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SCSL-04-14-T
(20539-20755)

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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
PROSECUTION FINAL TRIAL BRIEF

Office of the Prosecutor:

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Mr James C. Johnson
Mr Joseph F. Kamara
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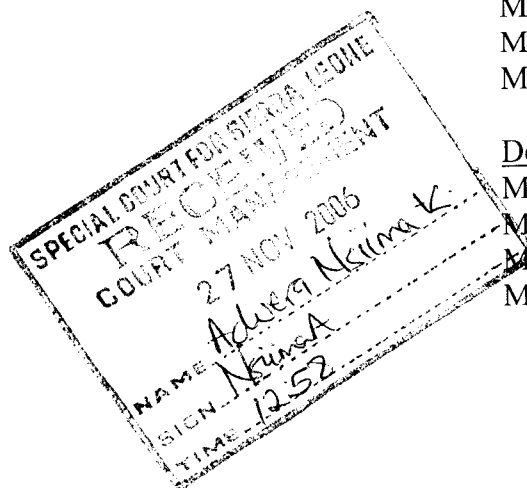
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1. In accordance with the Trial Chamber's Order on Re-filing, the Prosecution re-files the Prosecution Final Trial Brief with redactions as necessary to protect the identity of Prosecution witnesses who testified in closed session.¹
2. Annexes I and II have been removed and redactions have been made, otherwise the Public Prosecution Final Trial Brief is identical to the Confidential Prosecution Final Trial Brief filed on 22 November 2006.²

Filed in Freetown,

27 November 2006

For the Prosecution,



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¹ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-739, "Order to the Prosecution to Re-File Final Trial Brief," 23 November 2006.

² *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-737, "Prosecution Final Trial Brief," (Confidential) 22 November 2006.

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PART I

I. INTRODUCTION

1. At the end of this trial, the Trial Chamber is now called upon to weigh up the totality of the evidence in the case and to determine whether the charges in the Amended Consolidated Indictment (“**Indictment**”) against Samuel Hinga Norman (“**Norman**”), Moinina Fofana (“**Fofana**”) and Aliou Kondewa (“**Kondewa**”) have been proved beyond a reasonable doubt.
2. It is a fundamental principle of the legal system of the Special Court, enshrined in Article 17(3) of the Statute and Rule 87(A) of the Rules of Procedure and Evidence (“**Rules**”), that an Accused shall be presumed innocent until proven guilty, the burden being on the Prosecution to establish guilt beyond a reasonable doubt. This principle is consistent with universally recognised international standards. Proof beyond a reasonable doubt means a high degree of probability; it does not mean certainty or proof beyond any shadow of a doubt.¹ It has been acknowledged that

“The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible, but not in the least probable’, the case is proved beyond a reasonable doubt, but nothing short of that will suffice”.²
3. It is an equally fundamental principle that the overriding duty of the Trial Chamber is to establish the *truth*.³ The purpose of the Rules is to promote a fair and flexible trial, and a Chamber should not be hindered by technical rules in its search for the truth.⁴ In common law jury trials, judges traditionally encourage the jury members to appeal to their common sense when arriving at their decision. The approach should be no different

¹ *Prosecutor v. Delalić et. al*, IT-96-21-T, “Judgement”, (“**Delalić Trial Judgment**”), Trial Chamber, 16 November 1998, para. 600; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, “Judgement”, (“**Blagojević and Jokić Trial Judgment**”) Trial Chamber, 17 January 2005, para. 18, footnote 46.

² *Delalić Trial Judgment*, para. 600, quoting *Miller v. Minister of Pensions* [1947] 1 All ER 372, 373-374.

³ *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, “Reasons on the Decision for Request for Admission of Additional Evidence”, (“**Ntakirutimana Decision on Admission of Evidence**”) Trial Chamber, 8 September 2004, para. 6 (referring to “the obligation [of the Chamber] to search for the truth”).

⁴ *Prosecutor v. Brđanin and Talić*, IT-99-36-T, “Order on the Standards Governing the Admission of Evidence”, (“**Brđanin and Talić Order on Standards Governing Admission of Evidence**”) Trial Chamber, 15 February 2002, para. 10; *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, “Decision on Prosecutor’s Appeal on Admission of Evidence”, (“**Aleksovski Appeal Decision on Evidence**”) Appeals Chamber, 16 February 1999, para. 19.

merely because the triers of fact are professional judges rather than lay citizens of the community. The question whether it has ultimately been proved that something did or did not occur should be determined by an assessment of the evidence based on one's ordinary life experiences. The question is, looking at the evidence as a whole, and based on one's ordinary life experiences, which hypotheses are plausible and realistic, and which hypotheses are simply contrary to common sense.

4. Cases before international criminal courts are of their nature very large, involving voluminous amounts of evidence dealing with large scale and widespread conduct over wide geographical areas and relatively long periods of time. Of their nature, cases before international criminal courts are concerned with events that occurred in times of great upheaval. It cannot be expected that there will be clear and direct evidence in relation to every material issue in the case. In establishing the truth, it is necessary to look at all of the evidence relevant to a particular issue in the light of all of the evidence in the case as a whole.
5. An Accused is not of course required to present any evidence at all in his or her defence. If none of the Accused in a case elects to present evidence, the Trial Chamber will have to seek to determine the truth, and will have to decide whether guilt has been proven beyond a reasonable doubt, based on the Prosecution evidence alone. However, where one or more Accused do exercise the right to present evidence, the Trial Chamber's enquiry into the truth, and its verdict, will be based on all of the evidence in the case, considered as a whole. At the stage of reaching the final verdict in the case, there is no distinction between Prosecution evidence and Defence evidence. All evidence that is admitted by the Trial Chamber is part of a single corpus of evidence before the Trial Chamber. Thus, as has been repeatedly affirmed, "a witness, either for the Prosecution or Defence, once he or she has taken the Solemn Declaration pursuant to Rule 90(B) of the Rules of Procedure and Evidence, is a witness of truth before the International Tribunal and, inasmuch as he or she is required to contribute to the establishment of the truth, not strictly a witness for either Party."⁵

⁵ *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-PT, "Decision on Prosecutor's Motion on Trial Procedure", ("**Kordić and Čerkez Decision on Trial Procedure**") Trial Chamber, 19 March 1999; see also *Prosecutor v. Kupreškić et al.*, IT-95-16-T, "Decision on Communications Between Parties and their Witnesses", Trial Chamber, 21 September 1998.

6. In practice, it may frequently occur that certain evidence given by Prosecution witnesses is favourable to the Defence. Similarly, it can occur that evidence given by a Defence witness may be unfavourable to the Accused, and even inculpatory. It can occur that evidence given by a witness called by one Accused may be favourable or unfavourable to a co-accused. However, once the witness has given evidence, all of the evidence of that witness becomes evidence in the case as a whole. This means that evidence given by a witness called by one accused can be taken into account in relation to all accused. There is no “compartmentalisation” of the evidence. Indeed, if there were, this could result in the establishment of different “truths” in relation to each of the Accused. The law is not divorced from common sense. There is one truth, and the role of the Trial Chamber is to establish it, in accordance with procedures that have been designed and developed in order to be as conducive as possible to the establishment of the truth consistently with the rights of the Defence.
7. The presumption of innocence means that the Defence bears no burden of disproving any allegation made by the Prosecution. However, as in any criminal justice system, the fact that the verdict will be based on all of the evidence as a whole will mean in practice that the Defence evidence, and any Defence theories of the case, will play a significant role in shaping the issues in the case.
8. In this case, it is submitted that there are many important issues that are not seriously in dispute. Based on all of the evidence in the case as a whole, the Prosecution submits that it cannot be seriously in contention:
 - (1) that at all times material to the Indictment, there was an armed conflict in Sierra Leone in which the Civil Defence Forces (“CDF”) fought against the Revolutionary United Front (“RUF”) and later the Armed Forces Revolutionary Counsel (“AFRC”) forces;
 - (2) that the CDF was an armed force comprising various tribally-based traditional hunters, which included Kamajors;
 - (3) that members of the CDF were at all material times required to abide by international humanitarian law and the laws and customs of war;
 - (4) that crimes within the jurisdiction of the Special Court were committed by members of the CDF;

- (5) that these crimes were committed in the territory of Sierra Leone;
- (6) that a nexus existed between these crimes and the armed conflict; and
- (7) that these crimes occurred in the context of the armed conflict.

9. Furthermore, in relation to the three Accused in this case, it cannot be seriously in contention that at all times material to the Indictment:

- (1) Norman was the National Coordinator of the CDF;
- (2) Fofana was the National Director of War of the CDF;
- (3) Allieu Kondewa was the High Priest of the CDF.

10. The Prosecution submits that the main issues in contention in this case concern the individual criminal liability of each of the Accused for the crimes referred to.

11. [REDACTED]

[REDACTED] No one in the CDF exercised greater authority than they did. Norman was the most senior of the Accused within the CDF. Given Norman's pre-eminence in the CDF, a significant portion of the evidence in the trial focussed on his acts and words. Norman was a charismatic leader and witnesses recalled with some clarity his behaviour and status. However, Kondewa and Fofana were also essential to the operation of the CDF, and contributed significantly to the CDF.

12. The CDF were fighting a war in Sierra Leone; that fact had an impact on the manner in which the war was conducted. Materials were not easily obtained with the lack of supplies was a constant handicap in the preparation of the war. As supplies were of prime importance, whoever controlled the supply of such items was in a powerful position; that is, control of the organisation could, and was, exercised through the mechanism of supply. Fofana, under instructions from Norman and Kondewa, exercised that control.

13. The Prosecution case is that the three Accused shared a common plan, purpose or design, together with others in the CDF, to use any means necessary to defeat the opposing RUF and AFRC forces, to gain complete control over the population of Sierra Leone, and the complete elimination of the RUF and AFRC, its supporters, sympathisers, and anyone

⁶ TF2-011, Transcript 8 June 2005, Closed Session, p. 31; TF2-014, Transcript 11 March 2005, p. 24.

who did not actively resist the RUF and AFRC occupation of Sierra Leone. The means included the commission of crimes against civilians, including women and children, who were suspected of having supported, sympathised with, or simply failed to actively resist the RUF and AFRC forces, as well as the commission of crimes against captured enemy combatants. These crimes included unlawful killings, the infliction of physical violence and mental suffering, looting and burning, terrorising the civilian population and imposing collective punishments, and the use of child soldiers. In execution of this common plan, purpose or design, each of the Accused was involved, at the least, in the planning, instigating and ordering of such crimes. Furthermore, each of the Accused was in a position of superior authority to the members of the CDF who committed these crimes, for the purposes of Article 6(3) of the Statute, and failed to prevent the commission of the crimes or to punish the perpetrators, notwithstanding their knowledge that such crimes were about to be committed or had been committed.

14. The Prosecution does not dispute that the CDF was fighting “for the return of the constitutionally-elected government.” The Prosecution does not suggest that the CDF as such was a joint criminal enterprise, or that every member of the CDF was a participant in a joint criminal enterprise, or that every member of the CDF committed crimes. However, the “justness” of the cause for which a person acts does not justify the commission of crimes in furtherance of that cause. It would be incorrect to suggest that in an armed conflict between two opposing forces, it is only the side whose cause is “unjust” that is required to abide by international humanitarian law and the laws and customs of war. It is fundamental that international humanitarian law and the laws and customs of war apply equally to all parties in an armed conflict, regardless of the cause for which they are fighting.
15. The Prosecution similarly does not dispute that members of the forces opposing the CDF also committed a range of serious crimes under international humanitarian law. However, it is well established in international criminal law that there is no defence of “*tu quoque*”—that is, the commission of serious violations of international humanitarian law by one side in an armed conflict can never be a justification for the commission of crimes

by the other side.⁷ Even if, as the witness Peter Penfold suggested, the CDF were fighting “fire with fire”,⁸ that does not make these crimes any less criminal.

16. Given the nature of this case, there is inevitably much overlap in the evidence relevant to each of the different counts and geographical locations, the evidence relevant to the individual criminal responsibility of each of the Accused, and the evidence relevant to each different mode of liability under Article 6 of the Statute. In analysing the evidence in support of each of the elements of each crime in relation to each of the Accused there is accordingly a degree of repetition. For convenience and brevity, not every piece of evidence relevant to each Accused is recited against each individually in this brief. For example, material cited in respect of Norman is not always repeated in those sections dealing with the Fofana and Kondewa. It is therefore emphasised again that in relation to each issue, the evidence has to be considered in the context of all of the evidence in the case as a whole.

II. BRIEF HISTORY

17. The organisation called the CDF, was an armed faction which assisted in countering the threat of the RUF and later the AFRC on behalf of the government of Sierra Leone which had been exiled following a coup on the 25 May 1997. The history of the organisation was outlined during the course of the trial, in particular how it evolved from a tribal-based organisation to one dominated and controlled by the three Accused. In this brief, as throughout the trial, the terms CDF and Kamajors are both used, it being established, as discussed below, that the Kamajors were recruited from the Mende tribe and it is the east and south-east area where the Kamajors were the major operatives. It is also in that general area where most of the crimes were committed.
18. The CDF, at the relevant time was led by Norman assisted by Kondewa and Fofana and, in the initial stages of the organised resistance to the coup, supported by members of the hunting society called the Kamajors who filled the ranks of the CDF. Over time, and indeed a relatively short period of time, the manner by which people were recruited to the CDF changed, as did their direct loyalties and obligations. The CDF, of which the

⁷ *Prosecutor v. Kupreškić et al.*, “Decision on Evidence of the Good Character of the Accused and the Defence of Tu Quoque”, IT-95-16-T, Trial Chamber, 17 February 1999.

⁸ Peter Penfold, Transcript 9 February 2006, pp. 25-26.

Mende-based Kamajors were the majority component, owed its loyalty and obligations to the three Accused men. It is clear that Norman had absolute power in the CDF during the relevant period; however he could not have established and exercised that power without the efforts of Kondewa and Fofana. There were no other persons within the CDF to whom the combatants owed a greater loyalty or whose orders they followed with such diligence.

19. Following the AFRC coup in May 1997 and the flight of government officials out of Sierra Leone to Guinea, including President Kabbah, Norman, while in exile in Liberia, was directed by the President to organize, in particular, the south and eastern wings of the CDF, namely, the Kamajors, who were in disarray and in need of leadership. =
20. In a meeting at Bo-Waterside, and in the presence of Fofana, and Kondewa, Norman assumed leadership and pledged loyalty to the movement. Meetings were held at which the three Accused coordinated, directed and commanded military operations, in and around the Pujehun District. As part of a valid military strategy, it was necessary to improve the strength, logistics, and strategies of the Kamajors. As can be observed from the evidence presented to the Tribunal, the CDF developed into a viable military organisation, in response to the nature of the conflict in which it was involved.
21. Prior to the coup, the Kamajors assisted the Sierra Leone Army by providing local knowledge of the terrain and locations. After the coup, the CDF, including the Kamajors developed an offensive capacity which it previously did not possess. In order to achieve that transformation, there had to be an introduction of military training, logistics and planning which was not present before the coup. Having regard to the evidence, there are many instances where the CDF launched planned, coordinated attacks (although there were tactical challenges) against selected targets. On the evidence, the transformation from providing scouts to the Sierra Leone Army to being an effective fighting body came about through the re-structuring efforts of Norman, Kondewa and Fofana.
22. Unfortunately, as part of their combined effort in achieving the transformation, the three Accused introduced into the culture of the CDF, and particularly the Kamajors, the enforced obligation that the military victory was to be achieved at all cost, by any means, against anyone considered to be a 'rebel.' The three Accused also gave to the combatants under their command and control a very broad definition of rebel. The fusion of those

two issues directly led to the offences now before the court.

23. In the early stages of the war, Norman promised government help and asked for a base for operations. Talia or Base Zero, in Yawbeko Chiefdom, was chosen and allocated for Kamajor operations and training. Norman arrived at Base Zero in a helicopter along with arms and ammunitions and some Liberian soldiers, sometimes referred to as Special Forces. Norman's position as Deputy Defence Minister, combined with his appointment as National Coordinator, ensured his seniority and position of authority in the CDF.
24. Many traditional hunters as well as other Mendes who were not traditional hunters, upon hearing of the new base for Kamajor operations, converged in and around Base Zero, for logistical support, military training and direction. Base Zero was not a large village; however, thousands of Kamajors eventually were based in the vicinity. Norman, Fofana and Kondewa lived in close proximity to one another, if not at times in the same lodging. The physical situation was such that it is not feasible that they were not aware of the activities in and around Base Zero; the Accused saw each other every day as they were themselves the command unit of the CDF.
25. The CDF was an umbrella organisation, which included a number of other tribal groups; however, the majority of the CDF, especially in the areas where the offences occurred were Kamajors, from the Mende tribe. Norman and Fofana planned and coordinated the training of Kamajors; indeed, Fofana was in charge when Norman left Base Zero. Kondewa performed rituals for the success of the military ventures and initiated young men into the movement. Although most of the initiates were young men, there was no age restriction; not all initiates became combatants, such as the elderly. One of the benefits, if not the principal benefit, of being initiated was that the person acquired the belief that they were immune from bullets. That 'gift' was a powerful attraction to become initiated and to eventually become a combatant.
26. It was not obligatory, as noted, that upon a person becoming initiated that he was dispatched and deployed into battlefield positions. However, one needed to be initiated in order to be sent to the front lines. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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Although those orders from Norman conflicted with the original Kamajor rules, it is apparent from the evidence that when there was a conflict between the Kamajors orders, which were more in the nature of guidelines, Norman's orders prevailed.

27. The Kamajors were a group of traditional local hunters before the emergence of Kondewa who modified existing secret ceremonies. This resulted in the shifting of loyalties away from the traditional chiefs and to the CDF triumvirate, in order to obtain the intangible benefit of becoming 'bullet-proof'. As witnesses testified before the Court, both those called by the Prosecution and by the Defence, they believed that the ceremonies devised by Kondewa were capable of making someone impervious to bullets (although the mechanism of how that was achieved remains elusive). The desire to have such protection in war, especially when armed only with single-barrel shotguns and machetes and fighting against those armed with automatic weapons, was a powerful motivator and a means by which control could be exercised over the believers.
28. Evidence has shown that it was at Base Zero, that Norman, Fofana and Kondewa together, planned, coordinated, directed, trained and commanded the attacks on Bo, Koribundo and Tongo. Witnesses have testified to the meetings, where military operations were planned and directed. Norman, as well, provided logistics and arms to support the attacks.
29. When one considers the evidence, how battles were fought and towns captured, it cannot be suggested with any degree of conviction that the CDF was not controlled by a central body. Again, by the evidence, the one controlling the CDF, in every sense, was Norman. At the same time, in that position he needed loyal persons to assist him, to enforce his orders and to keep him informed. Any military organisation needs subordinate commanders. Even if one was not aware of the particularities of the war in Sierra Leone, one would as a matter of logic and common sense be satisfied that there was a leader of the CDF and that the leader had subordinate commanders. Kondewa and Fofana had authority and knowledge and were able to and did fulfill that role. This is established by direct evidence and it is the only reasonable inference which can be drawn.

⁹ TF2-223, Transcript 28 September 2004, Closed Session, p. 21

30. The Accused men resolved to use any means necessary to defeat the RUF/AFRC forces so as to gain and exercise control over the territory of Sierra Leone. That resolution can be inferred from the evidence which includes the words and actions of each of the Accused men, acting as a unified team. These events all occurred in Sierra Leone, in a country that had limited access to resources and modern weaponry. The war was conducted at a low technology level, with machetes being used to commit numerous offences, especially the killing of civilians. The CDF combatants were not highly trained soldiers, but they were organized and they followed the directions given to them by their superiors. It cannot be said that the circumstances of the war, the lack of resources and the unsophisticated nature of the CDF combatants, brought about the offences in the Indictment. The offences occurred because of the deliberate directions of the three Accused men who sought to achieve victory at all costs.

31. [REDACTED]

32. Before addressing the law, the evidence and how the two are applied in this trial, some suggestions are made in relation to the assessment of witnesses and exhibits.

III. CONSIDERATIONS WHEN ASSESSING THE LAW AND EVIDENCE

INTRODUCTION

32. Article 17(3) of the Statute, which reflects fundamental international standards, provides that the Accused shall be presumed innocent until proven guilty. The Prosecution bears the burden of establishing the guilt of the Accused, and, in accordance with Rule 87(A) of the Rules, must do so beyond reasonable doubt.

33. Rule 89(A) of the Rules provides that proceedings before the Special Court are governed by the rules contained in Rules 89-98, and that the Chambers are not bound by national

¹⁰ TF2-223, Transcript 28 September 2004, Closed Session, p. 32.

¹¹ Ibid., pp. 35-36.

rules of evidence. Rule 89(B) adds that in cases not otherwise provided for in those Rules, a Chamber “shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.” In addition, Rule 89(C) provides that “A Chamber may admit any relevant evidence.” This provision ensures that the administration of justice will not be brought into disrepute by artificial or technical rules of evidence.¹²

34. In cases not otherwise provided by the Rules, the Trial Chamber thus has a discretion in the evaluation of the evidence, and can take the approach it considers most appropriate for the assessment of evidence, and determine the credibility of witnesses and the weight to be afforded to the evidence proffered by the parties based on all of the relevant evidence admitted at trial.¹³ However, like any judicial discretion, this discretion must be exercised judicially. There has now developed a body of case law in international criminal courts dealing with the principles applicable to the exercise of this discretion.

CONTRADICTIONS WITHIN A WITNESS’S EVIDENCE, OR BETWEEN THE EVIDENCE OF DIFFERENT WITNESSES

35. The Trial Chamber has a discretion to accept a witness’s evidence notwithstanding inconsistencies with the witness’s prior statements or the evidence of other witnesses.¹⁴ In assessing the evidence, the Trial Chamber may accept some parts of a witness’s evidence and reject other parts.¹⁵
36. In particular, where the evidence of a witness relates to events that occurred years before the trial, the Trial Chamber should *not* treat “minor discrepancies between the evidence

¹² *Prosecutor v. Fofana*, SCSL-04-14-T-371, ‘Appeal against Decision refusing Bail’, (“**Fofana Appeal Decision on Bail**”), Appeals Chamber, 11 March 2005.

¹³ *Prosecutor v. Kupreškić et al.*, IT-95-16-A, “Appeal Judgement”, (“**Kupreškić Appeal Judgment**”), App. Ch., 23 October 2001, para. 334; *Prosecutor v. Rutaganda*, ICTR-96-3-A, “Judgement”, (“**Rutaganda Appeal Judgment**”) Appeals Chamber, 26 May 2003., para. 207 ; *Prosecutor v. Sesay et al.*, SCSL-04-15-T, “Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker”, (“**Sesay Ruling to Exclude Evidence**”) Trial Chamber, 23 May 2005, para. 4; *Fofana Appeal Decision on Bail*, paras 22-24.

¹⁴ *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Judgement”, (“**Čelebići Appeal Judgment**”) Appeals Chamber, 20 February 2001, para. 497; *Kupreškić Appeal Judgment*, paras 31 and 156; *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, “Judgement”, (“**Kajelijeli Appeal Judgment**”) Appeals Chamber, 23 May 2005, paras. 96-97; *Prosecutor v. Semanza*, ICTR-97-20-A, “Judgement”, (“**Semanza Appeal Judgment**”) Appeals Chamber, 20 May 2005, para. 224; *Prosecutor v. Limaj et al.*, IT-03-66-T, “Judgement”, (“**Limaj Trial Judgment**”) Trial Chamber, 30 November 2005, paras 12, 543.

¹⁵ *Prosecutor v. Strugar*, IT-01-42-T, “Judgement”, (“**Strugar Trial Judgment**”) Trial Chamber, 31 January 2005, para. 7; *Kupreškić Appeal Judgment*, paras 332-333; *Prosecutor v. Kunarac et al.*, IT-96-23, IT-96-23/1-A, “Appeal Judgement”, (“**Kunarac Appeal Judgment**”) Appeal Chamber, 12 June 2002, para. 228.

of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where that witness had nevertheless recounted the essence of the incident charged in acceptable detail.”¹⁶ Lack of detailed memory on the part of a witness in relation to peripheral matters should not in general be regarded as necessarily discrediting the evidence.¹⁷

37. Thus, the Appeals Chamber of the ICTY has held that “[f]actors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence”.¹⁸
38. The case law acknowledges in particular:
 - 1) that “... where the witness is testifying in relation to repetitive, continuous or traumatic events, it is not always reasonable to expect witnesses to recall with precision the details, such as exact date or time, and/or sequence of the events to which they testify”,¹⁹ and that such circumstances may impair the ability of such witnesses to express themselves clearly or present a full account of their experiences in a judicial context.²⁰
 - 2) that “it lies in the nature of criminal proceedings that a witness may be asked different questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court”,²¹
 - 3) that “[a] witness may also forget some matter or become confused”,²²
 - 4) that while there may be cases in which the trauma experienced by a witness may make that person unreliable as a witness, there is no recognized rule of evidence that traumatic circumstances render a witness’s evidence unreliable, and, if the Trial Chamber is to treat a witness as unreliable due to “the traumatic context, it must demonstrate this *in concreto*

¹⁶ **Blagojević and Jokić Trial Judgment**, para. 23, *Prosecutor v. Krnojelac*, IT-97-25-T, “Judgement”, (“Krnojelac Trial Judgment”) Trial Chamber, 15 March 2002, para. 69 (emphasis added).

¹⁷ Ibid.

¹⁸ *Kupreškić Appeal Judgment*, para. 31.

¹⁹ *Prosecutor v. Simić et al.*, IT-95-9-T, “Judgement”, (“**Simić Trial Judgment**”) Trial Chamber, 17 October 2003, para. 22.

²⁰ *Čelebići Trial Judgment*, para. 595.

²¹ *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, (“**Naletilić Trial Judgment**”) Trial Chamber, 31 March 2003, para. 10; *Prosecutor v. Vasiljević*, IT-98-32-T, “Judgement”, (“**Vasiljević Trial Judgment**”) Trial Chamber, 29 November 2002, para. 21; *Strugar Trial Judgment*, para. 8.

²² *Strugar Trial Judgment*, para. 8.

- through a reasoned opinion adequately balancing all the relevant factors;²³ and
- 5) that where a witness is testifying about extremely traumatic events, any observation they made at the time may have been affected by stress and fear.”²⁴
39. These factors are taken into account when assessing the credibility of witnesses.²⁵
40. In cases of *repeated* contradictions within a witness’ testimony, the evidence can still be relied on if it has been sufficiently corroborated.²⁶

CORROBORATION IS NOT REQUIRED

41. The Trial Chamber may rely on the testimony of a single witness as proof of a material fact;²⁷ corroboration is not required although it may go to weight,²⁸ and absence of corroboration may be particularly significant in the case of identification evidence.²⁹ The uncorroborated testimony of a single witness may be sufficient to establish the presence of the accused at the scene of a crime,³⁰ and indeed, the Appeals Chamber of the ICTY has confirmed that an accused may even be *convicted* on the basis of the evidence of a single witness, although such evidence must be assessed with the appropriate caution.³¹

ASSESSING THE CREDIBILITY AND RELIABILITY OF WITNESSES

42. In addition to the matters referred to above, in assessing the credibility and reliability of

²³ *Kunarac* Appeal Judgment, para. 324; see also *Prosecutor v. Kayishema*, ICTR-95-1-T, “Judgement and Sentence”, (“**Kayishema Trial Judgment**”) Trial Chamber, 21 May 1999, paras 73-75.

²⁴ *Limaj* Trial Judgment, para. 15.

²⁵ *Simić* Trial Judgment, para. 22; *Strugar* Trial Judgment, para. 8; *Limaj* Trial Judgment paras 12, 543.

²⁶ *Prosecutor v. Halilović*, IT-01-48-T, “Judgement”, (“**Halilović Trial Judgment**”) Trial Chamber, 16 November 2005, para. 17.

²⁷ Other, perhaps, than in the case of the testimony of a child witness not given under solemn declaration: *Kupreškić* Appeal Judgment, para. 33.

²⁸ *Prosecutor v. Tadić*, IT-94-1-A, “Judgement”, (“**Tadić Appeal Judgment**”) Appeals Chamber, 15 July 1999, para. 65; *Čelebići* Appeal Judgment, para. 507; *Prosecutor v. Aleksovski*, IT-95-14/1-A, “Judgement”, (“**Aleksovski Appeal Judgment**”) Appeals Chamber, 24 March 2000, paras 62-63; *Kunarac* Appeal Judgment, paras. 268 (and paras. 264-271 generally); *Kupreškić* Appeal Judgment, para. 33; *Kajelijeli* Appeal Judgment, para. 170 (citing cases); *Prosecutor v. Rutaganda*, ICTR-96-3-T, T. Ch. I. 6, “Trial Judgement and Sentence”, (“**Rutaganda Trial Judgment**”) Trial Chamber, December 1999, para. 18; *Čelebići* Trial Judgment, para. 594; *Prosecutor v. Akayesu*, ICTR-96-4-T, “Judgement”, (“**Akayesu Trial Judgment**”) Trial Chamber, 2 September 1998, paras. 132-136; *Kayishema and Ruzindana* Trial Judgment, para. 80; *Simić* Trial Judgment, para. 25; *Strugar* Trial Judgment, para. 9.

²⁹ *Kupreškić* Appeal Judgment, paras 34, 220.

³⁰ *Kajelijeli* Appeal Judgment, paras. 96-97.

³¹ *Kordić and Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, “Judgement”, (“*Kordić and Čerkez*”) Appeals Chamber, 17 December 2004, para. 274 (emphasis added). *Halilović* Trial Judgment, para. 18.

witnesses, the Trial Chamber may have regard to matters such as the following:

- 1) the fact that witnesses who do not have a high level of education may have difficulties in identifying and testifying to exhibits such as maps, and may have difficulties in testifying to dates, times, distances, colours and motor vehicles;³²
- 2) the fact that the inability of witnesses to identify correctly types of weapons or the nature of injuries inflicted on a victim may be due to the witness's lack of knowledge of weapons or physiology, rather than any unreliability as a witness;³³
- 3) the fact that human memory degenerates over time³⁴ (and that peripheral details may be forgotten over time, even if memories of core details remain vivid);
- 4) the fact that witnesses may have difficulties in testifying through an interpreter, or that discrepancies in a witness statement given via an interpreter may be due to problems of interpretation;³⁵
- 5) the fact that "a significant number of witnesses requested protective measures at trial, and expressed concerns for their lives and those of their family";³⁶
- 6) the fact that there is no reason why a person suffering from post-traumatic stress syndrome (PTSD) cannot be a perfectly reliable witness;³⁷ survivors of such traumatic experiences cannot however be expected to recall the precise minutiae of events such as exact dates and times, and their inability to do so may in certain circumstances indicate truthfulness and lack of interference with the witness;³⁸
- 7) the fact that discrepancies between a witness's testimony and the witness's prior statement(s) may be due to a variety of factors, and do not necessarily indicate that the witness is not credible or reliable, such other factors include failings on the part of the prosecution investigator, translation problems, and the fact that witness statements are not made under solemn declaration before a judicial officer; thus, the Trial Chamber may attach greater probative value to the witness's oral testimony in court which has been

³² *Rutaganda* Trial Judgment, para. 23.

³³ *Ibid*, paras. 334-335.

³⁴ *Akayesu* Trial Judgment, paras 140, 454-455.

³⁵ *Rutaganda* Trial Judgment, paras 23, 334-335; *Akayesu* Trial Judgment, paras 145-154.

³⁶ *Limaj* Trial Judgment, para. 15.

³⁷ *Kupreškić* Appeal Judgment, para. 171; *Prosecutor v. Furundžija*, ICTY IT-95-17/1-T, "Judgement," ("Furundžija Trial Judgment"), 10 December 1998, para. 109.

³⁸ *Furundžija* Trial Judgment, para. 113 (and see paras. 110 to 116 generally); *Akayesu* Trial Judgment, paras 142-144, 299.

- subject to the test of cross examination;³⁹ and
- 8) the fact that cultural factors of loyalty and honour may also have affected the witnesses' evidence as to the events.⁴⁰

HEARSAY EVIDENCE

43. Rule 89(C) gives the Chamber a broad discretion to admit relevant hearsay evidence,⁴¹ that is, a statement of a person made otherwise than in the proceedings in which it is tendered, that is nevertheless tendered in those proceedings in order to establish the truth of what that person says.⁴² This applies even when the evidence cannot be examined at its source or when it is not corroborated by direct evidence.⁴³ Proceedings in this legal system are conducted before professional judges who possess the necessary ability to begin by hearing hearsay evidence and then to evaluate it.⁴⁴ In the context of armed conflicts where thousands of people are displaced, detained or even killed, it can be expected that the witnesses will refer to events which others, and not they themselves, experienced, although such evidence must be considered on the basis of parity between the parties and on respect for the rights of the accused as expressed in internationally recognised standards.⁴⁵

CIRCUMSTANTIAL EVIDENCE

44. Circumstantial evidence is admissible where it is in the interests of justice to admit it,⁴⁶ and is often used to establish the *mens rea* of an accused. If there is more than one conclusion which is reasonably open from the evidence, these conclusions must all be

³⁹ *Kayishema* Trial Judgment, paras 76-80; *Akayesu* Trial Judgment, para. 137; *Rutaganda* Trial Judgment, para. 19.

⁴⁰ *Limaj* Trial Judgment, para. 15.

⁴¹ *Aleksovski Appeal Decision on Evidence*, para. 15; *Prosecutor v. Blaškić*, IT-95-14-T, "Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability," ("*Blaškić Decision on Admission of Hearsay*") Trial Chamber, 21 January 1998, para. 10; *Prosecutor v. Tadić*, IT-94-1-T "Decision on Defence Motion on Hearsay" ("*Tadić Decision on Hearsay*"), 5 August 1996, paras. 7, 17; *Kordić and Čerkez* Appeal Judgment, paras 281, 282.

⁴² *Aleksovski Appeal Decision on Evidence*, para. 15; *Blaškić Decision on Admission of Hearsay*, para. 10; *Tadić Decision on Hearsay*, paras 7, 17; *Kordić and Čerkez* Appeal Judgment, paras 281, 282.

⁴³ *Simić* Trial Judgment, para. 23.

⁴⁴ *Aleksovski Appeal Decision on Evidence*, para. 15; *Blaškić Decision on Admission of Hearsay*, para. 10; *Tadić Decision on Hearsay*, paras. 7, 17.

⁴⁵ *Blaškić Decision on Admission of Hearsay*, para. 4.

⁴⁶ *Simić* Trial Judgment, para. 27.

consistent with the guilt of an accused.⁴⁷

INSIDER WITNESSES

45. In any trial in which an ‘insider’ provides evidence it is for the Tribunal of fact to assess what, if any, impact the conditions surrounding the witness have affected the reliability and credibility of the testimony. For instance, the witness Albert Nallo was a very senior member of the CDF; consequently, upon him making the decision to testify if it was appropriate, upon an objective assessment of his security position that he be provided with protection. In the difficult task of evaluating the evidence, due regard can be had to this “context of fear.”⁴⁸
46. “Insiders witnesses play a crucial role in the trials in international criminal courts and are recognised as a pivotal source of evidence. In *Prosecutor v. Hassan Ngeze and Barayagwiza*, the ICTY Trial Chamber considered that the testimony of an insider was in the “the interests of justice.”⁴⁹ Thus, the fact that such insiders have commonly been granted guarantees of non-prosecution or mitigation is not considered as undermining the credibility of their testimonies.

PAYMENTS TO WITNESSES

47. During the course of the trial, an issue was raised in respect of the payment of money to witnesses; as these were payments made by the Special Court, in accordance with its standard practices that are applicable to both Prosecution and Defence witnesses alike, there can be no suggestion that the payments influence the testimony of the witnesses.

EXPERT WITNESSES

48. Neither the Statute nor the Rules oblige a Trial Chamber to require medical reports or other scientific evidence as proof of a material fact.⁵⁰ In relation to experts, it is for the

⁴⁷ *Halilović* Trial Judgment, para. 15; *Kordić and Čerkez* Appeal Judgment, para. 289; *Delalić* Appeal Judgment, para. 458; *Simić* Trial Judgment, para. 27.

⁴⁸ *Limaj* Trial Judgment, para. 15.

⁴⁹ *Prosecutor v. Hassan Ngeze and Barayagwiza*, ICTR-99-52-I “Decision on the Defence Request to Hear the Evidence of Witness Y by Deposition,” Trial Chamber, 10 April 2003, para. 7.

⁵⁰ *Aleksovski* Appeal Judgment, para. 62.

Court to determine whether the factual basis for an expert opinion is truthful and that determination is made in the light of all the evidence given.⁵¹ Furthermore, the weight to be attributed to expert evidence is to be determined by the Trial Chamber in light of all the evidence adduced.⁵² According to the jurisprudence, the factors to consider when assessing the probative value of an expert's oral and written evidence are the professional competence of the expert, the methodologies used and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber.⁵³ The Prosecution stresses that "[...] the expert may validly present his submissions on the issue of subordination, which naturally falls within the field of expertise of a military expert, and that, in this context, a military expert may express his opinion on matters of law".⁵⁴

DOCUMENTARY EVIDENCE

49. The weight to be attached to documents admitted into evidence is assessed when considering the entire evidence at the end of the trial.⁵⁵ If the original of a document is unavailable then copies may be relied upon.⁵⁶

RELEVANCE OF THE EVIDENCE OF ONE ACCUSED IN RELATION TO OTHER ACCUSED

50. As a general principle, the Trial Chamber should consider all of the evidence in a case in relation to all of the accused in the case, so far as it is relevant. It is quite common in a joint trial for the evidence of one accused to be prejudicial to another accused. This does not mean that the evidence of each Accused cannot be taken into account in relation to each of the other accused. The ability of the Trial Chamber in such cases to consider the

⁵¹ *Prosecutor v. Galić*, IT-98-29-T, "Decision on the Expert Witness Statements Submitted by the Defence", ("Galić Decision on Expert Witness") Trial Chamber, 27 January 2003, p. 4; *Čelebići* Appeal Judgment, para. 594.

⁵² *Galić Decision on Expert Witness*, p. 4; *Prosecutor v. Brđanin*, IT-99-36-T "Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown," Trial Chamber, 3 June 2003, p. 4.

⁵³ *Blagojević* Trial Judgment, para. 27 endorsing *Vasiljević* Trial Chamber's view.

⁵⁴ *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, T "Decision on Report of Prosecution Expert Klaus Reinhardt", Trial Chamber 11 February 2004, p. 4.

⁵⁵ *Prosecutor v. Simić et al.*, IT-95-9-T, "Reasons for Decision on Admission of "Variant A&B" Document," Trial Chamber, 22 May 2002, para. 12.

⁵⁶ *Fofana* Appeal Decision on Bail, para. 24.

evidence as a whole in relation to all of the Accused enables it to get to the truth of the matter in relation to all of the accused.⁵⁷

51. Thus, a witness presented by one Accused can give evidence against a co-Accused.⁵⁸ Similarly, evidence brought to light in the cross-examination of a witness by one Accused can be taken into account to the prejudice of another Accused, although the other Accused will have the right to further examine that witness to clarify the matter.⁵⁹

PART II LAW APPLICABLE TO THE CHARGES IN THE INDICTMENT AND EVIDENTIARY BASIS

I. CRIMES UNDER ARTICLE 2 OF THE STATUTE

1. CONTEXTUAL ELEMENTS

52. This Trial Chamber has previously defined the contextual elements that must be proved in relation to any crime against humanity as follows: (a) there must be an attack; (b) the acts of the accused must be part of the attack; (c) the attack must be widespread or systematic; (d) the attack must be directed against any civilian population; (e) the accused must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population.⁶⁰
53. An attack is not limited to the use of armed force, but encompasses any mistreatment of the civilian population.⁶¹ The phrase “widespread” refers to the scale of the attack and the number of victims, while the phrase “systematic” refers to the organized nature of

⁵⁷ See, for instance, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Request for Severance of Three Accused”, (“Bagosora Decision”) Trial Chamber, 27 March 2006, para. 5 referring to earlier relevant case law of the ICTY and ICTR.

⁵⁸ See *Prosecutor v. Kvočka et al.*, IT-98-30-PT, “Decision on the ‘Request to the Trial Chamber to Issue a Decision on Use of Rule 90 H’”, Trial Chamber, 11 January 2001, p. 3, in which the Trial Chamber rejected a defence motion seeking to limit Prosecution cross-examination of defence witnesses to questions relating to the accused who called that witness. The Trial Chamber considered “that a witness presented by an accused may give evidence against one of his co-accused, so that the co-accused has a right to cross-examine that witness, and further that to prohibit all cross-examination by a co-accused as requested in the Motion could exclude relevant evidence”.

⁵⁹ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Decision on the Defence Motion for the Re-examination of Witness DE”, Trial Chamber, 19 August 1998, para. 15.

⁶⁰ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-473, “Decision on Motions for Judgment of Acquittal, Pursuant to Rule 98,” (“Norman Decision on Motion for Acquittal”) Trial Chamber, 21 October 2005, para. 55; *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-469, “Decision on Defence Motions for Acquittal Pursuant to Rule 98,” (“Brima Decision on Motion for Acquittal”) Trial Chamber, 31 March 2006, para. 42.

⁶¹ *Limaj* Trial Judgment, para. 182.

the acts of violence and the improbability of their random occurrence.⁶² The attack must be *either* widespread *or* systematic, i.e. the requirement is disjunctive.⁶³ It is the attack itself and not the individual acts of the accused that must be widespread or systematic.⁶⁴ When establishing that there was an attack against a particular civilian population, it is irrelevant whether the other side in a conflict also committed crimes against a civilian population.⁶⁵

54. As for the necessary nexus between the act of the accused and the attack, the acts of the accused need only form part of the attack, viewed objectively,⁶⁶ by their nature or consequences,⁶⁷ and “all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random.”⁶⁸
55. The civilian population must be the *primary* object of the attack.⁶⁹ This Trial Chamber has adopted a broad interpretation of the term “civilian population”. Such an interpretation is consistent with recent jurisprudence.⁷⁰ The use of the word “population” does not imply that the entire population of the geographical entity in which the attack took place was subjected to that attack. Rather, it must be shown that a sufficient number of individuals were targeted, or that they were targeted in such a

⁶² *Norman* Decision on Motion for Acquittal, para. 56; *Blaškić* Appeal Judgment, para. 101.

⁶³ *Kunarac* Appeal Judgment, para. 95: The ICTY Appeals Chamber has stated: “the assessment of what constitutes a ‘widespread’ or ‘systematic’ attack is essentially a relative exercise in that it depends upon the civilian population which, allegedly, was being attacked. A Trial Chamber must therefore ‘first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic’. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a ‘widespread’ or ‘systematic’ attack vis-à-vis this civilian population.”; see also *Kordić and Čerkez* Appeal Judgment para. 93.

⁶⁴ *Blaškić* Appeal Judgment, para. 101.

⁶⁵ *Kunarac* Appeal Judgment, paras 87-88.

⁶⁶ *Limaj* Trial Judgment, para. 188.

