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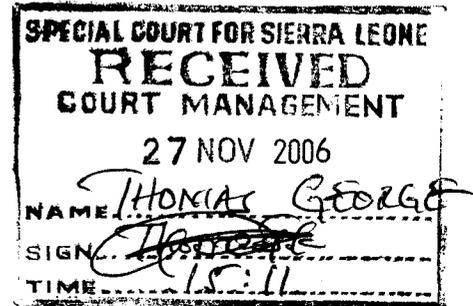
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr Lovemore G Munlo SC

Date filed: 27 November 2006



THE PROSECUTOR

Against

Samuel Hinga Norman
Moinina Fofana
Allieu Kondewa

Case No. SCSL-04-14-T

PUBLIC
ANNEXES III AND IV TO BE ATTACHED TO THE PUBLIC VERSION OF THE
PROSECUTION FINAL BRIEF

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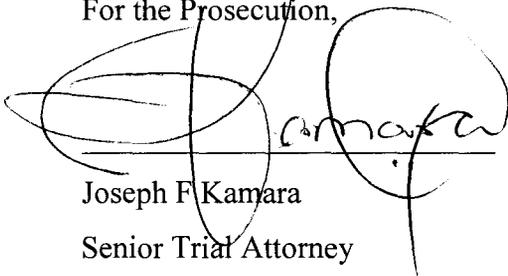
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1. Pursuant to the Trial Chamber's Decision, the Prosecution submits redacted versions of Annex III and IV to be attached to the Public Prosecution Final Trial Brief filed 27 November 2006.¹

Filed in Freetown,
27 November 2006

For the Prosecution,



Joseph F Kamara
Senior Trial Attorney

¹ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T, "Decision on Prosecution Request to File Two Additional Annexes to the Prosecution Final Trial Brief," 27 November 2006.

ANNEX III: COUNT 7 MATERIALS

COUNT 7-COLLECTIVE PUNISHMENTS (ARTICLE 3(B) OF THE STATUTE)

ELEMENTS

1. This Trial Chamber has defined the core elements of collective punishments as follows: (1) a punishment imposed upon protected persons for acts that they have not committed and (2) the intent, on the part of the offender, to punish the protected persons or group of protected persons for acts which form the subject of the punishment.¹
2. The provision covers administrative as well as judicial punishments and includes, for example, a fine imposed on the community at large for an act committed by one of its members, or destruction of houses in a village of which the offender is an inhabitant.² As noted by this Trial Chamber, the prohibition of collective punishment should be understood in its widest sense, and is “virtually equivalent to prohibiting ‘reprisals’ against protected persons”.³

B. EVIDENTIARY BASIS

3. The evidentiary basis for the crimes charged in Counts 1 to 5 taken as a whole provides the evidentiary basis for the acts of collective punishment. These crimes were committed to punish the civilian population for their perceived support to, or failure actively to resist, the combined RUF/AFRC forces.
4. TF2-027 testified that the Kamajors proffered three reasons why people were killed indiscriminately in Tongo. The first was in retaliation to the killings committed by Akim, a Lieutenant in the S.L.A. on their fellow Kamajors. The others were that Limbas were tapping palm wine for the Junta Forces and finally because the Temnes were supporting the Junta Forces.⁴
5. Witness TF2-079 testified that, on the return of Kamajors from Gendema, Norman sent a message that “all those chiefs who are not in favour of the Kamajors should be killed.”

¹ *Norman* Decision on Motion for Acquittal, para. 118; adopted by Trial Chamber II, *Brima* Decision on Motion for Acquittal, para. 62.

² UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, 9.4, footnote 6.

³ Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para. 4536.

⁴ *Ibid.*, pp. 64-66.

