁹⁴ Annex 42. Sierra Leone: Sowing Terror. Atrocities against Civilians in Sierra Leone, Vol. 10, No. 3(A) July 1998, Human Rights Watch, p. 24, Decision Prosecution Request to Admit into Evidence Certain Documents pursuant to Rules 92 BIS and 89, ("Evidence Decision"), 15 July 2005.

⁹⁵ Annex 42. Sierra Leone: Sowing Terror. Atrocities against Civilians in Sierra Leone, Vol. 10, No. 3(A) July 1998, Human Rights Watch, p. 24, Evidence Decision.

CONFIDENTIAL

meant to initiate those who would engage in fighting whereas others were meant only to immunize or protect them. According to the Defence it is clear that some witnesses who were the subject of evidence of child soldier recruitment were in fact trained by rebels and given protection, food and shelter by the Kamajors.⁹⁶ The Prosecution reiterates its arguments relating to the Rule 98 standard and notes that Prosecution called several witnesses who clearly and unambiguously stated that they were initiated to become “child soldiers” and subsequently deployed to combat zones. Witness TF2-021 testified that after being initiated, he was given a two pistol-grip gun, and he was shown how to use it. Then the witness would go on mission to attack surrounding villages and catch people – women.⁹⁷ More evidence can be found in the tendered documents, that “Sierra Leone’s pro-government militia, popularly known as the Kamajor, has admitted to recruiting thousands of children into its ranks to fight the remnants of the ousted military junta.”⁹⁸

V. INDIVIDUAL CRIMINAL RESPONSIBILITY

44. The Third Accused is charged with individual criminal responsibility under both Articles 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.⁹⁹ Additionally, the Third Accused is charged with committing the crimes

⁹⁶ Kondewa Motion, paras. 36-37.

⁹⁷ TF2-021, 2 November 2004, p. 43-45.

⁹⁸ 222. Children – SL Militia Admits Recruiting Child Soldiers, 29 June 1998, Inter Press Service, Lansana Fofana, p. 1, Evidence Decision.

⁹⁹ *Delalic* Judgement, para. 745; *Prosecutor v. Brdanin*, Case No. IT-99-36-T, “Judgement,” 1 September 2004, (“*Brdanin* Judgement”), para. 284-285.

C O N F I D E N T I A L

charged in the Indictment by his participation in a joint criminal enterprise. The Motion essentially moves for a judgment of acquittal on all counts in relation to all modes of liability.

A. Individual Criminal Responsibility under Article 6(1)**(i) Planning, instigating, ordering, committing, and aiding and abetting**

45. Planning is the contemplation of a crime and the undertaking of steps to prepare and arrange for its execution.¹⁰⁰ Instigating means prompting another to commit an offence¹⁰¹ and is punishable only where it leads to the actual commission of an offence desired by the instigator.¹⁰² However, the Prosecution submits that it is sufficient to prove that the instigation contributed to the perpetration of the crime.¹⁰³ Both acts and omissions may constitute instigating, which covers express as well as implied conduct.¹⁰⁴ Ordering a crime entails responsibility when the person in a position of authority uses that authority to convince another to commit an offence,¹⁰⁵ even in the absence of a formal superior-subordinate relationship.¹⁰⁶ The Prosecution submits that an accused may be found guilty of planning or ordering even if the contemplated crime was not executed.¹⁰⁷
46. 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.¹⁰⁸ The existence of a plan or order and the requisite *mens rea* may be proved by circumstantial evidence.¹⁰⁹

¹⁰⁰ *Akayesku* Judgement, para. 480; *Brdanin* Judgement, para. 268.

¹⁰¹ *Akayesku* Judgement, para. 482; *Blaskic* Judgement, para. 280; *Brdanin* Judgement, para. 269.

¹⁰² *Akayesku* Judgement, para. 482.

¹⁰³ *Brdanin* Judgement, para. 269.

¹⁰⁴ *Brdanin* Judgement, para. 269.

¹⁰⁵ *Akayesku* Judgement, para. 483.

¹⁰⁶ *Kordic* Judgement, para. 388; *Brdanin* Judgement, para. 270.

¹⁰⁷ Regarding ordering, see discussion in A. Casesse, *International Criminal Law* (N.Y., Oxford University Press, 2003), 194. Regarding planning see *Kordic* Judgement, para. 386 and contra *Akayesku* Judgement, para. 473.

¹⁰⁸ *Brdanin* Judgement, para. 269; *Blaskic* Judgement, para. 278.

¹⁰⁹ *Delalic* Judgement, para. 326-8; *Blaskic* Judgement, para. 279 and 281.

CONFIDENTIAL

47. 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.¹¹⁰
48. 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 during or after the act of the principal.¹¹¹ The acts of the principal offender that the accused is alleged to have aided and abetted must be established.¹¹² 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.¹¹³ The presence of a superior at the scene of a crime may be viewed as an indicator of, but is not sufficient to prove, encouragement or support.¹¹⁴
49. The required mens rea is knowledge in the sense of awareness that the acts of the accused assisted in the perpetration of the crime.¹¹⁵ 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."¹¹⁶ 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.¹¹⁷
50. The Prosecution also submits that to be guilty of planning, instigating or ordering, it is not necessary to show that the accused planned, instigated or ordered the specific crime,

¹¹⁰ *Prosecutor v. Kvočka et al.*, ICTY IT-98-30/1-T, Judgement, 2 November 2001, ("Kvočka Judgement"), para. 251; *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999, ("Tadić Appeal Judgement"), para. 188; *Prosecutor v. Simić et al.*, IT-95-9-T, Judgement, 17 October 2003, para. 137.