⁶⁷ *Brdanin* Trial Judgment, para. 132.

⁶⁸ *Ibid.*

⁶⁹ *Norman* Decision on Motion for Acquittal, para. 57.

⁷⁰ See e.g. *Limaj* Trial Judgment, para. 186: “The terms “civilian population” must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as “civilian” even if non-civilians are among it, as long as it is predominantly civilian. The presence within a population of members of resistance armed groups, or former combatants who have laid down their arms, does not as such alter its civilian nature. As a result, the definition of a “civilian” is expansive and includes individuals who at one time performed acts of resistance, as well as persons who were *hors de combat* when the crime was committed. Relevant to the determination whether the presence of soldiers within a civilian population deprives the population of its civilian character are the number of soldiers as well as whether they are on leave. There is no requirement that the victims are linked to any particular side of the conflict.”

way as to satisfy the Chamber that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.⁷¹ Furthermore, a crime against humanity may be committed against members of a civilian population (including military persons not taking part in hostilities) associated with the same political or military group as the perpetrators.⁷²

56. The *mens rea* element is satisfied if the accused had knowledge of the general context in which his acts occurred and of the nexus between his acts and that context,⁷³ in addition to the requisite *mens rea* for the underlying offence or offences with which he is charged.⁷⁴ The accused need not have known the details of the attack, neither does he need to approve of the context in which his acts occurred or to share the purpose or goal behind the attack.⁷⁵ The accused needs only to have understood the “greater dimension of criminal conduct”.⁷⁶ The accused’s motives are irrelevant,⁷⁷ so that a crime against humanity may be committed for purely personal reasons.⁷⁸ It is also irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim.⁷⁹

2. EVIDENTIARY BASIS

⁷¹ *Kunarac* Appeal Judgment, para. 90; *Limaj* Trial Judgment, para. 187.

⁷² This approach is consistent with the jurisprudence of the courts established after the Second World War, which held in a number of cases that *military persons* could be the victims of crimes against humanity. *R.*, Germany, Supreme Court in the British Occupied Zone, Judgment, 27 July 1948, in *Entscheidungen*, I; *P.*, Germany, Supreme Court (*Oberster Gerichtshof*) in the British Occupied Zone, Judgment, 20 May 1948 in *Entscheidungen*, I; *H. case*, Germany, Supreme Court in the British Occupied Zone, Judgment, 18 October 1949, in *Entscheidungen*, II; these cases are quoted in Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, pp. 86-87. It is noteworthy that the military personnel victim of a crime against humanity can belong to *the same party* as the perpetrator. For example in *R.*, members of the *German* NSDAP and NSKK were found guilty of crime against humanity, for their crime against a *German* non-commissioned officer in uniform and members of the NSDAP and of the SA. *R.*, Germany, Supreme Court in the British Occupied Zone, Judgment, 27 July 1948, in *Entscheidungen*, I. Also, in *P. and others*, members of *German troops* who had court martialled and sentenced three *German marines* to death for desertion were found guilty of complicity in a crime against humanity. *R.*, Germany, Supreme Court in the British Occupied Zone, Judgment, 27 July 1948, in *Entscheidungen*, I.

⁷³ *Kunarac* Appeal Judgment, para. 102.

⁷⁴ *Kunarac* Appeal Judgment, para. 102.

⁷⁵ *Kordić & Čerkez*, Appeal Judgment, para. 99; *Kunarac* Appeal Judgment, para. 103 (footnotes omitted); *Blaškić* Appeal Judgment, para. 124.

⁷⁶ *Prosecutor v. Bagilishema*, ICTR-95-1A-T, “Judgement”, (“Trial Judgment”) Trial Chamber, 7 June 2001, para. 94; *Limaj* Trial Judgment, para. 190.

⁷⁷ *Tadić* Appeal Judgment, paras 248-272; *Kunarac* Appeal Judgment, para. 103.

⁷⁸ *Kordić & Čerkez*, Appeal Judgment, para. 99; *Kunarac* Appeal Judgment, para. 103 (footnotes omitted); *Blaškić* Appeal Judgment, para. 124.

⁷⁹ *Kunarac* Appeal Judgment, para. 103.

The attacks

■ The Prosecution has demonstrated overwhelming evidence of a pattern of CDF attacks and campaigns spreading 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 civilian population was the primary object of the attack and civilians were terrorized and often executed based on the flimsiest of allegations.⁸⁰ Confronted with this alarming situation, international humanitarian organizations rightly recognized that the CDF was employing a strategy of attacks on the civilian population.⁸¹ ■

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Civilian population as primary object of the attack

58. The Prosecution does not dispute that the CDF was fighting against the RUF and the AFRC and therefore was involved in combat against these factions. However, for the attacks mentioned above and in the Indictment, the evidence shows that their purpose was to target *all* persons supposedly belonging to the RUF and AFRC, including the persons not taking part in hostilities, suspected to have supported, sympathized with or simply failed to actively resist the combined RUF/AFRC forces. These persons were termed “collaborators” or “rebels.” As a matter of fact, the CDF leaders adopted a very broad definition of ‘rebel’ that included persons not taking part in hostilities and thus overlapped with the definition of “collaborators.”⁸³ Such targeted persons included Police officers - i.e. civilians not participating to the hostilities and in charge of the law

⁸⁰ Exhibit 86: Situation Report Dated 16th November 1997 (Confidential); TF2-116, Transcript 9 November 2004, pp. 21-23.

⁸¹ Exhibit 104: Report of the UN Secretary General Dated 9th June 1998; Exhibit 105 (A)(B): Report of the UN Secretary General Dated 12th August 1998.

⁸² TF2-014, Transcript 10 March 2005, p. 37; TF2-082, Transcript 16 September 2004, pp. 7, 39, 48-49.

⁸³ TF2-014, Transcript, 10 March 2004, p. 37.

enforcement - because they had continued to work under the junta regime.⁸⁴ People who simply refused to leave the AFRC/RUF zones were also considered as “collaborators” or “rebels.” Relatives, agents and friends of RUF or AFRC members were targeted as well and indifferently qualified as “collaborators” or “rebels.” Other categories of civilians targeted included RUF and AFRC combatants “*hors de combat*,” in particular when captured, wounded or sick, and even ex-combatants of the same force as the three Accused. [REDACTED]
[REDACTED]

[REDACTED] The fact that the Civil Defence Force may have wanted to defend part of the civilian population of Sierra Leone does not change the fact that the CDF and the Kamajors militia were targeting and attacking another part of the civilian population of Sierra Leone. Indeed, as set out by the jurisprudence, the word “population” does not imply that the entire population of the geographical entity in which the attack took place was subjected to that attack. These civilians were not randomly selected, but designated as suspected “collaborators” or “rebels”.

Pattern of Attack

59. The evidence shows that 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.⁸⁶

60. The Prosecution led evidence to show that the attack on civilians were not random, and were not just committed by ‘rogue elements.’ On the contrary, the CDF adopted the tactic of attacks on the civilian population as an element of its overall military strategy.

⁸⁴ Ibid., 76.

⁸⁵ TF2-223, Transcript, 28 September 2004, Closed Session, p. 109-110.

⁸⁶ 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.

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 personally attacked.⁸⁷

61. TF2-073, a farmer from Sembehun, described how Kamajors came to his house, saying they were sent by their High Priest, Kondewa, and had come from Talia, Tihun, Gbangbatoke and other villages. 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.⁸⁸ TF2-151, a tailor from Kenema, witnessed the killing of a boy and was beaten up by Kamajors.⁸⁹ TF2-086 described how she was attacked and wounded by Kamajors in Bonthe.⁹⁰
62. The danger posed by the CDF to the Koribundo and Tongo civilian populations was sufficiently dire that the civilian population was forced to choose between either protecting themselves against the CDF attacks or abandoning their homes. The latter was the rational and realistic option open to the civilians living in those areas. In the case of the Tongo civilians, hundreds were compulsorily removed from the township under gunpoint and forced on a long journey to Panguma, the Kamajor Headquarter, where they were presented to Kamajor Commander BJK Sei.⁹¹
63. The Prosecution submits that evidence of widespread and systematic attacks by the CDF, particularly the Kamajors has been demonstrated through documents of the United Nations tendered as exhibits by the Prosecution.⁹² Exhibit 105 (A) noted the CDF accusation of human rights violations, looting, and confiscation of vehicles. This piece of evidence corroborates the evidence of the Prosecution witnesses on the crime of looting and terrorizing the civilian population.⁹³
64. Exhibit 106, A UN Report, demonstrates the armed deployment of under age boys and continued initiation into the CDF. Exhibit 107, another UN Report, also noted the frequent reports that children were being sent into combat environment notwithstanding

⁸⁷ TF2-006, Transcript 9 February 2005, pp. 10-11.

⁸⁸ TF2-073, Transcript 2 March 2005, pp. 34, 46, 49.

⁸⁹ TF2-151, Transcript 22 September 2004, pp. 15-17.

⁹⁰ TF2-086, Transcript 8 November 2004, pp. 94-95.

⁹¹ TF2-035, Transcript 14 February 2005, p. 12-14; Doris Kelfalla, Transcript 17 October 2006, pp 43-45.

⁹² Exhibits P105-P108: Report of the UN Secretary General dated: 16th October 1998, 16th December 1998, 4th June 1999.

⁹³ TF2-014, TF2-017, TF2-022, TF2-032, TF2-033, TF2-053, TF2-071, TF2-073, TF2-082, TF2-144.

indications from ECOMOG commanders that they would not allow CDF children to serve under them.

65. UN Report, Exhibit 108 (A), contained a narrative of a woman from Moyamba district who provided detailed information on the attack on Bradford by Kamajors in which at least six civilians were believed to have lost their lives. This piece of information corroborates Prosecution evidence of witnesses TF2-014, TF2-167, and TF2-173.
66. Human Rights Watch also found credible reports of CDF, particularly Kamajors, directing attacks against unarmed civilians. Exhibit 110 (A), a HRW report, documented numerous abuses including killing and torture by members of the CDF as well as obstructing humanitarian assistance by demanding money or compensation at road blocks. Humanitarian Agency vehicles were commandeered by Kamajors and aid workers were occasionally detained. Many witnesses of abuses committed by Kamajors spoke of the grotesque nature of the killings, at times, including disembowelment followed by consumption of vital organs such as the heart. Kamajors specifically targeted RUF/AFRC and their civilian supporters. Exhibit 110, another HRW report, identified the CDF as one of the forces that were the principal perpetrators of Human Rights Abuses in Sierra Leone.
67. Exhibit 111 (C), entitled "From Combat to Community-Women and Girls of Sierra Leone" estimated number of child soldiers in each fighting force. The CDF is estimated to have had 17, 216 child soldiers and 1, 722 girl soldiers.

Specific Attacks

68. The Prosecution has led evidence to show that the CDF, particularly Kamajors knowingly conducted systematic attacks on civilians covering a wide geographic perimeter spanning five of the twelve districts of Sierra Leone. The evidence has shown that perceived collaborators were punished, terrorized and often executed, during the relevant period of the Indictment.

Tongo Attacks

69. The evidence demonstrates that the town of Tongo was attacked by Kamajors on at least three occasions but was only captured on the third attempt.⁹⁴ The commanders that led the third attack were Kailondo, who attacked from Tongola flank, Siaka Lahia who attacked from the Mavehun flank, Keikula Amara, who attacked from the Tongo Highway and Lansana Bockarie who was with the standby team at Gelema.⁹⁵
70. According to Prosecution witness TF2-015, when Kamajors attacked Tongo, the civilians went to the NDMC HQ. The Kamajors were firing everywhere – three women were hit and the witness was struck in the stomach. The Kamajors ordered the civilians to go to Bumie and “some men were fired in amongst the people in the lines as we were going (to Bumie).” At Bumie, near a house, the men and the women were separated. According to the witness: “If they see anyone they want, they will just remove him from the line and took him and kill him.” Five people were killed behind the house.”⁹⁶
71. The same witness gave evidence that at Kamboma the Kamajors said “anybody that passed by Kamboma should be killed...We pleaded to them. We told them we were civilians. They said no. They said that Kamajors had ordered them to kill anybody that passed through Kamboma.” Fifteen people were put into two lines and the Kamajors started killing. The witness said that “[A]nybody that is fired, he rolled and goes to that swamp.” They shot all the people in the line, except eight. The commander came and said “not to spoil cartridges, it’s an ambush they are working on and they should use knives. I was struck on the back of the neck, fell down and I rolled and fell on other dead corpses.”⁹⁷
72. According to another Prosecution witness, TF2-027, when the Kamajors attacked civilians went to a big field at NDMC. The rebels left and the Kamajors came to the headquarters. The witness saw a Kamajor with a cutlass chopping at people who were lying on the field. Two were hacked.⁹⁸ Other Prosecution witnesses gave evidence of their horrific experiences in the hands of the Kamajors during the Tongo attack.⁹⁹

⁹⁴ Siaka Lahai, Transcript 17 May 2006 p. 5.

⁹⁵ Ibid., pp. 7-8.

⁹⁶ TF2-015, Transcript 11 February 2005, pp. 6-8.

⁹⁷ Ibid., pp. 12-15.

⁹⁸ Ibid., p. 46.

⁹⁹ TF2- TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, and TF2-144.

Koribundo Attacks

73. The Prosecution led evidence of Kamajor attacks on the town of Koribundo on the 13 February, 1998.¹⁰⁰ [REDACTED]

74. Prosecution witness TF2-159, testified that on a Sunday, during the Kamajor attack on Koribundo, he went to the Koribundo road junction, where he saw the Kamajors with five Limba people. The witness knew them as they used to sell palm wine. They were Sofiana, Sarrah, Momoh, Kamara and Karoma. The Kamajors said the five persons were junta. They were cut into pieces and some were shot with guns. Sarrah and Momoh had their heads cut off.¹⁰³

75. On the following Monday, the witness left his hiding place in the bush, to go to the Kamajor headquarters in Koribundo, to see Joe Timedie. At headquarters he saw Kamajors singing, as they had captured eight people. There were five men and three women. The witness knew the women as the wives of soldiers – Amie, Jainaba and Esther. The witness said they “were singing on them, they were taking them to be killed.” Witness followed the Kamajors along Blama Road, they were beating them and mutilating them and telling them they were going to be killed. Two of the women were killed by a stick (“right through them”) and one by a gun (and by a cutlass, her head was cut off). The men, four were killed by a gun and one man by a cutlass to his neck. The witness saw them disembowel the women and place the entrails in a bucket. Their intestines were turned into a checkpoint.¹⁰⁴

Bo Attacks

¹⁰⁰ TF2-008, TF2-012, TF2-032, TF2-082, TF2-157, TF2-159, TF2-162, TF2-176, TF2-190, TF2-198.

¹⁰¹ TF2-082, Transcript 15 September 2004, pp. 8-10.

¹⁰² Ibid., p. 35.

¹⁰³ TF2-159, Transcript 9 September 2004, p. 29-35.

¹⁰⁴ Ibid., pp. 35-38.

76. The Prosecution led evidence that the town of Bo was attacked on the 15 February 1998.

Nineteen witnesses for the Prosecution gave evidence regarding the Kamajor attack on Bo.¹⁰⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. According to Nallo's evidence, when they attacked Bo town, the police were targeted.

He said about the Police: "we killed them, those that we were able to see, we killed them."¹⁰⁹

78. TF2-030 testified that on 22 February 1998, the witness was at home with her husband.

The witness saw her husband surrounded by about fifteen Kamajors. Her husband ran away, about fifteen yards from the kitchen, to the swamp where he was chopped. The witness was in the parlour and the witness ran out to her husband who said to her: "Oh, my wife, they have killed me." Overnight her husband died.¹¹⁰

79. The Prosecution has led overwhelming evidence that Kamajors attacked the districts of Kenema,¹¹¹ Moyamba,¹¹² and Bonthe Town¹¹³ in similar circumstances as those narrated above. Civilians were specifically targeted during the attacks.

Number of Victims

¹⁰⁵ TF2-001, TF2-005, TF2-006, TF2-007, TF2-008, TF2-011, TF2-014, TF2-017, TF2-030, TF2-056, TF2-057, TF2-067, TF2-088, TF2-119, TF2-140, TF2-156, TF2-190, TF2-201

¹⁰⁶ TF2-001, Transcript 14 February 2005, p. 70.

¹⁰⁷ *ibid.*, pp. 82-83.

¹⁰⁸ *ibid.*, pp. 85-87.

¹⁰⁹ TF2-014, Transcript 10 March 2005, p. 77.

¹¹⁰ TF2-030, Transcript 25 November 2004, pp. 7-10.

¹¹¹ TF2-005, TF2-033, TF2-039, TF2-040, TF2-041, TF2-042, TF2-049, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, TF2-222, TF2-223.

¹¹² TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-170, TF2-173, TF2-190.

¹¹³ TF2-071, TF2-116, TF2-147.

80. The Prosecution submits that there is evidence, taken as a whole, from which it could be reasonably inferred that the totality of civilian casualty resulting from the Kamajor attacks was significantly high. For example, according to TF2-047, a Sanitary Officer in Tongo, on the day the Kamajors attacked he saw Kamajor Kamabote asked the crowd at the Tongo NDMC headquarters to point out rebels. Dr Blood was pointed out as a rebel who did not pay for rice. The witness said that Kamabote had Dr Blood sit down and he then chopped Dr. Blood on his neck.¹¹⁴ The witness saw people with heads chopped off, disemboweled and he also said he saw Kamajors kill three people. Therefore he concluded that the Kamajors killed all the people.¹¹⁵ A lady called Fatmata Kamara, was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces.¹¹⁶ The witness stated that he buried one hundred and fifty corpses. He also buried twenty five junta corpses that had been burnt with tyres at Olumatic.¹¹⁷

II. CRIMES UNDER ARTICLES 3 AND 4 OF THE STATUTE

81. The three Accused and all other members of the CDF armed faction engaged in fighting within Sierra Leone were required to comply with international humanitarian law and the laws and customs governing the conduct of armed conflict, including Common Article 3 to the Geneva Conventions of 1949, and Additional Protocol II. In the case of an armed conflict occurring in the territory of a High Contracting Party to the Geneva Convention or the Additional Protocol II, each Party to the conflict is bound to apply, as a minimum, the guarantees contained in Common Article 3 of the Geneva Conventions and Additional Protocol II.¹¹⁸ In the present case, the State of Sierra Leone has been a High Contracting Party to the Geneva Conventions of 1949 and Additional Protocol II since 21 October 1986,¹¹⁹ so it is indisputable that these legal instruments were in force during the period of the Indictment. The Appeals Chamber confirmed that the Trial Chamber

¹¹⁴ TF2-047, Transcript 22 February 2005, pp. 51-52.

¹¹⁵ *ibid.*, p. 58.

¹¹⁶ *ibid.*, pp. 59-60.

¹¹⁷ TF2-047, Transcript 22 February 2005, p. 66.

¹¹⁸ Common Article 3 (1) to the Geneva Conventions and Article 1 (1) Additional Protocol I.

¹¹⁹ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-117, "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence," (***Norman Judicial Notice Decision***) Trial Chamber, 2 June 2004, Annex 1 (E).

correctly took judicial notice of the fact that an armed conflict took place on the territory of Sierra Leone from March 1991 to January 2002, a period that extends beyond that covered by the Indictment.¹²⁰ The Trial Chamber has also taken judicial notice of the fact that the CDF, RUF and AFRC were involved in armed conflict in Sierra Leone.¹²¹ The evidence presented before the Court confirms this fact. Consequently, the CDF – as well as the other parties involved in the conflict in Sierra Leone- had to respect Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II. Furthermore, the guarantees contained in these provisions that appear in the Statute of the Special Court form part of customary international law, as does their criminalisation.¹²²

GENERAL REQUIREMENTS

82. The existence of an armed conflict is a precondition to the applicability of Article 3 of the Statute. This Trial Chamber has ruled that “an armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state”.¹²³ The Trial Chamber has taken judicial notice of the fact that the armed conflict in Sierra Leone occurred from March 1991 until January 2002.¹²⁴ The Appeals Chamber of the Special Court has found that it is immaterial whether the armed conflict is internal or international in nature; as recently noted by this Trial Chamber;¹²⁵ “the Court need only

¹²⁰ *Norman Judicial Notice Decision*, Annex 1 (A); *Prosecutor v. Fofana*, SCSL-04-14-T-398, ‘Decision on Appeal against Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’, (“*Fofana Appeal Decision on Judicial Notice*”) Appeals Chamber, 16 May 2005, para. 40.

¹²¹ *Norman Judicial Notice Decision*, Annex 1 (H); *Fofana Appeal Decision on Judicial Notice*, para. 40.

¹²² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge University Press, 2005, pp. 299-383 and 568-603.

¹²³ *Norman Decision on Motion for Acquittal*, para. 69. The Trial Chamber adopted the definition of an armed conflict of the ICTY Appeals Chamber in the *Tadić* case, see *Tadić Jurisdiction Appeal Decision*, para. 70. The ICTY Trial Chamber in the *Orić* case adopted the same definition, *Prosecutor v. Orić*, IT-03-68-T, “Judgement”, (“*Orić Trial Judgment*”) Trial Chamber, 30 June 2006, para. 254.

¹²⁴ *Norman Decision on Judicial Notice*, Annex 1(A); *Norman Decision Motion for Acquittal*, para. 71.

¹²⁵ *Prosecutor v. Sesay, Kallon, Gbao*, “Decision on Defence Motion for Acquittal Pursuant to Rule 98,” (*Sesay Decision on Motion for Acquittal*) Transcript, 25 October 2006, p.15.

be satisfied that an armed conflict existed and that the alleged violations were related to the armed conflict.”¹²⁶

83. As stated by this Trial Chamber, Common Article 3 applies to persons taking no active part in hostilities, which includes civilians, members of the armed forces who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause.¹²⁷ Additional Protocol II similarly protects all persons who do not take a direct part or who have ceased to take part in hostilities.¹²⁸ The accused must be aware of the civilian status of the victim.
84. A nexus between the acts of the accused and the armed conflict must be established, but this does not require a showing that the offence was committed while fighting was actually taking place or at the scene of combat. Furthermore, the armed conflict need not have been the cause of the commission of the crime but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed, or the purpose for which it was committed. The requirement would be fulfilled if the offence were committed in the aftermath of the fighting provided that it was committed in furtherance of or under the guise of the situation created by the fighting.¹²⁹
85. Like Article 3 of the Statute, Article 4 reflects the fundamental distinction drawn in international humanitarian law between civilians and the military and the absolute prohibition of attacks against the former.¹³⁰ The Prosecution submits that the general requirements in relation to Article 3 apply.¹³¹

EVIDENTIARY BASIS

¹²⁶ *Prosecutor v. Fofana*, SCSL-04-14-PT-101, “Decision on Preliminary Motion on Lack of Jurisdiction Materiae, Nature of the Armed Conflict,” (“**Fofana Decision on Jurisdiction (Armed Conflict)**”) Appeals Chamber, 25 May 2004, para. 25.

¹²⁷ *Čelebići* Appeal Judgment, paras. 124; *Norman* Decision on Motion for Acquittal, para. 70.

¹²⁸ *Norman* Decision on Motion for Acquittal, para. 70; *Akayesu* Trial Judgment, para. 629: “These phrases are so similar that, for the Chamber’s purposes, they may be treated as synonymous.”

¹²⁹ *Orić* Trial Judgment para. 256; *Brima* Decision on Motion for Acquittal, para. 44.

¹³⁰ See Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, para. 16.

¹³¹ *Brima* Decision on Motion for Acquittal, para. 46.

86. The Prosecution submits that it has established the required nexus under Articles 3 and 4 of the Statute. It has been shown that the crimes were closely related to the hostilities occurring in all parts of the areas controlled by the parties to the conflict.
87. The evidence demonstrates that the perpetrators were combatants, that is to say, that all perpetrators were Kamajor fighters. The evidence also demonstrates that the victims were non-combatants or persons hors de combat as set out in relation to the contextual elements for crimes against humanity above. Further, it has been established that the majority of the victims were suspected “Collaborators” which could include supporting the AFRC/RUF, or were targeted for their tribal affiliation.¹³²
88. The evidence manifests that the criminal acts could be said to serve the ultimate goal of a military strategy of targeting civilians in order to induce them to leave, and to attack and terrorize and punish those suspected of not fully supporting the Kamajors in its conduct of the war.¹³³
89. The liability of the three Accused arises in the context of their roles as National Coordinator (Chief Sam Hinga Norman) Director of war (Moinina Fofana) and High Priest (Allieu Kondewa). In these capacities and as described in Part III below, the Accused incur liability for the acts of the Kamajor fighters acting under their command and control.

CDF Strategic Command

90. Although the CDF did not have an ideological base, it had a clear top level strategic idea: to protect its homelands from the junta forces and regain control over territories occupied by the junta.
91. The CDF strategic command was located at Base Zero from the time of Norman’s arrival in September 1997. Upon his arrival at Talia, an Advisory War Council was set up whose purpose was to provide strategic guidance to the CDF military command, be the link between the tribal chiefs and the CDF, and control recruitment and initiation into the CDF.¹³⁴ Having established the War Council, however, it had little if any power or

¹³² TF2-030, Transcript 25 November 2004, p. 11; TF2-015, Transcript 11 February 2005, p. 66.

¹³³ TF2-079, Transcript 26 May 2005, p. 20.

¹³⁴ Exhibit P97: Expert Military Report, para. C-3.1.

influence over Norman and the military command of the CDF.¹³⁵ Where it tried to intervene by, for example, investigating complaints about individual Kamajors and recommending disciplinary action, it was pointedly ignored by Norman.¹³⁶

92. The War Council was generally excluded from military planning. [REDACTED]

93. Norman formed an inner core executive that dealt with military operations. Norman, Fofana and Kondewa were the executive of the Kamajor society, nobody took decisions in the absence of this group. Whatever happened they came together because they were the leaders and the Kamajors looked up to them.¹³⁸

94. Fofana was in charge of all fighters; all the fighting groups. His role was to plan, execute the war and supply arms and ammunition to commanders.¹³⁹ Kondewa, as the High Priest, was the head of all Initiators. Initiation and immunization (bullet proofing) were key components in the military strategy of the CDF. No Kamajor went to war without the blessing of Kondewa.¹⁴⁰

95. CDF National Coordinator Hinga Norman organized the military command to suit his own personality. Like many military commanders, he reserved the right to make all important decisions, and little authority was delegated to subordinates.¹⁴¹ The key staff branches of his military outfit were: logistics headed by Director of War Moinina Fofana; recruitment and initiation, headed by Allieu Kondewa; and planning and execution of operations, conducted by the Director of Operations (in Southern Sierra Leone) Albert Nallo.¹⁴²

96. The supply of logistics is elemental to the exercise of effective control and command over any form of military organization. It is through control of logistics that Norman as a commander was able to maintain control over his organization. It is no surprise therefore,

¹³⁵ Exhibit P97: Expert Military Report, para. C-3.1.

¹³⁶ TF2-008, Transcript 16 November 2004, pp. 76-77.

¹³⁷ TF2-068, Transcript 17 November 2004, p. 115.

¹³⁸ TF2-008, Transcript 16 November 2004, p. 51.

¹³⁹ Ibid., p. 47.

¹⁴⁰ Ibid., p. 49.

¹⁴¹ Exhibit P97, Expert Military Report, para. C-3.2.

¹⁴² Ibid., para. C-3.

that the important function of logistics was vested in Norman's second-in-command, Moinina Fofana.¹⁴³

Base Zero Operations

97. Base Zero was the name given to the town of Talia, in the Yawbeko Chiefdom after Norman's arrival in 1997. Between 1997 and 1998 it served as the headquarters and main base of the Kamajors. Norman in his evidence compared Base Zero to the seat of Generals and Field Marshals during war.¹⁴⁴
98. It was at Base Zero that Norman instituted a training program which was undertaken by all those at the base. There was a formal training of two weeks. The trainees were divided into two groups: commanders and fighters. After the completion of the training, certificates of Merit signed by Norman, Fofana and Kondewa were awarded to the participants at the training field.¹⁴⁵ That field also served as a venue for important meetings when Norman had to address the fighters. At such meetings, Fofana and Kondewa were usually in attendance.¹⁴⁶ There were different meeting places (Walihuns) at Base Zero depending on the importance of the subject to be deliberated upon.¹⁴⁷
99. There were two types of formal meetings conducted at Base Zero. The first was the general meeting, used to pass information to all Kamajors. The second was the commanders' meeting, used either for information sharing or for planning. General meetings were held on the training field; the fighters were organized in ranks facing a high platform from which Norman would address them. Allieu Kondewa would stand to his left and Moinina Fofana to his right, but neither sharing the platform with Norman.¹⁴⁸

Military Planning and Operations

¹⁴³ Ibid., para. C-4.2.

¹⁴⁴ Accused Sam Hinga Norman, Transcript 26 January 2006, p. 17.

¹⁴⁵ Exhibit P26: Certificate of Training Given to Witness (Confidential), 10 February 1998.

¹⁴⁶ TF2-017, Transcript 19 November 2004, p. 88.

¹⁴⁷ TF2-008, Transcript 16 November 2004, p. 65.

¹⁴⁸ Exhibit P97: Expert Military Report, para. C4.6.

100. [REDACTED]

100. The Prosecution also led evidence that the plan to attack Bo was orchestrated at Base Zero by Norman with the aid and support of Fofana and Kondewa. Witness TF2-014 stated that Moinina Fofana and Kondewa decided in a meeting at Base Zero that Mustapha Ngobeh must lead the attack on Bo.¹⁵³

101. Witness TF2-014 further testified that as Director of Operations, he was ordered by the First Accused to kill every living thing and destroy all properties at Koribundo. The witness gave evidence that Norman labeled residents of Koribundo as spies and collaborators and that the witness should ensure that no one should be left alive and house should be burnt. Petrol was given for that operation.¹⁵⁴

102. [REDACTED]

103. Witness TF2-008 testified that at a meeting at Base Zero, Norman instructed the commanders present, that when they proceeded to attack Koribundo, they should not leave any living thing and should burn down houses if there was resistance. Commanders should only spare the Mosque, the School, and the Barry.¹⁵⁶

¹⁴⁹ TF2-017, Transcript 19 November 2004, p. 88.

¹⁵⁰ TF2-005, Transcript 17 February 2005, p. 110.

¹⁵¹ TF2-047, Transcript 22 February 2005, p.53.

¹⁵² TF2-027, Transcript 22 February 2005, pp. 54, 68.

¹⁵³ TF2-014, 14 March 2005, pp. 20-21.

¹⁵⁴ Ibid., p.78.

¹⁵⁵ P41, TF2-201

¹⁵⁶ TF2-008, Transcript 16 November 2004, p. 79

Admission of Responsibility for the wider acts of Kamajors

104. The Prosecution notes that detailed evidence has been provided of individual admissions of responsibility for acts of Kamajors on the part of the Kamajor leadership. This establishes a nexus between the acts of the Kamajors and the three Accused in all locations where hostilities occurred.¹⁵⁷

COUNTS 1 AND 2 – MURDER (ARTICLE 2(A) OF THE STATUTE) AND MURDER (ARTICLE 3(A) OF THE STATUTE)

ELEMENTS

105. The elements of murder may be stated as follows: the *actus reus* exists if (1) the victim is dead; (2) the death of the victim resulted from an act or omission of the accused (or the individual for whose acts and omissions the accused bears criminal responsibility); and the *mens rea* exists if (3) the accused (or the individual for whose acts and omissions the accused bears criminal responsibility) directly intended to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death¹⁵⁸ or in reckless disregard of human life.¹⁵⁹ “[P]roof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The fact of a victim’s death can be inferred circumstantially from all of the evidence presented.”¹⁶⁰

106. It has been established in the jurisprudence of the International Tribunals that “the *mens rea* is not confined to cases where the accused has a direct intent to kill or to cause serious bodily harm, but also extends to cases where the accused has what is often

¹⁵⁷ TF2-008, Transcript 16 November 2004, pp.116-117; TF2-014, Transcript 10 March 2005, p. 89; TF2-082, Transcript 15 September 2004 p. 50; TF2-198, Transcript 15 June 2004 p. 38; TF2-159, Transcript 9 September 2004 p. 56; TF2-190, Transcript 10 February, 2005, p. 50.

¹⁵⁸ *Norman* Decision on Motion for Acquittal, para. 72; *Strugar* Trial Judgment, paras. 235-236; *Kordić and Čerkez*, Appeal Judgment para. 37; *Brima* Decision on Motion for Acquittal, para. 74.

¹⁵⁹ *Blaškić* Trial Judgment, paras. 152, 181; *Čelebići* Trial Judgment, para. 423; *Prosecutor v Emmanuel Ndindabahizi*, ICTR-2001-71-1, “Judgment” Trial Chamber, 15 July 2004, para. 487.

¹⁶⁰ *Krnojelac* Trial Judgment, para. 326.

- referred to as an indirect intent.”¹⁶¹ Therefore, “The necessary mental state exists when the accused knows that it is *probable* that his act or omission will cause death.”¹⁶²
107. The core elements of the offence of murder in relation to both Articles 2 and 3 of the Statute are the same.¹⁶³

EVIDENTIARY BASIS

108. The Prosecution has presented evidence of unlawful killings at or near Tongo Field, Kenema, Bo, Moyamba and Bonthe.
109. **Tongo Field:** Evidence of the physical acts of killing, which constitute the actus reus for the offence of unlawful killings for the Tongo crime base, is contained in the testimonies of witnesses TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, and TF2-144. For example, Witness TF2-047 gave evidence that a Kamajor commander called Kamabote said to him, “you are the sanitary officer. I know you. Today you are going to bury a lot of corpses until you become tired.”¹⁶⁴ The witness saw people being killed by the Kamajors and Kamabote told him to get a wheelbarrow and bury the corpses in a pit. Bodies were lying in the compound. The witness observed that some of them had their heads chopped off, and he never saw their heads.¹⁶⁵ 150 corpses were buried.¹⁶⁶
110. Witness TF2-027, for example, described how civilians were seized, rounded up and killed and how some civilians were ordered to dig mass graves.¹⁶⁷ 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

¹⁶¹ *Strugar* Trial Judgment, para. 235.

¹⁶² *Ibid.*, para. 236.

¹⁶³ *Norman* Decision on Motion for Acquittal, para. 75; *Kordić and Čerkez* Trial Judgment, para. 236; *Čelebići* Trial Judgment, para. 422; *Krnjelac* Trial Judgment, para. 323. See also *Brima* Decision on Motion for Acquittal, para. 77.

¹⁶⁴ TF2-047, Transcript 22 February 2005, p.53.

¹⁶⁵ TF2-047, *Ibid.*, p.58.

¹⁶⁶ TF2-047, *Ibid.*, p.61.

¹⁶⁷ TF2-027, *Ibid.*, pp. 54, 68.

- the remaining men. The Kamajors stated that they “had been ordered to kill anyone that passed through Kamboma.”¹⁶⁸
111. Witness TF2-027 gave evidence that on the third day after the Kamajor attack on Tongo, the witness left for Yumbona. On the way to Yumbona the witness passed through and went to Konia. At Konia, the witness heard Kamajors say that a boy that has been killed was not a rebel. He also heard some Kamajors who came from the bush ask the other Kamajors if they should go and bury the 30 corpses under the Coffee Tree.¹⁶⁹
112. Witness TF2-047¹⁷⁰ testified that Kamajor Kamabote asked the crowd at the Tongo NDMC HQ to point out rebels. Dr Blood was pointed out as a rebel who did not pay for rice. The witness said that Kamabote had Dr Blood sit down; he then chopped Dr. Blood on his neck. The same Witness saw people with heads chopped off, disemboweled. Witness said he saw Kamajors kill 3 people therefore he concluded that the Kamajors killed all the people.¹⁷¹
113. A lady called Fatmata Kamara was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces. “I had three corpses in the wheelbarrow, which I went to bury. So when I came I met he has struck her dead.” The same witness buried 150 corpses.¹⁷² He buried 25 junta corpses burnt with tyres at Olumatic.¹⁷³ Another witness, TF2-015 stated that, “Some men were fired in amongst the people in the lines as we were going (to Bumie).” The Kamajors killed them. “They would look at you as you’re in the line. They will just call you and kill you. They fired at them.”¹⁷⁴
114. Witness TF2-015 stated that at Kamboma they were taken behind a house. “They said anybody that passed by Kamboma should be killed...we pleaded to them... We told them we are civilians. They said no. They said that Kamajors had ordered them to kill anybody that passed through Kamboma. So they put us in two lines. They began by killing behind that house...anybody that is fired, he rolled and goes to that swamp.”¹⁷⁵ They shot all the people in the line, except eight persons. The CO came and said not to

¹⁶⁸ TF2-015, Transcript 11 February 2005, pp. 12-15.

¹⁶⁹ TF2-047, Transcript 22 February 2005, p. 51.

¹⁷⁰ TF2-047, Ibid., p. 51.

¹⁷¹ TF2-047, Ibid, p. 58.

¹⁷² TF2-047, Ibid, p. 61.

¹⁷³ TF2-047, Ibid, p. 66.

¹⁷⁴ TF2-015, Transcript 11 February 2005, p. 8.

¹⁷⁵ TF2-015, Ibid, pp. 12-13.

spoil cartridges, that they were working on an ambush and should use knives.¹⁷⁶ The witness testified that he was struck on the back of the neck, fell down and rolled onto "other dead corpses."¹⁷⁷

115. **Kenema:** [REDACTED]

116. As another example, witness TF2-021 described capturing collaborators and tying them with FM rope; they were then taken to the Yamorto; they were taken there to be eaten. The person would be choked with a bayonet, "then he will die. 'When he die, then the heart, the liver, and other parts in his stomach we remove and the legs. Then the head, we find a stick and put it on it.'"¹⁸¹

117. **Bo District:** [REDACTED]

Witness TF2-007 testified that in 1998, he was arrested in the bush by Kamajors who took him to town where he witnessed the killing of his father.¹⁸³ [REDACTED]

[REDACTED] Witness TF2-088 testified that in April 1999, at a Kamajor checkpoint he saw a letter, which said that his son was to be killed immediately for his ash to be used in last initiation in Mongeray (Mongere)

¹⁷⁶ TF2-015, Ibid, p. 14 (lines 9-13).

¹⁷⁷ TF2-015, Ibid, p. 14 (lines 22-23).

¹⁷⁸ TF2-223, Transcript 28 September 2004, Closed Session, pp. 71-73.

¹⁷⁹ TF2-223, Ibid, p. 75.

¹⁸⁰ TF2-223, Ibid, pp. 76-77.

¹⁸¹ TF2-021, Transcript 2 November 04, p. 76.

¹⁸² TF2-017, Transcript 19 November 2004, Closed Session, p. 97.

¹⁸³ TF2-007, Transcript 2 December 2004, pp. 57-58.

¹⁸⁴ Exhibit P37: Place of Birth and Place of Residence of the Witness, 2 December 2004.

- town in Hinga Norman's compound. The letter was addressed to a number of checkpoint commanders. On the 24th April 1999 the body was burned by Kamajors.¹⁸⁵
118. Witness TF2-014 testified that as Director of Operations, he was ordered by the First Accused to kill every living thing and destroy all properties at Koribundo. The witness gave evidence that Norman labeled residents of Koribundo as spies and collaborators and that the witness should ensure that no one should be left alive and house should be burnt. Petrol was given for that operation.¹⁸⁶ The witness was given further instructions by the First Accused to kill any soldier who had surrendered. The witness sent a message to Norman regarding a plea made to spare a surrendered soldier. Norman sent four Kamajors to kill the surrendered soldier in response. The surrendered soldier's head was cut off.¹⁸⁷
119. Witness TF2-042 saw Kamajors moving towards the Police football field, where they met two Police Officers. The officers were O.C.Kanu and Desmond Pratt. The Kamajors asked the O.C. Kanu his identity; he was the O.C. SSD. He showed them his identity card and he was shot and they shot Desmond Pratt. Sgt Turay had come from his own quarters to speak on behalf of the other police officers and they shot him. They were shot dead. She saw the bodies of Sgt Mason, Couple Fandai, Sgt Sumura, Sgt Turay, O.C.Kanu and Desmond Pratt. Later she saw the corpse of Essai Mimor. Later a report was given to ECOMOG by the Police stating that 36 Police officers had been killed.¹⁸⁸
120. **Moyamba District:** Witnesses TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 gave evidence of unlawful killings that occurred at the Moyamba crime base.
121. **Bonthe:** Witnesses TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189 gave evidence of unlawful killings that occurred at the Bonthe crime base.
122. Witness TF2-014 testified that he knew Mustapha Fallon who was executed in the Poro Bush at Talia, in the presence of Hinga Norman, Moinina Fofana, Allieu Kondewa and

¹⁸⁵ TF2-088, Transcript 26 November 2004, pp. 49-50.

¹⁸⁶ TF2-014, Transcript 10 March 2005, p. 78.

¹⁸⁷ TF2-014, Ibid, p. 85-86.

¹⁸⁸ TF2-042, Transcript 17 September 2004, p. 104 to p. 109 (lines 5-7).

others. Mustapha Fallon who was also a Kamajor was killed because Allieu Kondewa wanted human sacrifice in order to guarantee the protection of the fighters. The brother of Mustapha Fallon pleaded for his life with Norman but to no avail. Hinga Norman gave three hundred thousand Leones to the deceased brothers appealing to them not to tell anyone what transpired.¹⁸⁹

123. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the First Accused. Defence cross-examination was unable to undermine or dispute the occurrence. In his testimony, the witness said that he knew Alpha Dauda Kanu, a Kapra. He was killed in a palm oil plantation when going towards Mokusi. Kanu was killed by Dr Allieu Kondewa, Hinga Norman and Moinina Fofana. "He was hacked to death, and we took off his skin." The witness was present. Some of Kanu's body parts were taken and "They said that they are going to prepare a garment and a walking stick for Chief Hinga Norman and a fan, which is called a "controller", so as to use those things in order to become very powerful"¹⁹⁰

124. [REDACTED]

125. Witness TF2-071 gave evidence that the Chief of Mobayei (Mobayeh) Keinechawa, told him that Kamajors led by one Momoh Sitta had attacked the town of Mobayei and killed an old woman, Musu Fai and a pregnant woman, Jebbeh Kpaka who were unable to

¹⁸⁹ TF2-014, Transcript 10 March 2005, p. 59.

¹⁹⁰ TF2-014, Ibid, p. 55.

¹⁹¹ TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-77.

escape.¹⁹² Witness TF2-109 testified that saw the killing of Lahai Lebbie, Baggie, Ngor Jusu. They were killed near Makosi (Makose), on the way to Talia. Lahai Lebbie was killed by the Kamajors-he was tied up and a tire was used to burn him.¹⁹³

126. The Prosecution submits that the evidence of killings establishes the legal requirements for both murder as a crime against humanity and murder as a violation of Common Article 3 of the Geneva Conventions. The deaths of numerous victims resulted from the acts of the three Accused either directly or through the actions of the Kamajors for whose acts or omissions the three Accused were responsible. The Prosecution has presented detailed evidence of the composition and structure of the CDF.¹⁹⁴ Even the Defence through cross-examination confirmed the link between the CDF and the Kamajor militia, and how the movement had undergone systemic changes over the years. The circumstances of the killings demonstrate that the perpetrators intended to kill the victims or acted in the reasonable knowledge that such acts would result in the deaths of the victims. All of the victims were civilians or persons taking no active part in hostilities.
127. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the unlawful killings charged under Counts 1 and 2 will be detailed in Part II.