Norman also sent a message “that civilian collaborators, those who are sympathising with the AFRC/RUF rebel should also be killed. And the paramount chiefs who are not in favour of the Kamajors should also be killed.”⁵ The witness said also, that paramount chief at Dama Chiefdom, Chief Dassama was killed by Kamajors following Norman’s orders.⁶

6. Witness TF2-033 gave evidence that Jambawai, a Kamajor leader was chief coordinating officer. [REDACTED]

[REDACTED] Witness was told that there had been spies taking their names.⁷ On the 15th February 1998 the Kamajors came into town, down the street, Hangha Road. They were armed with guns, knives and cutlasses. The witness went to his barracks and he saw Sgt. Mason running, being chased by two Kamajors, armed with a gun and cutlass. The witness was about 30 metres away when he saw Mason shot and when he was on the ground and the other Kamajor chopped his hand and head.⁸ He further testified that from the veranda of a friend’s house, the witness saw Corporal Fandai going to his home, with a bible. Two Kamajors approached him and told him they wanted to kill him. Fandai asked to pray and when he said ‘Lord if it is they will, let it be done’, he was shot three times.⁹

7. The Prosecution submits that the evidence establishes the legal requirements for collective punishments. Civilian victims were targeted and punished arbitrarily simply on the basis of their status as so-called collaborators or supposed rebels, even though they were not combatants. The perpetrators clearly intended to inflict such punishment. To kill people indiscriminately in Tongo because an individual SLA member had killed a Kamajor clearly amounts to punishing people for acts for which they are not responsible. The same is true where, for example, all the Temnes, or all the Limbas, were punished.
8. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the acts of collective punishment under Count 7 will be detailed in Part III.

⁵ TF2-079, Transcript 26 May 2005, p. 20.

⁶ Ibid., p. 23.

⁷ TF2-033, Transcript 20 September, 2004, p. 30.

⁸ Ibid., p. 12.

⁹ Ibid., p. 15.

20769

ANNEX IV: COUNT 8 MATERIALS

COUNT 8 -ENLISTING CHILDREN UNDER THE AGE OF 15 YEARS INTO ARMED FORCES OR GROUPS OR USING THEM TO PARTICIPATE ACTIVELY IN HOSTILITIES (ARTICLE 4(C) OF THE STATUTE)

ELEMENTS

1. The Appeals Chamber has ruled that child recruitment was criminalized before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time frame relevant for the indictments. Therefore, the principles of legality and specificity are both upheld in the Indictment.¹
2. This Trial Chamber has held that the elements of the crime of conscripting or enlisting children under the age of 15 years into the armed forces or groups or using them to participate actively in hostilities are: (1) The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities; (2) Such person or persons were under the age of 15 years; (3) The perpetrator knew or had reason to know that such person or persons were under the age of 15 years; (4) The conduct took place in the context of and was associated with an armed conflict; (5) The perpetrator was aware of factual circumstances that established the existence of an armed conflict.²
3. The Prosecution notes that the Accused are not charged with conscripting children into the armed forces.
4. The term “enlist” is commonly defined as “to enroll on the “list” of a military body; to engage soldier”.³ It suggests a child’s voluntary enrollment.⁴ As set out in the ICRC

¹ *Prosecutor v. Norman*, SCSL-04-14-AR72(E)-131-7383, SCSL-04-14-AR72(E)-131-7398, SCSL-04-14-AR72(E)-131-7413, SCSL-04-14-AR72 (E)-131-7430, “Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment),” Appeals Chamber, 31 May 2004, para. 53; see also Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge University Press, 2005, pp. 482-488, 584.

² *Norman* Decision on Motion for Acquittal, para. 124; see also International Criminal Court, Elements of Crimes, ICC-ASP/1/3, 9 September 2002, Article 8 (2) (e) (vii). See also *Brima* Decision on Motion for Acquittal, para. 194.

³ The Oxford English Dictionary, vol. III, p. 191, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002. p. 377.

⁴ See also The American Heritage Dictionary of the English Language, 4th ed., 2002.