¹¹¹ *Tadić Appeal Judgement*, para. 229; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1, "Judgement on Appeal," 30 May 2001, paras 163-164; *Prosecutor v. Mucic*, Case No. IT-96-21-A, "Judgement," 20 February 2001, ("Celebici Appeal Judgement"), para. 352; *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, 10 December 1998, para. 235 and 249; *Vasiljević Trial Judgement*, para. 70-71; *Prosecutor v. Vasiljević*, Case No. IT-98-32-A, "Judgement," 25 February 2004 ("Vasiljević Appeal Judgement"), para. 102; *Prosecutor v. Naletilić*, Case No. IT-98-34-T, "Judgement," 31 March 2003, para. 63; *Prosecutor v. Simić*, Case No. IT-95-9, 17 October 2003, para. 161.

¹¹² *Brdanin Judgement*, para. 271.

¹¹³ *Brdanin Judgement*, para. 271.

¹¹⁴ *Brdanin Judgement*, para. 271.

¹¹⁵ *Vasiljević Appeal Judgement*, para. 102; *Prosecutor v. Blaskić*, Case No. IT-95-14-A, "Judgement," 29 July 2004, ("Blaskić Appeal Judgement"), para. 49.

¹¹⁶ *Brdanin Judgement*, para. 272.

¹¹⁷ *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, "Judgement," 24 March 2000, para. 162.

CONFIDENTIAL

or each of the specific crimes, alleged in the indictment. For instance, suppose that an accused participates in the creation of a general plan, or gives a general order, to the effect that no quarter should be given to enemy combatants, or that all villages that are "sympathizers of the enemy" should be eliminated. Suppose that others further down in the chain of command then create plans in more detail to give effect to the general plan, or give more specific orders in order to implement the general order, in which individuals who are deemed to be sympathizers of the enemy are identified, and the means by which they are to be eliminated are specified. Suppose that these identified persons are then killed, imprisoned or terrorized into submission, pursuant to the specific orders, by others even further down in the chain of command. In this example, it is submitted that the accused would be responsible for planning or ordering the crimes in question, even though the accused personally did not determine the specific victims of the crimes, or the specific fate of each victim.

51. In the present case, the Prosecution submits that it would be open to a reasonable trier of fact to conclude on the basis of all of the evidence that all of the crimes alleged in the Indictment were committed pursuant to a single campaign of which the Third Accused was one of the planners and instigators, and which the Third Accused gave orders to implement. On that basis, the Prosecution submits that it would be open to a reasonable trier of fact to conclude that the Third Accused is guilty of planning, instigating and ordering all of the crimes alleged in the Indictment.
52. The Defence Motion contends that there is insufficient evidence of direct participation in crimes pursuant to Article 6(1) of the Statute. On the contrary the Prosecution submits that witnesses TF2-005, TF2-008, TF2-017, TF2-014, TF2-068, TF2-073, TF2-079, TF2-188, TF2-190, TF2-201, TF2-222, and TF2-223 in particular, all presented cogent incriminating evidence against the Accused to support the allegation of individual criminal responsibility by planning, instigating, ordering, committing or aiding and abetting.

53. The Defence contends that the Evidence shows that the Third Accused was not a member of the War Council. And even if he participated in the War Council, the Evidence did not show that the War Council was in charge of the planning function.¹¹⁸

54. The prime leadership and effective control of the CDF was in the hands of Hinga Norman as National Coordinator, Moinina Fofana as Deputy Director of War, and the Third Accused 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]
[REDACTED]
[REDACTED]
[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 completely sidelined by Hinga Norman in March 1998. It was at Base Zero that the accused, planned, coordinated, directed, trained and commanded the attacks on Tongo, Bo, Koribundo and Kenema.¹²⁰ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

55. Another witness who was present at a meeting when the planning for the attack on Tongo was discussed described how Hinga Norman had convened the meeting, and was present together with Moinina Fofana, the Third Accused, some members of the War Council and some commanders. Hinga Norman wrote out the requirements for the commanders who were to go to Tongo and supplies were provided to the commanders.¹²²

¹¹⁸ Kondewa Motion, para. 44-45.

¹¹⁹ TF2-005, 15 February 2005, open session, p.102.

¹²⁰ TF2-005, TF2-008, TF2-011, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222.

¹²¹ TF2-005, 15 February 2005, closed session, p. 106.

¹²² TF2-201, 4 November 2004, closed session, p.106-107.

CONFIDENTIAL

56. The Defence submits that there is no evidence that the Third Accused encouraged or prompted any Kamajor to commit an offence.¹²³ To the contrary there is ample evidence that he gave warnings against interferences with Kamajors, especially with regards to discipline, and actively favored the Death Squad.¹²⁴

57. [REDACTED]

58. TF2-188 gave graphic evidence that Third Accused gave orders for her mother to be killed.¹²⁶ The witness met her mother who told her the Kamajors were going to kill her. Her mother told her that the Third Accused had ordered that she be killed. The mother was later killed in the presence of the witness. She was tied up and hit with a stick. The witness saw her mother's throat slit from the navel, using a machete and a stick.¹²⁷ Under cross examination, the witness identified the Third Accused as the person who ordered the death of her mother.¹²⁸ No question of mistaken identity was alleged, and neither was the substantive act of the order to kill challenged under cross-examination.