COUNT 3 AND 4 -INHUMANE ACTS (ARTICLE 2(I) OF THE STATUTE) AND CRUEL TREATMENT (ARTICLE 3(A) OF THE STATUTE)

ELEMENTS

128. This Trial Chamber has found that to sustain a conviction for inhumane acts, the Prosecution must prove: (1) the occurrence of an act or omission of similar seriousness to the other enumerated acts under [Article 2]; (2) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and (3) the act or omission was performed deliberately by the accused or a person or

¹⁹² TF2-071, Transcript 11 November 2004, p. 70.

¹⁹³ TF2-109, Transcript 30 May 2005, p. 34.

¹⁹⁴ TF2-005, TF2-008, TF2-014, TF2-017, TF2-068, TF2-079, TF2-190, TF2-201, TF2-222

persons for whose acts and omissions he bears criminal responsibility.¹⁹⁵ The *mens rea* is satisfied where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless thereto.¹⁹⁶

129. The category of “other inhumane acts” is a generic category which encompasses a series of criminal activities not explicitly enumerated. Conduct that has been held to amount to inhumane treatment includes beatings, torture, sexual violence, humiliation, harassment, psychological abuses, confinement in inhumane conditions, infliction of injuries other than killing,¹⁹⁷ mutilation and other types of severe bodily harm, beatings and other acts of violence,¹⁹⁸ contribution to an atmosphere of terror,¹⁹⁹ and serious physical and mental injury.²⁰⁰
130. The core elements of inhumane acts as a crime against humanity and of cruel treatment as a violation of Common Article 3 to the Geneva Conventions are the same.²⁰¹ This Trial Chamber has stated that cruel treatment may include treatment that does not meet the purposive requirement for the offence of torture.²⁰²

B. EVIDENTIARY BASIS

131. Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222 gave evidence of direct orders for the attack on civilian collaborators of the AFRC/RUF. Evidence of physical violence or mental suffering in Kamboma emanates from the unchallenged evidence of witness TF2-015. The witness (the 65th victim) was the only survivor. The witness

¹⁹⁵ *Norman* Decision on Motion for Acquittal, para. 93, citing *Vasiljevic* Trial Judgment, para. 234.

¹⁹⁶ *Vasiljevic* Trial Judgment, para. 236, and see *Norman* Decision on Motion for Acquittal, para. 94.

¹⁹⁷ *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, “Judgement” (“*Kvočka* Trial Judgment”), Trial Chamber, 2 November 2001, para. 209.

¹⁹⁸ *Tadić* Trial Judgment, para. 730; *Čelebići* Trial Judgment, para. 1034.

¹⁹⁹ *Čelebići* Trial Judgment, para. 1091.

²⁰⁰ *Blaškić* Trial Judgment, para. 239.

²⁰¹ *Čelebići* Trial Judgment, paras 516-44, 424; *Prosecutor v. Jelisić*, IT-95-10-A, “Judgement”, Appeals Chamber, (“*Jelisić Appeal Judgment*”) 5 July 2001, para. 52; *Blaškić* Trial Judgment, para. 186. See also *Norman* Decision on Motion for Acquittal, para. 95.

²⁰² *Norman* Decision on Motion for Acquittal, para. 95.

testified that he still bears visible scars of the machete blows he received during that attack, which he showed to the court.²⁰³

132. Many other witnesses described how they suffered at the hands of the Kamajors.

Witness TF2-006 testified to inhumane acts when he said that during the Bo attack, Kamajors used a cutlass to amputate his fingers. The Court observed that four out of the five fingers were amputated.²⁰⁴ Witness TF2-007 gave evidence that at Fengehun, he saw Kamajors tie his father with a rope and part of his right ear was cut.²⁰⁵ Witness TF2-041 gave evidence that Kamajors during the Kenema attack put a knife to his neck and stabbed him all over. They left him believing he was dead.²⁰⁶ Witness TF2-073 stated that as the Kamajors intensified their looting spree around the towns and villages surrounding Moyamba, his brother-in-Law was beaten severely by Kamajors and he later died as a result.²⁰⁷ TF2-157 gave evidence that on a Sunday, during the Kamajor attack, he saw a lot of people mutilate two persons, 'mutilating them, individually and sequentially.' Those persons had cutlasses, dressed in Kamajor clothing. The persons killed were Sarah Binkolo and Sarah Lamina.²⁰⁸

133. Witness TF2-086 provided further evidence of physical violence and mental suffering when she gave evidence that she was caught by a Kamajor called Abu Jakineh whilst in Bonthe. The witness was wounded on the wrist. She was also stabbed in the stomach with a stick and then she was struck on the neck with a machete.²⁰⁹ The Prosecution led further evidence of physical violence and mental suffering through the testimony of TF2-198. In that evidence, it was stated that the witness was identified by Kamajors that he was a resident of Koribundo, he was beaten and his brother was accused of being a junta, and the two of them were tied up. The witness was able to show the marks sustained from the wounds to the Court.²¹⁰

134. [REDACTED]

²⁰³ TF2-015, Transcript 11 February 2005, p. 16.

²⁰⁴ TF2-006, Transcript 9 February 2005, pp. 11-12.

²⁰⁵ TF2-007, Transcript 2 December 2004, p. 51.

²⁰⁶ TF2-041, Transcript 24 September 2004, pp. 27, 30-31.

²⁰⁷ TF2-073, Transcript 2 March 2005, pp. 38-39.

²⁰⁸ TF2-157, Transcript 16 June 2004, p. 15.

²⁰⁹ TF2-086, Transcript 8 November 2004, pp. 93-96.

²¹⁰ TF2-198, Transcript 15 June 2004, pp. 20-22.

Reference may also be made to the testimony of Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222, TF2-223.

135. The Prosecution submits that the evidence of the intentional infliction of serious physical and mental suffering establishes the legal requirements for both inhumane acts as a crime against humanity and cruel treatment as a violation of Common Article 3 to the Geneva Conventions. The acts described were of sufficient seriousness to constitute inhumane acts and resulted in serious mental or physical suffering or injury. The perpetrators intended to inflict such suffering or injury, or were aware that this would be the result of their actions, as is evidenced by the orders to attack civilian “collaborators”.
136. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the acts charged under Counts 3 and 4 will be detailed in Part II.

COUNT 5 – PILLAGE (ARTICLE 3(F) OF THE STATUTE)

ELEMENTS

137. In the RUF proceedings, this Trial Chamber modified its previous definition of pillage²¹² and defined the elements as follows: 1) the accused unlawfully appropriated the property, 2) the owner of the property was a person not taking a direct part in the hostilities 3) the appropriation was without the consent of the owner 4) the accused intended to unlawfully appropriate the property 5) the accused knew or had reason to know that the owner was a person not taking a direct part in the hostilities.²¹³ It has been established by both Trial Chambers that the property need not have been appropriated for private or personal use.²¹⁴ Pillage extends to cases of organized and systematic seizure of property as well as acts of looting by individual soldiers for private gain.²¹⁵

²¹¹ TF2-151, Transcript 23 September 2004, p. 33-35.

²¹² *Norman* Decision on Motion for Acquittal, para. 102. See also *Čelebići* Trial Judgment, para. 591.

²¹³ See also *Čelebići* Trial Judgment, para. 591.

²¹⁴ See *Brima* Decision on Motion for Acquittal, 242-243.

²¹⁵ *Norman* Decision on Motion for Acquittal, para. 102. See also *Čelebići* Trial Judgment, para. 591. It has been stated that “Pillage, also known as plunder or looting, is the same as stealing, which is an offence in peace or war. It must be distinguished from the lawful requisitioning of property for military, rather than private, purposes”. UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, 15.23.1.

The property protected is not limited to civilian property and the offence includes cases where property is given to third persons and not only used by the perpetrator.²¹⁶

138. Regarding the act of burning, the Prosecution submits that pillage under Article 3 of the Statute is derived from Article 4(2)(g) of Additional Protocol II to the Geneva Conventions. The ICTY in particular has emphasized the importance of international humanitarian law protecting property rights in times of armed conflict. As stated in the *Čelebići* case, “international law today imposes strict limitations on the measures which a party to an armed conflict may lawfully take in relation to the private and public property of an opposing party.”²¹⁷ It is the Prosecution’s position that destroying property by burning, as part of a series of acts involving ruthless plundering to remove anything of value followed by the total removal of the value of the buildings themselves, falls within the concept of “willful and unlawful appropriation of property.”²¹⁸ Moreover, the violent nature of pillage reflects the broader range of appropriation of property, including property appropriated for the mere purpose of depriving the owner of that property. The focus of the offence is the loss to the victim who may no longer use or benefit from the property. In the aftermath of World War II, in the *H. Szabados* case, the accused was found guilty of pillage, that is the looting of personal belongings and other property of the civilians evicted from their home *prior to the destruction of the latter* under Article 440 of the French Code.²¹⁹ Furthermore, both Australian and Canadian military manuals define pillage as including the destruction of enemy private or public property.²²⁰
139. The burning of civilian dwellings not justified by military necessity is recognized as a violation of the laws and customs of war and therefore as being of a seriousness which raises it above the level of an offence under national law. ICTY jurisprudence uses the terminology of “plunder of private property” as opposed to pillage and the ICTY has a

²¹⁶ Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p.273, applying also to pp. 464-465.

²¹⁷ *Čelebići* Trial Judgment, para. 587.

²¹⁸ *Naletilić* Trial Judgment, para. 612.

²¹⁹ In UNWCC, *LRTWC*, vol. IX, pp. 60 ff.; 13 AD 261, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p. 279.

²²⁰ Australian Defence Force, *Law of Armed Conflicts-Commander’s Guide*, paras. 743 and 1224 and Office of the Judge Advocate, *The Law of Armed Conflict at the Operational and Tactical Level*, p. 12-8, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, pp. 279-280.

separate and distinct crime of “wanton destruction of cities, towns or villages, or devastation not justified by military necessity.” The ICTY Statute divides the concept of unlawful appropriation of property into several categories, all under the heading “violations of the laws or customs of war.” The SCSL Statute, like the ICTR Statute, adopted narrower language for the section on war crimes. This crucial distinction in the construction of the ICTY and SCSL Statutes means that indictments under the two different statutes will vary as to what falls within the definition of plunder and pillage respectively. Therefore, it should be presumed that the most serious offences against property applicable to armed conflicts fall within the ambit of the Statute.

140. The Prosecution notes that the acts charged as “burning” fall within the scope of acts of terrorism charged under Count 6 and collective punishments under Count 7.

B. EVIDENTIARY BASIS

141. Witnesses TF2-151, TF2-154, TF2-223, and TF2-021 reported looting and burning incidents, carried out by Kamajors, in *Kenema*. Witnesses TF2-048, TF2-144, TF2-022, TF2-222 gave evidence on looting and burning in *Tongo*, likewise carried out by Kamajors. Witnesses TF2-119, TF2-030, TF2-156, TF2-088, TF2-057, TF2-067, TF2-058, TF2-056, TF2-190 and TF2-001 described looting and burning in *Bo*. Amongst others, witnesses TF2-198, TF2-157, TF2-176, TF2-012, TF2-162, TF2-159, TF2-032, TF2-0140, TF2-190 and TF2-082 testified about looting and burning activities carried out by Kamajors in *Koribundo*. Witness TF2-073 testified about lootings carried out by Kamajors in *Sembehun*. Furthermore, witnesses TF2-073, TF2-168, TF2-173, TF2-165, TF2-170, TF2-167, TF2-166 and TF2-014 told about looting and burning incidents in *Moyamba*. Witnesses TF2-096, TF2-086, TF2-116, TF2-147, TF2-071, TF2-008 and TF2-017 described similar incidents of lootings and burnings in *Bonthe*. Witness TF2-017 testified about lootings in *Talia*. Witnesses TF2-001, TF2-144, TF2-152 and TF2-154 all made statements of lootings and burnings in their townships, caused by Kamajors – the physical perpetrators - and therefore described the crime base for which the Accused are responsible under one or more of the relevant modes of liability.

142. There is compelling evidence for example, of the Second Accused direct involvement in acts of looting. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Prosecution will argue that the intention of the Second Accused based on his earlier exhortation to this commander, was clearly one of keeping the looted property rather than protecting them for return to their rightful owners.

143. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

144. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] At the least, there is no evidence that the Witness and others who conducted this looting raid were punished for this act by the Second or Third Accused Accused.

145. The incident contained in the evidence of TF2-073 wherein his Mercedes Benz car was looted from his home in Sembehun by Kamajors acting under the instructions of the Third Accused, Allieu Kondewa, and which was brought to Base Zero and used by Kondewa himself until the same was retrieved from him the Accused through the assistance of ECOMOG, it is submitted, was an incident well within the knowledge of

²²¹ TF2-082, Transcript 15 September 2004, p. 40.

²²² TF2-068, Transcript November 17 2004, p. 92.

²²³ TF2-223, Transcript 28 September 2004, pp. 100-101.

- the First and Second Accused, which it is further submitted they passively supported or condoned and ought properly to share responsibility for as accessories after the fact.
146. There is evidence from Witness Borbor Tucker that he acted on instructions given by Hinga Norman to remove three cars, located in the Special Security Division Headquarters. The three cars, with knowledge of their source, were given to Moinina Fofana, the Third Accused and Prince Brima.²²⁴
147. The Prosecution submits that the evidence of looting and burning establishes the legal requirements for pillage. The perpetrators unlawfully appropriated property belonging to persons known to be taking no active part in hostilities without the consent of those persons with the intention to deprive them permanently of the property. The fact that the looted property was sometimes distributed among the combatants and not used for personal use does not change this conclusion.
148. The ruthless destruction of property through burning similarly fulfils the legal requirements for pillage.
149. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the acts of looting and burning under Count 5 will be detailed in Part II.

COUNT 6-ACTS OF TERRORISM (ARTICLE 3(D) OF THE STATUTE)

ELEMENTS

150. This Trial Chamber has found that the core elements of the crime of acts of terrorism are: (1) Acts or threats of violence directed against protected persons or their property; (2) The offender wilfully made protected persons or their property the object of those acts and threats of violence; (3) The acts or threats of violence were committed with the primary purpose of spreading terror among protected persons.²²⁵
151. The Trial Chamber has also held that the proscriptive ambit of Protocol II in respect of acts of terrorism extends beyond acts or threats of violence committed against protected

²²⁴ TF2-190, Transcript February 10 2005, pp. 60-62.

²²⁵ *Norman* Decision on Motion for Acquittal, para. 112. Trial Chamber II adopted the same definition, *Brima* Decision on Motion for Acquittal, para. 49.

persons to “acts directed against installations which would cause victims terror as a side-effect”.²²⁶

152. 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,²²⁷ 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.²²⁸ Terror may be taken to connote extreme fear.²²⁹
153. “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.²³⁰ The term “primary” does not mean that the infliction of terror needed to be the only objective of the acts or threats of violence, but only that it was the principal aim.²³¹

B. EVIDENTIARY BASIS

154. The evidentiary basis for the crimes charged in Counts 1 to 5 taken as a whole provides the evidentiary basis for the campaign to terrorize the civilian population in the various locations specified in the Indictment. Terrorizing the civilian population through means of violent threats of intimidation, physical violence, mental suffering and looting was presented through the testimony, *inter alia*, of witnesses TF2-014, TF2-022, TF2-033, TF2-039, TF2-040, TF2-041, TF2-079, TF2-151, TF2-154, TF2-159, and TF2-176.

²²⁶ *Norman* Decision on Motion for Acquittal, para. 111, citing ICRC, Commentary on the Additional Protocols, 1375.

²²⁷ W. Fenwick, ‘Attacking the Enemy Civilian as a Punishable Offence’, *Duke Journal of Comparative and International Law*, Vol. 7, 1997, 539 at 562.

²²⁸ *Galić* Trial Judgment, para. 134.

²²⁹ *Ibid.*, para. 137.

²³⁰ *Ibid.*, para. 136; See also Additional Protocol II to the Geneva Convention 12 August 1949, Article 13.

²³¹ *Blagojević* Trial Judgement, para. 591; *Galić* Trial Judgment, para. 136 where the Trial Chamber found that the crime of terror is a specific intent crime.

155. Graphic evidence of a campaign to terrorize the civilian population was provided by Witness TF2-159 who testified that on Sunday, during the Kamajor attack on Koribundo, the witness went to the Koribundo junction, where he saw the Kamajors with five Limba people. The witness knew them as they used to sell palm wine. They were Sofiana, Sarrah, Momoh, Kamara and Karoma. The Kamajors said the five persons were junta; they were cut into pieces and some were shot with guns. Two were killed with guns and 3 with cutlasses. Sarrah and Momoh had their heads cut off.²³² On the following Monday, he went to Koribundo again, from his hiding place in the bush, to go to the Kamajor HQ, to see Joe Timedie. At HQ he saw Kamajors singing, as they had captured 8 people. There were 5 men and 3 women; witness knew the women as the wives of soldiers – Amie, Jainaba and Esther. “They were singing on them, they were taking them to be killed.” Witness followed the Kamajors along Blama Road; they were beating them and mutilating them and telling them they were going to be killed. Two of the women were killed by a stick (“right through them”) and one by a gun (and by a cutlass, her head was cut off). The men, four were killed by a gun and one man by a cutlass to his neck. He saw them disembowel the women and place the entrails in a bucket. Their entrails were turned into a checkpoint.²³³
156. Witness TF2-027 testified that in November-December 1997, the Kamajors attacked Tongo from the Panguma end. The Kamajors were not successful so they retreated. There were more attacks by the Kamajors. One day the witness heard the sounds of explosions from different parts of the town. At Tongola the witness saw the Kamajors coming into town. The witness heard shots, heavy fire, coming from the headquarters. The Kamajors came around and put people at gunpoint and asked all the civilians to go to the headquarters, around 4.30pm. At the entrance to HQ the witness saw 30 to 40 corpses. Some had bullet wounds in the back of the head.²³⁴ One of the Kamajor commanders BJK Sei ordered him to bury the corpses at the entrance to the security compound. 20 civilians were picked to dig a pit at the back of the compound. One of the corpses was Joski Mboma, who had been hacked in the back.²³⁵

²³² TF2-159, Transcript 9 September 2004, p. 32.

²³³ Ibid., pp. 33-38.

²³⁴ TF2-027, Transcript 18 February 2005, pp.79-87.

²³⁵ Ibid., pp. 105-7.

157. Witnesses TF2-187 presented evidence that the Kamajors made preparation for Norman's visit. Kondewa's boys captured pregnant women and took them to the court barri. The women were tied up standing. When they heard the sound of the plane, the Kamajors slit the stomach of the women and then cut off the head of the fetus. That was done one after another. The Kamajors put each of the heads on a separate stick. The three women died. The three sticks with the heads were tied together; when that was done it was like a flag and was placed at the junction. The junction was the junction to Mattru. When the women were killed at the barri, there were civilians present as well as Kamajors. Bombowai was present. When the pole was planted at the junction, Norman came by helicopter. Norman came out of the helicopter and the witness saw rice, medicine, bullets and arms taken from the helicopter. After the items were taken from the helicopter, the 'flag' was taken to the barri and the heads were removed. After the women had been killed, "then they smeared the blood on their bodies, on their faces and they took their corpses and buried them in one grave." The Kamajors then sang a song that they had got their medicine from pregnant women.²³⁶
158. The Prosecution submits that the evidence establishes the legal requirements for acts of terrorism. There can be no doubt that a violent campaign was conducted willfully against civilians, often identified as so-called collaborators. The primary purpose was to frighten and threaten civilians into submission and to spread fear that anyone who did not support the CDF would be deemed a collaborator.
159. The Prosecution presented expert forensic evidence before the Court to substantiate the charges of unlawful killings and physical violence for the Bo Crime base.²³⁷ In his evidence, Bill Haglund, a recognized expert in forensic pathology detailed his findings in a report²³⁸ consequent upon his forensic investigation and examination of the remains removed from graves in the Mahiboima District, City of Bo. The Prosecution submits that the expert's findings are consistent with the evidence adduced before the Court relating to the unlawful killings and physical violence and mental suffering charged for

²³⁶ TF2-187, Transcript 2 June 2005, pp. 17-37.

²³⁷ Bill Hugland, Transcript 20 June 2005.

²³⁸ Exhibit P101: Excerpts from the Expert's Report OG William Haglund.

the Bo Crime base. Prosecution witness TF2-156 showed the Court scars of injuries to his neck, stomach, chest and right side of his face.²³⁹

160. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the acts of terrorism under Counts 6 will be detailed in Part II.

PART III

Individual Criminal Responsibility of the Accused

Modes of Liability

161. The Prosecution submits that the evidence establishes the responsibility of the three Accused under Articles 6(1) and 6(3) of the Statute for the eight counts in the Indictment. The recognition in the Statute that individuals may be held criminally responsible for their participation in the commission of offences in any of several capacities is in clear conformity with general principles of criminal law.²⁴⁰ The Statute does not make any legal distinction between the different modes of participation and the consequences of engaging in any of the mentioned forms of participation entails equal criminal liability.²⁴¹
162. Additionally, the three Accused are charged with committing the crimes charged in the Indictment by their participation in a joint criminal enterprise. The jurisprudence of the International Tribunals indeed emphasizes that there are forms of participation that are not explicitly referred to in the Article, such as common purpose or joint criminal enterprise, but nevertheless are included within its meaning.²⁴²

²³⁹ Exhibit P101, pp. 44-45.

²⁴⁰ *Čelebići* Trial Judgment, para. 321.

²⁴¹ Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, at p. 180; The ICTY and ICTR adopt a purposive approach, wherein they sought to establish the object and purpose of the provisions of the Statute as opposed to narrow construction; see e.g. *Tadić* Appeal Judgment, para. 189.

²⁴² *Tadić* Appeal Judgment, para. 190; *Bagilishema* Trial Judgment, para. 27 and the accompanying footnote; *Kayishema* Trial Judgment, para. 203-204; *Čelebići* Trial Judgment, para. 328. *Tadić* Appeal Judgment, para. 190: "[The] Statute does not confine itself to providing for jurisdiction over those persons who plan, instigate, order, physically perpetrate a crime or otherwise aid and abet in its planning, preparation or execution. The Statute does not stop there. It does not exclude those modes of participating in the commission of crimes which occur where several persons having a common criminal purpose embark on criminal activity that is then carried out either jointly or by some members of this plurality of persons."

PLANNING, INSTIGATING, ORDERING, COMMITTING AND AIDING AND ABETTING: ARTICLE 5(1) OF THE STATUTE

163. The participation of each of the individuals accused need not cover cumulatively all the five different forms of participation in the commission of crimes stipulated in Article 6(1), but one or more of them will suffice.²⁴³ The Prosecutor submits that a Trial Chamber may find an accused guilty if it determines that he or she participated in a crime through any action encompassed by the Statute, even if it differs from the particular theory supported by the Prosecution. The Trial Chamber, as the finder of fact and trier of law, is free to apply any theory it finds applicable to the facts of a case as long as it fits within the confines of Article 6(1). As a rule, there is no problem with notice to the accused.

Planning

164. In order to secure a conviction for planning a crime, the Prosecution must show that: (1) the accused, either alone or in concert with others, planned, designed or organised the commission of the actus reus of a crime which was subsequently perpetrated.²⁴⁴ The criminal conduct designed constitutes one or more statutory crimes that are later perpetrated²⁴⁵ by another person.²⁴⁶ It can be an act or an omission;²⁴⁷ (2) the planning was a factor substantially contributing to the criminal conduct;²⁴⁸ and (3) the accused acted with direct intent, or was aware of the substantial likelihood that a crime would be committed in the execution of the plan.²⁴⁹

²⁴³ This is the position followed in various judgements of the two Tribunals, including, *Akayesu* Trial Judgment, para. 473; *Kayishema* Trial Judgment, para. 194-7; *Čelebići* Trial Judgment, para. 321.

²⁴⁴ *Akayesu* Trial Judgment, para. 480.

²⁴⁵ *Kordić and Čerkez* Appeals Judgment, para. 26 ; *Kordić and Čerkez* Trial Judgment, para 386; *Limaj* Trial Judgment, para. 513; *Akayesu* Trial Judgment, para. 473.

²⁴⁶ *Bagilishema* Trial Judgment, para. 30.

²⁴⁷ *Kordić and Čerkez* Appeal Judgment, para. 31.

²⁴⁸ *Ibid.*, para. 26; *Bagilishema* Trial Judgment, para. 30; *Stakić Rule 98bis Decision*, paras. 103-104.

²⁴⁹ *Kordić and Čerkez* Appeal Judgment, paras. 26, 31.

165. It needs to be established that the Accused, directly or indirectly, intended the crime in question to be committed.²⁵⁰ The required *mens rea* is that of intent or recklessness.²⁵¹ The accused may be held criminally responsible for “planning” crimes that are committed in the execution of his plan, even if those crimes were not part of the plan, provided that he was aware of the substantial likelihood of their being committed.²⁵²
166. There may be different levels of culpability for “planning”, depending on different levels of command.²⁵³ A superior commander, for example, may determine the overall strategy whereas the field commander may have substantial discretion in determining his or her own tactical plan in accordance with superior commander’s operational requirements.
167. An accused may be held liable on the basis of planning alone, but may additionally be liable under other modes of liability where the evidence supports such a finding. In these circumstances, the accused’s involvement in planning the crime at least constitutes an aggravating factor.²⁵⁴

i. Instigating

168. In order to secure a conviction for instigating a crime, the Prosecution must show that: (1) the actus reus of a crime was performed by a person other than the accused; (2) the accused prompted the person to commit an offence punishable under the Statute²⁵⁵, in the sense that the conduct of the accused was a factor substantially contributing to the conduct of the other person²⁵⁶; and (3) the accused acted with direct intent, or was aware

²⁵⁰ *Brđanin* Trial Judgment, para. 268.

²⁵¹ *Blaškić* Trial Judgment, para. 267: “To establish the *mens rea* of the superior who orders, plans or instigates, requires direct or indirect intent, it is necessary to prove his direct or indirect intent, the latter corresponding to the notion of recklessness in common law and the notion of *dolus eventualis* in civil law.” In cases of specific intent crimes, however, the *mens rea* must be that of intent (e.g. conduct of the accused an of planning the crime of terror must be aimed primarily at spreading terror among civilians.)

²⁵² *Kordić and Čerkez* Appeal Judgment, para. 30; *Blaškić* Appeal Judgment, para. 42; *Tadić* Trial Judgment para. 692.

²⁵³ *Kordić and Čerkez* Trial Judgment, para. 377: “Responsibility for planning may involve different levels of command and, accordingly, different levels of planning, from persons holding the higher positions of “overall architects” to field commanders. See also *Kupreškić* Trial Judgment, para. 862, where a commander that has been held criminally liable for passing orders from his superiors to his subordinates is also considered to have “assisted in the strategic planning of the whole attack.”

²⁵⁴ *Brđanin* Trial Judgment, para. 268.

²⁵⁵ *Orić* Trial Judgment, para. 270.

²⁵⁶ *Akayesu* Trial Judgment, para. 482; *Blaškić* Trial Judgment, para. 280; *Brđanin* Trial Judgment, para. 269; *Rutaganda* Trial Judgment, para. 38; *Prosecutor v. Strugar*, IT-01-42-T, “Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98 bis”, Trial Chamber, 21 June 2004, para. 86; *Kvočka et al.* Trial Judgment, para. 252; *Naletilić and Martinović* Trial Judgment, para. 60; *Brđanin* Trial Judgment, para. 269.

of the substantial likelihood that a crime would be committed in response to his prompting.²⁵⁷

169. There must be a causal connection between the instigation and the execution of the crime, but this connection need not amount to a *conditio sine qua non*.²⁵⁸ Instigation can be express or implied, and can also occur by omission rather than by a positive act, provided that the accused intended to cause the direct perpetrator to act in a particular way and, in fact, had that effect.²⁵⁹ A superior's persistent failure to prevent or punish crimes by his subordinates can also constitute instigation.²⁶⁰
170. It is necessary that the Accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts or omissions.²⁶¹ Consequently, as in the case of "planning", the accused may be held criminally responsible for "instigating" crimes that are committed in the course of executing the instigated crime, even if the accused did not intend to instigate such crimes, so long as he was aware of the substantial likelihood of their being committed.²⁶² Accordingly, the required *mens rea* is that of intent or recklessness.²⁶³
171. An accused "cannot be convicted as an instigator if he would be found guilty of having directly/physically perpetrated the same crime."²⁶⁴

²⁵⁷ Kordić and Čerkez Appeal Judgment, paras. 27, 32.

²⁵⁸ Blaškić Trial Judgment, para. 280; Tadić Trial Judgment, para. 688; Kvočka Trial Chamber Judgment, para. 252; Čelebići Trial Judgment, para. 327; Kordić and Čerkez Trial Judgment, para. 387; Also see Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, page 190; Galić Trial Judgment, para. 168; Akayesu Trial Judgment, para. 482; Orić Trial Judgment, para. 271.

²⁵⁹ Blaškić Trial Judgment, paras 280, 269; Brđanin Trial Judgment, para. 269; Galić Trial Judgment, para. 168; Blaškić Trial Judgment, para. 337; Kordić and Čerkez Appeal Judgment, para. 32.

²⁶⁰ Blaškić Trial Judgment, para. 337.

²⁶¹ Brđanin Trial Judgment, para. 269.

²⁶² Kordić and Čerkez Appeal Judgment, para. 32 ; Limaj et al. Trial Judgment para. 514; Tadić Appeal Judgment, para. 220: "What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* required..." ; Tadić Trial Judgment, para. 692: "the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question."

²⁶³ Blaškić Trial Judgment, para. 267: "To establish the *mens rea* of the superior who orders, plans or instigates, requires direct or indirect intent, it is necessary to prove his direct or indirect intent, the latter corresponding to the notion of recklessness in common law and the notion of *dolus eventualis* in civil law."

²⁶⁴ Stakić Rule 98bis Decision, para. 107.

ii. Ordering

172. In order to secure a conviction for ordering a crime, the Prosecution must demonstrate that: (1) the *actus reus* of the crime was performed by a person or persons other than the accused, with or without the participation of the accused; (2) the perpetrator(s) acted in execution of an express or implied order given by the accused to a subordinate or other person over whom the accused was in a position of authority; and (3) the accused issued the order with direct intent, or the accused was aware of the substantial likelihood that the crime committed would be an adequate consequence of carrying out the order.²⁶⁵
173. An accused may be held liable for orders given within regular military formations as well as irregular bodies, such as paramilitary forces, in which there is no *de jure* superior-subordinate relationship, provided the accused is vested with an authority that enables him or her to give orders to the other members of the group.²⁶⁶ The necessary authority may be informal or of a purely temporary nature.²⁶⁷
174. There is no requirement that the order be in writing or in any particular form.²⁶⁸ It may be express or implied.²⁶⁹ An order “does not need to be given by the superior directly to the person(s) who perform (s) the *actus reus* of the offence.”²⁷⁰ The existence of an order may be proven circumstantially and there is no requirement to adduce direct evidence that the order was given.²⁷¹
175. That an accused is in a position of authority and “ordered” a particular crime may be inferred from a number of factors, including the number of illegal acts; the number, identity and type of troops involved; the effective command and control exerted over these troops; the logistics involved, if any; the widespread occurrence of the acts; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved; the location of the superior at the time; and the superior’s knowledge of

²⁶⁵ *Strugar* Trial Judgment, paras. 331-333; See also *Brima* Decision on Motion for Acquittal, para. 295.

²⁶⁶ *Strugar* Trial Judgment, para. 331; *Kordić and Čerkez* Appeal Judgment, para. 28; *Kordić and Čerkez* Trial Judgment, para. 388; *Brđanin* Trial Judgment, para. 270.

²⁶⁷ *Semanza* Appeal Judgment, para. 363; *Kordić and Čerkez* Trial Judgment, para. 388;

²⁶⁸ *Strugar* Trial Judgment, para. 331; *Blaškić* Trial Judgment, para. 281.

²⁶⁹ *Blaškić* Trial Judgment, para. 281.

²⁷⁰ *Ibid.*, para. 282.

²⁷¹ *Strugar* Trial Judgment, para. 331; *Kordić and Čerkez* Trial Judgment, para. 388; *Blaškić* Trial Judgment, para. 281.

crimes committed by his subordinates.²⁷² An accused may also be liable for receiving a criminal order and using his powers to instruct his subordinates to perform it. According to the *Kupreškić* Trial Chamber, this amounts to the “reissuing of orders that were illegal in the circumstances.”²⁷³

176. A causal link between the act of ordering and the physical perpetration of a crime” is a required component of the *actus reus* of ordering.²⁷⁴ Such link need not be such that the offence would not have been committed in the absence of the order.²⁷⁵
177. With regard to *mens rea*, it must be established that the accused in issuing the order intended to bring about the commission of the crime, or was aware of the substantial likelihood that it would be committed in execution of the order.²⁷⁶ However, if the order is generic (e.g. a general order to abuse prisoners of war), the mental element of recklessness or gross negligence is sufficient.²⁷⁷ It should be mentioned that it is the *mens rea* of the person who gave the order that is important and not that of the actual perpetrator.²⁷⁸
178. As is the case with “planning” and “instigating,” a conviction for “ordering” a particular crime will not be entered where the accused has committed the same crime.²⁷⁹

iii. Committing

179. An accused may be found liable for directly committing a crime if the Prosecution has demonstrated that: (1) the accused performed all elements of the *actus reus* of the crime

²⁷² *Galić* Trial Judgment, para. 171; UN Commission of Experts, *Final Report*, p. 17. Similar indicia are relevant for the purposes of establishing individual criminal responsibility for “planning” a crime within the jurisdiction of the Tribunal.

²⁷³ *Kupreškić* Trial Judgment, para. 862.

²⁷⁴ *Strugar* Trial Judgment, para. 332.

²⁷⁵ *Ibid.*

²⁷⁶ *Strugar* Trial Judgment, para. 333 (citing *Kvočka* Trial Judgment, para. 252; *Blaškić* Appeal Judgment, para. 42; *Kordić and Čerkez* Appeal Judgment, para. 30); *Tadić* Trial Judgment, para. 692: “the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.”

²⁷⁷ Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p. 194, footnote 13; *Blaškić* Trial Judgment, para. 267: “To establish the *mens rea* of the superior who orders, plans or instigates, requires direct or indirect intent, it is necessary to prove his direct or indirect intent, the latter corresponding to the notion of recklessness in common law and the notion of *dolus eventualis* in civil law.”

²⁷⁸ *Blaškić* Trial Judgment, para. 282: “what is important is the commander’s *mens rea*, not that of the subordinate executing the order.”

²⁷⁹ *Stakić* Rule 98 bis Decision, para. 109.

in question. This means the participation of the accused physically or otherwise directly, in the material elements of a crime under the Tribunal's Statute²⁸⁰ or failing to act when such a duty exists;²⁸¹ and (2) the accused acted with the required mens rea of the crime in question.²⁸² The accused must either possess the mens rea of the relevant crime, or be aware of the substantial likelihood that a crime would occur as a consequence of his act or omission.²⁸³

iv. Aiding and Abetting

180. The elements of aiding and abetting are: (1) the accused carries out act(s) or omission(s)²⁸⁴ specifically directed to assist, encourage or lend moral support to the perpetration of a crime physically committed by a person other than the accused; (2) the accused's conduct has a substantial effect upon the perpetration of the crime; and (3) the accused acted with knowledge that his conduct would assist in the commission of the crime.²⁸⁵ While having a role in a system without influence would not be enough to attract criminal responsibility²⁸⁶, there is *no* requirement that the conduct of the aider and abettor be a *conditio sine qua non* of the actions of the perpetrator(s).²⁸⁷ The fact that similar assistance could have been obtained from someone else does not remove the accused's responsibility.²⁸⁸
181. Aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals.²⁸⁹ Presence during the commission of the crime can

²⁸⁰ Kvočka Trial Judgment, para. 251.

²⁸¹ Simić Trial Judgment, para. 137; Stakić Trial Judgment, para. 439; Naletilić and Martinović Trial Judgment, para. 62; Vasiljević Trial Judgment, para. 62; Kvočka Trial Judgment, paras 250-251; Krstić Trial Judgment, para. 601; Kunarac Trial Judgment, para. 390; Kordić and Čerkez Trial Judgment, para. 376.

²⁸² Kordić and Čerkez Trial Judgment, para. 376; Kunarac Trial Judgment, para. 390; Kvočka Trial Judgment, para. 251.

²⁸³ Kvočka Trial Judgment, para. 252.

²⁸⁴ Brđanin Trial Judgment, para. 271; Kvočka Trial Judgment, para. 256; Aleksovski Trial Judgment, para. 62; Blaškić Trial Judgment, para. 284; Tadić Trial Judgment, para. 686; Čelebići Trial Judgment, para. 842; Akayesu Trial Judgment, para. 705.

²⁸⁵ Blaškić Appeal Judgment, para. 45 (citing Vasiljević Appeal Judgment, para. 102); Strugar Trial Judgment, para. 349; Brđanin Trial Judgment, para. 271; Blaškić Trial Judgment, para. 286.

²⁸⁶ Furundžija Trial Judgment, para. 232.

²⁸⁷ Strugar Trial Judgment, para. 349 (citing Blaškić Appeal Judgment, para. 48); Furundžija Trial Judgment, paras. 232-235.

²⁸⁸ Furundžija Trial Judgment, paras. 224, 232-235; Kayishema Appeal Judgment.

²⁸⁹ Furundžija Trial Judgment, para. 199.

constitute “abetting” if it has an encouraging effect on the perpetrators, or gives them moral support or psychological support, or has a significant legitimising or encouraging effect on the principals, even if the accused takes no active part in the crime.²⁹⁰ The presence of a superior can be perceived as an important *indicium* of encouragement or support.²⁹¹ The *actus reus* of aiding and abetting can take place before, during or after the crime has been committed, and this form of participation may take place geographically and temporally removed from the crime’s location and timing.²⁹² It is not necessary for the person aiding or abetting to be present during the commission of the crime.²⁹³ Thus, presence, particularly when coupled with a position of authority, is a probative, but not determinative, indication that an accused encouraged or supported the perpetrators of the crime.²⁹⁴ The Prosecution submits that a persistent failure to prevent or punish crimes by subordinates over time may also constitute aiding or abetting.²⁹⁵ Aiding and abetting does not require a pre-existing plan or arrangement to engage in the criminal conduct in question and the principal may not even know about the accomplice’s contribution.²⁹⁶

182. The *mens rea* requirement for aiding and abetting is satisfied if the accused knows – in the sense of awareness – that his actions or omissions will assist the perpetrator in the commission of a crime.²⁹⁷ The aider and abettor must at least have accepted that the commission of a crime would be a possible and foreseeable consequence of his conduct.²⁹⁸ Such awareness may be inferred from all relevant circumstances and does

²⁹⁰ *Tadić* Trial Judgment, paras 689-692 (see also paras 678-687); *Akayesu* Trial Judgment, paras 546-548; *Čelebići* Trial Judgment, paras 327-328; *Furundžija* Trial Judgment, paras 205-209, 232-235.

²⁹¹ *Brđanin* Trial Judgment, para. 271; *Akayesu* Trial Judgment, paras. 693, 704-705.

²⁹² *Blaškić* Appeal Judgment, para. 48; *Simić* Trial Judgment, para 162; *Naletilić and Martinović* Trial Judgment, para. 163; *Vasiljević* Trial Judgment para. 70; *Kvočka* Trial Judgment, para. 256; *Blaškić* Trial Judgment, para. 285; *Krnojelac* Trial Judgment, para. 88; *Kunarac* Trial Judgment, para. 391; *Aleksovski* Trial Judgment, para. 129.

²⁹³ *Akayesu* Trial Judgment, para. 484.

²⁹⁴ *Kvočka* Trial Judgment, para. 257; *Kunarac* Trial Judgment, para. 393; see *Tadić* Trial Judgment, para. 689; *Aleksovski* Trial Judgment, paras 64-65; *Akayesu* Trial Judgment, para. 693.

²⁹⁵ *Blaškić* Trial Judgment, para. 337.

²⁹⁶ *Kordić and Čerkez* Trial Judgment, para. 399; *Tadić* Trial Judgment, para. 677; *Čelebići* Trial Judgment, paras 327-328.

²⁹⁷ *Strugar* Trial Judgment, para. 350 (citing *Tadić* Appeal Judgment, para. 229; *Aleksovski* Appeal Judgment, para. 162; *Blaškić* Appeal Judgment, para. 49); *Furundžija* Trial Judgment, para. 245; *Čelebići* Trial Judgment, paras 327-328; *Kunarac* Trial Judgment, para. 392. The principal need not know that he has been assisted by the aider and abettor. *Tadić* Appeal Judgment, para. 229 (ii); *Brđanin* Trial Judgment, para. 272.

²⁹⁸ *Kvočka* Trial Judgment, para. 255.

not need to be explicitly expressed.²⁹⁹ The aider and abettor needs to have as a minimum, accepted that his/her assistance would be a possible and foreseeable consequence of his conduct.³⁰⁰ While the aider and abettor need not share the *mens rea* of the principal, he must be aware of the essential elements of the crime ultimately committed by the principal.³⁰¹ It is not necessary that the aider and abettor know the precise crime that was intended or actually committed, as long as he was aware that one or a number of crimes would probably be committed, and one of those crimes was in fact committed.³⁰²

183. Conduct held to constitute aiding and abetting has included supplying the weapon or other instruments used in the commission of the crime;³⁰³ failing to prevent others from perpetrating crimes in circumstances where the accused is under a legal obligation to protect a victim;³⁰⁴ failing to maintain law and order by a person in a position of authority;³⁰⁵ and the presence of the accused coupled with a position of authority during the perpetration of a crime.³⁰⁶

184. Either aiding or abetting alone is sufficient to render the perpetrator criminally liable.³⁰⁷

B. SUPERIOR RESPONSIBILITY: ARTICLE 6(3) OF THE STATUTE

185. The Prosecutor charges the three Accused persons under Article 6(3) of the Statute with regard to all charges in the Indictment for the criminal acts of their subordinates.

²⁹⁹ *Strugar* Trial Judgment, para. 350; *Tadić* Trial Judgment, paras 675-676; *Čelebići* Trial Judgment, paras 327-328.

³⁰⁰ *Blaškić* Trial Judgment, para. 286: "in addition to knowledge that his acts assist the commission of the crime, the aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct."

³⁰¹ *Strugar* Trial Judgment, para. 350 (citing *Aleksovski* Appeal Judgment, para. 162).

³⁰² *Strugar* Trial Judgment, para. 350 (citing *Blaškić* Appeal Judgment, para. 50); *Brđanin* Trial Judgment, para. 272.