Commentary of Additional Protocol II: “The principle of non-recruitment also prohibits accepting voluntary enlistment”.⁵

5. The phrase “using children to participate actively in hostilities” does not require any formal induction into a military unit. The criminal act is employing a child in hostilities regardless of the tasks the child is instructed to perform. Participation in hostilities must, however, be active, which entails, for example, arming a child and sending him into battle, but also using a child to transmit orders or military information, to transport ammunition and food supplies, to carry on acts of sabotage or to guard bases.⁶ It also includes activities such as scouting, spying, and the use of children as decoys, couriers or at military checkpoints.⁷ It is unnecessary to prove that a child was put into uniform, trained, subjected to military discipline, made to bear arms or subjected to any of the traditional means of marking an individual as a soldier rather than a civilian. The term “hostilities” denotes the actual state of fighting.
6. Any volition or consent on the part of a child may not function as a justification or defence as children under the age of 15 are deemed not to have the capacity to consent to the activities envisaged under the provision. The mere belief that the victim is over a certain age limit is not a defence if the victim is in fact under it.⁸

B. EVIDENTIARY BASIS

7. Witness TF2-014 gave unchallenged and uncontroversial evidence that at Base Zero, there were Kamajors as young as six years of age.⁹ Witness knew a Kamajor called Junior Spain, who was between twelve to fifteen years old. Kamajors would go to war at

⁵ Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para. 4557; Article 51 of the Fourth Geneva Convention also forbids any pressure or propaganda aimed at securing “voluntary” enlistment.

⁶ Ibid.

⁷ Draft Statute of the International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, Addendum, Part One, UN doc. A/CONF.183/2/Add. 1, 14 April 1998, p. 21, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p. 376.

⁸ See for example, *Regina v. Prince*, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, pp. 379-380.

⁹ TF2-014, Transcript 11 March 2005, p. 15.

an early age, so long as they had been initiated into the Kamajor society.¹⁰ Evidence of child enlistment and use of child soldiers was presented by the Prosecution through the testimony of witness TF2-021. The witness was in Ngeihun when the Kamajors attacked and he was captured by a Kamajor named German. There were seven boys, the oldest being 15, and 3 women. The Kamajors looted and then burnt the houses. Boys carried the property to Kenema.¹¹ At the Moa River, the Kamajors shot the three women. They were shot because they were the wives of rebels.¹² The witness was initiated, and German gave him a two pistol-grip gun, and he was shown how to use it.¹³ Then the witness would go on mission to attack surrounding villages and catch people – women.¹⁴

8. The evidence further revealed that witness' first mission was to Masiaka, where they started shooting at the rebels. The boy next to the witness was shot and he became vexed. He saw a woman running towards him and he shot her in the stomach, and she fell down.¹⁵ They then went into the town and looted it, taking things of value.¹⁶

9. [REDACTED]

¹⁰ Ibid., p. 16
¹¹ TF2-021, Transcript, 2 November 2004, p. 33.
¹² Ibid., p. 35.
¹³ Ibid., p. 43.
¹⁴ Ibid., p. 44.
¹⁵ Ibid., p. 45.
¹⁶ Ibid., p. 46.
¹⁷ TF2-218, Transcript, 7 June 2004, Closed Session, p. 14.

[REDACTED]

10.

[REDACTED]

11. Evidence of use of child soldiers by the CDF was also portrayed in the course of the evidence of witness TF2-EW2. [REDACTED]

[REDACTED]

12.

[REDACTED]

13. The Prosecution submits that the evidence establishes the legal requirements for crime of enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities. Children as young as six were involved in the war

¹⁸ Ibid., p. 15.

¹⁹ Ibid., p. 17.

²⁰ TF2-EW2, Transcript, 16 June 2005, Closed Session, p. 17.

²¹ Ibid., p. 18.

²² Ibid., p. 68

²³ Ibid., p. 82

²⁴ Ibid., p. 91

effort and the perpetrators knew such persons were under the age of 15 but deliberately enlisted or used them to participate in actively in hostilities.

14. It is instructive to note that part of the case for the Prosecution included Exhibit 105A – a UN Report to the UN Secretary General-12 August 1998 – in which the CDF were accused of human Rights violations, looting, and confiscation of vehicles. It significantly referred to the CDF Commitment to end recruiting and initiating child soldiers.²⁵
15. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the use of child soldiers under Count 8 will be detailed in Part II.

²⁵ Exhibit P105A: UN Report to the UN Secretary General, 12 August 1998.