59. The Prosecution presented evidence of the Third Accused's effective participation in the military strategy and operations of the Kamajors. The fact that the Third Accused is illiterate does not deprive him of ordering or instigating crimes.¹²⁹ TF2-222 gave evidence that at one instance the Third Accused deployed Kamajors at Sumbuya and Koribundo.¹³⁰ Records of unlawful killings, physical violence and mental suffering and

¹²³ Kondewa Motion, para. 46-48.

¹²⁴ TF2-079, 26 May 2005, closed session, p. 48-49

¹²⁵ TF2-223, 28 September 2004, closed session, p. 110-112.

¹²⁶ TF2-188, 31 May 2005, open session, p. 15.

¹²⁷ TF2-188, 31 May 2005, open session, p. 15-18.

¹²⁸ TF2-188, 31 May 2005, open session, p. 31.

¹²⁹ Kondewa Motion, para. 48.

¹³⁰ TF2-188, 31 May 2005, open session, p. 93.

CONFIDENTIAL

looting and burning were presented to the Trial Chamber, consequent to the Third Accused's deployment order.¹³¹

60. 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, the Third Accused and others. Mustapha Fallon who is also a Kamajor was killed because the Third Accused wanted human sacrifice in order to guarantee the protection of the fighters.¹³²
61. TF2-014 gave evidence of the direct commission of an unlawful killing by the Third Accused in his presence. The witness stated that he knew Alpha Dauda Kanu, a Kapra who was killed in an oil palm plantation when going towards Mokusi. Kanu was killed by the Third Accused, Hinga Norman and Moinina Fofana. "He was hacked to death, and we took off his skin." 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."¹³³ In his testimony the witness gave additional evidence of the Third Accused's direct act of committing murder when he narrated an incident where Kamajors were asked to leave Sogbini Chieftdom by the Paramount Chief, because the Third Accused killed and burnt an initiate who did not survive the initiation process.¹³⁴
62. The Prosecution submits that direct criminal liability was also manifest in the evidence of TF2-096 when she testified that one day the she was collecting water from the well near Hinga Norman's house when she saw Kamajors singing. The Third Accused was leading the group, in which two people were dancing. She saw the Third Accused shoot a town commander. The town commander had been appointed by the rebels and that is why he was shot. The next day she saw two graves, and a Kamajor told her that those were the graves of the two people who were dancing.¹³⁵
63. Witness TF2-079 testified that Moinina Fofana introduced him to the Third Accused. He was introduced as the chief of all the initiators, the High Priest. He was the chief of all the initiators in Sierra Leone. Evidence was led to show the importance and placement of the

¹³¹ See TF2-012, TF2-032, TF2-157, TF2-159, TF2-162 and TF2-190.

¹³² TF2-014, 10 March 2005, open session, p. 50-52.

¹³³ TF2-014, 10 March 2005, open session, p. 55.

¹³⁴ TF2-014, 10 March 2005, open session, p. 16.

¹³⁵ TF2-096, 8 November 2004, open session, p. 24-27.

CONFIDENTIAL

Third Accused in the hierarchy of the Kamajors. Hinga Norman, National Coordinator, Moinina Fofana, National Director of War, the Third Accused, High Priest. The Third Accused was third in command and privy to all inner core war planning meetings.¹³⁶ At Base Zero, there were different meeting locations, called Walihuns. Only important and secret meetings of the leaders were held in Walihun I, which was attended by Chief Norman, the Third Accused, Moinina Fofana, and top commanders whom they suggest to attend.¹³⁷ Thus, the Third Accused had intimate and integral knowledge of the war machinery of the Kamajor militia.

64. This testimony clearly contradicts the Defence argument that the Third Accused did not participate in military operations, nor command any troops.¹³⁸
65. Witness TF2-073 gave evidence that in November of 1997, the Kamajors went on a rampage at Sembehun and looted a lot of properties from civilians and brought the loot back to their base in the town.¹³⁹ The next day, a new contingent of Kamajors came to the house of the witness and surrounded him with guns. They said they were Kamajors from their high priest, the Third Accused, and that they were coming from Talia, Tihun, Gbangbatoke and other villages around. The Kamajors saw the Mercedes Benz of the witness and removed it. On a Sunday, in Bo, the witness saw Third Accused relaxing at the back being driven in witness' car with a mounted flag, and an inscription on the car- "King Kindo".¹⁴⁰ This piece of evidence suggests a blatant display of the benefits of random and deliberate looting. It also unequivocally confirms actual knowledge and endorsement of the acts of looting on the part of the Third Accused.
66. With regard to the use of child soldiers, witness TF2-079 testified that he saw children carrying "AK47's, grenades and some were having machetes." The witness saw them patrolling with the commanders of Base Zero and some were used as bodyguards. For example the Third Accused had a child soldier as a bodyguard at Base Zero.¹⁴¹

¹³⁶ See TF2-005, TF2-011, TF2-008, TF2-014, TF2-190, TF2-201, TF2-222.

¹³⁷ TF2-079, 26 May 2005, closed session, p. 38-39.

¹³⁸ Kondewa Motion, para. 61.

¹³⁹ TF2-073, 2 March 2005, open session, p. 30-33.