³⁰³ *Tadić* Trial Judgment, paras 680, 684 (referring with apparent approval to the *Zyklon B* and *Mulka* cases).

³⁰⁴ *Tadić* Trial Judgment, para. 686 (referring with apparent approval to the *Borkum Island Case*); *Akayesu* Trial Judgment, paras 704-705 (failure of *bourgmestre* to maintain law and order in a commune, and failure to oppose killings and serious bodily or mental harm, found to constitute a form of tacit encouragement, which was compounded by being present at such criminal acts); *Aleksovski* Trial Judgment, para. 88.

³⁰⁵ *Akayesu* Trial Judgment, paras 704-705.

³⁰⁶ *Rutaganira* Trial Judgment, paras 76-77.

³⁰⁷ *Akayesu* Trial Judgment, para. 484; while "aiding" is defined by the ICTR as "giving assistance to someone", abetting is defined as "facilitating the commission of an act by being sympathetic thereto."

186. A superior will be held criminally responsible for the crimes of his subordinates where:
- (1) an offence was committed; (2) there existed a superior-subordinate relationship between the accused and the perpetrator of the offence; (3) the accused knew or had reason to know that the perpetrator (subordinate) was about to commit the offence or had done so; and (4) the accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator.³⁰⁸

The Effective Control Test

187. The actus reus consists of the existence of a superior-subordinate relationship, i.e. a hierarchical relationship between the Accused and the perpetrator, in which the former has 'effective control' over the latter.³⁰⁹ The applicable test to determine whether the accused held superior authority over his or her subordinates is one of "effective control," meaning that the accused possessed the material ability to prevent offences or to punish the offenders.³¹⁰ The hierarchical relationship need not be formalised, as it may be derived from the accused's *de facto* or *de jure* position of superiority.³¹¹ As stated by the Appeals Chamber in *Aleksovski*, "it does not matter whether [the accused] was a civilian or a military superior, if it can be proved that [...] he had the powers to prevent or to

³⁰⁸ *Aleksovski* Appeal Judgment, para. 76; *Čelebići* Appeal Judgment, paras 189-198, 225-226, 238-239, 256, 263; *Strugar* Trial Judgment, para. 358. It is settled that Article 7(3) applies to both international and internal armed conflicts. *Strugar* Trial Judgment, para. 357; *Kordić and Čerkez* Trial Judgment, para. 401.

³⁰⁹ *Čelebići* Appeal Judgment, paras 197 and 255-6 and 303; *Čelebići* Trial Judgment, para. 378; *Galić* Trial Judgment, para. 173; *Kajelijeli* Appeal Judgment, para. 87; *Orić* Trial Judgment, para 312.

³¹⁰ *Čelebići* Appeal Judgment, para. 196; *Strugar* Trial Judgment, para. 362-363; *Kayishema* Appeal Judgment, 302; *Kunarac* Trial Judgment, para. 396; *Kordić and Čerkez* Trial Judgment, paras. 405-406, 416-417; *Krstić* Trial Judgment, paras. 648-649. *Krnojelac* Trial Judgment, para. 93; *Brđanin* Trial Judgment, para. 276; *Čelebići* Trial Judgment, paras 370, 377; *Halilović* Trial Judgment, para 57; *Orić* Trial Judgment, para 307.; This decisive criterion of 'effective control' in terms of the actual possession, or non- possession, of powers of control over the actions of the subordinates, was first established by the Trial Chamber in *Čelebići*: *Čelebići* Trial Judgment, para. 378. For cases upholding this reasoning, see *Čelebići* Appeal Judgment, paras 192 et seq., *Kayishema* Appeal Judgment, para. 294; *Bagilishema* Appeal Judgment, para. 50. For cases following *Čelebići* in principle but occasionally employing different terminology, see *Aleksovski* Trial Judgment, para. 76; *Blaškić* Trial Judgment, para. 301; *Kunarac* Trial Judgment, para. 396; *Kvočka* Trial Judgment, para. 315; *Stakić* Trial Judgment, para. 459; *Krnojelac* Trial Judgment, para. 93; *Naletilić and Martinović* Trial Judgment, para. 67; *Galić* Trial Judgment, para. 173; *Brđanin* Trial Judgment, para. 276; *Blagojević* Trial Judgment, para. 791; *Strugar* Trial Judgment, para. 360; *Bagilishema* Trial Judgment, para. 39; *Niyitegeka* Trial Judgement, 16 May 2003, para. 472; *Kajelijeli* Trial Judgment, para. 773; *Kamuhanda* Trial Judgment, para. 604.

³¹¹ *Čelebići* Appeal Judgment, paras 192-194; *Kordić and Čerkez* Trial Judgment, paras 405-406, 416; *Krnojelac* Trial Judgment, para. 93; *Kunarac* Trial Judgment, para. 396; *Galić* Trial Judgment, para. 173; *Stakić* Trial Judgment, para. 459.

punish [...].”³¹² Article 6(3) applies equally to temporary or ad hoc military units if, at the time when the alleged acts occurred, the offenders were under the effective control of the accused.³¹³

188. “Effective control” need not take the form of military-style command.³¹⁴ The responsibility may be incurred by civilians who are not part of a military structure, such as political leaders, if they *de facto* constitute part of the chain of command.³¹⁵ It should be noted that the ICTY held that the existence of *de jure* authority creates a *presumption* that effective control exists.³¹⁶ Thus, when the Accused had an official title within an organisation, it is presumed that the Accused had effective control over his subordinates, as restated in the *Hadžihasanović* case, unless proof of the contrary is produced.³¹⁷
189. A *de facto* superior who lacks formal letters of appointment or commission but has, in reality, effective control over the perpetrators of offences equally incurs criminal responsibility.³¹⁸ In the same vein, the mere *ad hoc* or temporary nature of a military unit or an armed group does not *per se* exclude a relationship of subordination between the member of the unit or group and its commander or leader.³¹⁹ There is no requirement that the relationship between the superior and the subordinate be permanent in nature.³²⁰
190. A superior may also be responsible for crimes committed by a subordinate more than one level down the chain of command.³²¹ In the *Halilović* case, the Trial Chamber referred to the judgment in the case against the Japanese Admiral Soemu Toyoda tried in the aftermath of World War II:

³¹² *Aleksovski* Appeal Judgment, para. 76.

³¹³ *Strugar* Trial Judgment, para. 362; *Kunarac* Trial Judgment, paras 399, 628.

³¹⁴ *Baglishema* Appeal Judgment, para. 55; *Kajelijeli* Appeal Judgment, para. 87.

³¹⁵ *Aleksovski* Appeal Judgment, para. 76; *Čelebići* Appeal Judgment, paras 195-197, reaffirming the conclusion of the Trial Chamber in *Čelebići* Trial Judgment, paras 356-363.

³¹⁶ The ICTY Appeals Chamber in *Čelebići* held that “[i]n general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced.” *Čelebići* Appeal Judgment, para. 197; this was repeated in *Galić* Trial Judgment, para. 173.

³¹⁷ *Hadžihasanović* Trial Judgment, para. 851.

³¹⁸ *Brđanin* Trial Judgment, para. 276.

³¹⁹ *Kunarac* Trial Judgment, para. 399; *Strugar* Trial Judgment, para. 362; *Halilović* Trial Judgment, para. 61; *Orić* Trial Judgment, para. 310.

³²⁰ *Limaj* Trial Judgment, para. 522.

³²¹ *Strugar* Trial Judgment, paras. 363-366; see also ICRC Commentary to the Additional Protocols, p. 1013, para. 3544.

- b. The military tribunal in that case highlighted that subordination does not have to be direct and stated that (*Toyoda* case, p. 5006): “[i]n the simplest language it may be said that this Tribunal believes the principle of command responsibility to be that, if this accused knew, or should by the exercise of ordinary diligence have learned, of the commission by his subordinates, *immediate or otherwise*, of the atrocities proved beyond a shadow of a doubt before this Tribunal or of the existence of a routine which would countenance such, and, by his failure to take any action to punish the perpetrators, permitted the atrocities to continue, he has failed in his performance of his duty as a commander and must be punished.”³²²

191. The Appeals Chamber in *Blaskić* held that “the indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had the power to prevent, punish, *or* initiate measures leading to proceedings against the alleged perpetrators where appropriate”.³²³

192. The jurisprudence provides for certain criteria that may be indicative of the existence of authority in terms of effective control.³²⁴ They include the formality of the procedure used for appointment of a superior,³²⁵ the official position held by the accused,³²⁶ the position of the accused within the military or political structure,³²⁷ the actual tasks that he performed,³²⁸ the power of the superior to issue orders whether *de jure* or *de facto*³²⁹ or take disciplinary action,³³⁰ the power to appoint leaders of local groups, and charged specific persons with a specific task³³¹, the fact that subordinates show in the superior's presence greater discipline than when he is absent,³³² the fact that the subordinates where

³²² *Halilović* Trial Judgment, para. 63, footnote 149.

³²³ *Blaškić* Appeal Judgment, para. 69 (emphasis added); *Akayesu* Trial Judgment, para. 491; *Strugar* Trial Judgment, para. 366; *Halilović* Trial Judgment, para. 63; *Orić*, Trial Judgment, paras 307 et seq. (emphasis added).

³²⁴ *Orić* Trial Judgment, paras 307 et seq.

³²⁵ *Halilović* Trial Judgment, para. 58.

³²⁶ *Kordić and Čerkez* Trial Judgment, paras 418-424.

³²⁷ *Kordić and Čerkez* Trial Judgment, para. 423.

³²⁸ *Kordić and Čerkez* Trial Judgment, para. 424.

³²⁹ *Aleksovski* Trial Judgment, paras 101, 104; *Blaškić* Trial Judgment, para. 302; *Kordić and Čerkez* Trial Judgment, para. 421; *Kajelijeli* Trial Judgment, paras 403-404.

³³⁰ *Blaškić* Trial Judgment, para. 302; *Hadžihasanović* Trial Judgment, paras 83 et seq.

³³¹ *Orić* Trial Judgment, para. 700.

³³² *Čelebići* Appeal Judgment, para. 206, endorsing the findings of *Čelebići* Trial Judgment, para. 743.

informing the accused of measures taken,³³³ the capacity to transmit reports to competent authorities for the taking of proper measures,³³⁴ the capacity to sign orders,³³⁵ provided that the signature on a document is not purely formal or merely aimed at implementing a decision made by others,³³⁶ but that the indicated power is supported by the substance of the document³³⁷ or that it is obviously complied with,³³⁸ an accused's high public profile, manifested through public appearances and statements³³⁹ or by participation in high-profile international negotiations,³⁴⁰ the fact that witnesses had described his sphere of command, the respect he enjoyed and his widely acknowledge leadership,³⁴¹ the fact that an accused had been promoted as commander.³⁴²

193. The effective control can be admitted even when the superior is not competent to order and/or implement sanctions himself. It has been held that the superior has to order or execute appropriate sanctions³⁴³ or, if not yet able to do so, he or she must at least conduct an investigation³⁴⁴ and establish the facts³⁴⁵ in order to ensure that offenders under his or her effective control are brought to justice.³⁴⁶ The superior need not conduct the investigation or dispense the punishment in person,³⁴⁷ but he or she must at least ensure that the matter is investigated³⁴⁸ and transmit a report to the competent authorities for further investigation or sanction.³⁴⁹ As in the case of preventing crimes, the

³³³ Čelebići Appeal Judgment, para. 209.

³³⁴ Aleksovski Trial Judgment, para. 78; Blaškić Trial Judgment, para. 302.

³³⁵ Čelebići Trial Judgment, para. 672; Kordić and Čerkez Trial Judgment, para. 421; Naletilić and Martinović Trial Judgment, para. 67.

³³⁶ Kordić and Čerkez Trial Judgment, para. 421.

³³⁷ Ibid.

³³⁸ Naletilić and Martinović Trial Judgment, para. 67.

³³⁹ Kordić and Čerkez Trial Judgment, para. 424; Stakić Trial Judgment, para. 454.

³⁴⁰ Aleksovski Trial Judgment, para. 101; Kordić and Čerkez Trial Judgment, para. 424; Strugar Trial Judgment, para. 398.

³⁴¹ Čelebići Appeal Judgment, paras 206, 209, endorsing the findings of Čelebići Trial Judgment, paras 746-750.

³⁴² Čelebići Appeal Judgment, para. 206.

³⁴³ As for instance, by suspending a subordinate: Ntagerura Trial Judgment, para. 650.

³⁴⁴ Kordić and Čerkez Trial Judgment, para. 446; Brđanin Trial Judgment, para. 279; Halilović Trial Judgment, paras 74, 97, 100.

³⁴⁵ Halilović Trial Judgment, paras 97, 100.

³⁴⁶ Strugar Trial Judgment, para. 378; Halilović Trial Judgment, para. 98.

³⁴⁷ Halilović Trial Judgment, paras 99-100.

³⁴⁸ Ibid., paras 97, 100.

³⁴⁹ Blaškić Appeal Judgment, para. 632; Blaškić Trial Judgment, paras 302, 335, 464; Kordić and Čerkez Trial Judgment, para. 446; Kvočka Trial Judgment, para. 316; Stakić Trial Judgment, para. 461; Brđanin Trial Judgment, para. 279; Halilović Trial Judgment, paras 97, 100.

superior's own lack of legal competence does not relieve him from pursuing what his or her material ability enables him or her to do.³⁵⁰

194. The proof of the existence of a superior-subordinate relationship does not require the identification of the principal perpetrators, particularly not by name, nor that the superior had knowledge of the number or identity of possible intermediaries, provided that it is at least established that the individuals who are responsible for the commission of the crimes were within a unit or a group under the control of the superior.³⁵¹
195. There is no requirement that the superior-subordinate relationship be direct or immediate in nature.³⁵² For example, the relationship between a commander of one unit and troops belonging to other units that are temporarily under his command, constitutes the hierarchic relationship of superior-subordinate.³⁵³ Effective control can exist, whether that subordinate is immediately answerable to that superior or more remotely under his command.³⁵⁴ A superior may also be responsible for crimes committed by a subordinate more than one level down the chain of command.³⁵⁵ Thus, whether this sort of control is directly exerted upon a subordinate or mediated by other sub-superiors or subordinates is immaterial, as long as the responsible superior would have means to prevent the relevant

³⁵⁰ *Aleksovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, paras 302, 335, 464; *Halilović* Trial Judgment, para. 100.

³⁵¹ A first instance of this proviso with regard to identification requirements can be found in relation to the form of the indictment by the Trial Chamber's finding in the *Krnojelac* case that it would be sufficient for the prosecution to identify subordinates who allegedly committed the criminal acts at least by their 'category' or 'as a group' if it is unable to identify those directly participating in the alleged crimes by name: *Prosecutor v. Krnojelac*, IT-97-25-PT, "Decision on the Defence Preliminary Motion on the Form of the Indictment", Trial Chamber, 24 February 1999, para. 46. As may be concluded from the unchallenged reference to this decision by the Appeals Chamber in the *Blaškić* case (*Blaškić* Appeal Judgment, para. 217), to establish superior responsibility, the direct perpetrators of the relevant crimes need not be identified by name, nor must it be shown that the superior knew the identity of those individuals if it is at least proven that they belong to a category or group of people over whom the accused has effective control. See also *Hadžihasanović* Trial Judgment, para. 90.

³⁵² *Strugar* Trial Judgment, para. 363; *Orić* Trial Judgment, paras 310-311; *Čelebići* Appeal Judgement, para. 252. *Stakić* Trial Judgment, 31 July 2003, para. 459.

³⁵³ This essentially was the view expressed in the post-World War II trial of the Japanese General Tomoyuki Yamashita, by the U.S. Military Commission (subsequently affirmed by the U.S. Supreme Court). *Trial of General Tomoyuki Yamashita Before U.S. Military Commission* (Oct. 7–Dec. 7, 1945), summarized in 4 U.N. War Crimes Commission, Law Reports of Trials of War Criminals 1, 33-35 (1948). Confirmed in the appeal before the U.S. Supreme Court in *In re Yamashita*, 327 U.S. 1 (1945).

³⁵⁴ *Halilović* Trial Judgment, para. 63.

³⁵⁵ *Strugar* Trial Judgment, paras 363-366.

crimes from being committed or to take efficient measures for having them sanctioned.³⁵⁶

The Superior Knew or Had Reason to Know

196. Article 6(3) requires that the superior either (a) knew or (b) had reason to know that his subordinates were about to commit criminal acts or had already done so. Whereas the former requires proof of actual knowledge, the latter requires proof only of some grounds which would have enabled the superior to become aware of the relevant crimes of his or her subordinates.³⁵⁷

197. Actual knowledge may be established by way of circumstantial evidence.³⁵⁸ The superior's position per se is not to be understood as a conclusive criterion³⁵⁹ but may appear to be a significant indication from which knowledge of a subordinate's criminal conduct can be inferred.³⁶⁰ For instance, the fact that crimes were committed frequently or notoriously by subordinates of the accused, indicates that the superior had knowledge of the crimes.³⁶¹ Circumstantial evidence can in particular be gained from³⁶² the number, type and scope of illegal acts, the time during which they occurred, the number and type of troops, the logistics involved, the geographical location of the acts, their widespread occurrence, the tactical tempo of operations, the modus operandi of similar

³⁵⁶ *Orić* Trial Judgment, paras 307 et seq.

³⁵⁷ *Ibid.*, para. 317.

³⁵⁸ *Čelebići* Trial Judgment, paras 383, 386; *Kordić and Čerkez* Trial Judgment, para. 427; *Krnojelac* Trial Judgment, para. 94; *Naletilić* Trial Judgment, para. 71; *Galić* Trial Judgment, para. 174; *Brđanin* Trial Judgment, para. 278; *Strugar* Trial Judgment, para. 368; *Halilović* Trial Judgment, para. 66; *Limaj* Trial Judgment, para. 524; *Hadžihasanović* Trial Judgment, para. 94; *Bagilishema* Trial Judgment, para. 46; *Kajelijeli* Trial Judgment, para. 778; *Strugar* Trial Judgment, para. 368; *Aleksovski* Trial Judgment, para. 80; *Blaškić* Trial Judgment, para. 307; these Judgments indicate that the position of authority of the superior over the subordinate is a significant indication in itself that the superior knew of crimes committed by his subordinates.

³⁵⁹ *Blaškić* Appeal Judgment, para. 57; *Bagilishema* Trial Judgment, para. 45; *Semanza* Trial Judgment, para. 404; *Kajelijeli* Trial Judgment, para. 776.

³⁶⁰ *Aleksovski* Trial Judgment, para. 80; *Blaškić* Trial Judgment, para. 308.

³⁶¹ The Trial Chamber held that "[t]he crimes committed in the *Čelebići* prison-camp were so frequent and notorious that there is no way that [the accused] could not have known or heard about them." *Čelebići* Trial Judgment, para. 770.

³⁶² This list of criteria is in particular referred to in *Čelebići* Trial Judgment, para. 386; *Blaškić* Trial Judgment, para. 307; *Kordić and Čerkez* Trial Judgment, para. 427; *Galić* Trial Judgment, para. 174; *Brđanin* Trial Judgment, para. 276, footnote 736; *Strugar* Trial Judgment, para. 368; *Limaj* Trial Judgment, para. 524; *Hadžihasanović* Trial Judgment, para. 94; *Bagilishema* Trial Judgment, para. 968; Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, p. 17.

illegal acts, the officers and staff involved and the location of the commander at the time.³⁶³ Additionally, the fact that a military commander "will most probably" be part of an organised structure with reporting and monitoring systems has been cited as a factor facilitating the showing of actual knowledge.³⁶⁴

198. A superior can be held responsible on the basis of having had reason to know, had he made use of information which, by virtue of his superior position and in compliance with his duties, was available to him, that subordinates were about to commit or had already committed crimes.³⁶⁵
199. It is sufficient that the superior be in possession of sufficient information written or oral,³⁶⁶ or even general in nature, to be on notice of the likelihood of illegal acts by his subordinates, i.e., so as to justify further inquiry in order to ascertain whether such acts were indeed being or about to be committed.³⁶⁷ Such information must suggest the need for further inquiry into the likely or possible unlawful acts of subordinates and need not be explicit or specific.³⁶⁸ In particular, with regard to the duty to prevent, the superior need be on notice only of the "risk" or possibility of crimes being committed by his subordinates, not that crimes will certainly be committed.³⁶⁹ Moreover, the Prosecution submits that where a superior possesses such information, he has an affirmative duty to take reasonable measures to prevent criminal conduct, beyond his duty to investigate the situation.³⁷⁰

³⁶³ *Orić* Trial Judgment, paras 316 -324.

³⁶⁴ *Naletilić and Martinović* Trial Judgment, para. 73.

³⁶⁵ *Čelebići* Trial Judgment, paras 387-389, 393; *Blaškić* Trial Judgment, para. 332; *Bagilishema* Trial Judgment, para. 46; *Čelebići* Appeal Judgment, para. 238; *Galić* Trial Judgment, para. 175.

³⁶⁶ *Čelebići* Appeal Judgment, para. 238; *Kvočka* Trial Judgment, para. 318; *Galić* Trial Judgment, para. 175.

³⁶⁷ *Čelebići* Trial Judgment, para. 393; *Kordić and Čerkez* Trial Judgment, para. 437; *Strugar* Trial Judgment, paras 369-370; *Čelebići* Appeal Judgment, para. 241; *Blaškić* Appeal Judgment, para. 62; *Kvočka* Trial Judgment, para. 318; *Krnojelac* Trial Judgment, para. 94; *Naletilić and Martinović* Trial Judgment, para. 74; *Galić* Trial Judgment, para. 175; *Brđanin* Trial Judgment, para. 278; *Blagojević* Trial Judgment, para. 792; *Halilović* Trial Judgment, para. 68; *Kayishema* Trial Judgment, para. 228; *Semanza* Trial Judgment, para. 405; *Kajelijeli* Trial Judgment, para. 778; *Kamuhanda* Trial Judgment, para. 609.

³⁶⁸ *Bagilishema* Appeal Judgment, para. 28; *Čelebići* Appeal Judgment, paras 236, 238; *Strugar* Trial Judgment, para. 369; *Kvočka* Trial Judgment, paras 317-318; *Kordić and Čerkez* Trial Judgment, para. 437.

³⁶⁹ *Krnojelac* Appeal Judgment, paras 155, 166, 169, 170, 173-180. *Krnojelac* was held responsible under Article 7(3) for failing to prevent acts of torture that occurred after he witnessed the beating of a man, and for failing to prevent murders that occurred after disappearances of which he had knowledge; *Strugar* Trial Judgment, paras 370, 416-418.

³⁷⁰ *Kvočka* Trial Judgment, paras 317-318; *Čelebići* Appeal Judgment, para. 238 (notice of the violent or unstable character of subordinates may trigger duty to intervene); *Strugar* Trial Judgment, para. 373.

200. In *Celebici*, the ICTY Appeals Chamber held that “knowledge may be presumed ... if [the superior] had the *means* to obtain the knowledge but deliberately refrained from doing so.”³⁷¹ The superior need not have possessed knowledge of the *specific* details of the crime.³⁷²
201. This determination does not require the superior to have actually acquainted himself with the information in his or her possession³⁷³, nor that the information would, if read, compel the conclusion of the existence of such crimes.³⁷⁴ It rather suffices that the information was available to the superior and that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by subordinates.³⁷⁵
202. This does not necessarily mean that the superior may be held liable for failing to personally acquire such information in the first place.³⁷⁶ However, as soon as the superior has been put on notice of the risk of illegal acts by subordinates,³⁷⁷ he or she is expected to stay vigilant and to inquire about additional information, rather than doing nothing³⁷⁸ or remaining 'willfully blind'.³⁷⁹

³⁷¹ *Čelebići* Appeal Judgment, para. 226. This is also repeated in *Stakić* Trial Judgment, para. 422; In the *Halilović* case, the Trial Chamber has held that knowledge cannot be presumed if a person fails in his duty to obtain the relevant information, but it may be presumed where a superior had the means to obtain the relevant information and deliberately retained from doing so, see *Halilović* Trial Judgment, para. 69.

³⁷² *Čelebići* Appeal Judgment, para. 238: “[a] showing that a superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he ‘had reason to know’ ... This information does not need to provide specific information about unlawful acts committed or about to be committed. For instance, a military commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge.” This view was also repeated by the ICTY Trial Chamber in *Galić* Trial Judgment, 5 Dec. 2003, para. 175; *Krnjelac* Appeal Judgment, para. 155.

³⁷³ *Čelebići* Appeal Judgment, para. 239; *Galić* Trial Judgment, para. 175.

³⁷⁴ *Čelebići* Trial Judgment, para. 393; *Naletilić and Martinović* Trial Judgment, para. 74; *Halilović* Trial Judgment, para. 68; *Hadžihasanović* Trial Judgment, para. 97.

³⁷⁵ *Čelebići* Trial Judgment, para. 393.

³⁷⁶ *Čelebići* Appeal Judgment, para. 226; *Blaškić* Appeal Judgment, para. 62; *Halilović* Trial Judgment, para. 69; *Limaj* Trial Judgment, para. 525.

³⁷⁷ Instead of the “risk” of crimes by subordinates, as used in describing the standard of possible awareness in the case law of this Tribunal (*Krnjelac* Appeal Judgment, para. 155; *Čelebići* Trial Judgment, para. 383; *Strugar* Trial Judgment, para. 416), some judgments speak of “likelihood” (*Kordić and Čerkez* Trial Judgment, para. 437; *Limaj* Trial Judgment, para. 525) or even of “substantial” and “clear likelihood” (*Strugar* Trial Judgment, paras 420, 422). Yet this language, rather than requiring a higher standard, seems merely to express that with such a degree of likelihood the risk test is definitely satisfied. See also *Hadžihasanović* Trial Judgment, paras 98, 102 et seq.

³⁷⁸ *Strugar* Trial Judgment, para. 416.

³⁷⁹ *Čelebići* Trial Judgment, para. 387; *Halilović* Trial Judgment, para. 69.

203. Examples of information which have been found to place a superior on notice of the risk of criminal conduct by a subordinate – and consequently that shows that the superior possessed the requisite knowledge – include that of a subordinate having a notoriously violent or unstable character and that of a subordinate drinking prior to being sent on a mission.³⁸⁰ Similarly, a commander's knowledge of, for example, the criminal reputation of his subordinates may be sufficient to meet the *mens rea* standard required by Article 6(3) of the Statute if it amounted to information which would put him on notice of the "present and real risk" of offences within the jurisdiction of the SCSL.³⁸¹

Necessary and Reasonable Measures

204. A superior must take reasonable and necessary measures within his material abilities to prevent the offence or punish the principal offender.³⁸² There is no rigid definition as to what constitutes reasonable measures;³⁸³ it should be decided on a case-by-case basis in light of the superior's material abilities.³⁸⁴ Such 'available' measures have been held to include measures which are beyond the legal authority of the superior, if their undertaking is materially possible.³⁸⁵

205. Indeed a superior may be held liable despite lacking the formal legal competence to take particular measures to prevent or repress offences committed by subordinates.³⁸⁶ Such a superior ordinarily can, for example, alert others concerning crimes committed or about to be committed by subordinates.³⁸⁷

³⁸⁰ *Čelebići* Appeal Judgment, para. 238; *Krnojelac* Appeal Judgment, para. 154; *Hadžihasanović* Trial Judgment, para. 100.

³⁸¹ *Brdanin* Trial Judgment, para. 278, referring to *Čelebići* Appeal Judgment, paras 223 and 241; *Halilović* Trial Judgment para. 68 footnote 164.

³⁸² *Strugar* Trial Judgment, para. 372; *Aleksovski* Appeal Judgment, para. 76; *Blaškić* Trial Judgment, para. 335; *Čelebići* Trial Judgment, paras. 377, 395.

³⁸³ *Aleksovski* Trial Judgment, para. 81; *Čelebići* Trial Judgment, para. 394.

³⁸⁴ *Strugar* Trial Judgment, para. 372, 374, 378.

³⁸⁵ *Čelebići* Trial Judgment, para. 395. *Stakić* Trial Judgment, para. 461.

³⁸⁶ *Strugar* Trial Judgment, para. 372; *Čelebići* Trial Judgment, para. 395; *Kordić and Čerkez* Trial Judgment, para. 443.

³⁸⁷ *Aleksovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, para. 302. See also 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 3562; *Blaškić* Trial Judgment, para. 335. *Stakić* Trial Judgment, para. 461.

206. At the same time, however, mere punishment by the superior of a subordinate, subsequent to having committed the crime, cannot remedy the superior's failure to take 'necessary and reasonable measures' in advance aimed at preventing the crime.³⁸⁸

207. The contours of a superior's duty to prevent crimes by subordinates were addressed in the *Strugar* case, stating that "if a superior has knowledge or has reason to know that a crime is being or is about to be committed, he has a duty to prevent the crime from happening and is not entitled to wait and punish afterwards."³⁸⁹ The Trial Chamber listed several factors considered by the post-World War II tribunals in establishing a superior's responsibility for failure to prevent crimes by his subordinates, including *inter alia* the failure to issue orders aimed at bringing practices into accord with the rules of war, the failure to secure reports that military actions have been carried out in accordance with international law, the failure to protest against or criticise criminal acts, the failure to take disciplinary measures to prevent criminal acts by subordinates, and the failure to insist before a superior authority that immediate action be taken against perpetrators of crimes.³⁹⁰

208. The Trial Chamber in *Strugar* also held that "a superior's duty to punish the perpetrators of a crime includes at least an obligation to investigate possible crimes, to establish the facts, and if the superior has no power to sanction, to report them to the competent authorities."³⁹¹ The Trial Chamber noted that the post-World War II cases required a superior to conduct an effective investigation and take active steps to ensure that the perpetrators will be brought to justice.

Plurality of Superiors

209. More than one superior may be held responsible for their failure to prevent or punish the same crime committed by a subordinate.³⁹² The fact that an Accused may himself have

³⁸⁸ *Blaškić* Trial Judgment, para. 336. *Stakić* Trial Judgment, para. 461.

³⁸⁹ *Strugar* Trial Judgment, para. 373; See also *Blaškić* Trial Judgment, para. 336. Customary international law allows for conviction on the sole basis that the superior failed to prevent the crimes of his subordinates even if the perpetrators were punished after crimes had been committed. *US v Leeb* (High Command Case), 11 TWC 1, 568 (1949); *US v Von List* (Hostage Case), 11 TWC 1, 1298-99.

³⁹⁰ *Strugar* Trial Judgment, para. 374.

³⁹¹ *Strugar* Trial Judgment, para. 376.

³⁹² *Blaškić* Trial Judgment, para. 303 and *Alekovski* Trial Judgment, para. 106; *Krnojelac* Trial Judgment, para. 93.

had superiors does not impact on his own responsibility as a superior. Command responsibility applies to every commander at every level.³⁹³

210. Finally, an accused who is found guilty under Article 6(1) of the Statute should not also be convicted of the same crime pursuant to Article 6(3); instead, his superior position is considered an aggravating factor in sentencing.³⁹⁴

C. JOINT CRIMINAL ENTERPRISE

211. International jurisprudence 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.³⁹⁵
212. The Three Accused are all charged as participants in a joint criminal enterprise (“JCE”) the plan, purpose or design of which was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included gaining complete control over the population of Sierra Leone and the complete elimination of the RUF/AFRC, its supporters, sympathizers, and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone.
213. The key players in the joint criminal enterprise during the relevant time frame included those named in the Indictment as well as other members of the CDF who shared the common design. It is not alleged that every member of the CDF was necessarily a member of the joint criminal enterprise.
214. There are three recognized forms of joint criminal enterprise.³⁹⁶ The Prosecution has alleged all three of these variants of JCE liability in the Indictment³⁹⁷ as well as the Pre-

³⁹³ *Halilović* Trial Judgment, paras 61-62. *Blaškić* Trial Judgment, paras 296, 302, 303; *Krnjelac* Trial Judgment, para. 93; *Naletilić and Martinović* Trial Judgment, para. 69.

³⁹⁴ *Kordić and Čerkez* Appeal Judgment, para. 34 (quoting *Blaškić* Appeal Judgment, para. 91); *Kajelijeli* Appeal Judgment, para. 81-82.

³⁹⁵ *Tadić* Appeal Judgment, para. 190; *Vasiljević* Appeal Judgment, para. 95; *Prosecutor v. Milutinović et al.*, IT-99-37-AR72, “Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction—Joint Criminal Enterprise”, (“*Milutinović Decision on Joint Criminal Enterprise*”) Appeals Chamber, 21 May 2003, para. 20.

³⁹⁶ *Tadić* Appeal Judgment, paras 195-226; *Vasiljević* Appeals Judgment, paras 96-99.

³⁹⁷ Amended Consolidated Indictment, 5 February 2004, para. 19.

Trial Brief³⁹⁸, and submits that all three may be applicable to the facts proven at trial. The Trial Chamber may rely on the variant or variants of JCE liability which it concludes best fit the facts of this case.

215. The first category or ‘basic form’ of JCE describes cases where all participants, acting pursuant to a common purpose which amounts to or involves the commission of a crime listed in the Statute,³⁹⁹ share the same criminal intent. The second category, a variant of the first, is also a basic form, and applies where the accused has personal knowledge of a concerted system of ill-treatment, as well as the intent to further this concerted system of ill-treatment.⁴⁰⁰ This second category is frequently used to describe concentration camp cases, but can apply in other cases characterized by the existence of an organized system set in place to achieve a common criminal purpose.⁴⁰¹ In such cases, it is necessary to prove that the accused had personal knowledge of the system and the intent to further the system; it is less important to prove that there was a more or less formal agreement between all the participants than to prove their involvement in the system.⁴⁰² On a proper analysis, the first and second categories may be regarded not as separate ‘categories’ of joint criminal enterprise liability, but merely as two different ways in which an accused can participate in a joint criminal enterprise under the ‘basic form’ of liability.⁴⁰³ The third category or ‘extended form’ describes cases where all participants share the intention to carry out a common design and where the physical perpetrator commits a crime which falls outside the scope of the original design but which is nevertheless a natural and foreseeable consequence of that design.⁴⁰⁴ Regardless of the role played by each participant in the commission of the crime, all of the participants in the joint criminal enterprise are guilty of the same crime.⁴⁰⁵

³⁹⁸ Pre-Trial Brief, 2 March 2004, para. 154, p. 487.

³⁹⁹ *Tadić* Appeal Judgment, para. 227.

⁴⁰⁰ **Krnojelac Appeal Judgement**, para. 32.

⁴⁰¹ *Ibid*, para. 89.

⁴⁰² *Ibid*, para. 96.

⁴⁰³ See *Prosecutor v. Stakić*, IT-97-24-T, “Judgement,” 31 July 2003, (“**Stakić Trial Judgment**”), para. 435 (“A person may *participate* in a joint criminal enterprise *in various ways*: (i) by personally committing the agreed crime as a principal offender; (ii) by assisting or encouraging the principal offender in committing the agreed crime as a co-perpetrator who shares the intent of the joint criminal enterprise; (iii) *by acting in furtherance of a particular system in which the crime is committed by reason of the accused’s position of authority or function and with knowledge of the nature of that system and intent to further it*” (emphasis added)).

⁴⁰⁴ *Vasiljević* Appeal Judgment, para. 99.

⁴⁰⁵ *Vasiljević* Appeal Judgment, paras 110-111; *Blagojević and Jokić* Trial Judgment, para. 702.

216. The following elements therefore establish liability as a co-perpetrator in a joint criminal enterprise:⁴⁰⁶

- 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 personal knowledge of a system of ill-treatment and intent to further the criminal purpose of the system;
- 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 and willingly taking the risk that the crime might occur.⁴⁰⁷

Plurality of Persons

217. A joint criminal enterprise can be large or more restricted in size. In the *Karemera* case, the ICTR Appeals Chamber confirmed that it would be incorrect to suggest that liability can arise only from participation in enterprises of limited size or geographical scope”.⁴⁰⁸ In the case of a large scale joint criminal enterprise, the participants may change over a period of time, with new members joining, and some persons ceasing to be members.

218. There is no requirement that the plurality of persons be organized in a military, political or administrative structure⁴⁰⁹ and membership in the enterprise may be fluid so long as the common aim remains constant.⁴¹⁰ Identification of a perpetrator by category is sufficient if the precise identity is not known.⁴¹¹ For example, it has been found that a

⁴⁰⁶ *Kvočka* Trial Judgement, para. 266; see also *Tadić* Appeal Judgment, para. 227.

⁴⁰⁷ *Brđanin* Trial Judgment, para. 265; see also *Tadić* Appeal Judgment, para. 228; *Stakić* Appeal Judgment, paras 64-65.

⁴⁰⁸ *Prosecutor v Karemera*, “Decision on Jurisdictional Appeals: Joint Criminal Enterprise”, 12 April 2006, para. 16. See also *Krajisnik* Trial Judgment, para. 876.

⁴⁰⁹ *Vasiljević* Appeal Judgment, para. 100.

⁴¹⁰ *Brđanin* Trial Judgement” para. 261; *Tadić* Trial Judgement para. 227; *Blagojević and Jokić* Trial Judgment, paras 700-701.

⁴¹¹ *Kvočka* Trial Judgment para. 266; *Tadić* Appeal Judgment, para. 227; *Prosecutor v. Rasevic*, IT-97-25/1-PT, “Decision regarding Defence Preliminary Motion on the Form of the Indictment”, Trial Chamber, 28 April 2004, para. 47; *Prosecutor v. Stojan Zupljanin*, IT-99-36-I, “Second amended Indictment”, October 2004.

“group including the leaders of political bodies, the army, and the police who held power in the Municipality of Prijedor” was a plurality of persons, meeting the first element of JCE.⁴¹²

Common purpose

219. It is necessary to demonstrate the existence of a common plan, design or purpose which amounts to *or involves* the commission of a crime listed in the Statute. While the aim of defeating the enemy and regaining control of territory is not in itself a criminal aim, if the plan involves the commission of crimes against civilians suspected to have collaborated with the enemy in order for what might be legitimate ultimate aims to be achieved, liability may be invoked under the doctrine of JCE.
220. There is no need for the Prosecution to establish that the common plan, design or purpose was expressly or formally agreed between the various members of the joint criminal enterprise, or previously arranged or formulated.⁴¹³ Furthermore, the understanding or arrangement may be an unspoken one. The existence of such a common plan, design or purpose may be established by circumstantial evidence, and may be inferred from all the evidence.⁴¹⁴ In particular, the common plan, understanding or agreement may be inferred merely “from the fact that a plurality of persons acts in unison to put the plan into effect or from other circumstances.”⁴¹⁵ For instance, it has been said that “[w]here the act of one accused contributes to the purpose of the other, and both acted simultaneously, in the same place and within full view of each other, over a prolonged period of time, the argument that there was no common purpose is plainly unsustainable.”⁴¹⁶
221. While the physical perpetrator of crimes will often be a member of the enterprise, it is well-established that persons, such as leaders, who may be more removed from the *actus reus* of a crime are not immune from liability. Senior leaders necessarily divide tasks up amongst each other and use the means at their disposal, such as armies, to execute the

⁴¹² *Prosecutor v Stakić*, Appeal Judgment, para. 69.

⁴¹³ *Krajišnik* Trial Judgment, para. 883.

⁴¹⁴ *Prosecutor v. Blagoje Simić*, IT-95-9-T, “Judgement”, 17 October 2003, para. 158; *Vasiljević* Trial Judgment, para. 66; *Krnojelac* Trial Judgment, para. 80, footnote 236; *Furundžija* Appeals Judgment, para. 119; *Krnojelac* Appeal Judgment, paras. 81, 96.

⁴¹⁵ *Tadić* Appeal Judgment, para. 227; *Krnojelac* Trial Judgment, para. 80.

⁴¹⁶ *Furundžija* Appeals Judgment, para. 120.

common plan. A commander may use the forces under his control, while another participant makes inflammatory speeches and yet another provides political support. Therefore, it has been held that a JCE may exist even if none or only some of the physical perpetrators are part of the enterprise if they are procured by members of the enterprise to commit crimes which further the common plan.⁴¹⁷ In an interlocutory decision in the *Ojdanic* case, Judge Bonomy considered the question of the membership of the physical perpetrator in the JCE in some detail and concluded in relation to the ICTY/R case law that:

“it is not inconsistent with the jurisprudence of the Tribunal for a participant in a JCE to be found guilty of commission where the crime is perpetrated by a person or persons who simply act as an instrument of the JCE, and who are not shown to be participants in the JCE. There is certainly no binding decision of the Appeals Chamber that would prevent the Trial Chamber from finding an accused guilty on that basis.”⁴¹⁸

222. In the case of the second category of joint criminal enterprise, the emphasis is on the accused’s knowledge of the system and intent to further that system. It is not necessary to prove an agreement between the accused and the physical perpetrators of the crimes, however it must be shown that the accused knew of the system and agreed to it.⁴¹⁹
223. In the case of a large scale joint criminal enterprise, the participants may change over a period of time, with new members joining, and some persons ceasing to be members. A new and distinct joint criminal enterprise may come into existence if the objective of the enterprise changes, such that the objective is fundamentally different in nature and scope from the original plan. The members of the new joint criminal enterprise may be the same, or alternatively it may be that only some of the original members joined the new enterprise.⁴²⁰

Participation of the Accused

⁴¹⁷ *Krajisnik* Trial Judgment, para. 883.

⁴¹⁸ *Prosecutor v Milutinovic et al.*, “Decision on Ojdanic’s Motion Challenging Jurisdiction: Indirect Co-Perpetration”, 22 March 2006, para. 13.

⁴¹⁹ *Kvočka* Appeal Judgment, para. 118; *Krnjelac* Appeal Judgment, para. 97.

⁴²⁰ *Blagojević and Jokić* Trial Judgment, paras 700-701.

224. Participation in a joint criminal enterprise need not involve the commission of a specific crime nor indeed of any element of a crime⁴²¹ but may take the form of assistance in, or contribution to, the execution of the common purpose.⁴²² Presence at the scene of the crime is not required.⁴²³ The accused's contribution need not have been substantial or necessary to the achievement of the objective of the enterprise.⁴²⁴
225. An accused's contribution to the JCE may take different forms, but a sufficient contribution is clearly made when an accused physically or directly perpetrates a serious crime that advances the goal of the criminal enterprise, or when a person in a position of authority or influence knowingly fails to protest against the commission of such crimes.⁴²⁵ In the specific context of the second category of JCE liability, the *actus reus* focuses on the accused's participation in the enforcement of a system of ill treatment or repression. The necessary participation can be inferred from, among other factors, the position and functions of the accused.⁴²⁶

Shared Intent

226. As set out by Trial Chamber II, the shared intent in the first form of joint criminal enterprise exists where the accused possess the intent to commit a crime in furtherance of the common plan.⁴²⁷ This intent to commit a crime can exist even when the accused does not personally commit the crime but nevertheless intends this result.⁴²⁸
227. The shared intent to commit crimes in furtherance of the common plan may be inferred from the evidence. When reliance is placed on the state of mind of an accused by inference, that inference must be the only reasonable inference available on the evidence.⁴²⁹ Shared intent may, and often will, be inferred from knowledge of the plan and participation in its advancement.⁴³⁰

⁴²¹ *Kvočka* Appeal Judgment, para. 99.

⁴²² *Stakić* Appeal Judgment, para. 64.

⁴²³ *Kvočka* Appeal Judgment, paras 112-113.

⁴²⁴ *Krajisnik* Trial Judgment, para. 883.

⁴²⁵ *Kvočka* Trial Judgment, para. 309.

⁴²⁶ *Kvočka* Trial Judgment, para. 272; *Kvočka* Appeal Judgment, para. 101.

⁴²⁷ *Brima* Decision on Motion for Acquittal, para. 311.

⁴²⁸ *Tadić* Appeal Judgment para. 196; *Brdjanin* Trial Judgment, para. 264

⁴²⁹ *Vasiljević* Appeals Judgment, para. 120.

⁴³⁰ *Kvočka* Trial Judgment, para. 271.

228. However, if the Trial Chamber is not satisfied that the Accused shared the state of mind required for the commission of the crimes charged pursuant to a joint criminal enterprise, it may nevertheless consider the Accused's responsibility as an aider or abettor.⁴³¹

229. Regarding the second type of JCE, the *Tadić* Judgement stressed that the *mens rea* element comprised: "(i) knowledge of the nature of the system and (ii) the intent to further the common concerted design to ill-treat the inmates."⁴³² Personal knowledge of the system of ill treatment can be proven by express testimony or by reasonable inference from the accused's position of authority.⁴³³ The ICTY Appeals Chamber has also stated that the required criminal intent does not require the accused's personal satisfaction, enthusiasm, or personal initiative in contributing to the joint criminal enterprise.⁴³⁴

Crimes as a Natural and Foreseeable Consequence

230. For the application of third category joint criminal enterprise liability, it is necessary to prove that: (a) crimes that were not intended as part of the implementation of the common purpose occurred; (b) these crimes were a natural and foreseeable consequence of effecting the common purpose and (c) the participant in the joint criminal enterprise was aware that the crimes were a possible consequence of the execution of the common purpose, and in that awareness, he nevertheless acted in furtherance of the common purpose.⁴³⁵ The crime must be shown to have been foreseeable to the particular accused.⁴³⁶ Although it has been held until now that more than negligence is required, liability attaches where the risk was both a predictable consequence of the execution of the common design and the accused was either *reckless* or *indifferent* to that risk.⁴³⁷

⁴³¹ *Vasiljević* Trial Judgment, paras 68-69.

⁴³² *Tadić* Appeals Chamber Judgement, para. 203; *Krnjelac* Appeal Judgment, para. 89; *Kvočka* Trial Judgment, para. 311.

⁴³³ *Tadić* Appeal Judgment, para. 228.

⁴³⁴ *Kvočka* Appeal Judgment, para. 106.

⁴³⁵ *Stakić* Appeal Judgment, para. 87.

⁴³⁶ *Tadić* Appeal Judgment, para. 220.

⁴³⁷ *Tadić* ACJ para 204, 220, 228.

Distinction between Liability pursuant to a Joint Criminal Enterprise and Aiding and Abetting

231. An aider and abettor carries out acts directed to assist, encourage, or lend moral support to the perpetration of a specific crime and this support has a substantial effect on the perpetration of that crime, while a co-perpetrator in a joint criminal enterprise performs acts which are in some way directed to the furtherance of the common objective through the commission of crimes.⁴³⁸ An aider and abettor has knowledge that his acts assist the commission of a specific crime, while the co-perpetrator in a joint criminal enterprise intends to achieve the common objective.⁴³⁹ 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.⁴⁴⁰ 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.⁴⁴¹ When, however, an accused participates in a crime that advances the goals of the criminal enterprise, it is often reasonable to hold that his form of involvement in the enterprise amounts to that of a co-perpetrator.⁴⁴²

THE JOINT CRIMINAL ENTERPRISE IN THE CDF CASE

Plurality of persons:

⁴³⁸ *Tadić* Appeal Judgment, para. 229.

⁴³⁹ *Tadić* Appeal Judgment, para. 229.

⁴⁴⁰ *Tadić* Appeal Judgment, para. 229.

⁴⁴¹ *Tadić* Appeal Judgment, para. 229.

⁴⁴² *Prosecutor v. Miroslav Kvocka, Milojica Kos, Mlado Radic, Zoran Zigic, Dragoljub Prcać*, IT-98-30/1-T, 2 November 2001, Judgment, Trial Chamber, at para. 284. "For example, (...)an accountant hired to work for a film company that produces child pornography may initially manage accounts without awareness of the criminal nature of the company. Eventually, however, he comes to know that the company produces child pornography, which he knows to be illegal. If the accountant continues to work for the company despite this knowledge, he could be said to aid or abet the criminal enterprise. Even if it was also shown that the accountant detested child pornography, criminal liability would still attach. At some point, moreover, if the accountant continues to work at the company long enough and performs his job in a competent and efficient manner with only an occasional protest regarding the despicable goals of the company, it would be reasonable to infer that he shares the criminal intent of the enterprise and thus becomes a co-perpetrator. The man who merely cleans the office afterhours, however, and who sees the child photos and knows that the company is participating in criminal activity and who continues to clean the office, would not be considered a participant in the enterprise because his role is not deemed to be sufficiently significant in the enterprise." Ibid at para. 285 and 286.

232. Norman, Fofana and Kondewa were the very heart of the CDF organization. This was, perhaps, expressed best by Prosecution insider witness, TF2-008, who said: Norman, Fofana and Kondewa “have the executive power of the Kamajor society. These people....nobody can take a decision in the absence of this group. Whatever happened, they come together because they are the leaders and the Kamajors look up to them.”⁴⁴³

[REDACTED]

[REDACTED]

233. The Prosecution submits that the element of plurality is satisfied by the evidence of numerous Prosecution witnesses who testified about meetings where all three Accused were present and discussions were had and plans were made to eliminate RUF/AFRC and their supporters and sympathisers.⁴⁴⁵ That the element of plurality is met was conceded by the Defence for the Third Accused in their Rule 98 submissions.⁴⁴⁶

Existence of a common plan, design or purpose:

234. The evidence, in three specific ways, points to the conclusion that there existed a common plan which involved the commission of crimes: 1) The three Accused held numerous meetings; 2) public announcements were made by Norman and supported by Fofana and Kondewa; and 3) the repetition of crimes targeted specifically at collaborators or sympathizers of the enemy, demonstrates that a plan was in place.

235. The common plan was explicitly expressed by Norman at a War Council meeting at Base Zero where Fofana and Kondewa were also present. Norman said that if the CDF were to take over Freetown, Bo, Kenema and Kono, then they would control Sierra Leone for three years before inviting Kabbah to come back to power. The witness noted that all commanders had this idea in the back of their minds.⁴⁴⁷

236. There is significant evidence about meetings during which all three Accused and various other commanders discussed military issues. [REDACTED]

⁴⁴³TF2-008, Transcript 16 November 2004, p. 51.

⁴⁴⁴TF2-011, Transcript 8 June 2005, Closed Session, p. 31; TF2-014, Transcript 11 March 2005, p. 24, TF2-014, Transcript 15 March 2005, p. 28.

⁴⁴⁵TF2-005, TF2-201, TF2-079, TF2-017, TF2-223, TF2-201, TF2-021, TF2-222.

⁴⁴⁶*Norman*, Decision on Motion for Acquittal, para. 63.

⁴⁴⁷TF2-008, Transcript 16 November 2004, pp. 83, 87-90.

[REDACTED] TF2-079 also testified about a meeting at Base Zero where Norman did most of the talking but was later on “supported by the Director of War and the High Priest also followed suit.”⁴⁴⁹ At that meeting Norman said that in Tongo civilian collaborators should forfeit all their property and be killed.⁴⁵⁰ At Base Zero, Norman, Fofana and Kondewa as well as a select few would attend important and secret meetings held at Walihun I.⁴⁵¹

237. TF2-014 testified that at a meeting where Fofana and Kondewa were also present, Norman said that the enemies included “sympathisers, collaborators, and those who refused deliberately to leave the AFRC and RUF zones, those were our enemies and that we should kill them, no problem.”⁴⁵² [REDACTED]

[REDACTED] Additionally, TF2-223, TF2-201, TF2-021, TF2-222 all testified regarding meetings where the three Accused planned various attacks.⁴⁵⁴

238. It is not only the private planning meetings which points to the conclusion that a common plan was in existence, but the public announcements made by Norman and supported by Fofana and Kondewa.

239. TF2-157 testified about a meeting which was held at the court barry in Koribundo. Kamajors required everyone to attend. The witness specifically recalled Norman’s speech: “I said that one [that nothing should be spared] because when the soldiers were here you were here together and you hosted them and you supported them and you have brought a lot of wicked things.”⁴⁵⁵ Numerous other witnesses also recalled the public

⁴⁴⁸TF2-005, Transcript February 15, 2005, Closed Session, p. 105; TF2-201, Transcript 4 November 2004, Closed Session, pp.106-107.

⁴⁴⁹TF2-079, Transcript 26 May 2005, p. 53.

⁴⁵⁰TF2-079, Transcript 26 May 2005, p. 55.

⁴⁵¹TF2-079, Transcript 26 May 2005, p. 39.

⁴⁵²TF2-014, Transcript 10 March 2005, p. 37.

⁴⁵³TF2-017, Transcript 19 November 2004, Closed Session, pp. 93-94.

⁴⁵⁴TF2-223, Transcript 28 September 2004, Closed Session, pp. 56-58, ; TF2-201, Transcript 5 November 2004, Closed Session, pp. 42-43; TF2-021, Transcript 2 November 2004, p. 62; TF2-222, Transcript 17 February 2005, pp. 102-103.

⁴⁵⁵TF2-157, Transcript 16 June 2004, pp. 20-21.

announcement Norman made regarding the failure of the Kamajors to burn everything and kill everyone in Koribundo.⁴⁵⁶ There was no hiding the fact that Norman was not pleased that his plan was not being carried out.

240. At a passing out parade, Norman gave instructions for the attack on Tongo which included killing, burning and looting. Fofana spoke next and warned that any commander who did not perform accordingly or who lost ground should “decide to kill yourself there...” Kondewa was the last to speak and he said: “I give you my blessings; so my boys, go.”⁴⁵⁷

241.

[REDACTED]

242. Finally, the repeated targeting of anyone collaborating, suspected of collaborating or even sympathising with the enemy suggests that a joint enterprise that required the commission of crimes in order to make the ultimate plan of regaining power a reality, existed.

243. TF2-035 testified about how one thousand civilians were detained at a checkpoint at the Telama junction. After the Kamajors searched people and their belongings, the Loko, Limba and Temne people were told to form a queue. Keikula Kamaboty passed an order that “they all should be killed” and the one hundred and fifty people in that line were hacked to death with cutlasses. The stomach of one of the victims’ was slit open and his entrails were taken.⁴⁵⁹

244. TF2-159 testified regarding an incident at the Koribundo Junction where he saw Kamajors with five Limba people. The Kamajors said that the Limba people were junta; two were killed with guns and three were killed with a cutlass.⁴⁶⁰ Numerous other

⁴⁵⁶TF2-162, Transcript 8 September 2004, pp. 29-30; TF2-198, Transcript 15 June 2004, pp. 37-38; TF2-012, Transcript 21 June 2004, pp. 26-27; TF2-159, Transcript 9 September 2004, pp. 51-55; TF2-032, Transcript 13 September 2004, pp. 61-62.

⁴⁵⁷TF2-222, Transcript 17 February 2005, pp. 110-115, 119-120.

⁴⁵⁸TF2-011, Transcript 8 June 2005, pp. 32-33.

⁴⁵⁹TF2-035, Transcript 14 February 2005, pp. 13-20

⁴⁶⁰TF2-159, Transcript 9 September 2004, pp. 28-31.

witnesses all gave evidence regarding screenings for and crimes committed against suspected collaborators, junta, or sympathisers.⁴⁶¹

245. The crimes were never committed in secret, they took place in public areas and on occasion people in the crowds were asked to point out rebels or suspected collaborators.⁴⁶²

246. The Prosecution submits that there was a policy of targeting people who were in any way connected with the enemy. Those people were killed, subjected to physical violence and their property was looted and burned. The way in which these crimes were repeatedly carried out against a specific target, anyone having anything to do with the enemy or suspected of having anything to do with the enemy, demonstrates that these were not random acts.

Participation in the execution of the common plan:

247. The three Accused all participated in criminal activities in various essential ways to give effect to the common plan. As the above-mentioned evidence indicates, each accused participated in the joint criminal enterprise by attending and participating in CDF planning meetings and public announcements. Additionally, the three Accused gave orders.⁴⁶³ [REDACTED]

[REDACTED] The three accused were involved in recruitment, training and movement of Kamajor troops.⁴⁶⁵ [REDACTED]

⁴⁶¹TF2-027, Transcript 18 February 2005, pp. 94, 102-104; TF2-144, Transcript 24 February 2005, p. 65; TF2-048, Transcript 23 February 2005, pp. 23-26; TF2-079, Transcript 26 May 2005, pp. 23, 83; TF2-053, Transcript 1 March 2005, pp. 82-85; TF2-151, Transcript 22 September 2004, pp. 12-18, 27-29; TF2-159, Transcript 9 September 2004, pp. 29-31; TF2-014, Transcript 10 March 2004, p. 53-54; TF2-223 Transcript 28 September 2004, Closed Session, pp. 62, 72-73; TF2-154, Transcript 27 September 2004, pp. 52-53; TF2-058; TF2-056, Transcript 6 December 2004, pp. 71-72.

⁴⁶² TF2-027, Transcript 18 February 2005, p. 94; TF2-053, Transcript 1 March 2005, pp. 82-83.

⁴⁶³TF2-014, Transcript 10 March 2005, pp. 52-53, 63, 70-79; TF2-017, Transcript 19 November 2005, Closed Session, p. 93-95; TF2-079, Transcript 26 May 2005, p. 20-22; TF2-223, 28 September 2004, Closed Session, pp. 37, 100-102; TF2-222, Transcript 17 February, 2005, pp. 110-111; TF2-201, Transcript 4 November 2004, Closed Session, p. 107; TF2-041, Transcript 24 September 2004, p. 22; TF2-021, Transcript 2 November 2005, p. 67; TF2-011, Transcript 8 June 2005, Closed Session, p. 29; TF2-119, Transcript 23 November 2004, pp. 109-112; TF2-190, Transcript 10 February 2005, p. 35; TF2-173, Transcript 4 March 2005, p. 55; TF2-118, Transcript 31 May 2005, pp. 15-16; TF2-073, Transcript 2 March 2005, p. 35-36.

⁴⁶⁴TF2-201, Transcript 4 November 2004, Closed Session, pp. 87, 96-98, 107; TF2-022, Transcript 11 February 2005, p. 54; TF2-223, Transcript 28 September 2004, Closed Session, p. 37; TF2-190, Transcript 10 February 2005, p. 37; TF2-005, Transcript 15 February 2005, Closed Session, p. 101; TF2-079, Transcript 26 May 2005, p. 42.

⁴⁶⁵Organizing and/or participating in initiation: TF2-189, Transcript 3 June 2005, p. 15; TF2-080, Transcript, 6 June 2005, p. 27; TF2-011, Transcript 8 June 2005, Closed Session, p. 20; TF2-017, Transcript 19 November 2004,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Each accused participated in the joint criminal enterprise by 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 financial and resource support; and organizing and/or participating in the initiation processes.

248. The three Accused also participated in the joint criminal enterprise by committing crimes themselves.⁴⁶⁷

Shared intention:

249. The evidence set out above with respect to the planning and participation of the three Accused in the execution of the joint criminal enterprise also provides proof of the shared intention of Norman, Fofana and Kondewa to control the territory of Sierra Leone by whatever means necessary, including through criminal acts.

250. Numerous Prosecution witnesses testified regarding the reports they made to Norman, Fofana and Kondewa about what was happening in battles throughout Sierra Leone.⁴⁶⁸

[REDACTED]

[REDACTED] and TF2-222 testified that when reports came back to Base Zero, the fighters would first go to Kondewa, then Fofana and would finally report to Norman.⁴⁷⁰

Closed Session, pp. 9-10; TF2-140, Transcript 14 September 2004, p. 74-76; TF2-079, Transcript 26 May 2005, p. 11; TF2-021, 2 November 2004, pp. 38-39; Training, organising and deploying troops: TF2-189, Transcript 3 June 2005, p. 14-15; TF2-223, Transcript 28 September 2004, Closed Session, pp.22-23, 35-37; TF2-011, Transcript 8 June 2005, Closed Session, pp. 47, 54-55; TF2-005, Transcript 15 February 2005, Closed Session, p. 101; TF2-222, Transcript 17 February 2005, pp. 92-93.

⁴⁶⁶TF2-223, Transcript 28 September 2004, Closed Session, pp. 38, 39, 57-58.

⁴⁶⁷TF2-014, Transcript 10 March 2005, p. 18; TF2-096, Transcript 8 November 2004, pp. 24-27; TF2-017, Transcript 19 November 2004, Closed Session, p. 29-33.

⁴⁶⁸TF2-190, Transcript 10 February 2005, p. 40; TF2-014, Transcript 10 March 2005, pp. 62-64; TF2-027, Transcript 18 February 2005, pp. 98-99; TF2-079, Transcript 26 May 2005, p. 25-26.

⁴⁶⁹TF2-201, Transcript 4 November 2004, Closed Session, pp. 110-113.

⁴⁷⁰TF2-222, Transcript 17 February 2005, pp. 121-122.

251. Additionally all three accused knew about the commission of crimes because they themselves had ordered the commission of these crimes on a number of occasions.
252. The only reasonable inference to be drawn from the entirety of the evidence is that the three Accused not only shared and intended to participate in a joint criminal enterprise, but in fact did participate in and had knowledge of the crimes being committed in furtherance of the common plan. The full extent of the crimes may also be regarded as forming part of a system of ill-treatment of civilians suspected of being RUF/AFRC collaborators or sympathisers.
253. Alternatively, if the Trial Chamber should find that some or all of the crimes charged in the Indictment were not intentionally committed as part of the implementation of the common plan, those crimes were a natural and foreseeable consequence of the implementation of that plan. Thus, the full extent of the crimes committed by Hinga Norman, his co-accused and individual Kamajors was objectively a natural and foreseeable consequence of the common plan to instil fear in the population and use criminal means to wipe out the RUF/AFRC and those perceived to be sympathizers.

PART III

ASSESSMENT OF INDIVIDUAL ACCUSED

254. The following submissions relate to the individual accused. Again it must be noted that there is a strong commonality of evidence between the accused and the offences, so that, in one regard, it is an artificial exercise seeking to allocate the evidence in a manner that does not recognize the intrinsic closeness of the accused with each other, and their direct connection to the offences committed by persons under their authority.

I. HINGA NORMAN:

I. Hinga Norman

A. Norman's Position of Authority

255. Norman served in the Armed Forces of the Republic of Sierra Leone from about 1959 to 1972 rising to the rank of Captain. In 1966 he graduated from the Mons Officer Cadet School in Aldershot, United Kingdom. Norman was a leading political figure in the Republic of Sierra Leone.
256. In 1997, Norman became National Coordinator of the CDF.⁴⁷¹ As such he was the principal force in establishing, organizing, supporting, providing logistical support to, and promoting the CDF. Norman was also the leader and Commander of the Kamajors and as such had *de jure* and *de facto* command and control over the activities and operations of the Kamajors.⁴⁷²
257. The sources of Norman's power were twofold. In the first place, Norman possessed power by virtue of the political positions he occupied both at the municipal level (chiefdom spokesman) and national level (Deputy Minister for Defence). In the second place, Norman was entrusted with political power directly by the President. Norman oversaw the portfolio of the Ministry of Defence and was in charge of the security of the nation. Norman's power was consolidated with his appointment as National Coordinator of the CDF.⁴⁷³
258. On 15 September 1997, Norman landed at Talia in a helicopter at Talia, Yawbeko Chiefdom, which later came to be known as 'Base Zero'. Norman likened the place to the base of generals and field marshals in war.⁴⁷⁴ At Talia, Norman "co-ordinated the activities of the Kamajors."⁴⁷⁵ Norman was not only the ostensible leader of the Kamajors, but was in fact the very heart of its existence as its key figure. In the public eye, it was Norman who personified the Kamajors.⁴⁷⁶ It was up to Norman to organise or summon people to attend a meeting whenever he felt the need. During such meetings

⁴⁷¹ TF2-008, Transcript, 16 November 2004, p. 82.

⁴⁷² Ibid., p. 51.

⁴⁷³ Accused Sam Hinga Norman, Transcript, 26 January 2006, p. 6.

⁴⁷⁴ Ibid, p. 17.

⁴⁷⁵ Ibid.

⁴⁷⁶ BBC Radio Broadcasts, TF2-222, Transcript 17 February 2005, pp. 104-107.

Norman played a crucial and central role. At such gatherings, Norman would chair the meetings and very often propose conclusions.⁴⁷⁷ During Norman's stay at Talia, no one was above him;⁴⁷⁸ he was the final arbiter. All these were further important indicators that Norman was indeed the driving force behind the Kamajors.

259. Norman agreed with the Prosecution evidence that he was the person who gave the final approval for the appointment of Battalion Commanders and above, until the setting up of the National Coordinating Committee on 29 January 1999.⁴⁷⁹
260. It was also at Talia that Norman organized rudimentary training for Kamajors. After the successful training of Kamajors, Norman would make a public address at the Field in Talia and admonish Kamajors. Norman instructed his commanders not to spare anyone working or mining for the Junta.⁴⁸⁰
261. At Base Zero, in a meeting with commanders, Norman gave instructions for the attack on Koribundo.⁴⁸¹ It is the evidence that Norman instructed the Commanders present, "that when you proceed to attack Koribundo, don't leave any living thing and burn down houses if there was resistance. Commanders should only spare the Mosque, the School, and the Barry."⁴⁸²
262. By virtue of his position as National Coordinator of the CDF and particularly as the key figure of the Kamajors and the driving force behind its decisions, international monitors and negotiators on the ground between 1997 and 2001 were in contact with Norman as the representative voice of the Kamajors.⁴⁸³
263. The evidence indicates that the prime leadership and effective control of the CDF was in the hands of Norman as National Coordinator, Fofana as Deputy Director of War, and Kondewa as High Priest. All three accused persons if not members of the War Council had the authority to sit with the War Council when they chose to be present at the deliberations of that body.
264. The War Council provided advice to Norman, which he could accept or reject. The War Council discussed political and military issues. including military operations, welfare

⁴⁷⁷ TF2-008, Transcript 16 November 2004, pp. 88-90.

⁴⁷⁸ Accused Sam Hinga Norman, Transcript 6 February 2006, p.108 (line 8).

⁴⁷⁹ Ibid, p. 42.

⁴⁸⁰ TF2-222, Transcript 17 February 2005, p. 110.

⁴⁸¹ Ibid, p. 79.

⁴⁸² Ibid.

⁴⁸³ Exhibit P109: Unicef Monthly Report, 31 July 1999.

and discipline of the Kamajors. The War Council did not consist of persons with military training.

265.

[REDACTED]

266. Reports on how the war was being fought were submitted to the War Council. This body was gradually marginalized in terms of the real planning and was sidelined by Norman in March 1998. Indeed, prior to that time it had no effective control over the Kamajors or other groups within the umbrella of the CDF.

[REDACTED] It was at Base Zero that the First Accused planned, coordinated, directed, trained and commanded the attacks on Tongo, Bo, Koribundo and Kenema.⁴⁸⁵ [REDACTED]

[REDACTED]

268. The witness further testified that the First Accused ordered Fofana to dish out the ammunition.⁴⁸⁷ Another witness who was present at a meeting when the planning for the attack on Tongo was discussed described how Norman had convened the meeting, and was present together with Fofana, Kondewa, some members of the War Council and some commanders. Norman wrote out the requirements for the commanders who were to go to Tongo and supplies were provided to the commanders.⁴⁸⁸

269.

[REDACTED]

⁴⁸⁴ TF2-005, Transcript 15 February 2005, Closed Session, p. 102.

⁴⁸⁵ TF2-005, TF2-008, TF2-011, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222

⁴⁸⁶ TF2-005, Transcript 15 February 2005, Closed Session, p. 106 (line 12).

⁴⁸⁷ Ibid, (lines 24-25).

⁴⁸⁸ TF2-201, Transcript 4 November 2004, Closed Session, pp. 106-107.

- [REDACTED]
- [REDACTED]
270. The evidence establishes that there was an agreement between the three accused and subordinate members of the Kamajors to use any means necessary, including the terrorization of the civilian population through killings, serious physical and mental injury, collective punishment and pillage, to meet the objective of eliminating the RUF/AFRC and its supporters and sympathizers. The plan included the use of child soldiers. The evidence shows that the National Coordinator, Director of War and the High Priest were at the centre of the implementation of Kamajor plans.⁴⁹¹ The three accused utilised the CDF structure to achieve the strategic objectives of the CDF, in particular the Kamajors, in holding meetings and planning military operations with subordinates from Base Zero. Norman gave orders to subordinates that were carried out, and he received reports from subordinates about the execution of these orders.⁴⁹²
271. The objectives of what was portrayed as a defensive policy and strategy could only be realised through the commission of war crimes and attacks against civilians amounting to crimes against humanity. This is evident from the widespread nature of the campaign of terror and the manner in which it was directed from Base Zero and organized from district to district.
272. When the evidence is looked at in its entirety, the control of the organisation becomes apparent. No one within the CDF had authority over Norman; that is admitted by Norman. Norman needed positive assistance in running the CDF and that assistance was provided by Fofana and Kondewa. Further, as the evidence discloses, Norman would give an order, such as to how the Kamajors were to deal with Koribundo, and the people of that township describe the effect of that order as do the Kamajors who carried out the orders. Then Norman arrives to confirm his orders.
273. It must be noted that when Norman gave orders, as described in the testimony of many witnesses, he was not giving orders to sophisticated, highly trained soldiers. He was giving orders to hunters and villages who accepted orders in a literal sense. Their loyalty

⁴⁸⁹ TF2-201, Transcript 5 November 2004, Closed Session, p. 43.

⁴⁹⁰ Ibid, p. 56.

⁴⁹¹ TF2-008, Transcript 16 November 2004, p. 82.

⁴⁹² TF2-014, TF2-017, TF2-079, TF2-223

and obedience was obtained and secured through the efforts of Kondewa and supported and enforced by Fofana.

274. Witness TF2-222 gave evidence that Norman addressed a passing out parade of Kamajor fighters, in the presence of Fofana and Kondewa, in which he stated that no Junta Forces or their collaborators must be spared in Togo, since Togo determines who wins the war.⁴⁹³ Witness TF2-008 gave evidence that Norman, Fofana and Kondewa were seen as being at the centre of administering the affairs of the Kamajors and because of this, the Kamajors relied on these three men.⁴⁹⁴

B. Norman's Personal Liability Under Art. 6.1

1. Counts 1 and 2: Unlawful Killings

a) Togo Field

275. The evidence indicates that the First Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of the unlawful killings as charged. [REDACTED]

276. [REDACTED]

277. It must be observed, as mentioned elsewhere, that Norman and his co-accused understood their subordinates. All three men came from Sierra Leone, from villages in the country and it is submitted had the knowledge and experience to appreciate the level of understanding of the Kamajors to the orders given and their capacity to carry out such orders. For example, specific instructions were given by Norman regarding the Togo attack. He told the men after they had been trained that the attack on Togo would determine who the winner or the loser of the war would be and that they should be

⁴⁹³ TF2-222, Transcript 17 February 2005, p. 110.

⁴⁹⁴ TF2-008, Transcript 16 November 2004, p. 51.

⁴⁹⁵ TF2-005, Transcript 15 February 2005, pp. 106 (lines 18-20).

ready. He told them to bear in mind that when they went to Tongo there is no place to keep captured persons or war prisoners like the juntas, let alone their collaborators.⁴⁹⁶

278. As witness TF2-222 articulated, "Giving such a command to a group that was 95 percent illiterate who had been wronged is like telling them an eye for an eye, go in there for that reason. So I look at the command to be a bit not too comfortable to be given by a commander to your men for that means you were not going to even spare the vulnerables."⁴⁹⁷

279. Evidence of the physical acts of killing, which constitute the actus reus for the offence of unlawful killings for the Tongo crime base, is contained in the testimonies of witnesses TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, and TF2-144. For example, Witness TF2-047 gave evidence that a Kamajor commander called Kamabote said to him, "you are the sanitary officer. I know you. To-day you are going to bury a lot of corpses until you become tired."⁴⁹⁸ The witness saw people being killed by the Kamajors and Kamabote told him to get a wheelbarrow and bury the corpses in a pit. Bodies were lying in the compound. The witness observed that some of them had their heads chopped off, and he never saw their heads.⁴⁹⁹ 150 corpses were buried.⁵⁰⁰

280. A woman called Fatmata Kamara was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces. "I had three corpses in the wheelbarrow, which I went to bury. So when I came...he has struck her dead." The same witness buried 150 corpses.⁵⁰¹ He buried 25 junta corpses burnt with tyres at Olumatic.⁵⁰² Another witness, TF2-015 stated that, "Some men were fired in amongst the people in the lines as we were going (to Bumie)." The Kamajors killed them. "They would look at you as you're in the line. They will just call you and kill you. They fired at them."⁵⁰³

281. [REDACTED]
[REDACTED] A radio

⁴⁹⁶ TF2-222, Transcript 17 February 2005, p. 110.

⁴⁹⁷ Ibid, p. 111.

⁴⁹⁸ TF2-047, Transcript 22 February 2005, p. 53.

⁴⁹⁹ Ibid, p. 58.

⁵⁰⁰ Ibid, p. 61.

⁵⁰¹ TF2-047, Transcript 22 February 2005, p. 61.

⁵⁰² Ibid, p. 66.

⁵⁰³ TF2-015, Transcript 11 February 2005, p. 8.

⁵⁰⁴ TF2-201, Transcript 4 November 2004, Closed Session, pp. 106-107; TF2-005, Transcript DD February 2005, Closed Session, p. 23.

announcement was made by the First Accused alerting the world and warning civilians about the attack. Situation reports were received by him from the Tongo battlefield.⁵⁰⁵ Witness TF2-027 heard the Kamajor operator ask to speak to Chief Hinga Norman and say, 'Chief, chief, we have taken Tongo' or 'held Tongo.'⁵⁰⁶

282. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

283. The evidence indicates that Norman intended to kill or inflict grievous bodily harm on civilians in Tongo in reckless disregard for human life.⁵⁰⁹ Witness TF2-222 stated that the First Accused said, on the air, that people who did not move away from the strongholds of the junta, "be prepared to suffer any consequence that would meet them...you decided to stay in Sierra Leone you'll be looked upon as a collaborator or an effective participant of the junta rule."⁵¹⁰

284. 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."⁵¹¹ He also sent a message "that civilian collaborators, those who are sympathizing with the AFRC/RUF rebel should also be killed. And the paramount chiefs who are not in favour of the Kamajors should also be killed."⁵¹² The witness added that the paramount chief of Dama Chiefdom, Chief Dassama, was killed by Kamajors following the First Accused's orders.⁵¹³

⁵⁰⁵ TF2-201, Transcript 4 November 2004, Closed Session, pp. 106-107; TF2-222 Transcript 17 February 2005, p. 122.

⁵⁰⁶ TF2-027, Transcript 18 February 2005, pp. 97-99.

⁵⁰⁷ TF2-201, Transcript 4 November 2004, p. 106.

⁵⁰⁸ TF2-201, Transcript 4 November 2004, p. 107.

⁵⁰⁹ TF2-005, TF2-079, TF2-201, TF2-222

⁵¹⁰ TF2-222, Transcript 17 February 2005, p. 105.

⁵¹¹ TF2-079, Transcript 26 May 2005, p. 20.

⁵¹² Ibid.

⁵¹³ TF2-079, Transcript 26 May 2005, p.23.

285. The Prosecution maintains that in the course of the pursuit of that military objective (legitimate or otherwise), and, notably, after its fulfillment, crimes against humanity were committed, particularly unlawful killings.⁵¹⁴ The Prosecution maintains that where the First Accused (National Coordinator) of the Kamajor militia, with its membership largely illiterate⁵¹⁵ provides logistical support, coupled with instructions not to spare AFRC, RUF and collaborators (persons not necessarily engaged in active hostilities) this clearly amounts to support of unlawful killings which may result from the pursuit of such a command. The First Accused had knowledge of the risk of unlawful killings when he placed in the hands of the Kamajor militia, ammunition for attacking cities, such as Tongo, (a mining town with strong civilian presence) and accepted the consequences of that risk.⁵¹⁶
286. The Prosecution further maintains that the First Accused had actual knowledge of the unlawful killings by the Kamajors prior to his ordering and providing logistical support for the Tongo attack. Exhibit 86, which is a situation report inclusive of an incident of an unlawful killing, was shown to and read by the First Accused.⁵¹⁷

b) Kenema

287. The Prosecution submits that Norman's command position in the context of the conflict and the nature of the orders given are far removed from an administrative position, or a person holding clerical status. Witness TF2-041 testified that Kamajors said to him when he was arrested during the Kenema attack, that they were taking him to the ground commander at Blama, and was then told that Hinga Norman had instructed them to kill the Police, their wives and their children.⁵¹⁸ Under cross-examination, this piece of evidence was not challenged.
288. This evidence is consistent with evidence of police killings in Bo in pursuance of the First Accused's command,⁵¹⁹ and when the evidence is viewed as a whole, it is submitted that the only reasonable inference is that the Accused did give orders for these killings to be committed.

⁵¹⁴ Statute for the Special Court, Art. 2(a) and 3(a) (Counts 1 and 2).

⁵¹⁵ TF2-222, Transcript 17 February 2005, p. 11.

⁵¹⁶ See footnote 10

⁵¹⁷ TF2-079, Transcript 26 May 2005, pp. 27-36.

⁵¹⁸ TF2-041, Transcript 24 September 2004, p. 23.

⁵¹⁹ TF2-001, TF2-014

289. Witness TF2-014 gave evidence that at Base Zero, general and specific orders came from the First Accused. "It's from him that all directives emanated."⁵²⁰ Orders were distributed to the Kamajors.⁵²¹ In these general orders, the First Accused was said to have identified who were the enemies of the Kamajors – "All AFRC fighters were our enemies, and collaborators and sympathizers who were also enemies."⁵²² There is also evidence that the First Accused said that the enemies included "sympathizers, collaborators, and those who refused deliberately to leave the AFRC and RUF zones, those were our enemies and that we should kill them, no problem".⁵²³ There is evidence that Norman said that the police officers who used to work under the AFRC junta, they were all to be killed.⁵²⁴

290. There is evidence of Kamajors carrying out their orders in Kenema. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

291. Many other witnesses testified as to the acts of the Kamajors in killing civilians. Such acts could only have occurred, in view of their widespread nature, without any attempt of concealment, without, at the least, being condoned by the three accused men. As another example, witness TF2-021 described capturing collaborators and tying them with FM rope; they were then taken to the Yamorto; they were taken there to be eaten.

⁵²⁰ TF2-014, Transcript 10 March 2005, p. 35.

⁵²¹ TF2-014, Transcript 10 March 2005, p. 35.

⁵²² TF2-014, Transcript 10 March 2005, p. 37.

⁵²³ TF2-014, Transcript 10 March 2005, p. 37.

⁵²⁴ TF2-014, Transcript 10 March 2005, p. 76.

⁵²⁵ TF2-223, Transcript 28 September 2004, Closed Session, pp. 71-73.

⁵²⁶ TF2-223, Transcript 28 September 2004, Closed Session, p. 75.

⁵²⁷ TF2-223, Transcript 28 September 2004, Closed Session, pp. 75-77.

292. The person would be choked with a bayonet, “then he will die. ‘When he die, then the heart, the liver, and other parts in his stomach we remove and the legs. Then the head, we find a stick and put it on it.’”⁵²⁸

c) Bo District

293. The following evidence, as examples, establishes the elements for direct responsibility and also supports the allegation of superior responsibility. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

294. The Prosecution submits that there is evidence to conclude that unlawful killings occurred in pursuance of the orders of the Accused.⁵³⁰ Witness TF2-014 stated that Norman ordered him to destroy life and property. He instructed the witness to “kill PC Veronica Bagni of Valunia Chiefdom, the home town of—chiefdom of Chief Hinga Norman, because ‘that woman was against our movement.’”⁵³¹ Norman said that the witness should kill Joe Kpundoh Boima III, Paramount chief of Bo Kakua. He should also kill Tuma Alias, chairlady of Bo Town council, because she used to collect the market dues, therefore she was a collaborator. The witness was also instructed to kill Lansana Koroma who was there as Provincial Secretary.⁵³²

295. Witness TF2-014 further testified that as Director of Operations, he was ordered by the First Accused to kill every living thing and destroy all properties at Koribundo. The witness gave evidence that Norman labeled residents of Koribundo as spies and collaborators and that the witness should ensure that no one should be left alive and houses should be burnt. Petrol was given for that operation.⁵³³ The witness was given further instructions by the First Accused to kill any soldier who had surrendered. The witness sent a message to Norman regarding a plea made to spare a surrendered soldier.

⁵²⁸ TF2-021, Transcript 2 November 2004, p. 76.

⁵²⁹ TF2-201, Transcript 5 November 2006, Closed Session, pp. 41-42

⁵³⁰ TF2-012, TF2-032, TF2-157, TF2-159, TF2-162 and TF2-198

⁵³¹ TF2-014, Transcript 10 March 2005, pp. 71-72.

⁵³² TF2-014, Transcript 10 March 2005, pp. 71-72.

⁵³³ TF2-014, Transcript 10 March 2005, p. 78.

Norman sent four Kamajors to kill the surrendered soldier in response. The surrendered soldier's head was cut off.⁵³⁴

296. Witness TF2-008 testified that at a meeting at Base Zero, Norman instructed the commanders present, that when they proceeded to attack Koribundo, they should not leave any living thing and should burn down houses if there was resistance. Commanders were told only to spare the mosque, the school, and the barry.⁵³⁵ The witness also gave evidence that in the middle of 1998, a meeting was convened in Bo Town Hall wherein some senior members of the CDF were present including Moinina Fofana, in which Hinga Norman made a declaration to the effect that "I am personally responsible for the excesses and atrocities of the Kamajors."⁵³⁶ Norman could not have made his position and power any clearer; other evidence supports Norman statement.

297. [REDACTED]

298. The Prosecution submits that it is inconceivable that issuing direct orders to kill and burn, and target the civilian population of Koribundo, could be viewed as an administrative act. The evidence shows orders given by the Accused, the execution of those orders and the acceptance of responsibility for the outcome by the Accused himself.

299. [REDACTED]

⁵³⁴ TF2-014, Transcript 10 March 2005, pp. 85-86.

⁵³⁵ TF2-008, Transcript 16 November 2004, p. 79.

⁵³⁶ TF2-008, Transcript 16 November 2004, pp. 116-117.

⁵³⁷ TF2-082, Transcript 15 September 2004, Closed Session, p. 7.

⁵³⁸ TF2-082, Transcript 15 September 2004, Closed Session, p. 60.

⁵³⁹ TF2-082, Transcript 15 September 2004, Closed Session, p. 39.

⁵⁴⁰ TF2-082, Transcript 15 September 2004, Closed Session, p. 50.

⁵⁴¹ TF2-082, Transcript 15 September 2004, Closed Session, pp. 92-93.

██████████ Witness TF2-007 testified that in 1998, he was arrested in the bush by Kamajors who took him to town where he witnessed the killing of his father.⁵⁴³ Exhibit 37 is the document with the name of witness' town (Fengehun).⁵⁴⁴ Witness TF2-088 testified that in April 1999, at a Kamajor checkpoint he saw a letter, which said that his son was to be killed immediately for his ash to be used in last initiation in Mongeray (Mongere) town in Hinga Norman's compound. The letter was addressed to a number of checkpoint commanders. On the 24th April 1999 the body was burned by Kamajors.⁵⁴⁵

300. Perhaps the most persuasive evidence establishing the culpability of the three accused men is to be found in the testimony relating to the killing of unarmed Police officers. Such killings could only have taken place with the approval of the three accused; even if they did not know the specifics of the killings it is not possible they did not become aware of such killings. The evidence clearly establishes that the Police officers were killed whilst unarmed; indeed only the SSD contingents of the Police were armed during the conflict. The Police were killed on the orders of Norman, supported by Fofana and Kondewa.

d) Moyamba District

301. Witnesses TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 gave evidence of unlawful killings that occurred at the Moyamba crime base, carried out by the CDF under the leadership, direction and control of Norman.

302. ██████████
██████████
██████████
██████████
██████████

303. Witness TF2-014 testified that he told Norman and Fofana about the killing of the Chiefdom speaker of Ribbi Chiefdom, by Kamajor commander Abu Bawote. ██████████

⁵⁴² TF2-017, Transcript 19 November 2004, Closed Session, p. 97.

⁵⁴³ TF2-007, Transcript 2 December 2004, pp. 57-58.

⁵⁴⁴ Exhibit P37: Place of Birth and Place of Residence of the Witness, 2 December 2004.

⁵⁴⁵ TF2-088, Transcript 26 November 2004, pp. 49-50.

⁵⁴⁶ TF2-017, Transcript 19 November 2004, Closed Session, pp. 82-84.

304.

e) Bonthe

305. Witnesses TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189 gave evidence of unlawful killings that occurred at the Bonthe crime base carried out by the CDF under the leadership, direction and control of Norman.

306.

307. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the First Accused. Defence cross-examination was unable to undermine or dispute the occurrence. In his testimony, the witness said that he knew Alpha Dauda Kanu, a Kapra. He was killed in a palm oil plantation when going towards Mokusi. Kanu was killed by Dr Allieu Kondewa, Hinga Norman and Moinina Fofana. "He was hacked to death, and we took off his skin." The witness was present. Some of Kanu's body parts were taken and "[t]hey said that they are going to prepare a garment and a walking stick

⁵⁴⁷ TF2-017, Transcript 19 November 2004, Closed Session, p. 57.

⁵⁴⁸ TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-59.

⁵⁴⁹ TF2-017, Transcript 19 November 2004, Closed Session, p. 86.

⁵⁵⁰ TF2-017, Transcript 19 November 2004, Closed Session, p. 86.

for Chief Hinga Norman and a fan, which is called a “controller”, so as to use those things in order to become very powerful.”⁵⁵¹

308.