¹⁴⁰ TF2-073, 2 March 2005, open session, p.45.

¹⁴¹ TF2-079, 27 May 2005, open session, p. 12-13.

CONFIDENTIAL

67. Evidence of the Third Accused's direct role in the attack on Bo, was presented through the testimony of Witness TF2-008. He gave evidence that the War Council recommended to Hinga Norman that the Kamajors should now concentrate on taking Bo, and ignore Freetown. The planning and implementation was left in the hands Hinga Norman, Moinina Fofana and the Third Accused.¹⁴² This piece of evidence taken in context with other facts in issue, such as the direct orders to loot and kill by Hinga Norman, in the presence of the Third Accused and his tacit support goes to show the substantial contribution of the Accused to the commission of the crimes by Kamajors in the course of the Bo attack.

68. [REDACTED]

69. [REDACTED]

70. The Prosecution submits that sufficient evidence has been presented that the Third Accused planned, instigated, ordered and aided and abetted the crimes charged in the Indictment and on the basis of which a reasonable trier of fact could conclude that the Third Accused had effective control over Kamajors' subordinates.

(ii) Joint Criminal Enterprise

71. 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.¹⁴⁶

¹⁴² TF2-008, 16 November 04, open session, p. 93-94.

¹⁴³ TF2-201, 4 November 2004, closed session, p. 107.

¹⁴⁴ TF2-210, 4 November 2004, closed session, p.72.

¹⁴⁵ TF2-201, 5 November 2004, closed session, p.56.

¹⁴⁶ *Tadic*, Appeal Judgement, para. 190; *Vasiljevic* Appeal Judgement, para. 95; *Prosecutor v. Ojdanic*, "Appeal Decision on Motion Challenging Jurisdiction – Joint Criminal Enterprise," 20 May 2003, para. 20; *Prosecutor v.*

72. Furthermore, an accused can be found criminally liable for aiding and abetting the participants of a joint criminal enterprise. Where this occurs, the accused will be criminally responsible for aiding and abetting all of the crimes that were committed in the course of that joint criminal enterprise.¹⁴⁷ For the reasons given below, it would be open to a reasonable trier of fact to conclude that all of the crimes alleged in the Indictment were committed as part of a single joint criminal enterprise of which the Third Accused was a participant. The evidence below that the Third Accused aided and abetted the crimes alleged in the Indictment could therefore also be taken by a reasonable trier of fact to be evidence that the Third Accused aided and abetted the joint criminal enterprise, and that accordingly, he aided and abetted all of the crimes alleged in the Indictment.

73. The following elements establish the existence of a joint criminal enterprise:¹⁴⁸

- 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
- 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.¹⁴⁹

74. 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

Milorad Krnojelac, Case No. IT-97-25-A, “Judgement,” 17 September 2003 (“*Krnojelac Appeal Judgement*”), para. 28-32, 73; *Brdanin Judgement*, para. 258.

¹⁴⁷ See *Prosecutor v. Vasiljević, Judgement*, Case No. IT-98-32-A, Appeals Chamber, 25 February 2004, para. 102 (“In the context of a crime committed by several co-perpetrators in a joint criminal enterprise, the aider and abettor is always an accessory to these co-perpetrators, although the co-perpetrators may not even know of the aider and abettor’s contribution”); see also *Kvočka Judgement*, para. 249.

¹⁴⁸ *Kvočka Judgement*, para. 266; See also *Tadić Appeal Judgement*, para. 227.

¹⁴⁹ *Brdanin Judgement*, para. 265; See also *Tadić Appeal Judgement*, para. 228.

C O N F I D E N T I A L

circumstances.¹⁵⁰ 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.¹⁵¹ 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.¹⁵²

75. The Kondewa Motion concedes that the element of a plurality of persons in this case is met.¹⁵³
76. The Indictment alleges that Hinga Norman, Moinina Fofana and the Third Accused 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 not actively resist the RUF/AFRC occupation of Sierra Leone."¹⁵⁴ The Kondewa Motion argues that the common purpose of the CDF and the "organized system through which the Kamajors came to function existed to further the legitimate goal of restoring democracy and protecting the lives and property of civilians during a devastating time in the country's history".¹⁵⁵
77. The Prosecution submits that a liberation effort fuelled by an intent to kill 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.
78. The evidence in relation to planning has been set out above and the Prosecution submits that this evidence demonstrates a clear 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

¹⁵⁰ *Tadic* Appeal Judgement, para. 227; *Krnjelac* Trial Judgement, para. 80.; *Simic* Trial Judgement, para. 158, (esp. footnote 288; *Prosecutor v. Furundzija*, IT-95-17/1-A, Judgement, 21 July 2000, para. 119.).

¹⁵¹ *Brdanin* Judgement, para. 263.

¹⁵² *Brdanin* Judgement, para. 263.

¹⁵³ Kondewa Motion, para. 63.

¹⁵⁴ Indictment, 4 February 2004, para. 19.

¹⁵⁵ Kondewa Motion, para. 59.

CONFIDENTIAL

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.¹⁵⁶ 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. Hinga Norman gave orders to subordinates that were carried out, and he received reports from subordinates about the execution of these orders.¹⁵⁷ Therefore, the Defence Submission that the Prosecution failed to establish that the Accused were not “sharing some nefarious plan to commit crimes, the Kamajors to which Kondewa belonged, were fighting to protect democracy, restore the democratically elected government and not to enrich themselves” is contrary to the evidence.