[REDACTED]

309. Witness TF2-071 gave evidence that the Chief of Mobayei (Mobayeh) Keinechawa, told him that Kamajors led by one Momoh Sitta had attacked the town of Mobayei and killed an old woman, Musu Fai and a pregnant woman, Jebbeh Kpaka who were unable to escape.⁵⁵³ Witness TF2-109 testified that saw the killing of Lahai Lebbie, Baggie, Ngor Jusu. They were killed near Makosi (Makose), on the way to Talia. Lahai Lebbie was killed by the Kamajors-he was tied up and a tire was used to burn him.⁵⁵⁴

310. The Prosecution has presented detailed evidence of the composition and structure of the CDF.⁵⁵⁵ Even the Defence through cross-examination had confirmed the nexus between the CDF and the Kamajor militia, and how the movement had undergone systemic changes over the years. Thus, the Prosecution submits that it is clear that the issue is the criminal responsibility of Norman and his co-accused, as the key superiors who held most of the power of the CDF in their hands.

⁵⁵¹ TF2-014, Transcript 10 March 2005, p. 55.

⁵⁵² TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-77.

⁵⁵³ TF2-071, Transcript 11 November 2004, p. 70.

⁵⁵⁴ TF2-109, Transcript 30 May 2005, p. 34.

⁵⁵⁵ TF2-005, TF2-008, TF2-014, TF2-017, TF2-068, TF2-079, TF2-190, TF2-201, TF2-222

2. Counts 3-4: Physical Violence and Mental Suffering

311. The Prosecution submits that evidence has been presented from many witnesses who made specific mention of the First Accused in relation to the offences charged under Counts 3 and 4, in particular, witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222. These witnesses gave evidence of direct orders from the First Accused for the attack on civilian collaborators of the AFRC/RUF.
312. There is clear, unambiguous and unchallenged evidence before the Court from Prosecution witnesses who indicate that the First Accused gave orders directly to subordinates for various attacks on locations across the Southern and Eastern Provinces, and that he specifically ordered subordinates to kill captured AFRC/RUF combatants, their agents, friends, families and sympathisers, otherwise known as “collaborators.” These orders to kill captured enemy combatants and civilians carry with them the requisite mental element for the infliction of serious bodily harm and physical suffering on victims who survived the assaults. The testimonies of Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222, TF2-223, referred to earlier apply.
313. The evidence of any physical violence or mental suffering in Kamboma emanates from the unchallenged evidence of witness TF2-015 about killings in Kamboma. The witness (the 65th victim) was the only survivor. The witness testified that he still bears visible scars of the machete blows he received during that attack, which he showed to the court.⁵⁵⁶
314. Many other witnesses described how they suffered at the hands of the Kamajors and the evidence indicates the widespread nature of the attacks. Witness TF2-006 testified to inhumane acts when he said that during the Bo attack, Kamajors used a cutlass to amputate his fingers. The Court observed that four out of the five fingers were amputated.⁵⁵⁷ Witness TF2-007 gave evidence that at Fengehun, he saw Kamajors tie his father with a rope and part of his right ear was cut.⁵⁵⁸ Witness TF2-041 gave evidence that Kamajors during the Kenema attack put a knife to his neck and stabbed him all over. They left him believing he was dead.⁵⁵⁹ Witness TF2-073 stated that as the

⁵⁵⁶ TF2-015, Transcript 11 February 2005, p. 16.

⁵⁵⁷ TF2-006, Transcript 9 February 2005, pp. 11-12.

⁵⁵⁸ TF2-007, Transcript 2 December 2004, p. 51.

⁵⁵⁹ TF2-041, Transcript 24 September 2004, pp. 27, 30-31.

Kamajors intensified their looting spree around the towns and villages surrounding Moyamba, his brother-in-Law was beaten severely by Kamajors and he later died as a result.⁵⁶⁰ TF2-157 gave evidence that on a Sunday, during the Kamajor attack, he saw a lot of people mutilate two persons, 'mutilating them, individually and sequentially.' Those persons had cutlasses, dressed in Kamajor clothing. The persons killed were Sarah Binkolo and Sarah Lamina.⁵⁶¹

3. Count 5: Looting and Burning

315. The Prosecution submits that there is evidence that Norman is criminally responsible by way of orders and instigating, and the expressed intention for looting and burning. The requisite elements for establishing the superior responsibility of Norman for the acts of the Kamajors will be set out at the end of the section. It was not contested that there were a number of lootings and burnings in the evidence within the relevant period in the Indictment.
316. While witnesses TF2-001, TF2-144, TF2-152 and TF2-154 do not mention Norman expressly, they all made statements of lootings and burnings in their townships, caused by Kamajors – the physical perpetrators - and therefore described the crime base for which the First Accused is responsible under one or more of the relevant modes of participation.
317. The Prosecution submits that there is evidence of a direct nexus between the acts of the First Accused and the offences as charged. [REDACTED]
[REDACTED]
[REDACTED] At this time the Accused authorized and ordered the commandeering of properties.⁵⁶³ Direct criminal responsibility for looting and burning for the Bo crime base were made manifest in the testimonies of several witnesses.⁵⁶⁴ In Koribuno, at least two meetings were held by the First Accused where he admonished the Kamajors for not

⁵⁶⁰ TF2-073, Transcript 2 March 2005, pp. 38-39.

⁵⁶¹ TF2-157, Transcript 16 June 2004, p. 15.

⁵⁶² TF2-005, Transcript 17 February 2005, Closed Session, p. 110.

⁵⁶³ TF2-014, Transcript 10 March 2005, p. 66 (lines 4-6), where witness stated, "[w]e got the Honda from the Jiamia Bongor Chieftdom from Africare. We commandeer it and took it from there, from the NGOs. That was done on an order."

⁵⁶⁴ These are about Bo, not Koribundo. TF2-198, Transcript 15 June 2004, pp. 37-38; TF2-157, Transcript 16 June 2004, pp. 20-22.

having burnt down the entire village of Moribund, except three specific premises. He took full responsibility for their actions.⁵⁶⁵

318. [REDACTED]
[REDACTED]

There is evidence that the First Accused said at a parade in Bo, that the Kamajors deceived him as he was told they had burnt down the barracks, but now there were still barracks left.⁵⁶⁷ There is evidence that Norman encouraged the Kamajors by releasing them after they had been apprehended for alleged killings, lootings and burnings of houses.⁵⁶⁸

319. Witness TF2-032 clearly testified that he attended a meeting in the Court Barry, Koribundo, where the Accused said, *inter alia*, “and if they were to spare anything, it could be the mosque, the barri and that house at the junction, but they did not do that.”⁵⁶⁹

320. The Prosecution submits that there is evidence that TF2-012, TF2-157, TF2-159, TF2-162 and TF2-198 attended a meeting called by the Accused where he accepted responsibility for the atrocities the Kamajors wreaked on the civilian population of Koribundo. The meeting was not convened in order to attend to administrative matters of Koribundo or the welfare of the residents, but rather to showcase a stamp of conquest and ensure the dominance of the Kamajors over the civilian population of Koribundo.

321. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The fact that a commander in charge

⁵⁶⁵ TF2-157, TF2-159, TF2-032, TF2-162

⁵⁶⁶ TF2-017, Transcript 19 November 2004, Closed Session, p. 94; see also TF2-014, Transcript 10 March 2005, pp. 70-71, where witness relates First Accused saying: “[w]hen you go down to Bo the southern pharmacy should be looted and bring all the medicines to me.”

⁵⁶⁷ TF2-001, Transcript 14 February 2005, p. 99.

⁵⁶⁸ See Evidence given by TF2-014, Transcript 10 March 2005, p. 64; TF2-021, Transcript 2 November 2004, p. 105, where witness insisted no punishment was meted out to him or other Kamajors for looting homes and killing civilians.

⁵⁶⁹ TF2-032, Transcript 13 September 2004, p. 62.

⁵⁷⁰ TF2-082, Transcript 15 September 04, Closed Session, pp. 34-36.

⁵⁷¹ TF2-082, Transcript 15 September 04, Closed Session, p. 35.

suddenly backslides during a specific military operation, does not imply automatically the lack of command responsibility in respect of the Accused.

4. Counts 6-7: Terrorizing the Civilian Population and Collective Punishments

322. The Prosecution submits that the evidence indicates that the First Accused planned, instigated or otherwise aided and abetted in the planning, preparation, or execution of terrorizing and collectively punishing the civilian population. Evidence from insider witnesses such as TF2-005, TF2-008, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, and TF2-222 substantiated the Prosecution submission of individual criminal responsibility with regards to the offences as charged in the Indictment.
323. Evidence of physical acts of terrorizing the civilian population and collective punishment through means of violent threat of intimidation, physical violence, mental suffering and looting was presented through the testimony of witnesses TF2-014, TF2-022, TF2-033, TF2-039, TF2-040, TF2-041, TF2-079, TF2-151, TF2-154, TF2-159, and TF2-176.
324. In his testimony, TF2-022 gave evidence that while in an open field at the NDMC headquarters, the Kamajors had people in line. There were 20 people who the Kamajors said were captured SLA soldiers and four women who were the wives of soldiers. The witness knew one of the soldiers as Cobra. The Kamajors took these people to an open place, to an area called MP office, "they took them one after another and they hacked all of them." After they were hacked they were all dead.⁵⁷² He further testified that the day after the attack, the civilians were told to go to Kenema by the Kamajors. One CO had told them to leave and he left. Then another CO turned up and gave the order that they should be shot, and so the Kamajors opened fire. The shooting had been random, without aiming, but as there were so many people they were struck by bullets. The firing stopped and the witness saw a Kamajor chop a person who had been hit by a bullet; that person died.⁵⁷³
325. Witness TF2-159 testified that on Sunday, during the Kamajor attack on Koribundo, the witness went to the Koribundo junction, where he saw the Kamajors with five Limba

⁵⁷² TF2-022, Transcript 11 February 2005, pp. 51-53.

⁵⁷³ TF2-022, Transcript 11 February 2005, p. 57.

people. The witness knew them as they used to sell palm wine. They were Sofiana, Sarrah, Momoh, Kamara and Karoma. The Kamajors said the five persons were junta; they were cut into pieces and some were shot with guns. Two were killed with guns and 3 with cutlasses. Sarrah and Momoh had their heads cut off.⁵⁷⁴ On the following Monday, he went to Koribundo again, from his hiding place in the bush, to go to the Kamajor HQ, to see Joe Timedie. At HQ he saw Kamajors singing, as they had captured 8 people. There were 5 men and 3 women; witness knew the women as the wives of soldiers – Amie, Jainaba and Esther. “They were singing on them, they were taking them to be killed.” Witness followed the Kamajors along Blama Road; they were beating them and mutilating them and telling them they were going to be killed. Two of the women were killed by a stick (“right through them”) and one by a gun (and by a cutlass, her head was cut off). The men, four were killed by a gun and one man by a cutlass to his neck. He saw them disembowel the women and place the entrails in a bucket. Their entrails were turned into a checkpoint.⁵⁷⁵

326. Witness TF2-033 gave evidence that Jambawai, a Kamajor leader was chief coordinating officer. Jambawai said that the reason Kamajors were killing Police was “you were in the bush fighting (for) the RUF”. Witness was told that there had been spies taking their names.⁵⁷⁶ 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.⁵⁷⁷ 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 thy will, let it be done’, he was shot three times.⁵⁷⁸

327. 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.”

⁵⁷⁴ TF2-159, Transcript 9 September 2004, p. 32.

⁵⁷⁵ TF2-159, Transcript 9 September 2004, pp. 33-38.

⁵⁷⁶ TF2-033, Transcript 20 September 2004, p. 30.

⁵⁷⁷ TF2-033, Transcript 20 September 2004, p. 12.

⁵⁷⁸ TF2-033, Transcript 20 September 2004, p. 14 (lines 21-23).

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.”⁵⁷⁹ The witness said also, that paramount chief at Dama Chiefdom, Chief Dassama, was killed by Kamajors following Norman’s orders.⁵⁸⁰

328. Witness TF2-187 presented evidence that the Kamajors made preparation for Norman’s visit. Kondewa’s boys captured pregnant women and took them to the court barri. The women were tied up standing. When they heard the sound of the plane, the Kamajors slit the stomach of the women and then the cut off the head of the fetus. That was done one after another. The Kamajors put each of the heads on a separate stick. The three women died. The three sticks with the heads were tied together; when that was done it was like a flag and was placed at the junction to Mattru. When the women were killed at the barri, there were civilians present as well as Kamajors. Bombowai was present. When the pole was planted at the junction, Norman came by helicopter. Norman came out of the helicopter and the witness saw rice, medicine, bullets and arms taken from the helicopter. After the items were taken from the helicopter, the ‘flag’ was taken to the barri and the heads were removed. After the women had been killed, “they smeared the blood on their bodies, on their faces and they took their corpses and buried them in one grave.” The Kamajors then sang a song that they had got their medicine from pregnant women.⁵⁸¹

5. Count 8: Use of Child Soldiers

329. Child soldiers were sourced by the CDF by initiating or enlisting children under the age of 15 years into armed forces or groups and in addition, or in the alternative, using them to participate actively in hostilities.⁵⁸² Nonetheless, the Prosecution witnesses TF2-004, TF2-021, TF2-140 gave unchallenged viva voce evidence of coercive recruitment and direct participation in active hostilities. Norman’s modes of liability under this count include aiding and abetting, and instigating. Norman also had direct knowledge of CDF enlistment of children under 15 years and in addition used them to participate actively in

⁵⁷⁹ TF2-079, Transcript 26 May 2005, p. 20.

⁵⁸⁰ TF2-079, Transcript 26 May 2005, p. 23.

⁵⁸¹ TF2-187, Transcript 2 June 2005, pp. 17-37.

⁵⁸² *Prosecutor v. Norman, Fofana, Kondewa*, “Indictment”, March 5, 2004.

hostilities.⁵⁸³ Norman, once in possession of such knowledge, failed to take necessary and reasonable measures to prevent the commission of the offence as charged.

330. Witness TF2-014 gave unchallenged evidence that at Base Zero, which was Norman's main base between September 1997 and early March 1998, there were Kamajors as young as six years of age.⁵⁸⁴ Witness knew a Kamajor called Junior Spain, who was between twelve to fifteen years old. Kamajors would go to war at an early age, so long as they had been initiated into the Kamajor society.⁵⁸⁵

331. The Prosecution submits that there is evidence that the First Accused had actual knowledge of children engaged in active hostilities by the Kamajors. TF2-021 gave evidence that after fighting he went back to Base Zero. There is evidence that the Accused came to Base Zero to say they should go to Freetown.⁵⁸⁶ A few days later the witness went in a helicopter with GA Gobey, which went to Freetown. They disembarked at Cockerill. It was the First Accused' secretary, Moses, who took down their names and gave them guns. They went to Congo Cross where there was heavy firing and then to the Brookfield's Hotel.⁵⁸⁷

332. According to the evidence, in Koribundo, the witness arrived just after the attack. The witness then spoke about going to the first checkpoint at Koribundo, and then onto HQ. He saw houses on fire and corpses of persons who had been beheaded. He was told the corpses were rebels.⁵⁸⁸ Kamajor Joe Tamidey had four boys as securities, who were younger than the witness.⁵⁸⁹ Whilst at Bo, he met Moinina Fofana, his former commander, and Chief Norman was also there. Witness joined the security.⁵⁹⁰ On his return to Freetown, he stayed at 13 Spur Road, with Hinga Norman. There were a number of small boys younger than the witness, one 11 years old being guarded. Witness said, "shortly after we left Guinea, Chief Norman had a decision to say that all small

⁵⁸³ See Exhibit 104A, 105A, 105C.

⁵⁸⁴ TF2-014, Transcript 11 March 2005, p. 15.

⁵⁸⁵ TF2-014, Transcript 11 March 2005, p. 16.

⁵⁸⁶ TF2-021, Transcript 2 November 2004, p. 84.

⁵⁸⁷ TF2-021, Transcript 2 November 2004, p. 86.

⁵⁸⁸ TF2-021, Transcript 2 November 2004, p. 78.

⁵⁸⁹ TF2-021, Transcript 2 November 2004, p. 83.

⁵⁹⁰ TF2-021, Transcript 2 November 2004, p. 86.

boys were exempted from the war and, as such, he was trying to re-organize us in our numbers so that he could hand us over to programs.”⁵⁹¹

333.

[REDACTED]

334.

[REDACTED]

335.

[REDACTED]

336.

[REDACTED]

⁵⁹¹ TF2-021, Transcript 2 November 2004, p. 96.

⁵⁹² TF2-218, Transcript 7 June 2004, Closed Session, p. 17.

⁵⁹³ TF2-218, Transcript 7 June 2004, Closed Session, p. 19.

⁵⁹⁴ TF2-EW2, Transcript 16 June 2005, Closed Session, p. 17.

⁵⁹⁵ TF2-EW2, Transcript 16 June 2005, Closed Session, p. 18.

[REDACTED]
[REDACTED]
[REDACTED]

337. 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.⁵⁹⁹ It significantly referred to the CDF Commitment to end recruiting and initiating child soldiers.
338. Exhibit 107, another UN Report, details frequent reports that children were being sent into a combat environment notwithstanding indications from ECOMOG commanders refusing to allow CDF underage children to serve under them.⁶⁰⁰
339. Exhibit 108, a UN Report, detailed the continued widespread recruitment of children in the Southern and Eastern provinces by the CDF, especially in Kenema.⁶⁰¹ This piece of evidence was corroborated by Exhibit 111C which contained the experiences of a Kamajor girl fighter from Kenema. It stated that many children joined the Kamajors with the approval of their parents. In Kenema township where the Kamajors were most active during the war, the burned homes are not the result of rebel activities instead they belong to families that did not contribute a family member to the Kamajors, suspected rebel sympathizers. According to Ramatu T. a girl fighter with the Kamajors, a common practice of the Kamajor males was to enter a village, capture an adult civilian, cut his throat and turn the corpse upside down to drain the blood. The blood will be collected in a bucket. All members of the fighting party including women and girls would then drink the blood so they would not be afraid during the attack.
340. [REDACTED]
[REDACTED]

⁵⁹⁶ TF2-EW2, Transcript 16 June 2005, Closed Session, p. 68.

⁵⁹⁷ TF2-EW2, Transcript 16 June 2005, Closed Session, p. 82.

⁵⁹⁸ TF2-EW2, Transcript 16 June 2005, Closed Session, p. 91.

⁵⁹⁹ Exhibit P105A:

⁶⁰⁰ Exhibit P 107:

⁶⁰¹ Exhibit P 108:

[REDACTED]

[REDACTED]

6. Norman's 6.3 Liability Under Counts 1-8

341. There is evidence that Norman, as the National Coordinator of the CDF, was the principal force in establishing, organizing, supporting, providing logistical support to, and promoting the CDF. As Deputy Minister of Defence he was able to enhance the capability and effectiveness of the CDF as a fighting force. He was the leader and commander of the Kamajors. He gave the order to launch attacks with the intention that subordinates would commit unlawful killings, physical violence, lootings and burnings, and that children would be enlisted to assist in the war effort.
342. Furthermore, on the evidence, viewed as a whole, the only reasonable inference is that Norman participated in the enterprise with the awareness that such crimes were a foreseeable consequence of its execution.
343. Norman as the National Coordinator of the CDF exercised effective command and control over the CDF.⁶⁰³ The CDF was a disciplined military force; it may not have resembled a traditional army but it was adapted to the circumstances of the war in which it was engaged. Under the direction of its leadership it was able to attack in a coordinated manner; it was not the situation that the various Kamajor units randomly arrived at the same town at the same time to attack the rebel forces.
344. According to a military expert, at "the strategic and operational level, [the CDF] command was highly effective."⁶⁰⁴ The CDF had a recognizable military structure and there was coherence between the strategic, operational and tactical levels.⁶⁰⁵ It could and did achieve successful military outcomes.
345. Hinga Norman was the ultimate power, in a military sense in the CDF.⁶⁰⁶ He was also head of the Kamajors. [REDACTED]
- [REDACTED]

⁶⁰² TF2-017, Transcript 19 November 04, Closed Session at p 87-90.

⁶⁰³ TF2-005, TF2-008, TF2-014, TF2-017, TF2-068, TF2-079, TF2-190, TF2-201, TF2-222, TF2-223

⁶⁰⁴ TF2-EW1, Transcript 14 June 2005, p. 30.

⁶⁰⁵ TF2-EW1, Transcript 14 June 2005, p. 39.

⁶⁰⁶ TF2-EW1, Transcript 14 June 2005, p. 40.

Further, as Witness TF2-042 testified, Norman gave the orders to the Kamajors when they were in Kenema before ECOMOG arrived.⁶⁰⁸ There was a meeting at the Kenema Police Station, some time before, when Norman was introduced as head of the Kamajors.⁶⁰⁹ In the light of Norman's testimony it cannot be in doubt that he was the head of the CDF, which included the Kamajors. As such, it is inconsistent and indeed incompatible with the evidence that as the leader he did not control the Kamajors.

346. Witness TF2-008 gave evidence that Norman, Fofana and Kondewa, were the executive of the Kamajor Society. "They have the executive power of the Kamajor society. These people....nobody can take a decision in the absence of this group. Whatever happened, they come together because they are the leaders and the Kamajors look up to them."⁶¹⁰ He also testified that the final authority to send people to the war front was with Norman.⁶¹¹ War Council decisions were sent to Norman in his capacity as National Coordinator for his approval, then to the National Director of War Moinina Fofana, who channeled it to the National Director of Operations, J.S. Koroma, to the four Regional Operations Commanders.⁶¹²
347. Witness TF2-014 testified that he was appointed by Norman as National Deputy Director of Operations, and he was to take instructions from Norman, general and specific, and transmit them to the people at the war front. Secondly, he collected reports from the war front, compiled them, submitted them to the National Coordinator, Norman, through the Director of War, Moinina Fofana.⁶¹³
348. The evidence further reveals that the War Council was an administrative wing of the CDF. Everything had to go through the National Coordinator for his approval. Anything that did not have his approval was not carried out. Norman was above the War Council.⁶¹⁴ At a meeting held in Bo, after the attack, Norman said, "whatever Kamajors

⁶⁰⁷ TF2-005, Transcript 16 February 2005, Closed Session, pp. 28-30.

⁶⁰⁸ TF2-042, Transcript 17 September 2004, p. 97.

⁶⁰⁹ TF2-042, Transcript 17 September 2004, p. 97.

⁶¹⁰ TF2-008, Transcript 16 November 2004, p. 51.

⁶¹¹ TF2-008, Transcript 16 November 2004, p. 58.

⁶¹² TF2-008, Transcript

⁶¹³ TF2-014, Transcript 10 March 2004, p. 30.

⁶¹⁴ TF2-008, Transcript 17 November 17 2004, p. 77.

do or atrocity committed I am responsible.”⁶¹⁵ Under cross-examination, witness TF2-008 reinforced the fact that the commanders would only take instructions from Norman, Fofana and Kondewa.⁶¹⁶ So integral was Norman to the formulation and execution of the CDF policies in both Sierra Leone and outside that he would represent their interests in meetings with members of the international community and during several peace and disarmament negotiations.⁶¹⁷

349. After March 1998, the First Accused sidelined the War Council, which he had already effectively marginalized, and operated the affairs of the Kamajors without making reference to that body. The First Accused later formed his own command structure without the approval of the War Council. The structures formed by him were new District Administrators and Directorates in the places of Regional Commanders and Battalion Commanders.⁶¹⁸
350. On the basis of the evidence there can be no doubt that Norman exercised effective control over his subordinates and was in a position to prevent or punish offences.
351. The evidence shows that many of the crimes were ordered directly by Norman. Where he did not directly order them, the Prosecution submits that he knew or had reason to know about their commission. Witness TF2-190 testified that he was the leader of the Death Squad which was responsible for security in and around Talia, Base Zero. The Death Squad was also involved in attacking the junta. The witness used to receive orders from “Pa Norman and not any other person else.”⁶¹⁹ In 1998 he was at a meeting in which the First Accused spoke of an all-out attack. The First Accused gave the witness instructions that his group was to hold the Bo-Koribundo highway. The witness said that the ammunition was given by a Mr Lome, to Joe Tamidey, by orders of Norman.⁶²⁰

⁶¹⁵ TF2-008, Transcript 17 November 17 2004, p. 118.

⁶¹⁶ TF2-008, Transcript 17 November 2004, p. 49.

⁶¹⁷ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit Into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, Trial Chamber, 14 July 2005, Annex para. 160, 222.

⁶¹⁸ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit Into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, Trial Chamber, 14 July 2005, Annex para. 160, 222.

⁶¹⁹ TF2-190, Transcript 10 February 2005, p. 34.

⁶²⁰ TF2-190, Transcript 10 February 2005, p. 48.

352. [REDACTED]

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

354. As the person holding ultimate power in the CDF, Norman had central and effective control of the Kamajor militia, and had the necessary and reasonable measures to prevent atrocities by them, which he failed to do.⁶²⁵

355. [REDACTED]

356. Witness TF2-079 testified that he gave Fofana a written situation report from Tongo and the environs prepared to inform Chief Norman about the way the war was being pursued.⁶²⁸ [REDACTED]

⁶²¹ TF2-223, Transcript 28 September 2004, Closed Session, p. 34.

⁶²² TF2-223, Ibid., p. 55.

⁶²³ TF2-223, Ibid., p. 108.

⁶²⁴ TF2-223, Ibid., pp. 118-121.

⁶²⁵ TF2-008, TF2-011, TF2-014, TF2-201, and TF2-222

⁶²⁶ TF2-005, Transcript 15 February 2005, Closed Session, pp. 87-88.

⁶²⁷ TF2-005, Ibid., p. 95.

⁶²⁸ TF2-079, Transcript 26 May 2005, pp. 25-27; Exhibit P86: CDF Situation Report, 16 November 1997.

7. Norman's Defence Case

357. Norman maintained that there was no CDF umbrella organization at Talia until the NCC created it in 1999.⁶³² Yet defence witness Peter Penfold said that the CDF as an organisation came into place when the President went on the air (BBC) and Norman was appointed CDF coordinator; before that time there were individual civilian militia.⁶³³ It could be said of Mr. Penfold, in light of his outburst in court, that he was a person strongly biased towards Norman.

358. Norman said that the designation "Civil Defence Forces" was not used before March 1998. This is contradicted by Prosecution evidence. For example, Exhibit 27, dated 30 December 1997, is headed Civil Defence Forces of Sierra Leone (C.D.F. S/L) and signed by Norman as National Coordinator.

359. According to Norman, after March 18th 1998, there was either a UNAMSIL group or an ECOMOG group in control of wherever the hunters were operating.⁶³⁴ Joe Demby said that General Shelpidi, not Colonel (later General) Khobe was the head of ECOMOG when that force came to Sierra Leone.⁶³⁵ Colonel Khobe was the head of Nigerian forces, which were present in Sierra Leone before the coup. He later became the head of

⁶²⁹ TF2-068, Transcript 17 November 2004, Closed Session, pp. 88-89;

⁶³⁰ TF2-008, Transcript 16 November 2004, p. 41.

⁶³¹ TF2-005, TF2-008, TF2-014, TF2-079, TF2-201, TF2-222, & TF2-223

⁶³² Accused Sam Hinga Norman, Transcript 6 February 2006, p. 29 (lines 6-11).

⁶³³ Peter Penfold, Transcript 9 February 2006, p. 37 (lines 17-29) to p. 38 (line 1).

⁶³⁴ Accused Sam Hinga Norman, Transcript 26 January 2006, pp. 83-84.

⁶³⁵ Albert Joe Edward Demby, Transcript 13 February 2006, p. 75.

the Sierra Leone army; one must be careful not to be confused with the chronology of events.

360. The Defence has suggested that ECOMOG were generally in charge of the Kamajors, yet Norman himself agreed that there were no ECOMOG troops when the Kamajors attacked Koribundu,⁶³⁶ nor could he tell whether there were ECOMOG troops with the Kamajors when Tongo Field was attacked.⁶³⁷ In the case of the Bo and Kenema attacks, the evidence from both the Prosecution⁶³⁸ and the Defence⁶³⁹ is that ECOMOG came in at least five days after the Kamajors had attacked and captured those cities.
361. Norman agreed that he was the person who gave final approval of the appointment of battalion commanders and above until the establishment of the National Co-ordinating Committee; that is until 29 January 1999. Before then, Norman had final approval of appointments at or above the level of battalion commander upon the advice of the War Council.⁶⁴⁰ By letter dated 30 December 1997 entitled: "Civil Defence Force of Sierra Leone (CDF S/L) Headquarters", Norman signed as the National Coordinator under the heading of Civil Defence Forces of Sierra Leone.⁶⁴¹ Norman said that he provided the information to the people producing the calendar (CDF 2001 Calendar) and that it was correctly recorded.⁶⁴² Norman approved the publication of the calendar.
362. Norman said that Moinina Fofana became the National Director of War, after the formation of the National Co-ordinating Committee.⁶⁴³ The Prosecution led evidence that contradicts this assertion. Exhibit 159, Fofana's letter of appointment as Director of War, is dated 18 January 1998 and signed by Norman himself. The National Co-ordinating Committee was formed in January 1999.
363. Norman testified that he did receive reports from the frontline.⁶⁴⁴ Norman said that the director of appointment and promotion appointed the commander to attack Koribundo.

⁶³⁶ Accused Sam Hinga Norman, Transcript, 6 February 2006, at p. 14.

⁶³⁷ Ibid.

⁶³⁸ TF2-033, 20 September 2004, p. 27.

⁶³⁹ Mohammed Bhonie Koroma, Transcript, 22 May 2006, p. 23.

⁶⁴⁰ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 42.

⁶⁴¹ Transcript 6 February 2006, p. 43 (lines 20-29) to p. 44 (lines 1-12); Exhibit P27: Sam Hinga Norman Letter Appointing Ibrahim F. Kanneh as Member of the War Council dated 30 December 1997.

⁶⁴² Accused Sam Hinga Norman, Transcript 6 February 2006, p. 54 (lines 16-22); Exhibit P112: CDF Calendar 2001, p. 0830.

⁶⁴³ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 83 (lines 23-26).

⁶⁴⁴ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 94 (lines 9-26).

He said he did not have anything to do with his appointment but he approved it.⁶⁴⁵ Norman said that at Talia, there was no higher authority than him.⁶⁴⁶ Norman said that he would not do anything with the initiators except through Allieu Kondewa and with his authority.⁶⁴⁷ Norman denied ever arranging for guns and ammunition at Talia, despite a defence witness M.T.Colloier saying that Norman sent guns and ammunition; also Haruna Collier,⁶⁴⁸ Mohamed Kaineh⁶⁴⁹ and Mustapha Lumeh⁶⁵⁰.

364. A number of witnesses spoke about the meeting in the barri after Koribundo had been taken by the Kamajors. Witness TF2-198⁶⁵¹ spoke about how Norman left a message with the people to assemble at the barri because he would have a meeting on the way back from Pujehun; his meeting took place at the end of March 1998. There were a lot of civilians and Kamajors. Norman addressed the Kamajors and thanked them, but told them that they hadn't done the work he told them to do. He said that he only wanted to see three houses left in Koribondo: the mosque, the barri and the house where he would have to reside. Norman said, 'You people are afraid of killing? Why? The soldiers killed, nothing happened; *Kapras* killed nothing happened; rebels killed nothing happened. Really you've not done my work, you've disappointed me.'⁶⁵² Witness TF2-157 had a similar recollection of that meeting;⁶⁵³ as did witnesses TF2-032,⁶⁵⁴ TF2-082,⁶⁵⁵ TF2-012,⁶⁵⁶ TF2-162⁶⁵⁷ as well as other witnesses. Norman was stating the policy of the CDF as developed and promulgated by himself with the support and encouragement of Fofana and Kondewa.

365. It was not after every attack that Norman accepted responsibility for the offences committed. It is submitted that Norman demonstrated, at Koribundo, his commitment to the policy of winning the conflict at all costs. The justification for the policy was that

⁶⁴⁵ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 100 (lines 7-18).

⁶⁴⁶ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 102 (lines 4-9).

⁶⁴⁷ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 103 (lines 1-4).

⁶⁴⁸ Haruna Collier, Transcript 12 May 2006, pp. 35-37.

⁶⁴⁹ Mohamed Kaineh, Transcript 19 May 2006, p. 36 (lines 23-26).

⁶⁵⁰ Mustapha Lumeh, Transcript 5 May 2006 pp. 74-76.

⁶⁵¹ TF2-162, Transcript 8 September 2004, pp. 29-31.

⁶⁵² TF2-198, Transcript 15 June 2004, pp. 37-38.

⁶⁵³ TF2-157, Transcript 16 June 2004, pp. 20-21.

⁶⁵⁴ TF2-032, Transcript 13 September 2004, pp. 61-62.

⁶⁵⁵ TF2-082, Transcript 15 September 2004, pp. 48-49.

⁶⁵⁶ TF2-012 Transcript 21 June 2004, pp. 26-27

⁶⁵⁷ TF2-162, Transcript 8 September 2004 pp. 29-30.

the soldiers, Kapras, and rebels killed and destroyed without any consequences, and so should the Kamajors. The only people who could have opposed Norman in this commitment were Fofana and Kondewa; neither did so or expressed any reservation concerning the policy. The chiefs, though the War Council, had the potential to be a counter-balance to Norman however, as the evidence establishes, the War Council was ineffective and marginalized. There were no other persons within the CDF who could have contested this policy. Even Nallo, a very senior commander, followed orders except at those times when he devised a way not to fully discharge his obligations.

366. Norman admitted he had the final approval over promotions, another means by which control and discipline was maintained. Norman, in direct contradiction, said that no one came under his control; he was not a commander; yet Norman said that he was the highest authority at Base Zero.⁶⁵⁸ Whilst cross-examining witness TF2- 042 the accused (at that time acting on his own behalf) agreed that he made the proclamation in Kenema that he was the head of the Kamajors.⁶⁵⁹

367. Norman denied knowing about the Death Squad.⁶⁶⁰ In assessing Norman's evidence one could form the view that he was seeking to obfuscate a number of issues and that there were a number of intrinsic contradictions in his evidence. Norman was in charge of the CDF; even he did not nominate anyone who was in a superior position to himself within the organisation. The President was not in a better position than Norman to control the war, as was acknowledged; the President was in Guinea and the combatants followed Norman not President Kabbah.

368. The Court can draw from the evidence of Norman that he directed the war efforts of the CDF. Norman did not direct those efforts by himself; he had a small number of subordinate commanders who, although not in the same mould as say the British Army, fulfilled the tasks of general tasks officers. Fofana was the deputy, an essential element in maintaining continuity and discipline as well as being responsible for the essential supplies. Kondewa promoted an alternative source of discipline through the belief of the combatants in his capacity, directly or indirectly, to protect them on the battlefield.

⁶⁵⁸ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 102 (lines 4-9).

⁶⁵⁹ Transcript 17 September 2004, p. 118 (lines 18-19).

Accused Sam Hinga Norman, Transcript 7 February 2006, p. 39 (24-29) to 40.

⁶⁶⁰ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 34 (lines 15-16).

Nallo was a senior ‘officer’ however his role was more directed towards conveying and implementing the orders of the triumvirate formed by the three accused.

369. Demby confirmed that the National Co-ordination Committee dealt with the supply of rice and condiments from the government to the CDF – it did not have any role in conducting the war. It was an administrative body not a military body.⁶⁶¹ Demby testified how he investigated many, many complaints against the CDF with Norman. He admitted that his one description of how civilians were killed at checkpoints covered ten events. Having investigated many killings of civilians at around ten checkpoints, the one explanation he provided purported to describe all the killings at all checkpoints manned by the CDF.⁶⁶²
370. Mohamed Turay Collier, the chief at Talia, said that when Norman came to Talia he told the crowd, “the President has accepted that I should come to join you to fight”⁶⁶³ Norman brought with him guns and ammunition.⁶⁶⁴ Collier’s evidence is contrary to Norman’s in that Norman stated that he never arranged the distribution of arms and ammunition at Talia.⁶⁶⁵
371. Osman Vandī, alias Vanjawai, said that there was an allegation he killed someone. The War Council decided that he should be hanged. Vandī denied being involved in the attack on Koribundo, contrary to Norman. He also denied being convicted of having killed a woman, contrary to Norman.⁶⁶⁶ However, Vanjawai also denied seeing military training at Talia⁶⁶⁷ which is an issue that is, effectively, not in dispute. The Prosecution draws the Trial Chamber’s attention to this clear contradiction between two key defence witnesses.
372. Mustapha Lumeh was the Director of logistics, Civil Defence Force. He said support came from Lunghi and Monrovia. Lumeh said that Fofana’s role was to solve small disputes at Base Zero; Fofana was called the Director of War. Lumeh agreed that one of the ways in which the initiators prepared a person to go to war was to get a person in a

⁶⁶¹ Albert Joe Edward Demby, Transcript 10 February 2006, p. 69 (lines 18-21).

⁶⁶² Albert Joe Edward Demby, Transcript 16 February 2006, p. 41 (lines 2-6).

⁶⁶³ Mohamed Turay Collier, Transcript 16 February 2006, p. 81 (lines 13-15).

⁶⁶⁴ Mohamed Turay Collier, Transcript 16 February 2006, p. 81 (lines 19-28).

⁶⁶⁵ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 19 (24-26).

⁶⁶⁶ Osman Vandī, Transcript 20 February 2006, p. 16 (lines 8-16).

⁶⁶⁷ Osman Vandī, Transcript 20 February 2006, p. 18 (lines 16-20).

good psychological mood for the battle ahead.⁶⁶⁸ Lumeh said that the War Council were policy makers and the execution of the war itself, the planning of the war itself was done by commanders in the field. Lumeh agreed that the Director of War is one of the persons who could give orders.⁶⁶⁹ Lumeh knew nothing about the Death squad.

373. Evidence of the Death Squad came from a number of witnesses. That evidence included Witness TF2-008 who testified that there was a Death Squad and it was answerable to First, Second, and Third accused as well as its commander, Borbor Tucker ("Jegbeyama").⁶⁷⁰ TF2-014 said that Norman used the Death Squad to molest active members of the War Council, to loot and to torture captives held at Base Zero.⁶⁷¹ [REDACTED]

[REDACTED] TF2-190, said that as a member of the Death Squad he received orders from Pa Norman and not any person else.⁶⁷³ TF2-008, said he had received a complaint from Commander Nallo that the Death Squad were killing innocent civilians and looting properties whenever they were sent to war.⁶⁷⁴ Borbor Tucker said he was the commander of the Death Squad and answerable only to Chief Hinga Norman.⁶⁷⁵ [REDACTED]

374. Evidence about some of the activities occurring at Base Zero/Talia came from a number of witnesses. TF2-133, unchallenged by the Defence, who said that she had been captured by the Kamajors at York Island and taken to Base Zero alone; her mother was killed in the oil plantation.⁶⁷⁷ Witness TF2-188 said she and her mother were both taken to Talia as prisoners and her mother was killed in the presence of witnesses.⁶⁷⁸ She saw her mother's throat being slit and identified Kondewa in court as the person who ordered the death of her mother.

⁶⁶⁸ Mustapha Lumeh, Transcript 5 May 2006 p. 94 (lines 18-21).

⁶⁶⁹ Mustapha Lumeh, Transcript 8 May 2006 p. 12 (lines 4-8).

⁶⁷⁰ TF2-008, Transcript 16 November 2004, p. 60 (lines 25-29) to p. 61 (lines 16-18).

⁶⁷¹ TF2-014, Transcript 14 March 2005, p. 41 (lines 22-29).

⁶⁷² TF2-008, Transcript 15 February 2005, pp. 94-96.

⁶⁷³ TF2-190, Transcript 10 February 2005 p. 75, (lines 18-24).

⁶⁷⁴ TF2-008, Transcript 16 November 2004, p. 62-63.

⁶⁷⁵ TF2-190, Transcript 10 February 2005 p. 34, (lines 20-26).

⁶⁷⁶ TF2-011, Transcript 8 June 2005, Closed Session, p. 22 (lines 2-3).

⁶⁷⁷ TF2-133, Transcript 6 June 2005 pp. 4-6.

⁶⁷⁸ TF2-188, Transcript 31 May 2005, pp. 14.

375. TF2-109 was captured by Kamajors and taken to Talia ("Base Zero").⁶⁷⁹ She described the killing there of her brother Lahai Lebbie. Kamajors placed a tyre around him and burnt the tyre.⁶⁸⁰ TF2-109 also described the death, at Base Zero, of her uncle Baggie and another man called Ngo Jusu. Both were killed by the Kamajors.⁶⁸¹
376. TF2-096 gave evidence of the murder by Kamajors of a soldier that had been brought to Base Zero from Koribundo to surrender.⁶⁸² The next day TF2-096 heard that the soldier had been killed at the instruction of Norman.⁶⁸³ TF2-108 saw Jusu Shalley, Baggie Vayei, and Lahai Lebbie being killed by the Kamajors in Talia.⁶⁸⁴ In the case of Jusu Shalley she saw his stomach being split open with a cutlass.⁶⁸⁵ In the case of Baggie Vayei, she saw his body dismembered.
377. TF2-187 gave evidence that her uncle made a report about Kondewa's boys, as they were called, as a result of which her uncle was arrested; she saw him tied up and burning plastic poured over his body till he died.⁶⁸⁶ Witness TF2-189 saw her husband killed by the Kamajors at Talia, a man called Nulele, cut his throat and removed his head in front of civilians.⁶⁸⁷
378. Siaka Lahai was simply unhelpful and vague. Keikula Amara, alias Kamabotie, knew nothing about higher CDF structures. Mohamed Kaineh was not a very senior Kamajor. As with most defence witnesses, they claimed to know nothing about crimes committed by Kamajors.
379. Mohamed Bhonie Koroma said that on 15 February 1997 Kamajors attacked Kenema; he claimed that Kenema was captured without a shot being fired. He volunteered that he did not see any Kamajor burn a house, nor looting civilian property or killing anyone.⁶⁸⁸ He said that everyone was happy and dancing.

⁶⁷⁹ TF2-109, Transcript 30 May 2005, p. 32 (lines 8-11).

⁶⁸⁰ TF2-109, Transcript 30 May 2005, p. 34 (lines 16-18).

⁶⁸¹ TF2-109, Transcript 30 May 2005, pp. 34-35.

⁶⁸² TF2-096 Transcript 8 November 2004, p. 21 (lines 6-15).

⁶⁸³ TF2-096 Transcript 8 November 2004, p. 21 (lines 24-29) to 22 (lines 1-3).

⁶⁸⁴ TF2-108, Transcript 30 May 2005, p. 5 (lines 16-29) to p. 6 (lines 1-15).

⁶⁸⁵ TF2-108, Transcript 30 May 2005, pp. 8-9.

⁶⁸⁶ TF2-187, Transcript 1 June 2005, p. 13.

⁶⁸⁷ TF2-189, Transcript 3 June 2005, pp. 8-13.

⁶⁸⁸ Mohamed Bhonie Koroma, Transcript 22 May 2006, p. 19 (lines 23-29).

380. Brima Moriba, a Concerned Kamajor, did not know any other commanders;⁶⁸⁹ nor anything about killings or looting by Kamajors.⁶⁹⁰ No defence witness saw any prisoners, nor any child soldiers, nor knew anything about the complete structure of the CDF.

⁶⁸⁹ Brima Moriba, Transcript 23 May 2006, p. 29.

⁶⁹⁰ Brima Moriba, Transcript 23 May 2006, p. 46.