79. On the basis of the evidence, it would be open to a reasonable trier of fact to conclude that the objectives of what was portrayed as a defensive policy and strategy could only be realized 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 to district.
80. 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 Koribundu barri held by Hinga Norman at which Moinina Fofana and the Third Accused were introduced. Hinga Norman stated that he had authorized the Kamajors to burn the whole town and kill everyone in it.¹⁵⁸ Witness TF2-222 gave evidence that Hinga Norman addressed a passing out parade of Kamajor fighters, in the presence of Moinina Fofana and the Third Accused, in which he stated that no Junta Forces or their collaborators must be spared in Tongo, since Tongo determines who wins the war.¹⁵⁹ TF2-159 testified that at a meeting at the Barri Hinga Norman introduced Moinina Fofana to and the Third Accused who were present.¹⁶⁰ TF2-008 gave evidence that Hinga Norman, Moinina Fofana and the

¹⁵⁶ TF2-008, 16 November 2004, open session, p.82.

¹⁵⁷ See TF2-014, TF2-017, TF2-079, TF2-223.

¹⁵⁸ TF2-159, 9 September 2004, open session, p. 75.

¹⁵⁹ TF2-222, 17 February 05, open session, p. 110.

¹⁶⁰ TF2-159, 9 September 2004, open session, p. 51-52.

CONFIDENTIAL

Third Accused were seen at the centre of administering the affairs of the Kamajors and because of this, the Kamajors relied on these three men.¹⁶¹ Witness TF2-188 testified that her mother told her that the Third Accused had ordered that she be killed. Her mother was later killed in the presence of the witness. The witness identified the Third Accused as the person who ordered the death of her mother.¹⁶² Witness TF2-189 gave evidence that Nulele, a Kamajor, told the witness that the 'plane' which came to Talia carried Norman who had brought guns and ammunition for the Third Accused. Nulele told her the Third Accused was their leader and he was the one who initiated him into the Kamajor society. Furthermore, the Third Accused trained Kamajors on the big field.¹⁶³

81. Alternatively, it would be open to a reasonable trier of fact to conclude that the full extent of the crimes committed by the three 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, supporters, sympathizers and collaborators.
82. On the basis of the evidence, a reasonable trier of fact could conclude that 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.
83. The evidence indicates that the Third Accused was High Priest of the CDF and a member of the War Council. Together with Hinga Norman he presided over all meetings where battle plans were made and was physically present in was planning meetings and at the issuing of directives and commands to the CDF. He prepared fighters for battle by providing immunization against bullets to make them fearless. He intended that subordinates, including children, would fearlessly commit unlawful killings, physical

¹⁶¹ TF2-008, 16 November 2004, open session, p. 51.

¹⁶² TF2-188, 31 May 2005, open session, p. 16, 31.

¹⁶³ TF2-189, 3 June 2005, open session, p. 14.

CONFIDENTIAL

violence lootings and burnings. Alternatively, he participated in the enterprise with the awareness that such crimes were a possible consequence of its execution.

84. The Prosecution submits that it would be open to a reasonable trier of fact, on the basis of the evidence of a joint criminal enterprise as outlined here and when considered together with the evidence as a whole, to convict the Third Accused. It would be open to a reasonable trier of fact to conclude that all of the crimes alleged in the Indictment were committed as part of a single joint criminal enterprise of which the Third Accused was a participant, and that accordingly the Third Accused is guilty of committing (as a participant in a joint criminal enterprise) all of the crimes alleged in the Indictment.

B. Superior Responsibility under Article 6(3)

85. 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.

86. The existence of a superior-subordinate relationship is characterized by a direct or indirect,¹⁶⁴ 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.¹⁶⁵ "Effective control is defined as the material ability to prevent or punish the commission of the offence."¹⁶⁶

87. As regards 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

¹⁶⁴ *Celebici Appeal Judgement*, para. 252.

¹⁶⁵ *Delalic Judgement*, para. 378; *Brdanin Judgement*, para. 276.

¹⁶⁶ *Brdanin Judgement*, para. 276.

CONFIDENTIAL

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.¹⁶⁷ "Knowledge may be presumed if a superior had the means to obtain the relevant information of a crime and deliberately refrained from doing so."¹⁶⁸

88. 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.¹⁶⁹ 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.¹⁷⁰ "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."¹⁷¹ What constitutes such measures is not a matter of substantive law but of evidence.¹⁷² It is not necessary that the superior's failure to act caused the commission of the crime.¹⁷³

89. 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.¹⁷⁴

(i) Superior-Subordinate Relationship – effective control

90. The Defence submits that the fact that the Third Accused as Chief Priest and Holy Ghost of the Kamajor Trinity was given power and responsibility relative to the initiation and immunization ceremonies conducted does not establish a hierarchy and certainly does not place him at the head of it.¹⁷⁵ Furthermore, the Defence submits that the presented evidence gives only vague reference to the Third Accused as being a "big Kamajor".

¹⁶⁷ *Celebici Appeal Judgement*, para. 223, 241; *Brdanin Judgement*, para. 278.

¹⁶⁸ *Brdanin Judgement*, para. 278.