MOININA FOFANA:**FOFANA'S POSITION OF AUTHORITY**

381. The Second Accused Moinina Fofana, is believed to have been born in 1950, in Nongoba Bullom Chiefdom, Bonthe District, in the Republic of Sierra Leone.⁶⁹¹
382. The Second Accused was at all times relevant to the Indictment in a high position of authority, invested with power and responsibility over his subordinates. In the function of Director of War of the CDF, the Second Accused was working side by side with Hinga Norman, the National Coordinator and Allieu Kondewa, the High Priest. Together the triumvirate orchestrated and planned war strategies and attacks and most importantly the commission of unlawful acts. All major decisions were taken in consultation with each other.⁶⁹²
383. Fofana was not simply a store-keeper. He was an important person with the CDF as he fulfilled the function of deputy to Norman, ensuring the continuity of Norman's authority. Fofana was perceived by the majority of witnesses as being an important person, someone from whom orders originated and were enforced.⁶⁹³
384. The Prosecution submits that the power and authority entrusted to the Second Accused, as a top leader of the CDF, is further confirmed by his own admission at Base Zero that he was in charge whenever Hinga Norman was not there.⁶⁹⁴ Witnesses TF2-021, TF2-079 reinforced that the prominent people at Base Zero were Hinga Norman, Moinina Fofana and Allieu Kondewa.⁶⁹⁵
385. The Prosecution has also adduced evidence that the Second Accused together with Allieu Kondewa was in charge of the CDF Headquarter offices established in Kenema and at Zimmi. [REDACTED]

⁶⁹¹ *Prosecutor v. Norman, Fofana, Kondewa*, "Indictment", 5 February 2004, para 2.

⁶⁹² Exhibit P97: Military Expert Report, May 2005, p. C-4; TF2-014, Transcript 14 March 2005, p. 6.

⁶⁹³ Exhibit P112: Description of Title, Position and Authority of Moinina Fofana, CDF Calendar, DD Month YYYY.

⁶⁹⁴ TF2-079, Transcript 26 May 2005, p. 25-26.

⁶⁹⁵ TF2-021, Transcript 2 November 2004, p 60; TF2-079, Transcript 26 May 2005, p 37.

██████████ During his time in Kenema, Kamajors under his command committed a great number of atrocities.⁶⁹⁷

386. The Second Accused's authority is also evident from the fact that he was often quoted on the radio reporting about the activities of the Kamajors, such as, to where their front was moving, what they had captured etc. Witness TF2-079 said that there were many reports in this respect made by the Second Accused.⁶⁹⁸

Counts 1 & 2: Unlawful Killings

387. Fofana 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.

388. With regard to his personal liability under Article 6.1, the Prosecution submits that it has adduced evidence that proves beyond reasonable doubt the Second Accused's individual criminal liability through planning, ordering, instigating, committing, aiding and abetting or his involvement in a joint criminal enterprise for the offence of unlawful killing charged under Counts 1 & 2 of the Indictment, for the locations of Bo, Koribondo, Kenema, Tongo, Bonthe, Base Zero and Moyamba.⁶⁹⁹

389. The evidence indicates that prime leadership and effective control of the CDF was in the hands of Norman as National Coordinator, Fofana as Director of War, and Kondewa as

⁶⁹⁶ TF2-223, Transcript 30 September 2004, p. 41, 95, 100.

⁶⁹⁷ See TF2-042, TF2-033, TF2-152, TF2-154, TF2-039.

⁶⁹⁸ TF2-079, Transcript 26 May 2005, p 43.

⁶⁹⁹ Tongo: TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, TF2-144; Kenema: TF2-033, TF2-039, TF2-040, TF2-042, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, and TF2-223 Bo & Koribondo: TF2-001, TF2-006, TF2-012, TF2-014, TF2-017, TF2-030, TF2-032, TF2-056, TF2-057, TF2-058, TF2-067, TF2-088, TF2-119, TF2-140, TF2-156, TF2-157, TF2-159, TF2-162, TF2-198, TF2-201; Moyamba: TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 and TF2-190; Bonthe: TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189

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.

390. The evidence also shows that the Second Accused's role in the CDF was instrumental in planning and implementing policy and strategy for prosecuting the war.⁷⁰⁰ Witness TF2-014 testified that he was the one in charge of putting down on paper the war strategies formulated and dictated by the Second Accused.

391. The Second Accused's role in planning the attacks on Bo, Koribondo, Kenema and Tongo was vividly put to the court by Prosecution witnesses whose testimonies remain unchallenged. [REDACTED]

[REDACTED] It was at Base Zero that these actors planned, coordinated, directed, trained and commanded the attacks on Tongo, Bo, Koribondo and Kenema.⁷⁰² [REDACTED]

[REDACTED] The Second Accused also spoke to the Kamajor fighters, emphasizing the unlawful orders given by the First Accused.⁷⁰⁵

392. Witness TF2-222 testified that, in a planning meeting for the Tongo attack and Black December Operation, held at Base Zero in December 1997, Hinga Norman stated that no Junta Forces, their collaborators, and no prisoners of war or their houses must be spared in Tongo, since Tongo determines who wins the war.⁷⁰⁶ Fofana also spoke to the

⁷⁰⁰ TF2-008, Transcript 16 November 2004, p 47; TF2-005, Transcript 16 February 2005, p. 54, 63; TF2-222, Transcript 17 February 2005, p. 87; TF2-079, Transcript 26 May 2005, p. 40.

⁷⁰¹ TF2-005, Transcript 15 February 2005, Closed Session, p. 102.

⁷⁰² TF2-005, TF2-008, TF2-011, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222

⁷⁰³ TF2-005, Transcript 15 February 2005, Closed Session, p. 106 (line 12).

⁷⁰⁴ TF2-005-February 15, 05 at p.106

⁷⁰⁵ TF2-222, Transcript 17 February 2005, p. 119.

⁷⁰⁶ TF2-222, Transcript 17 February 2005, p.110, 112, 113, 115.

Kamajor fighters, emphasizing the unlawful orders given by the First Accused. His instructions were: "Now you have heard the National Co-ordinator, any commander failing to perform accordingly and losing your own grounds, just decide to kill yourself there and don't come and report to us."⁷⁰⁷ The Chief Priest Allieu Kondewa gave the last command. Kondewa said, "a rebel is a rebel; surrendered, nor surrendered. The time for their surrender has long since been exhausted, so we don't need any surrendered rebels."⁷⁰⁸

393. Witness TF2-190 testified about a planning meeting that took place in 1998 at Base Zero in which an all-out attack on all areas occupied by the junta forces including the Bo-Koribondo axis was discussed. In this meeting the Second Accused took the stage after Hinga Norman and instructed the fighters present, "so any commander, if you are given an area to launch an attack and you fail to accomplish that mission, do not return to Base Zero."⁷⁰⁹ The Second Accused further ordered commanders to launch an attack on the soldiers and destroy them.⁷¹⁰

394. Another witness who was present at a meeting when the planning for the attack on Tongo was discussed described how Norman had convened the meeting, and was present together with Fofana, Kondewa, the chairman and some members of the War Council and some commanders. Norman wrote out the requirements for the commanders who were to go to Tongo and supplies were provided to the commanders.⁷¹¹

395.

[REDACTED]

396. The Prosecution submits that there is vivid and compelling evidence that proves beyond reasonable doubt the role of Moinina Fofana in the unlawful killings for the Kenema

⁷⁰⁷ TF2-222, Transcript 17 February 2005, p. 119.

⁷⁰⁸ TF2-222, Transcript 17 February 2005, p. 120.

⁷⁰⁹ TF2-190, Transcript 10 February 2005, p. 44.

⁷¹⁰ TF2-190, Transcript 10 February 2005, pp. 83-84.

⁷¹¹ TF2-201, Transcript 4 November 2004, pp. 106-7.

⁷¹² TF2-201, Transcript 4 November 2004, p. 42.

⁷¹³ TF2-201, Transcript 4 November 2004, pp. 97-98.

crime base.⁷¹⁴ Evidence of the physical acts of killing, which constitute the actus reus for the offence is contained in the testimonies of witnesses TF2-033, TF2-039, TF2-040, TF2-042, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, and TF2-223. Witness TF2-041 testified that Kamajors said to him when he was captured in Blama, that they were taking him to the ground commander at Blama, and he was then told that Hinga Norman had instructed them to kill the Police, their wives and their children.⁷¹⁵ This piece of evidence was not challenged under cross-examination. The Prosecution submits that the attack on the police in Kenema District generally, including this incident at Blama, was part of orders the orders given by Hinga Norman at the meetings described above which were reinforced by the Second Accused.

397. It is open to the Trial Chamber to conclude that this directive to kill police officers on the part of the First Accused, in the presence of the Second Accused, was consistent with evidence of police killings in Kenema in pursuance of his command.⁷¹⁶
398. The Prosecution submits that evidence which go beyond the threshold for culpability against the Second Accused for planning unlawful killings under Counts 1 & 2 has been presented. The Second Accused directed the physical perpetrators to carry out the acts in furtherance of the plan and intended the crimes or knew that they would be a consequence of the implementation of the plan.
399. The Prosecution submits that in addition to showing responsibility for planning attacks on Bo, Koribondo, Kenema and Tongo, the evidence adduced also establishes culpability for orders given by the Second Accused, to commanders to carry out these attacks and to kill civilians, captured enemy combatant and “collaborators”, or alternatively that the Second Accused in collusion with the Third Accused actively supported and reinforced orders for unlawful killings given by Hinga Norman in these attacks.⁷¹⁷
400. Witness TF2-014 stated that Moinina Fofana and Kondewa decided in a meeting at Base Zero that Mustapha Ngobeh must lead the attack on Bo.⁷¹⁸ Furthermore, this witness testified that the Second Accused was present in Norman’s room at Base Zero when he

⁷¹⁴ TF2-223, TF2-201, TF2-222, TF2-079.

⁷¹⁵ TF2-041, Transcript 24 September 2004, p. 23.

⁷¹⁶ TF2-014.

⁷¹⁷ TF2-190, 10 February 05 at p 44, 83 and 84.; TF2-222, , 17 February 05 at p 119 & 120

⁷¹⁸ TF2-014, Transcript 10 March 2005, pp. 20-21.

received orders from Norman to loot pharmacies and kill. "When you go down to Bo the Southern Pharmacy should be looted and bring all the medicines to me". Norman said you should kill PC Veronica Bagni of Valunia Chiefdom, the home town, chiefdom of Chief Hinga Norman, because 'that woman was against our movement.'⁷¹⁹ The Second Accused's tacit support of these crimes can again be inferred.

401. [REDACTED]
[REDACTED]
[REDACTED]

402. The Prosecution submits that there is evidence to could conclude that unlawful killings occurred in pursuance of the orders of the Accused.⁷²¹ Witness TF2-014 stated that Norman's order to kill which was supported by the Second Accused was not only for PC Veronica Bagni of Valunia Chiefdom,⁷²² but also Joe Kpundoh Boima III, Paramount chief of Bo Kakua, Toma Alias, chairlady of Bo Town council, because she used to collect the market dues, therefore she was a collaborator and Lansana Koroma who was there as Provincial Secretary.⁷²³

403. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

404. Furthermore, Witness TF2-057 also testified to the Second Accused's effective command in Bo and to his criminal conduct. The witness related how his brother and other Temne people were killed as a result of the Second Accused's orders. The witness described how he and his brother were forcefully taken by Kamajors before the Second Accused at the CDF Headquarters in Bo. Witness explained that the Second Accused expressed in their presence that "he had nothing to do with Temnes because Foday

⁷¹⁹ TF2-014, Transcript 10 March 2005, pp. 71-72.

⁷²⁰ P41, TF2-201

⁷²¹ TF2-012, TF2-032, TF2-157, TF2-159, TF2-162 and TF2-198

⁷²² TF2-014, Transcript 10 March 2005, pp. 71-72.

⁷²³ TF2-014, Transcript 10 March 2005, pp. 71-72.

⁷²⁴ TF2-082, Transcript 15 September 2004, p 40.

Sankoh was a Temne, and it was you [Temne] who brought the war in this country.”⁷²⁵ The witness explained that he understood that the Second Accused meant that “any Temne man who is brought forward to him, he wouldn’t have any regard for him. They would kill him.”⁷²⁶ The witness and his brother, who were Temne, were consequently locked up in a cell.⁷²⁷ The witness said that 15 days later the Second Accused ordered that his brother be taken out of the cell. The witness heard his brother shouting “Brother they are taking me away, they are taking me away.”⁷²⁸ The witness has never seen his brother since.⁷²⁹ The witness further testified that the Second Accused ordered out two other men that were also in his cell. The witness observed from his cell as they were carried away and were hacked to death by the Kamajors on the premises of the CDF Headquarters.⁷³⁰ The witness further testified that the Kamajors “killed most of the Temnes in Bo town.”⁷³¹

405. [REDACTED]

406. Witness TF2-014 spoke of the Second Accused’s involvement in a mission to get rid of all rebels and their collaborators suspected to be based around the surrounding villages to Base Zero.⁷³⁴ The witness testified that the Second Accused designated two persons who knew the terrain, to accompany him and help witness carry out the operation to eliminate collaborators, at Dodo village in Jong Chiefdom, Bonthe District. The killings were carried out accordingly.⁷³⁵

407. Witness also stated he was ordered by the Second Accused and Hinga Norman to go to a village called Baoma Kpenge to pursue collaborators, as they had received information

⁷²⁵ TF2-057, Transcript 29 November 2004, p. 122; TF2-057, Transcript 30 November 2004, pp. 20-21.

⁷²⁶ TF2-057, Transcript 30 November 2004, p. 21.

⁷²⁷ TF2-057, Transcript 29 November 2004, pp. 120-121, 122-123.

⁷²⁸ TF2-057, Transcript 30 November 2004, p. 3.

⁷²⁹ TF2-057, Transcript 30 November 2004, p. 3.

⁷³⁰ TF2-057, Transcript 30 November 2004, pp. 5-6.

⁷³¹ TF2-057, Transcript 30 November 2004, p. 22.

⁷³² TF2-223, Transcript 28 September 2004, p. 101.

⁷³³ TF2-223, Transcript 28 September 2004, pp. 93-95.

⁷³⁴ TF2-014, Transcript 10 March 2004, pp. 40-41.

⁷³⁵ TF2-014, Transcript 10 March 2004, p. 41.

from one Kamajor commander based there that rebels had been infiltrating in the trade fair. At Baoma Kpenge a civilian was identified as being a collaborator and was consequently executed.⁷³⁶

408. The Prosecution submits that with regard to culpability through instigation, evidence has been adduced before the court which strongly inculcates the Second Accused along with the First and Third Accused for the offence of Unlawful Killing of civilians, captured enemy combatants and “collaborators” at the locations of Bo, Koribundo, Kenema, Tongo, Bonthe, and Moyamba. The Prosecution submits that the Second Accused by his utterances of support often following Hinga Norman’s orders for attacks, he provided encouragement and motivated commanders for the perpetration of the unlawful orders.

[REDACTED]

409. Witness TF2-057 related how his brother and other Temne people were killed as a result of the Second Accused’s orders.⁷³⁹ The witness further testified that the Kamajors “killed most of the Temnes in Bo town.”⁷⁴⁰ The witness explained how non-Mende people were singled out and were hacked to death by Kamajors at check points mounted in the way out of Bo.⁷⁴¹ The Prosecution submits that these killings can be imputed to the Second Accused, as a direct result of the comments and unlawful orders given by him at the CDF Headquarter. Alternatively, the Prosecution argues that at the very least these further killings were a foreseeable consequence of the Second Accused’s inducement and active encouragement of the practice of killing Temne people.

⁷³⁶ TF2-014, Transcript 10 March 2005, p. 49.

⁷³⁷ TF2-222, Transcript 17 February 2005, p. 119.

⁷³⁸ TF2-005 15 February, 05 at p 107.

⁷³⁹ TF2-057, 29 November 2004, p. 122; TF2-057, Transcript 30 November 2004, pp. 20-21.

⁷⁴⁰ TF2-057, Transcript 30 November 2004, p. 22.

⁷⁴¹ TF2-057, 30 N November at pp 34, 35, 37, 38, 40, 44.

410. Witness TF2-014 testified about the Second Accused's direct involvement in the commission of murder. The witness said that one Alpha Dauda Kanu, a Kapra that he knew was killed in an oil palm plantation when going towards Mokosi. Kanu was killed by Dr Allieu Kondewa, Hinga Norman, and Moinina Fofana. "He was hacked to death, and we took off his skin." Witness was present. Some of Kanu's body parts were taken and "They said that they are going to prepare a garment and a walking stick for Chief Hinga Norman and a fan, which is called a "controller", so as to use those things in order to become very powerful."⁷⁴²
411. Witness TF2-014 testified that he knew Mustapha Fallon who was executed in the Poro Bush at Talia, in the presence of Hinga Norman, Moinina Fofana, Allieu Kondewa and others. Mustapha Fallon who was also a Kamajor was killed because Allieu Kondewa wanted human sacrifice in order to guarantee the protection of the fighters. The brother of Mustapha Fallon pleaded for his life with Norman but to no avail. Hinga Norman gave three hundred thousand Leones to the deceased's brothers appealing to them not to tell anyone what transpired.⁷⁴³
412. The Prosecution submits that by his presence at the scene of these killings and being positively associated with Hinga Norman and Allieu Kondewa, in particular with the incriminating statement made by Hinga Norman in the Kanu killing, the Second Accused knowingly puts himself in the position of an active perpetrator of these crimes or at the least as an accessory to their commission.
413. The Second Accused, as Director of War, was invested with the key role of distributing logistics to the fighters.⁷⁴⁴ As the military expert EW1 testified,⁷⁴⁵ one of the most important functions, in any guerilla type army like the CDF, was the logistics supplier, which role was assigned to Moinina Fofana, Hinga Norman's second-in-command.
414. Without munitions guerrilla groups cannot operate; without food they cannot live. It is through control of logistics that a guerrilla commander maintains control of his organization: a dispersed organization such as the CDF or RUF is liable to break up as individual commanders with strong egos strive for independence from central command.

⁷⁴² TF2-014, Transcript 10 March 2005, p. 55.

⁷⁴³ TF2-014, Transcript 10 March 2005, p. 59.

⁷⁴⁴ See Exhibit 59.

⁷⁴⁵ EW1, 14 June 2005.

415. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

416. [REDACTED]

417. [REDACTED]

⁷⁵² TF2-223, Transcript 28 September 2004, Closed Session, pp. 118-119, 121, 123.

[REDACTED]

418. The Second Accused actively and expressly supported the unlawful killings and burning of houses by the Kamajors that occurred in Tongo and during the Black December Operation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

419. The result of all this planning, ordering, instigation, aiding and abetting was widespread and indiscriminate killing of innocent civilians, relatives and sympathizers or suspected sympathizers of the AFRC/RUF junta in CDF Kamajor strongholds in the south and east of Sierra Leone called “collaborators” and captured enemy combatants.

420. Based on the foregoing, the Prosecution submits that evidence beyond reasonable doubt has been provided for the Trial Chamber to conclude that the Second Accused planned, instigated, committed, ordered and aided and abetted the crimes charged in the Indictment thus engaging his individual criminal responsibility under Article 6(1).

421. The evidence shows that the Second Accused as Director of War, in concert with the National Coordinator and the High Priest were at the centre in the implementation of the plans of the Kamajors.⁷⁵⁶

422. The Prosecution submits that on the basis of the evidence of a joint criminal enterprise as outlined, considered together with the evidence as a whole, it is submitted that the guilt of the Second Accused is established beyond a doubt. The only reasonable conclusion is that all of the crimes alleged in the Indictment were committed as part of a single joint criminal enterprise of which the Second Accused was a participant, and that accordingly the Second Accused is guilty of committing (as a participant in a joint criminal enterprise) all of the crimes alleged in the Indictment.

⁷⁵³ TF2-223, Transcript 30 September 2004, Closed Session, pp. 41, 95, 100.

⁷⁵⁴ TF2-222, Transcript 17 February 2005, pp. 110, 112-113, 115; TF2-005, Transcript 15 February 2005, pp. 105-106.

⁷⁵⁵ TF2-222, Transcript 17 February 2005, p. 119.

⁷⁵⁶ TF2-008, Transcript 16 November 2004, p. 82.

Counts 3 & 4: Physical Violence and Mental Suffering

423. Reference is made to the Second Accused's role as commander of the Kamajors on the basis of which evidence in relation to his culpability for unlawful killings has been led. The Prosecution submits that the Trial Chamber should conclude on the basis of the evidence that the Second Accused, Moinina Fofana planned, instigated, ordered, committed or aided and abetted the infliction of physical or mental harm and suffering.

424. The Prosecution submits that evidence has been presented from many witnesses who made specific mention of the Second Accused in relation to the offences charged under Counts 3 and 4, in particular, witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222. These witnesses gave evidence of direct orders from the First Accused for the attack on civilian collaborators of the AFRC/RUF supported and reinforced by comments or remarks of exhortation by the Second Accused.⁷⁵⁷

425. Witness TF2-014 gave evidence that the First Accused stated at Base Zero that "sympathisers, collaborators and those who refuse deliberately to leave the AFRC/RUF Zone" were enemies and ordered that they should be killed.⁷⁵⁸ There is clear, unambiguous and unchallenged evidence before the Court from Prosecution witnesses who indicate that the First Accused gave orders directly to subordinates for various attacks on locations across the Southern and Eastern Provinces, and that he specifically ordered subordinates to kill captured AFRC/RUF combatants, their agents, friends, families and sympathisers, otherwise known as "collaborators." These orders to kill captured enemy combatants and civilians carry with them the requisite mental element for the infliction of serious bodily harm and physical suffering on such victims. The testimonies of Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222, TF2-223, referred to earlier apply. The Prosecution submits that the Second Accused is inculpated in each of the instances referred to above in that the remarks or comment he made provided substantial support to the commission of the offences by the perpetrators.

426. Many witnesses described how they suffered at the hands of the Kamajors and the

⁷⁵⁷ TF2-190, Transcript 10 February 2005, pp. 44, 83-84.; TF2-222, Transcript 17 February 2005 pp. 119-120.

⁷⁵⁸ TF2-014, Transcript 10 March 2005, p. 34.

evidence indicates the widespread nature of the attacks. There is clear, unchallenged evidence before the court by witness TF2-015 about gruesome killings in Kamboma from which the witness (the 65th victim) is the only survivor. The witness testified that he still bears visible scars of the machete blows he received during that attack, which he showed to the court.⁷⁵⁹

427. TF2-041 testified still bearing scars at the back of his neck from a brutal attempt on his life. The witness described how Kamajors hunting for police officers in Blama, acting on the instructions of Hinga Norman, Moinina Fofana and Allieu Kondewa, chased and caught him where he tried to hide. TF2-041 was severely struck at the back of his neck with a knife. The blow was intended to kill him. The witness managed to survive the attack and escape into the bush. After his recovery and rescue witness spent no less than five months in hospital recovering from injuries sustained in this brutal attack.⁷⁶⁰

428. The Prosecution led evidence of mental suffering through the evidence of TF2-006 and TF2-007. Witness TF2-006 testified to inhumane acts when he said that during the Bo attack, Kamajors used a cutlass to amputate his fingers. The Court observed that four out of the five fingers were amputated.⁷⁶¹ Witness TF2-007 gave evidence that at Fengehun, he saw Kamajors tie his father with a rope and part of his right ear was cut.⁷⁶² Witness TF2-086 provided further evidence of physical violence and mental suffering when she gave evidence that she was caught by a Kamajor called Abu Jakineh whilst in Bonthe. Jakineh wounded her wrist and stabbed her in the stomach with a stick. He then struck her on the neck with a machete.⁷⁶³ The Prosecution led further evidence of physical violence and mental suffering through the testimony of TF2-198. In that evidence, it was stated that the witness was identified by Kamajors that he was a resident of Koribundo. He was beaten. His brother was accused of being a junta, and the two of them were tied up. The Accused was able to show the marks sustained from these wounds to the Court.⁷⁶⁴

⁷⁵⁹ TF2-015, Transcript 11 February 2005, p. 16.

⁷⁶⁰ TF2-041, Transcript 24 September 2004, pp. 27, 30-31.

⁷⁶¹ TF2-006, Transcript 9 February 2005, pp. 11-12.

⁷⁶² TF2-007, Transcript 2 December 2004, pp. 57-58.

⁷⁶³ TF2-086, Transcript 8 November 2004, pp. 93-96.

⁷⁶⁴ TF2-198, Transcript 15 June 2004, pp. 20-22.

429. Evidence of cruel or inhumane treatment was portrayed through the testimony of witness TF2-151 when he testified that whilst in Kenema, he was stripped and put into a cell by Kamajors and beaten. They also tied his arms around his back with a short rope, the effect of which was to leave the witness partially unable to use his hands after he was untied for over seven months.⁷⁶⁵

430. TF2-156, lost two teeth and a third was broken from an attack by Kamajors on himself and four others in Bo. He also bears scars, on his right foot, stomach, face, nose and lips from the attack, which were shown to the court. The other four people, two of whom were his brothers died from the attack. The witness spent two months in hospital getting cured.⁷⁶⁶ The incident relating to this attack was forensically established by the evidence of Witness TF2-EW3, a forensic pathologist, who conducted an exhumation of the remains of four males (three from one grave and the fourth from a separate grave) believed to be those of the victims of the attack from two gravesites in Bo. He also photographed Witness TF2-156 and tendered the picture in court as Exhibit 102,⁷⁶⁷ as that of the victim who survived the attack. The photo depicted scars consistent with the injury suffered by TF2-156.

Count 5: Pillage (Looting & Burning)

431. The Prosecution submits that there is evidence on the basis of the Trial Chamber should conclude that Fofana is criminally responsible by way of orders and expressed intention for looting and burning. The Prosecution notes that the Defence did not challenge the fact of a number of incidents of looting and burning in the evidence within the relevant period in the Indictment.

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

⁷⁶⁵ TF2-151, Transcript 23 September 2004, pp. 33-35.

⁷⁶⁶ TF2-156, Transcript 25 November 2004, pp. 44-50.

⁷⁶⁷ TF2-EW3, Transcript 20 June 2005, pp. 22-23.

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

[REDACTED] Direct criminal responsibility for looting and burning for the Bo crime base were made manifest in the testimonies of several witnesses.⁷⁷⁰

434. [REDACTED]

There is evidence that the First Accused with Kamajor elders said at a parade in Bo, that the Kamajors deceived him as he was told they had burnt down the barracks, but now there were still barracks left.⁷⁷² There is evidence that Norman encouraged the Kamajors by releasing them after they had been apprehended for alleged killings, lootings and burnings of houses.⁷⁷³ The witnesses who testify to the ordering of these acts by Norman not only place the Second Accused at these meetings, but their evidence also states that Fofana always made comments or remarks designed to ensure that the orders of Norman were executed often under a veiled threat of fear: "Now you have heard the National Co-ordinator, any commander failing to perform accordingly and losing your own grounds, just decide to kill yourself there and don't come and report to us."⁷⁷⁴

435. Strong evidence of the Second Accused direct involvement in acts of looting is contained in the evidence of [REDACTED]

⁷⁶⁸ TF2-005, Transcript 17 February 2005, Closed Session, p. 110.

⁷⁶⁹ TF2-014, Transcript 10 March 2005, p. 66 (lines 4-6), where witness stated, "[w]e got the Honda from the Jiamia Bongor Chiefdom from Africare. We commandeer it and took it from there, from the NGOs. That was done on an order."

⁷⁷⁰ These are about Bo, not Koribundo. TF2-198, Transcript 15 June 2004, pp. 37-38; TF2-157, Transcript 16 June 2004, pp. 20-22.

⁷⁷¹ TF2-017, Transcript 19 November 2004, Closed Session, p. 94; see also TF2-014, Transcript 10 March 2005, pp. 70-71, where witness relates First Accused saying: "[w]hen you go down to Bo the southern pharmacy should be looted and bring all the medicines to me."

⁷⁷² TF2-001, Transcript 14 February 2005, p. 99.

⁷⁷³ See Evidence given by TF2-014, Transcript 10 March 2005, p. 64; TF2-021, Transcript 2 November 2004, p. 105, where witness insisted no punishment was meted out to him or other Kamajors for looting homes and killing civilians.

⁷⁷⁴ TF2-222, Transcript 17 February 2005, p. 119.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Prosecution submits that the intention of the Second Accused based on his earlier exhortation to this commander, was clearly one of keeping the looted property rather than protecting them for return to their rightful owners.

436.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

437.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] At the least, there is no evidence that the Witness and others who conducted this looting raid were punished for this act by the Second or Third Accused.

438. The incident contained in the evidence of TF2-073 wherein his Mercedes Benz car was looted from his home in Sembehun by Kamajors acting under the instructions of the Third Accused, Allieu Kondewa, and which was brought to Base Zero and used by Kondewa himself until the same was retrieved from him the Accused through the assistance of ECOMOG, it is submitted, was an incident well within the knowledge of the First and Second Accused.

439. There is evidence from Witness Borbor Tucker that he acted on instructions given by Hinga Norman to remove three cars, located in the Special Security Division

⁷⁷⁵ TF2-082, Transcript 15 September 2004, p. 40.

⁷⁷⁶ TF2-068, Transcript November 17 2004, p. 92.

⁷⁷⁷ TF2-223 – 28 September 2004, at page 100-101

Headquarters. The three cars, with knowledge of their source, were given to Moinina Fofana, the Third Accused and Prince Brima.⁷⁷⁸

Counts 6 & 7: Terrorizing the Civilian Population and Collective Punishments

440. The Prosecution submits that the evidence indicates that the Second Accused, in concert with the First and Third Accused planned, instigated or otherwise aided and abetted in the planning, preparation, or execution of terrorizing and collectively punishing the civilian population. The evidence offered by Insiders, TF2-005, TF2-008, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222 is compelling in this regard.
441. Evidence of physical acts of terrorizing the civilian population and collective punishment through means of violent threat of intimidation, physical violence, mental suffering and looting was presented through the testimony of witnesses TF2-014, TF2-022, TF2-033, TF2-039, TF2-040, TF2-041, TF2-079, TF2-151, TF2-154, TF2-159, and TF2-176 (non-Insiders).
442. In his testimony, TF2-022 gave evidence that while in open field at the NDMC headquarters, the Kamajors had people in line. There were 20 people who the Kamajors said were captured SLA soldiers and four women who were the wives of soldiers. The witness knew one of the soldiers as Cobra. The Kamajors took these people to an open place, to an area called MP office, "they took them one after another and they hacked all of them." After they were hacked they were all dead.⁷⁷⁹ He further testified that the day after the attack, the civilians were told to go to Kenema by the Kamajors. One CO had told them to leave and he left. Then another CO turned up and gave the order that they should be shot, and so the Kamajors open fire. The shooting had been random, without aiming, but as there were so many people they were struck by bullets. The firing stopped and the witness saw a Kamajor chop a person who had been hit by a bullet; that person died.⁷⁸⁰ [REDACTED]
- [REDACTED]
- [REDACTED]

⁷⁷⁸ TF2-190, Transcript February 10, 2005, pp. 60-62.

⁷⁷⁹ TF2-022, Transcript 11 February 2005, pp. 51-53.

⁷⁸⁰ TF2-022, Transcript 11 February 2005, p.57.

⁷⁸¹ TF2-005, Transcript 15 February 2005, p. 106.

443. The evidence further indicates that a lady called Fatmata Kamara, was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces. The witness buried seventy-five corpses in a day. The witness continued the burial of these corpses the subsequent day amounting to one hundred and fifty.⁷⁸⁴ At Olumatic, the witness saw 25 corpses of juntas. They were not buried but were burnt by tyres. He said he buried 40 corpses at the Methodist Primary School.⁷⁸⁵
444. The attack on Koribondo stands out as a compelling instance of a planned and executed act of collective punishment by the First Accused, actively supported by the Second and Third Accused. At the planning meeting in Base Zero, Norman's orders to his commanders were clear: to burn down every house in Koribondo as a punishment for their support of the AFRC Junta forces there, except the mosque, the school and the court barri.⁷⁸⁶
445. Following the capture of the town Hinga Norman paid a visit there and in the company of the Second Accused, he addressed a meeting at the court barri where he blamed Kamajors for not carrying out his orders fully, and he took responsibility for the destruction of the town.⁷⁸⁷
446. The Prosecution submits that there is evidence that TF2-012, TF2-157, TF2-159, TF2-162 and TF2-198 attended a meeting called by the First Accused where he accepted responsibility for the atrocities the Kamajors wreaked on the civilian population of Koribondo. The meeting was not convened in order to attend to administrative matters of Koribondo or the welfare of the residents, but rather to showcase a stamp of conquest and ensure the dominance of the Kamajors over the civilian population of Koribondo.
447. Witness TF2-033 gave evidence that Jambawai, a Kamajor leader was chief coordinating officer. Jambawai said that the reason Kamajors were killing Police was "you were in the bush fighting (for) the RUF". Witness was told that there had been spies taking their

⁷⁸² TF2-005, Transcript 15 February 2005, Closed Session, p. 106 (line 12).

⁷⁸³ TF2-222, February 17, 05 at p 119.

⁷⁸⁴ TF2-047, Transcript 22 February 2005, p. 61.

⁷⁸⁵ TF2-047, Transcript 22 February 2005, p. 68.

⁷⁸⁶ TF2-008, Transcript 17 November 2004, p. 79.

⁷⁸⁷ TF2-159, Transcript 9 September 2004, pp. 52-57.

names.⁷⁸⁸ On 15 February 1998 the Kamajors came into town, down 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.⁷⁸⁹ 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."⁷⁹⁰ He was shot three times.

448. The evidence has shown, for example, that horrific crimes were committed by members of the CDF, largely Kamajors. Amongst others, witness TF2-188 gave evidence of how a Kamajor killed her mother; "She was tied up and hit with a stick."⁷⁹¹ [REDACTED]

[REDACTED] 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 as "traditional hunters." 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.⁷⁹⁴

449. It is submitted that these acts of terrorism was perpetrated in furtherance or in execution of orders given earlier for attacks on locations such as Bo, Kenema, Tongo, and Koribondo.

Counts 8: Use of Child Soldiers

⁷⁸⁸ TF2-033, Transcript 20 September 2004, p. 30.

⁷⁸⁹ TF2-033, Transcript 20 September 2004, p. 12.

⁷⁹⁰ TF2-033, Transcript 20 September 2004, p. 15.

⁷⁹¹ TF2-188, 31 May 2005, p. 15-18.

⁷⁹² TF2-223, 28 September 2004, p. 79-86.

⁷⁹³ TF2-189, 3 June 2005, p. 12.

⁷⁹⁴ Exhibit P104, 105, 108, 110, 114, 117.

450. Child soldiers were sourced by the CDF by initiating or enlisting children under the age of 15 years into armed forces or groups and in addition, or in the alternative, using them to participate actively in hostilities.⁷⁹⁵ Prosecution witnesses TF2-004, TF2-021, TF2-140 gave unchallenged viva voce evidence of coercive recruitment and direct participation in active hostilities.
451. Witness TF2-014 gave unchallenged evidence that at Base Zero, where Fofana was ordinarily resident, there were Kamajors as young as six years of age.⁷⁹⁶ Witness knew a Kamajor called “Junior Spain,” who was between twelve to fifteen years old. Kamajors would go to war at an early age, so long as they had been initiated into the Kamajor society.⁷⁹⁷ 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.⁷⁹⁸ At the Moa River, the Kamajors shot the three women. They were shot because they were the wives of rebels.⁷⁹⁹ The witness was initiated, and German gave him a two pistol-grip gun, and he was shown how to use it.⁸⁰⁰ Then the witness would go on mission to attack surrounding villages and catch people – women.⁸⁰¹
452. According to the evidence, in Koribundu, the witness arrived just after the attack, witness then spoke about going to the first checkpoint at Koribundu, and then onto HQ. He saw houses on fire and corpses of persons who had been beheaded. He was told the corpses were rebels.⁸⁰² Kamajor Joe Timide had four boys as security, who were younger than the witness.⁸⁰³ Whilst at Bo, he met Moinina Fofana, his former commander, and Chief Norman was also there. Witness joined the security.⁸⁰⁴ On return to Freetown, he stayed at 13 Spur Road, with Hinga Norman. There were a number of

⁷⁹⁵ Consolidated Amended Indictment, March 5, 2004.

⁷⁹⁶ TF2-014, Transcript 11 March 2005, p. 15.

⁷⁹⁷ TF2-014, Transcript 11 March 2005, p. 16.

⁷⁹⁸ TF2-021, Transcript 2 November 2004, p. 33.

⁷⁹⁹ TF2-021, Transcript 2 November 2004, p. 35.

⁸⁰⁰ TF2-021, Transcript 2 November 2004, p. 43.

⁸⁰¹ TF2-021, Transcript 2 November 2004, p. 44.

⁸⁰² TF2-021, Transcript 2 November 2004, p. 78.

⁸⁰³ TF2-021, Transcript 2 November 2004, p. 83.

⁸⁰⁴ TF2-021, Transcript 2 November 2004, p. 86.

small boys younger than the witness, one 11 years old being guarded. Or were they acting *as guards*? The witness said, "shortly after we left Guinea, Chief Norman had a decision to say that all small boys were exempted from the war and, as such, he was trying to re-organize us in our numbers so that he could hand us over to programmes."⁸⁰⁵

453.

[REDACTED]

454.

[REDACTED]

⁸⁰⁵ TF2-021, Transcript 2 November 2004, p. 96.

⁸⁰⁶ TF2-218, Transcript 7 June 2004, Closed Session, p. 14.

⁸⁰⁷ TF2-218, Transcript 7 June 2004, Closed Session, p. 15.

⁸⁰⁸ TF2-218, Transcript 7 June 2004, Closed Session, p. 17.

455. Evidence was adduced before the court shows the Second Accused's individual criminal responsibility under this charge. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

456. Witness TF2-140 was initiated into the Kamajor society as a child combatant. He testified that whilst at Bo, he met the Second Accused. The witness said that being a CDF member, he stayed near the Bo CDF Headquarters, in a house located right behind the one where the Second Accused was living.⁸¹⁰

457. [REDACTED]
[REDACTED] Other evidence shows that child combatants between the age of 10 and 14 were used in the CDF and they were referred to as 'small hunters'. 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. TF2-021, a child combatant testified that the 'big men at Base Zero were Papay Konde, Moinina Fofana, Hinga Norman'.⁸¹²

458. The Prosecution submits that the evidence of the Second Accused's presence at the meeting at Base Zero as one of the most senior members of the CDF, where child combatants were praised for their good work, not only shows notice or knowledge of the use of child combatants by the CDF, it also shows that the Second Accused tacitly encouraged these acts. Further evidence of knowledge can also be inferred from the fact that the Second Accused was based at Base Zero in late 1997 and early 1998 and that he made frequent visits thereafter.

COMMAND RESPONSIBILITY (6.3) – Counts 1-8

⁸⁰⁹ TF2-017, Transcript 19 November 04, Closed Session at p 87-90.

⁸¹⁰ TF2-140, Transcript 14 September 2004, pp. 86-88, 114, 141.

⁸¹¹ TF2-201, 5 November 04 Closed Session at pp 62-63.

⁸¹² TF2-021, 2 Nov 04 at p 60.

459.

[REDACTED] His official position was formalized by Hinga Norman in the Letter of Appointment dated 18th January 1998.⁸¹⁴ His position as Director of War and as one of the top leaders of the Kamajor Society was known by everyone in the CDF and that is how everyone treated and referred to the Second Accused.⁸¹⁵ Witnesses, including the military expert, also placed him second in command in the military chain, with specific duties and responsibilities entrusted upon him.⁸¹⁶ As such, the Prosecution submits that there is evidence to establish the Second Accused's *de jure* position of authority.

460. The Second Accused possessed both *de jure* and the *de facto* authority over the Kamajors. According to this evidence, among the powers he was invested with, the Second Accused had jurisdiction over: deploying forces to the war front; making appointments and promoting commanders; passing operational orders and instructions to subordinates; distributing arms and ammunition for battles; addressing Kamajor fighters in meetings before going into battle and reinforcing unlawful orders given by Hinga Norman and Allieu Kondewa. Finally, the Second Accused had the authority and liberty to independently give unlawful orders to subordinates for which he was never punished, or did not have to account for before a higher authority.

461.

[REDACTED]

⁸¹³ TF2-005, Transcript 16 February 2005, pp. 54-55; TF2-222, Transcript 17 February 05, pp. 95-97.

⁸¹⁴ Exhibit P59:

⁸¹⁵ TF2-159, 9 September 04 at p 53, TF2-008, 16 November 04 at 47, TF2-190, 10 February 05 at 11-13, TF2 134, 3 June 05 at p 26.

⁸¹⁶ TF2-079, 26 May 05 at pp 42, 66, TF2-017, 19 November 04 at p 18, TF2-223, 28 September 04 at p 57, Military Expert Report, May 2005, Exhibit 97 at p C-5.

⁸¹⁷ TF2-005, 15 February 04 at p 101.

[REDACTED]

462. Defence witness for the Second Accused Billoh Conteh, said that he was a close friend of Fofana before the war. However, at Base Zero, the witness said he did not approach Fofana because, in his words, "if he didn't give you an order to see him, you would not go there, except you stay from afar and you see him, but you not go there without his order". That was, "because he had great power and authority."⁸²⁰ Although Conteh said that he would not recognise Nallo, he said of Fofana, "All of us used to call him director. All Kamajors were afraid of him"⁸²¹

463. Witness TF2-096 attended a meeting, in 1997, at Talia in which Norman spoke; Norman described Fofana as the Director of War. Norman would come and go from Talia, never spending more than a week there. Norman needed a loyal deputy in his absence to ensure continuity of commanders and that orders were followed. Fofana fulfilled that essential role.⁸²²

464. [REDACTED]

465. [REDACTED]

⁸¹⁸ TF2-005, 15 February 04 at p. 101; TF2-068 23 November 04 at p 11.

⁸¹⁹ TF2-005, 16 February 05, at p 10.

⁸²⁰ P46, 28 Sept 2006

⁸²¹ P58, 28 Sep 2006

⁸²² P18, 8 November 2004

⁸²³ P96, 4 November 2004

⁸²⁴ P98, 4 November 2004

⁸²⁵ TF2-017, 19 November 04 at pp. 42, 43, 45.

466.

467.

468. Further evidence of the power to deploy fighters to the war front and of the power to make appointments was adduced by witness TF2-190. The witness testified that after he was initiated in the Kamajor society by Allieu Kondewa, he went to the war front and engaged in combat at Boama Kpengeh, under the instructions of the Second Accused and Musa Kortuwai.⁸²⁹ After the battle, the witness was promoted by the Second Accused as the leader of the group that was going to capture Singihun⁸³⁰.

469. Witness TF2-014 also testified that Joseph Koroma was appointed National Director of Operations as a result of a common decision by the Second Accused, Hinga Norman and Allieu Kondewa.⁸³¹

470.

⁸²⁶ TF2-014, 14 March, 05 at p. 24.

⁸²⁷ TF2-223 28 September at p 105, 106.