¹⁶⁹ *Delialic Judgement*, para. 395; *Prosecutor v. Stakic*, Case No. IT-97-24-T, "Judgement," 31 July 2003, ("Stakic Trial Judgement"), para. 423; *Brdanin Judgement*, para. 279.

¹⁷⁰ *Kordic Trial Judgement*, para. 446; *Stakic Trial Judgement*, para. 461.

¹⁷¹ *Brdanin Judgement*, 279.

¹⁷² *Blaskic Appeal Judgement*, para. 72; *Brdanin Judgement*, para. 279.

¹⁷³ *Delialic Judgement*, para. 398; *Kordic Trial Judgement*, para. 447; *Brdanin Judgement*, para. 279.

¹⁷⁴ *Brdanin Judgement*, para. 281-283.

¹⁷⁵ *Kondewa Motion*, para. 77.

C O N F I D E N T I A L

91. This may be the theory of the Kondewa Defence. However, at this stage in the proceedings, it certainly cannot be suggested that there is no evidence meeting the Rule 98 standard to establish the Third Accused's position of authority. There is evidence to show that the Third Accused exercised effective command and control over the Kamajors, and that he was one of the three pillars of leadership of the CDF. The Third Accused was the chief architect and grand master of the morale and psychological components of the CDF military strategy and operations. His powers were shrouded in mysticism and a token of holiness.¹⁷⁶
92. The position of the Third Accused in directing the planning and strategy of the CDF military operations was evident when witness TF2-014 stated that Moinina Fofana and the Third Accused decided in a meeting at Base Zero that Mustapher Ngobeh must lead the attack on Bo.¹⁷⁷ The role of the Third Accused cannot be under-emphasized in this instance, as the choice of a commander to lead a military attack on Bo, the second largest city of Sierra Leone will definitely reside in the wisdom of the uppermost leadership of the armed faction. There is a sufficient evidence to suggest that indeed the Third Accused was a core component of the Kamajor leadership.¹⁷⁸
93. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Witness TF2-079 testified that the Third Accused gave military instructions to Kamajors.¹⁸¹
94. The Prosecution further submits that the role of the Third Accused was not merely spiritual or one based on sublime mysticism as the Defence would want the Trial Chamber to believe, but rather, that it was pivotal to the operational and tactical component of the Kamajor militia. This submission is supported by the testimony of witness TF2-008 when he testified that the Third Accused had to bless the Kamajors

¹⁷⁶ See TF2-005,008, TF2-014, TF2-068 and TF2-222.

¹⁷⁷ TF2-014, 14 Mach 2005, open session, p. 20-21.

¹⁷⁸ See TF2-005, TF2-008, TF2-014, TF2-068, TF2-079, TF2-201, TF2-222.

¹⁷⁹ TF2-082, 17 September 2004, closed session, p. 19.

¹⁸⁰ TF2-082, 17 September 2004, closed session, p. 19.

¹⁸¹ TF2-079, 27 May 2005, closed session, p. 92-93.

~~13984~~
13984

CONFIDENTIAL

before they went to the war front, "so they have to go to him"¹⁸². The witness said also that the Kamajors at Base Zero had to go and see him, if he was around before they went to the war front.¹⁸³

95. The evidence of witness TF2-008 is quite instructive in identifying the unique role of the Third Accused in the Kamajor military operations. The witness gave evidence that the Third Accused was the chief initiator and attained the status of High Priest because of the mystical powers he possessed, and as such, no Kamajor would ever go to war without his blessings.¹⁸⁴ The Third Accused recommended whether a particular fighter should go to war or not. The final authority to send the Kamajors to war lay with Hinga Norman, Moinina Fofana and the Third Accused.¹⁸⁵ Witness TF2-008 further gave evidence that the Kamajor Commanders only take instructions from Hinga Norman, Moinina Fofana and the Third Accused.¹⁸⁶

96. [REDACTED]

97. [REDACTED]

98. Supporting evidence of an effective superior and subordinate relationship on the part of the Third Accused and other Kamajors, is seen in the testimony of witness TF2-222, who stated that when he went to Base Zero, he and his delegation were received by a lot of people. Hinga Norman introduced the witness to the Third Accused as the High Priest. At

¹⁸² TF2-008, 23 November 2004, open session, p. 58.

¹⁸³ TF2-008, 23 November 2004, open session, p. 59.

¹⁸⁴ TF2-008, 16 November 2004, open session, p. 38-40, 49.

¹⁸⁵ TF2-008, 16 November 2004, open session, p. 58-59.

¹⁸⁶ TF2-008, 17 November 2004, open session, p. 48-49.

¹⁸⁷ TF2-071, 12 November 2004, closed session, p. 46-48.

¹⁸⁸ TF2-223, 28 September 2004, closed session, p. 93-95.

CONFIDENTIAL

Base Zero also, Hinga Norman appointed the Director of War, Director of Logistics and the High Priest to the War Council. At a passing out parade in Base Zero, the Third Accused spoke in the presence of Hinga Norman and Moinina Fofana in which he encouraged the fighters to fight and gave his blessings.¹⁸⁹

99. Witness TF2-190 gave evidence that on the instructions of the Third Accused, the witness and his Kamajors attacked soldiers at Mekanji and captured arms which were handed to the Third Accused.¹⁹⁰ He further stated in his evidence that the Third Accused instructed him and other Kamajors to attack Bo, but the attack was not carried out because the Kamajors ran out of food at Bumpe.¹⁹¹ According to the testimony, it was the Third Accused who ordered the attack on Taiama. The witness and his group of Kamajors were successful in the attack.¹⁹²
100. The evidence revealed also, that the Third Accused in the presence of Hinga Norman and Moinina Fofana contributed by saying that the Kamajors should never be afraid at the battle front as the Third Accused spiritual power was with them.¹⁹³

101. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
102. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁸⁹ TF2-222, 17 February 2005, open session, p. 86, 96-97, 119-120.

¹⁹⁰ TF2-190, 10 February, 05, open session, p. 17.

¹⁹¹ TF2-190, 10 February, 05, open session, p. 18-19.

¹⁹² TF2-190, 10 February, 05, open session, p. 21.

¹⁹³ TF2-190, 10 February, 05, open session, p. 45.

¹⁹⁴ TF2-223, 28 September 04, closed session, p. 112-115.

¹⁹⁵ TF2-005, 15 February 2005, closed session, p. 105-106.

C O N F I D E N T I A L

103. The evidence does not support the Defence theory that the Third Accused the mere initiator and does not form part of the chain of command. However, that is a matter that will fall to be decided at the end of the trial. At this stage, it is clear that there is sufficient evidence on which a reasonable trier of fact could conclude that the Third Accused was in a position of command authority.

(ii) **Superior knew or had reason to know that the crime was committed or about to be committed by the subordinate:**

104. The Defence submits that there is evidence that the communication system was extremely rudimentary, very slow and often inaccurate, and that considering the geographical and temporal circumstances, this meant that the more physically distant the superior was from the commission of the crimes, the more indicia are necessary to prove that he knew of the crimes.¹⁹⁶

105. While this may be the theory of the Kondewa Defence, for the purposes of Rule 98 there is clearly evidence on the basis of which a reasonable trier of fact could conclude the contrary. The Prosecution submits that there is sufficient evidence to demonstrate that the Third Accused had actual knowledge of crimes being committed by Kamajors and by virtue of his leadership position as High Priest had reason to know that crimes were committed by his subordinates.

106. The evidence in support of this submission is revealed in the testimony of witness TF2-222 who stated that when Kamajors returned to Base Zero with situation reports from Tongo, the fighters met first with the High Priest, then proceeded to Moinina Fofana and finally to Hinga Norman.¹⁹⁷ Inferentially, the Third Accused was the first to be made au fait with situation reports from the Tongo frontline.

107. Witness TF2-014 gave evidence that in the presence of Moinina Fofana and the Third Accused; Hinga Norman permitted the Kamajors to kill the Junta Forces and their sympathizers, and burn and loot their properties.¹⁹⁸ He gave evidence that that Hinga Norman always made decisions in consultation with Moinina Fofana and the Third

¹⁹⁶ Kondewa Motion, para. 87, 91.

¹⁹⁷ TF2-222, 17 February 2005, open session, p. 122.

¹⁹⁸ TF2-014, 10 March 2005, open session, p. 37-39.

13793
13997

CONFIDENTIAL

Accused.¹⁹⁹ Witness TF2-079 testified, that the Third Accused had requested for and provided logistics for commanders of fighting groups of his own choice. Those groups included the Vanjawai's group and the Death Squad. The Third Accused provided logistics to Vanjawai's group and the Death Squad.²⁰⁰ There were reports of crimes committed by the Death Squad reaching the War Council at Base Zero, and the Third Accused was present at those sittings. Therefore, the Third Accused cannot deny knowledge of the crimes.

108. Witness TF2-190 gave evidence of instructions from Hinga Norman to loot cars from the Special Security Division kept at their Headquarters. The three cars with knowledge of their source were given to Moinina Fofana, the Third Accused and Prince Brima.²⁰¹

109. [REDACTED]

Being part of a planning process for the commission of an offence, with tacit moral support and encouragement would necessarily impute actual knowledge of the offence on the part of the Accused, as that participation in itself is part of a process of the commission of the offence.

110. Witness TF2-147 gave evidence that his community made reports of Kamajor atrocities to the Third Accused and even decided to send a delegation to him. The Third Accused came to Bonthe on 29th of February 1998 with a group of Kamajors to ascertain and verify the reports.²⁰³

111. Witness TF2-159 gave evidence that he attended a meeting at the Barri after the fall of Koribundo. Hinga Norman introduced Moinna Fofana and the Third Accused at the meeting. Hinga Norman said that he was the one that authorized the Kamajors to burn

¹⁹⁹ TF2-014, 14 March 2005, open session, p. 6.

²⁰⁰ TF2-079, 26 May 2005, open session, p. 43-44.

²⁰¹ TF2-190, 10 February 2005, open session, p. 60-62.

²⁰² TF2-017, 19 November 2004, closed session, p. 92-93.

²⁰³ TF2-147, 10 November 2004, open session, p. 57-66.

C O N F I D E N T I A L

the whole town and kill everybody in the town. He admonished Joe Tamidey, saying that he had instructed him to ensure that only 3 houses were left standing.²⁰⁴ Armed with this piece of information at that meeting, the Third Accused was in direct knowledge of the acts of the Kamajors.

112. The Prosecution presented evidence of reports of crimes committed by Kamajors reaching Base Zero with the direct knowledge of the Third Accused.²⁰⁵ Situation reports from the battle front were also regularly received at Base Zero for the attention of Hinga Norman and Moinina Fofana through the Third Accused.²⁰⁶ From these examples, it would be open to a reasonable trier of fact to infer the requisite mens rea.

(iii) Superior failed to take necessary and reasonable measures to prevent the crime or to punish the perpetrator thereof:

113. The Prosecution submits that sufficient evidence has been presented which, if accepted, could prove the elements beyond reasonable doubt that show that the Third Accused was in a position of authority with knowledge of crimes committed by Kamajors, yet failed to take the necessary and reasonable measures to prevent the crimes or punish the perpetrators.²⁰⁷
114. Indeed, the Kondewa Defence concedes, albeit as part of its argument that the Third Accused lacked effective control of subordinates, that “[t]here is not one example of Kondewa punishing or even reprimanding any individual”.²⁰⁸
115. Witness TF2-017 gave evidence that sometimes the War Council would say something the Kamajors did was bad, like looting, but the Third Accused said, “whosoever touched the Kamajors would have a problem with him.” In other words, criticisms of the Kamajors were unwelcome by the Third Accused.
116. Witness TF2-147 gave evidence that he complained to CO Kamara about the behavior of the Kamajors, and Kamara replied that he could not control all Kamajors since some of

²⁰⁴ TF2-159, 9 September 2004, open session at p. 52-54.

²⁰⁵ See TF2-005, TF2-008, TF2-014, TF2-079, TF2-190, TF2-201, TF2-222.

²⁰⁶ See TF2-005, TF2-008, TF2-014, TF2-079, TF2-190, TF2-201, TF2-222.

²⁰⁷ See TF2-005, TF2-014, TF2-017, TF2-021, TF2-068, TF2-073, TF2-147.

²⁰⁸ Kondewa Motion, para. 98.

13775
13989

CONFIDENTIAL

them were related to Third Accused. The witness stated that he was not aware that Kamajors were punished by the Third Accused after all the reports that were made to him.²⁰⁹

117. The Prosecution presented evidence that a Kamajor called Vanjawai, who was attached to the Third Accused was never punished for committing murder.²¹⁰

118. Witness TF2-068 testified that he was present when the War Council denounced the looting, killings and raping of innocent civilians by the Kamajors to Hinga Norman but no reply was heard from Hinga Norman. The War Council further advised Moinina Fofana and the Third Accused to control their men.²¹¹

119. Witness TF2-068 further testified that he saw evidence of looting by the Kamajors in an incident when a truck of coffee and cocoa was unloaded and handed over to Moinina Fofana and the Third Accused.²¹² Evidence was further presented through the testimony of witness TF2-021 who insisted that no punishment was meted out to them for looting properties and the killings of innocent people.²¹³

120. [REDACTED]

121. It would clearly be open to a reasonable trier of fact to conclude from the evidence that the Third Accused's failure to act in stopping the mass killings and physical and mental suffering or to punish the perpetrators amounted to a failure to prevent or punish for the purposes of Article 6(3) of the Statute.

²⁰⁹ TF2-147, 9 November 2004, open session, p. 12, 49, 57, 66.

²¹⁰ TF2-014, 11 March 2005, open session, p. 14, 20.

²¹¹ TF2-068, 17 November 2004, closed session, p. 87-88.

²¹² TF2-068, 17 November 2004, closed session, p. 92.

²¹³ TF2-021, 2 November 2004, open session, p. 105.

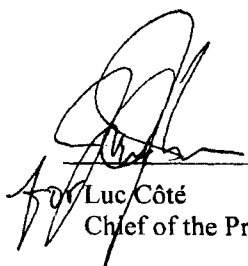
²¹⁴ TF2-005, 15 February 2005, closed session, p. 95-100.

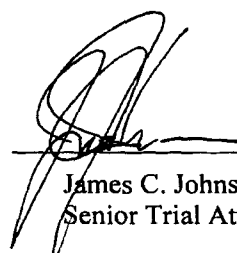
CONFIDENTIAL

VI. Conclusion

122. 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 could to be satisfied beyond reasonable doubt of the guilt of the Third Accused under all counts of the Indictment. Rule 98 is not a vehicle through which the Defence may be permitted to move to quash all counts in the indictment through general allegations. 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.
123. On the basis of the evidence, a reasonable trier of fact could conclude that the Third 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 and therefore the Prosecution submits that the Trial Chamber must leave all the alleged modes of criminal responsibility open until the conclusion of the trial.
124. For all of the aforementioned reasons, the Prosecution submits that the Defence Motion should be dismissed in its entirety.

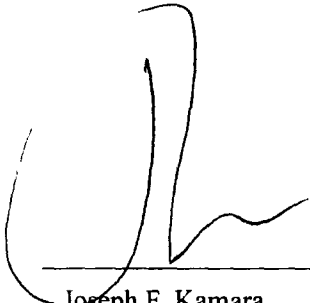
Filed in Freetown
18 August 2005
For the Prosecution



for Luc Côté
Chief of the Prosecutions

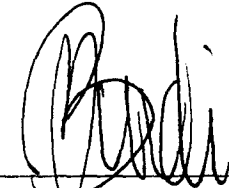
James C. Johnson
Senior Trial Attorney

~~13991~~
13991



Joseph F. Kamara
Trial Attorney

CONFIDENTIAL



Marco Bundi
Trial Attorney

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/kvocka/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/hadzihas/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 Judgement 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>

~~13200~~
13994

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

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

63. 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>