⁸²⁸ P57, 28 September 2004

⁸²⁹ TF2-190, 10 February 05 at p 4. This evidence is outside the timeframe of the Indictment but it has been adduced to show a pattern of the Second Accused' authority over Kamajors fighters.

⁸³⁰ TF2-190, 10 February 05 at pp 5-6. This evidence is outside the timeframe of the Indictment (1995) but it has been adduced to show a pattern of the Second Accused' authority over Kamajors fighters.

⁸³¹ TF2-014, 11 March 05 at p 76.

⁸³² TF2-223, 28 September 04 Closed Session at p 104.

471. The Second Accused's effective control over his subordinates is furthermore made clear by his power to pass down orders and instructions to Kamajor commanders individually and Kamajor fighters generally. The evidence shows indeed that Kamajor commanders only took instructions from Hinga Norman, the Second Accused and Allieu Kondewa.

472. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

473. Further illustrations of command responsibility and unlawful orders given by the Second Accused, were adduced by witness TF2-082. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

474. The Prosecution has also adduced evidence that the Second Accused on several occasions addressed troops in public meetings before going into battle. The Second Accused often spoke to fighters supporting and reinforcing unlawful orders passed down by Hinga Norman and Allieu Kondewa⁸³⁵. Such evidence further emphasizes the Second Accused's position of authority and effective command.

475. The evidence shows that the Second Accused knew that crimes were about to be committed by virtue of his presence at meetings where unlawful orders were made by his immediate superior Hinga Norman or Allieu Kondewa; or his presence at the crime scene.

476. Moreover, the Second Accused had knowledge of crimes committed by the Kamajors by virtue of the situational reports he received from the battle front. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁸³³ TF2-223, 28 September 04 at pp 41, 95, 100, 101, 102.

⁸³⁴ TF2-082, Transcript 15 September 2004, p. 40.

⁸³⁵ See TF2-222, TF2-190.

⁸³⁶ TF2-068, 18 November 04 Closed Session at p. 74.

[REDACTED] Finally, the Second Accused knew of the crimes committed by the Kamajors as he himself has ordered their commission on occasion. From these examples, the requisite mens rea can be inferred.

477. There is evidence that Moinina Fofana was present when orders were given by Hinga Norman to execute rebel collaborators at Nongoba Bullum Chiefdom.⁸³⁸

478. Witness TF2-222 said situational reports were coming back to Base Zero from the Koribundu and Tongo battle fronts. They were made to Allieu Kondewa then to the Second Accused and then to Hinga Norman.⁸³⁹

479. TF2-079 spoke of a situational report that he brought to Base Zero and handed over to the Second Accused. The report talked of a summary execution of a captured junta agent near Panguma.⁸⁴⁰ The witness said that there were other reports of similar incidents at the time in the area. Witness went on to say that each time they fought a battle, a situation report would be made. The Second Accused also knew of crimes committed around Base Zero. [REDACTED]

480. Witnesses have testified that reports about the wrongdoings of the Death Squad were made to the Second Accused and were then transmitted to Hinga Norman. The reports stated that whenever the Death Squad went to the war front, they were killing innocent people and looting the property of civilians.⁸⁴² [REDACTED]

481. Witness TF2-014 testified that as National Deputy Director of Operations he had to collect reports from the war front, compile them and submit them to the National

⁸³⁷ TF2-201, 4 November 04 at p 110;

⁸³⁸ TF2-014, 10 March 04 at p 49.

⁸³⁹ TF2-222, 17 February at p 122.

⁸⁴⁰ TF2-079, 26 May at p 33-34.

⁸⁴¹ TF2-068, November 17, 04 at p. 87, 88.

⁸⁴² TF2-008, 16 November 04 at p 62; TF2-079, 26 May 05 at p 48.

⁸⁴³ TF2-005, 15 February 05 at p 95; TF2-008, 16 November 04 at p 61.

Coordinator, Sam Hinga Norman, through the Director of War, Moinina Fofana.⁸⁴⁴ The witness testified that he told Moinina Fofana and Hinga Norman about the killing of the Chiefdom speaker of Ribbi Chiefdom, by Kamajor commander Abu Bawote.⁸⁴⁵

482. [REDACTED]

483. [REDACTED]

484. [REDACTED]

485. The Second Accused's knowledge of the crimes committed in Bo is made clear by witness's TF2-057 testimony. The witness related that the Second Accused summoned his brother and witness to the CDF Headquarters in Bo. When the Second Accused learned that they were Temne they were locked up in a cell for weeks. His brother and two other detainees were later killed as a result of the Second Accused's orders.⁸⁵¹ The witness further testified that the Kamajors "killed most of the Temnes in Bo town."⁸⁵² The witness heard the Second Accused say what he understood to be an order for the killing of all Temne people in Bo.⁸⁵³

486. [REDACTED]

⁸⁴⁴ TF2-014, 11 March 2005, p. 54.

⁸⁴⁵ TF2-014, 11 March 2005, p. 30.

⁸⁴⁶ TF2-223, 28 September 2004, p. 93-95.

⁸⁴⁷ Ibid., p. 101.

⁸⁴⁸ Ibid., pp. 111-115.

⁸⁴⁹ Ibid., pp. 118, 121, 123.

⁸⁵⁰ TF2-223, 30 September 2004, pp. 41, 95, 100.

⁸⁵¹ TF2-057, 29 November 2004, p. 122 and 30 November 2004, p. 20, 21.

⁸⁵² TF2-057, Transcript 30 November 2004, p. 22.

⁸⁵³ TF2-057, 30 November 2004, p. 21.

[REDACTED]

487. Witness Borbor Tucker testified that he acted on instructions given by Hinga Norman to remove three cars, located in the Special Security Division Headquarters. The three cars, with knowledge of their source, were given to Moinina Fofana, the Third Accused and Prince Brima.⁸⁵⁵

488. [REDACTED]

489. 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.⁸⁵⁷

490. The Accused and Allieu Kondewa were reported to be the highest authority in charge of the Kamajors' affairs in Kenema during the attack and for sometime after.⁸⁵⁸ [REDACTED]

[REDACTED] or to punish the perpetrators amounted to a failure to prevent or punish for the purposes of Article 6(3) of the Statute.

491. Based on the foregoing, the Prosecution submits that it has been proved beyond reasonable doubt that the Second Accused not only possessed a *de jure* position of authority in the CDF organization, he also exercised effective control over the Kamajors. Indeed, there is evidence that the Second Accused had an extremely high degree of authority over CDF subordinates in his position as Director of War and as one of the top three senior members of the CDF.

492. The Defence will make arguments that Moinina Fofana did not have the authority to, and was not in a position to prevent or stop unlawful acts committed by the Kamajors, but this is not consistent with the evidence. As demonstrated above, the evidence indicates

⁸⁵⁴ TF2-082, Transcript 15 September 2004, p 40.

⁸⁵⁵ TF2-190, Transcript February 10, 2005, pp. 60-62.

⁸⁵⁶ TF2-017, Transcript 22 November 2004, Closed Session, pp. 77-78.

⁸⁵⁷ TF2-021, Transcript 2 November 2004, p. 105.

⁸⁵⁸ See TF2-042, TF2-033, TF2-152, TF2-154, TF2-039.

⁸⁵⁹ TF2-223, Transcript 28 September 2004, pp. 109-114. See also witnesses TF2-052, TF2-154, TF2-151, TF2-142, TF2-033, TF2-040.

that the Second Accused was invested with a range of important responsibilities which allowed him to exercise effective command over subordinate commanders and Kamajor combatants generally.

493. However the evidence indicates that despite his material authority to do so and the ample notice and knowledge he had of the widespread and systematic crimes that were being committed by the Kamajors, the Second Accused chose not to do anything. The evidence indicates that no effort or attempt was made by the Second Accused to prevent these crimes or to punish subordinates for their perpetration. The evidence before the court shows indeed that the Second Accused actively and tacitly encouraged the continued perpetration of these crimes.
494. It would clearly be reasonable for the Trial Chamber to conclude that the Second Accused's silence in the face of the atrocities committed by the Kamajors does not represent, as the Defence alleges, a lack of authority and effective control.

Defence Case Analysis:

495. The Defence has raised various possible defences during the course of the trial. The Prosecution submits that the "greatest responsibility" argument, and any argument relating or suggesting *tu quoque* do not give rise to grounds for excluding responsibility.
496. It has repeatedly been held that *tu quoque*, or the argument that the adversary or other factions involved in a conflict in Sierra Leone committed similar or even more serious crimes,⁸⁶⁰ is no defence, since the rules of international humanitarian law are designed to safeguard fundamental human values and therefore must be complied with by each party

⁸⁶⁰ *Limaj* Trial Judgment, para. 193; *Kupreskic* Trial Judgment, paras 51, 515-520. *Prosecutor v. Hadžihasanović and Kubura*, Decision on Defence Motion for Clarification of the Oral Decision of 17 December 2003 Regarding the Scope of Cross-Examination Pursuant to Rule 90 (H) of the Rules, Case No. IT-01-47-T, T. Ch. II, 28 January 2004, p. 4; *Prosecutor v. Kupreškić et al*, Judgment, Case No. IT-95-16-T, T. Ch. II., 14 January 2000, paras. 515-520; *Prosecutor v. Kordić and Čerkez*, Judgment, Case No. IT-95-14/2-T, 26 February 2001, para. 520; *Prosecutor v. Kupreškić et al*, Decision on Evidence of the Good Character of the Accused and the Defence of Tu Quoque, IT-95-16-T, T. Ch. II., 17 February 1999, p. 3; *Prosecutor v. Kupreškić et al*, Decision on Defence Motion to Summon Witness, IT-95-16-T, T. Ch. II., 8 February 1999, p. 3.

regardless of the conduct of the other party or parties.⁸⁶¹ Similarly, involvement in what might be described as a defensive operation is not a defence.⁸⁶²

497. The Defence witness for Fofana, Mohammed Fallon, gave a differing version of the circumstances surrounding the death of his brother Mustapha Fallon.⁸⁶³ The Prosecution submits that uncorroborated testimony of a single witness may be sufficient to establish the presence of the Accused at the scene of a crime.⁸⁶⁴ The Trial Chamber has the discretion to accept a witness's evidence notwithstanding inconsistencies with the witness's prior statements *or* the evidence of other witnesses.⁸⁶⁵
498. The Prosecution submits that upon a consideration of all the relevant evidence, coherence, and credibility of both witnesses, Nallo's testimony should be accorded greater weight than that of Mohammed Fallon. Nallo, as CDF Director of Operations South, was an important and integral part of the operations of the CDF. He was close enough and proximate not only to the decisions of the leadership but also their direct acts. His testimony regarding the death of Fallon is direct, that is, committed in his own presence. He even acknowledged his own participation.
499. It is imperative to note that the Accused persons agreed that Mustapha Fallon's family at Kati should be told that he was killed during the Koribundo attack.⁸⁶⁶ It is not surprising, therefore, that the misinformation put forward by the Accused persons in a bid to conceal their deeds turned out to be the exact evidence of the Defence Witness Mohammed Fallon.⁸⁶⁷ Further, according to Nallo's account, the human sacrifice was needed to make Kamajors invisible to enable them to capture Koribundo after several failed attempts.⁸⁶⁸ Indeed after the incident, Koribundo was attacked by the Kamajors and captured.

⁸⁶¹ *Prosecutor v. Kupreškić et al.*, Decision On Defence Motion to Summon Witness, IT-95-16-T, T. Ch. II., 8 February 1999, para. 15; *Prosecutor v. Kupreškić et al.*, Decision on Evidence of the Good Character of the Accused and the Defence of Tu Quoque, Case No. IT-95-16-T, T. Ch. II., 17 February 1999.

⁸⁶² *Kordić and Čerkez* Trial Judgment, paras 448-452.

⁸⁶³ Mohammed Fallon, Transcript 27 September 2006, p. 30-31.

⁸⁶⁴ *Kajelijeli* Appeals Judgement, paras. 96-97.

⁸⁶⁵ *Čelebići* case Appeal Judgement, para. 497; *Kupreškić* Appeal Judgement, paras 31, 156; *Kajelijeli* Appeal Judgement, paras. 96, 102; *Semanza* Appeal Judgement, para. 224; *Limaj* Trial Judgment, paras 12, 543.

⁸⁶⁶ TF2-014, Transcript 10 March 2005, p. 58.

⁸⁶⁷ Mohammed Fallon, Transcript 27 September 2006, p. 30.

⁸⁶⁸ TF2-014, Transcript 10 March 2005, p. 56.

500. When juxtaposed, the evidence of Nallo stands out as more believable and consistent with the surrounding facts.

501. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the three Accused persons. Defence cross-examination was unable to undermine or dispute the occurrence. In his testimony, the witness said that he knew Alpha Dauda Kanu, a Kapra. He was killed in a palm oil plantation when going towards Mokusi. Kanu was killed by Kondewa, Norman and Fofana. "He was hacked to death, and we took off his skin." The witness was present. Some of Kanu's body parts were taken and "They said that they are going to prepare a garment and a walking stick for Chief Hinga Norman and a fan, which is called a "controller", so as to use those things in order to become very powerful."⁸⁶⁹

502. The Kondewa Defence called a witness, Moses Bangura that disputed the Prosecution's narrative surrounding the death of Alpha Dauda Kanu. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

503. Billoh Conteh denied going on any mission with Nallo or killing anyone in Dodo village. Conteh said that he was a close friend of Fofana before the war. However, in Base Zero, he did not approach Fofana as "if he didn't give you an order to see him, you would not go there, except you stay from afar and you see him, but you not go there without his

⁸⁶⁹ TF2-014, Transcript 10 March 2005, p. 60.

⁸⁷⁰ TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-62, 77.

order. That was, “because he had great power and authority.”⁸⁷¹ Although Conneh said that he would not recognise Nallo, he said of Fofana, “All of us used to call him director. All Kamajors were afraid of him.”⁸⁷²

504. The Fofana defence will argue that it is clear from the evidence that Moinina Fofana does not belong to the category of those bearing the greatest responsibility, and that the Court should not have had jurisdiction over him.⁸⁷³ They will argue that the evidence points to other persons who bear greater responsibility than Fofana, including other members of the CDF and in particular, members of the RUF and AFRC against whom the CDF fought a legitimate armed opposition effort.
505. The issue of personal jurisdiction has previously been canvassed before the Trial Chamber by the Second Accused. In its “Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction on behalf of Accused Fofana” (“Decision on Personal Jurisdiction”), the Trial Chamber found that “the Special Court has personal jurisdiction over the Accused”.⁸⁷⁴ The issue has therefore been settled, subject to any final appeal against conviction.
506. The Defence will argue that the Second Accused, had no influential role in the CDF. Despite the title and position he possessed, he had no real authority or effective control over subordinates. He was “nothing more than a glorified storekeeper and occasional conduit for messages to Mr. Norman [...] at most an amateur aide de camp.”⁸⁷⁵ The Defence will further state that the Second Accused was only reacting to Hinga Norman’s authority and he lacked power to go against his unlawful orders and compel a different result.
507. This may be the theory of the Fofana Defence. However, there is evidence that the Second Accused was at all times relevant to the Indictment in a high position of authority, invested with power and responsibility over his subordinates. In the function of Director of War of the CDF, the Second Accused was working side by side with Hinga Norman, the National Coordinator and Allieu Kondewa, the High Priest. There is

⁸⁷¹ Billoh Conteh, Transcript 28 September 2006, p. 50 (lines 5-7).

⁸⁷² Billoh Conteh, Transcript 28 September 2006, p. 58 (lines 21-22).

⁸⁷³ Fofana Motion for Acquittal

⁸⁷⁴ *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, para. 48.

⁸⁷⁵ Fofana Motion, para 44.

evidence that together they orchestrated and planned war strategies and attacks and most importantly the commission of unlawful acts. There is evidence that all major decisions were taken in consultation with each other.⁸⁷⁶

508. Furthermore, there is evidence that the Second Accused was at all times relevant to the Indictment in a high position of authority, invested with power and responsibility over his subordinates. In the function of Director of War of the CDF, the Second Accused was working side by side with Hinga Norman, the National Coordinator and Allieu Kondewa, the High Priest. There is evidence that together they orchestrated and planned war strategies and attacks and most importantly the commission of unlawful acts. There is evidence that all major decisions were taken in consultation with each other.⁸⁷⁷
509. The Prosecution has presented evidence that the Second Accused possessed both *de jure* and the *de facto* authority over the Kamajors. According to this evidence, among the powers he was invested with, the Second Accused enjoyed jurisdiction over: deploying forces to the war front; making appointments and promoting commanders; passing operational orders and instructions to subordinates; distributing arms and ammunition for battles; addressing Kamajor fighters in meetings before going into battle and reinforcing unlawful orders given by Hinga Norman and Allieu Kondewa. Finally, the Second Accused had the authority and liberty to independently give unlawful orders to subordinates for which he was never punished, or did not have to account for before a higher authority.
510. Moreover, the Second Accused had knowledge of crimes committed by the Kamajors by virtue of the situational reports he received from the battle front. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Finally, the Second Accused knew of the crimes committed by the Kamajors as he himself has ordered their commission on occasion. From these examples, the requisite mens rea can be inferred.

⁸⁷⁶ Military Expert Report, May 2005, Exhibit 97 at p C-4. See also TF2-014, March 14 05 at p. 6

⁸⁷⁷ Military Expert Report, May 2005, Exhibit P97 at p C-4. See also TF2-014, March 14 05 at p. 6

⁸⁷⁸ TF2-068, 18 November 04 Closed Session at p. 74.

⁸⁷⁹ TF2-201, 4 November 04 at p 110;

511. The Defence will argue that Moinina Fofana did not have the authority to prevent or stop unlawful acts committed by the Kamajors. As demonstrated above, the evidence indicates the Second Accused was invested with a range of important responsibilities. This authority allowed him to exercise effective command over both subordinate commanders and Kamajor combatants generally.
512. Evidence indicates that despite his material authority to do so and the ample notice and knowledge he had of the widespread and systematic atrocities being committed by the Kamajors, the Second Accused chose not to do anything. The evidence indicates that no effort or attempt was made by the Second Accused to prevent these crimes or to punish subordinates for their perpetration. The evidence before the court shows indeed that the Second Accused both actively and tacitly encouraged continued perpetration of these crimes.

I. ALLIEU KONDEWA: PERSONAL LIABILITY UNDER ART. 6.1 & ART. 6.3

Kondewa's Position of Authority:

513. Allieu Kondewa is believed to have been born in the Bo District, in the Republic of Sierra Leone. Before his arrest he resided in Bumpeh Chiefdom, Bo District and he was a farmer and an herbalist.
514. Kondewa was nominated High Priest of the Kamajors, meaning he was the chief and head of all Kamajor initiators.⁸⁸⁰ As leader of all Initiators, he had command over all Kamajor initiates. No Kamajor would go to war without his blessings.⁸⁸¹
515. Kondewa fulfilled an important role in the Kamajors. He was able, by means of secret rites and the promises such rites made, to shift the loyalty of the Kamajors from the chiefs to the triumvirate, namely, Norman, Fofana and Kondewa. Norman was a charismatic and dominant figure, but that alone was not sufficient, it is suggested, to have the Kamajors carry out the offences outlined in the Indictment. Kondewa was an intrinsic part of the executive group which controlled the Kamajors; he achieved that status and power through the implementation of the initiation ceremonies.
516. The process of initiation aided in creating cohesion within the CDF. This cohesion in a military organization is very important, because it fosters a sense of belonging. Initiation is correlated to confidence build up. In order to give fighters confidence that they are immunized against bullet wounds they usually receive additional immunization prior to an attack. Initiation is thus an important part of building the will to fight.⁸⁸²
517. Norman, Fofana and Kondewa were seen as the centre of administration of the affairs of the Kamajors and because of this, the Kamajors relied on these three men. They had the executive powers of the Kamajor society. No one made decisions in the absence of this group and the Kamajors looked up to them for leadership.⁸⁸³
518. In his capacity as the High Priest Kondewa made recommendations as to whether a particular fighter should go to war or not. The final authority to send the Kamajors to

⁸⁸⁰ TF2-008, Transcript 16 November 2004, pp. 38.

⁸⁸¹ TF2-008, Transcript 16 November 2004, p. 49.

⁸⁸² TF2-EW1, Transcript 14 June 2005, p. 35.

⁸⁸³ TF2-008, Transcript 16 November 2004, p. 51.

war lay with Norman, Fofana and Kondewa. The National Coordinator, Director of War and the High Priest were at the centre in the implementation of the plans of the Kamajors.⁸⁸⁴

Kondewa's 6.1 under counts 1 and 2

519. Kondewa 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.
520. The Prosecution has presented detailed and overwhelming evidence of the direct and indirect acts of Kondewa in the charge of unlawful killing. The Defence had through their witnesses merely made general denials as to the occurrence of the charges in the counts, asserting that by virtue of their position as chieftom speaker⁸⁸⁵ or town chief⁸⁸⁶, that if such incidents had occurred they should have known. Indeed it is incredulous that these Defence witnesses know nothing, saw nothing and heard nothing. Therefore the Trial Chamber will attach no weight or value to their evidence by virtue of its unreliability.
521. Turning to the individual criminal responsibility of Kondewa, the evidence demonstrates beyond reasonable doubt that Kondewa committed the *actus reus* of murder with the requisite *mens rea*. Consequently, Kondewa is liable for "committing" murder. This mode of liability is particularly relevant to the unlawful killings charged for the Talia, Bonthe crime base. For example, Witness TF2-014 testified that he knew Mustapha Fallon was executed in the Poro Bush at Talia, in the presence of Norman, Fofana,

⁸⁸⁴ TF2-008, Transcript 16 November 2004, pp. 56-59, 82.

⁸⁸⁵ Joseph Murana, Transcript 11 October 2006.

⁸⁸⁶ Joe Kpana Lewis, Transcript 10 October 2006.

Kondewa and others. Mustapha Fallon who was also a Kamajor was killed because Kondewa needed a human sacrifice to guarantee the protection of the fighters. The brother of Mustapha Fallon pleaded for his life with Norman but to no avail. Norman gave three hundred thousand Leones to the deceased brothers and ordered them not to tell anyone what had transpired.⁸⁸⁷

522. The Defence witness for Fofana, Mohammed Fallon, gave a differing version of the circumstances surrounding the death of his brother Mustapha Fallon.⁸⁸⁸ The Prosecution submits that uncorroborated testimony of a single witness may be sufficient to establish the presence of the Accused at the scene of a crime.⁸⁸⁹ The Trial Chamber has the discretion to accept a witness's evidence notwithstanding inconsistencies with the witness's prior statements *or* the evidence of other witnesses.⁸⁹⁰

523. The Prosecution submits that upon a consideration of all the relevant evidence, coherence, and credibility of both witnesses, Nallo's testimony should be accorded greater weight than that of Mohammed Fallon. Nallo, as CDF Director of Operations South, was an important and integral part of the operations of the CDF. He was close enough and proximate not only to the decisions of the leadership but also their direct acts. His testimony regarding the death of Fallon is direct, that is committed in his own presence. He even acknowledged his own participation.

524. It is imperative to note, that the Accused persons agreed that Mustapha Fallon's family at Kati should be told that he was killed during the Koribundo attack.⁸⁹¹ It is not surprising, therefore, when the misinformation put forward by the Accused persons in a bid to conceal their deeds turned out to be the exact evidence of the Defence Witness Mohammed Fallon.⁸⁹² Further, according to Nallo's account, the human sacrifice was needed to make Kamajors invisible to enable them to capture Koribundo after several failed attempts.⁸⁹³ Indeed after the incident, Koribundo was attacked by the Kamajors and captured.

⁸⁸⁷ TF2-014, Transcript 10 March 2005, p. 59.

⁸⁸⁸ Mohammed Fallon, Transcript 27 September 2006, p. 30-31.

⁸⁸⁹ *Kajelijeli* Appeals Judgement, paras. 96-97.

⁸⁹⁰ *Čelebići* case Appeal Judgement, para. 497; Kupreškić Appeal Judgement, paras 31, 156; *Kajelijeli* Appeal Judgement, paras. 96, 102; *Semanza* Appeal Judgement, para. 224; *Limaj* Trial Judgment, paras 12, 543.

⁸⁹¹ TF2-014, Transcript 10 March 2005, p. 58.

⁸⁹² Mohammed Fallon, Transcript 27 September 2006, p. 30.

⁸⁹³ TF2-014, Transcript 10 March 2005, p. 56.

525. When juxtaposed, the evidence of Nallo stands out as more believable and consistent with the surrounding facts.

526. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the three Accused persons. Defence cross-examination was unable to undermine or dispute the occurrence. In his testimony, the witness said that he knew Alpha Dauda Kanu, a Kapra. He was killed in a palm oil plantation when going towards Mokusi. Kanu was killed by Kondewa, Norman and Fofana. "He was hacked to death, and we took off his skin." The witness was present. Some of Kanu's body parts were taken and "They said that they are going to prepare a garment and a walking stick for Chief Hinga Norman and a fan, which is called a "controller", so as to use those things in order to become very powerful."⁸⁹⁴

527. The Kondewa Defence called a witness, Moses Bangura that disputed the Prosecution's narrative surrounding the death of Alpha Dauda Kanu. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

528. In another episode of unlawful killing, the Prosecution evidence demonstrates that one day witness TF2-096 was collecting water from the well near Norman's house when she saw Kamajors singing. Kondewa was leading the group, in which two people were dancing. She saw Kondewa shoot a town commander. The town commander had been appointed by the rebels and that is why he was shot. The man Kondewa shot had been

⁸⁹⁴ TF2-014, Transcript 10 March 2005, p. 60.

⁸⁹⁵ TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-62, 77.

holding a stick with a head on top. The next day, she saw two graves, and a Kamajor told her those were the graves of the two people who were dancing. The incident took place in 1997.⁸⁹⁶ Kondewa personally committed multiple acts of murder, and acts of murder were committed in the presence of Norman and Fofana with their approval and encouragement.⁸⁹⁷

529. Additionally, the Prosecution submits that Norman, Fofana and Kondewa planned, ordered or otherwise aided and abetted the killing of civilians at Tongo,⁸⁹⁸ Koribundo,⁸⁹⁹ Bo,⁹⁰⁰ Kenema,⁹⁰¹ Moyamba⁹⁰² and Bonthe.⁹⁰³

530. [REDACTED]

531. At the meeting to plan the attack on Tongo, Norman, Fofana and Kondewa, Abubakarr Konuwa and Vandi Songo were present. Everyone contributed to the meeting including Fofana and Kondewa. Norman said, at the meeting: "Whoever takes Tongo and keeps it wins the war...and therefore Tongo should be taken at all costs." Norman also said: "anybody found walking with the junta there or mining for them should not be spared."⁹⁰⁶

⁸⁹⁶ TF2-096, Transcript 8 November 2004, p. 25-27.

⁸⁹⁷ In the alternative, all three Accused at the very least aided and abetted murder at Base Zero by their actions, and in the case of Norman and Fofana by their presence and the persistent failure to prevent or punish murder committed by their subordinates.

⁸⁹⁸ TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, TF2-144.

⁸⁹⁹ TF2-012, TF2-014 TF2-032 TF2-140, TF2-157, TF2-159, TF2-162.

⁹⁰⁰ TF2-001, TF2-006, TF2-012, TF2-014, TF2-017, TF2-030, TF2-032, TF2-056, TF2-057, TF2-058, TF2-067, TF2-088, TF2-119, TF2-140, TF2-156, TF2-157, TF2-159, TF2-162, TF2-198, TF2-201.

⁹⁰¹ TF2-033, TF2-039, TF2-040, TF2-042, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, TF2-223.

⁹⁰² TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 and TF2-190

⁹⁰³ TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189.

⁹⁰⁴ TF2-201, Transcript 4 November 2004, Closed Session, p. 106.

⁹⁰⁵ TF2-201, Transcript 4 November 2004, Closed Session, p. 107.

⁹⁰⁶ Transcript 15 February 2005, pp. 105-107.

532. The evidence indicates that Norman intended to kill or inflict grievous bodily harm on civilians in Togo in reckless disregard for human life.⁹⁰⁷ Kondewa was actively supportive of this venture by his attendance and approval of conclusions reached at the meeting and his preparation of the herbs for the attack. Witness TF2-222 stated that Norman said, on the air, that people who did not move away from the strongholds of the junta should “be prepared to suffer any consequence that would meet them...you decided to stay in Sierra Leone you’ll be looked upon as a collaborator or an effective participant of the junta rule.”⁹⁰⁸

533. The Prosecution led evidence of ordering as a mode of liability for the count of unlawful killings. [REDACTED]

[REDACTED] Kondewa’s presence in that meeting was not a coincidence.

534. The Prosecution submits that the only reasonable conclusion is that unlawful killings occurred in pursuance of those orders.⁹¹⁰

535. Many other witnesses testified to the acts of the Kamajors in killing civilians. Such acts could not have occurred, in view of their widespread nature, without any attempt of concealment, without, at the least, being condoned by the three accused men. As another example, witness TF2-021 described capturing collaborators and tying them with FM rope; they were then taken to the Yamorto; they were taken there to be eaten. The person would be choked with a bayonet, “then he will die. ‘When he die, then the heart, the liver, and other parts in his stomach we remove and the legs. Then the head, we find a stick and put it on it.”⁹¹¹

536. [REDACTED]

⁹⁰⁷ TF2-005, TF2-079, TF2-201, TF2-222

⁹⁰⁸ TF2-222, Transcript 17 February 2005, p. 105.

⁹⁰⁹ TF2-201, Transcript 4 November 2004, Closed Session, p. 73-75.

⁹¹⁰ TF2-012, TF2-032, TF2-157, TF2-159, TF2-162, TF2-198.

⁹¹¹ TF2-021, Transcript 2 November 2004, p. 76.

⁹¹² TF2-223, Transcript 28 September 2004, Closed Session, pp. 98.

537. Perhaps the most persuasive evidence establishing the culpability of the three accused men is to be found in the testimony relating to the killing of unarmed Police officers. Such killings could only have taken place with the approval of the three accused; even if they did not know the specifics of the killings it is not possible they did not become aware of such killings. The evidence clearly establishes that the Police officers were killed whilst unarmed; indeed only the SSD contingent of the Police were armed during the conflict. The Police were killed on the orders of Norman, supported by Fofana and Kondewa.
538. Witness TF2-042 saw Kamajors moving towards the Police football field, where they met two Police Officers. The officers were O.C.Kanu and Desmond Pratt. The Kamajors asked the O.C. Kanu his identity; he was the O.C SSD. He showed them his identity card and he was shot and they shot Desmond Pratt. Sgt Turay had come from his own quarters to speak on behalf of the other police officers and they shot him. They were shot dead. She saw the bodies of Sgt Mason, Couple Fandai, Sgt Sumura, Sgt Turay, O.C.Kanu and Desmond Pratt. Later she saw the corpse of Essai Mimor. Later a report was given to ECOMOG by the Police stating that thirty six Police officers had been killed.⁹¹³
539. Evidence of Kondewa'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 Norman that the Kamajors should now concentrate on taking Bo, and ignore Freetown. The planning and implementation was left in the hands of Norman, Fofana and Kondewa.⁹¹⁴ This piece of evidence taken in context with other facts, such as the direct orders to kill by Norman, in the presence of Kondewa and Kondewa's support, by bullet-proofing fighters, goes to show the meaningful role of Kondewa in the commission of the crimes by Kamajors in the course of the Bo attack.
540. Witness TF2-008 testified that at a meeting at Base Zero, Norman instructed the commanders present, that when they proceeded to attack Koribundo, they should not leave any living thing and should burn down houses if there was resistance.

⁹¹³ TF2-042, Transcript 17 September 2004, p. 104-109.

⁹¹⁴ TF2-008, Transcript 16 November 2004, p. 93-94.

Commanders should only spare the mosque, the school, and the barray.⁹¹⁵ The witness also gave evidence that in the middle of 1998, a meeting was convened in Bo Town Hall wherein some senior members of the CDF were present including Fofana, and Norman made a declaration to the effect that “I am personally responsible for the excesses and atrocities of the Kamajors.”⁹¹⁶

541. 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.⁹¹⁷ 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 the Third Accused relaxing at the back being driven in the witness’ car with a mounted flag, and an inscription on the car-“King Kindo.”⁹¹⁸ TF2-073 further gave evidence that the Kamajors went to Yakarji. They beat up his brother-in-law and asked him to show them where a Mazda van was hidden. The van had been secured in the woods in that village. So his brother-in-law had to lead them to the bush where the van was, after receiving a severe beating. His brother-in-law was so beaten that he died a few weeks later.⁹¹⁹

542. Another witness TF2-170 gave evidence that that at Makabi-Loko, the CDF patrol commander, called Kakpata, ordered another member, Amadou Lavalie to kill one Pa Aluseini Kabbah. Lavalie did not carry out the order. The patrol commander, Kakpata, collected the gun from Lavalie and took a cartridge from his pocket and placed it into the gun. He cocked it and shot Aluseini Kabbah on the face, but the Pa did not fall. Then he put his arm for a second time in his pocket removed a cartridge and placed the cartridge into the gun and shot him. Then the Pa fell over. The next morning, witness and others returned and the Headman produced three people plus himself who knew that Pa Aluseini was killed and they buried Pa Aluseini in the bush.⁹²⁰

⁹¹⁵ TF2-008, Transcript 16 November 2004, p. 79.

⁹¹⁶ TF2-008, Transcript 16 November 2004, pp.116-117

⁹¹⁷ TF2-073, 2 March 2005, pp. 30-33.

⁹¹⁸ TF2-073, 2 March 2005, p. 45.

⁹¹⁹ TF2-073, Transcript 2-3 March 2005, p. 39.

⁹²⁰ TF2-170, Transcript 7 March 2005, pp. 65-68.

543. The testimony of TF2-167 states that on the 23 March Kamajors came again to Bradford. Whilst in the bush the witness heard his children saying to the Kamajors “please leave us, please leave us.” The witness went close, but remained hidden, he then saw a Kamajor shoot at his three and a half year old grandson as he was shouting, he shot at him. When they left the witness found that his grandson was dead. He then buried his grandson.⁹²¹
544. According to TF2-166, in December 1997, a group of CDF attacked her father’s house. One CDF Mohammed Koroma of Mayenoh village took something like a knife and stabbed her father on the eye. Her father shouted ‘oh, my children they are killing me.’ Commander Amidou Mahoi cut her father’s mouth saying ‘that is the mouth that eats sweet things’, he then fell on the ground and was dragged to the back of the house. At Masanki, ECOMOG officers and witness were shown a water well where the body of the witness’s father was found. The witness named the persons who killed her father as Bob Marley, Hassana Atilo, Mohammed Lingon, Brima Kargbo, Salfu and Abu Tupeni, Abu Two Penny, Abu Sesay of Masanki, Ibrahim Lebanese of Roki, Moray of Small Masanki, Raymond Sesay and Mr Clay.⁹²²
545. TF2-165 testified that Kamajors came to Moyamba under the command of Mr Ngobeh. A Mr Thomas, the Treasury Clerk was hunted as a collaborator; he was suspected of passing information to the AFRC. The witness gave evidence that he once saw Mr. Thomas, in the midst of Kamajors who were singing and dancing, coming towards Shenge Park. Thomas was told by the Kamajors he was free to go. Thomas ran down Siaka Stevens Street, as he was being shot at by the Kamajors and he fell down, dead. Ngobeh was in command, in control. Thomas had been shot in the back. His body was dragged away by Kamajors and his head was cut off and some of the Kamajors drank the blood, whilst others rubbed the blood on their bodies. One Kamajor took the head and placed it on his own head. They then processed with the head, going along Langowa street dancing, with the head on one of the Kamajor's head.⁹²³ Commander Ngobeh received his supply of arms from Talia.⁹²⁴ Defence Witness for Norman Kenie Torma,

⁹²¹ TF2-167 Transcript 8 March 2005, p. 33.

⁹²² TF2-166, Transcript 8 March 2005, pp. 67-78.

⁹²³ TF2-165, Transcript 7 March 2005, pp.10-14.

⁹²⁴ TF2-190, Transcript 10 February 2005, p. 38.

gave evidence that Commander Ngobeh got his appointment from Base Zero in Talia.⁹²⁵ This evidence shows the link between the acts of the three Accused at Base Zero in Talia to that of Commander Ngobeh and his band of Kamajors.

546. The Prosecution led cogent evidence of Kondewa giving direct orders for an attack on Taiama that resulted in the loss of lives of innocent civilians. TF2-190 testified that he was ordered to attack Taiama by Kondewa. “We killed some rebels.” “On the civilian casualty side, I wouldn’t deny it because it was a cross firing.” “Later we learned civilians died.”⁹²⁶
547. The Prosecution evidence reveals further instances of unlawful killings at Talia, the seat of the throne of the High Priest of the Kamajors. Witness TF2-108 saw Kamajors kill one Jusu Shalley, Baggie Vaiey and Lahai Lebbie. Witness saw Kamajors slit open Jusu Shalley’s stomach with a machete.⁹²⁷ Baggie Vaiey’s chest was slit open and his body dismembered by Kamajors, at Talia.⁹²⁸ Lahai Lebbie was killed in Talia, the Kamajors cut down a stick and pinned him on the ground. A fire was set underneath the platform where he was laid, and he shouted his mother’s name until he was completely burnt.⁹²⁹
548. The Prosecution’s direct evidence of unlawful killing continued in the testimony of TF2-187 as she testified that she went to Gambia, Jong Chiefdom, Bonthe District. Kondewa’s boys arrested her uncle and took him to the initiation bush. At the entrance to the initiation bush the boys tied up her uncle which caused him to ‘scream like a pig.’ Kondewa’s boys then pushed him to the ground and dropped burning plastic on his eyes. He was screaming until he finally died. The witness saw the event. The attack continued until her uncle died. The boys wrapped him up and buried him in a hole.⁹³⁰ The witness under cross-examination gave further details of more Kamajor killings at Gambia. She testified that Kamajors made preparation for Norman’s visit. Kondewa’s boys captured pregnant women and took them to the court barri.⁹³¹ The women were tied up standing. When they heard the sound of the plane, the Kamajors slit the stomach of the women and then the cut off the head of the foetus. That was done one after

⁹²⁵ Kini Torma, Transcript 2 June 2006, p. 25.

⁹²⁶ TF2-190, Transcript 10 February 2005, pp. 21-23.

⁹²⁷ TF2-108, Transcript 30 May 2005, p. 10.

⁹²⁸ TF2-108, Transcript 30 May 2005, p. 12.

⁹²⁹ TF2-108, Transcript 30 May 2005, p. 14.

⁹³⁰ TF2-187, Transcript 1 June 2005 at p. 14.

⁹³¹ TF2-187 Transcript 2 June 2005 at p. 17.

another. The Kamajors put each of the head on a separate stick.⁹³² The three women died. The three sticks with the heads were tied together; when that was done it was like a flag and was placed at the junction.⁹³³

549. The Prosecution evidence further demonstrates, beyond doubt, the direct commission of unlawful killing on the part of Kondewa in the testimony of TF2-188 when she gave evidence that her mother and she were taken to Talia; they carried loads of cartridges. Her mother said that Kondewa ordered her own death.⁹³⁴ Witness said 'I was there when she was killed.' Mohamed a Kamajor killed her mother; 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.⁹³⁵
550. Witness TF2-109 testified that saw the killing of Lahai Lebbie, Baggie, Ngor Jusu. They were killed in Makosi (Makose), on the way to Talia. Lahai Lebbie was killed by the Kamajors-he was tied up and a tire was used to burn him.⁹³⁶
551. The Prosecution evidence reveals further Kamajor killings at Talia through the testimony of TF2-189. In her evidence, she testified that saw her husband, who was tied, being led by Nulele, the Kamajor that captured her. Nulele said he was taking her husband to Kondewa. The witness knew Kondewa to be the chief initiator. Later Nulele came back with other Kamajors singing that there was going to be a cut-throat the next morning. The husband was taken to the Yemani tree. Nulele told her husband to say his prayers and his last good-byes. The witness saw Nulele cut her husband's throat and remove his head.⁹³⁷
552. The Prosecution submits that the unlawful killing evidence is further demonstrated in the testimony of Witness TF2-071 who gave evidence that the Chief of Mobayei (Mobayeh) Keinechawa, told him that Kamajors led by one Momoh Sitta had attacked the town of Mobayei and killed an old woman, Musu Fai and a pregnant woman, Jebbeh Kpaka who were unable to escape.⁹³⁸

⁹³² TF2-187 Transcript 2 June 2005 at p. 19.

⁹³³ TF2-187 Transcript 2 June 2005 at p. 20.

⁹³⁴ TF2-188, Transcript 31 May 2005, p. 16.

⁹³⁵ TF2-188, Transcript 31 May 2005, p. 18.

⁹³⁶ TF2-109, Transcript 30 May 2005, p. 34.

⁹³⁷ TF2-189, Transcript 3 June 2005, p. 12.

⁹³⁸ TF2-071, Transcript 11 November 2004, p. 70.

553. The Prosecution evidence further demonstrates more acts of unlawful killing in the Bonthe crime base when TF2-147, a 39 year old tertiary educated priest. Witness saw the body of a fisherman Kpana Manso, who had been shot by the leader of the Kamajor, Baigeh.⁹³⁹ Witness also saw the body of Abu Samuka on the street whom he had been told, was killed by the Kamajors. Kamajors from Sitta he was told, had killed Abu Conteh on the grounds that he had been preparing concoctions for the soldiers.⁹⁴⁰
554. The Prosecution also submits that Norman, Fofana and Kondewa are responsible for murder as a consequence of their participation in the joint criminal enterprise and that all three Accused persons shared the direct intent to kill or knew of the system of killing and intended to further it.

Counts 3-4: Physical Violence and Mental Suffering:

Kondewa's 6.1 under counts 3 and 4

555. The Prosecution refers to the evidence that has already been set out in relation to superior responsibility and the widespread and systematic nature of the attacks. There is evidence of Kondewa's role as High Priest of the Kamajors and on the basis of the evidence in relation to unlawful killings referred to above, the only reasonable conclusion is that Norman together with Fofana and Kondewa planned, instigated, ordered, committed or aided and abetted the infliction of physical or mental harm and suffering.
556. The Prosecution submits that evidence has been presented from many witnesses who made specific mention of orders in relation to the offences charged under Counts 3 and 4, in particular, witnesses TF2-005, TF2-014, TF2-017, TF2-079, and TF2-222. These witnesses gave evidence of direct orders from the First Accused, in the presence of Fofana and Kondewa for the attack on civilian collaborators of the AFRC/RUF. Witness TF2-014 gave evidence that Norman stated at Base Zero that "sympathisers, collaborators and those who refuse deliberately to leave the AFRC/RUF Zone" were enemies and ordered that they should be killed.⁹⁴¹ There is clear, unambiguous and

⁹³⁹ TF2-147, Transcript 10 November 2004, p. 36.

⁹⁴⁰ TF2-147, Transcript 10 November 2004, p. 39.

⁹⁴¹ TF2-014, Transcript 10 March 2005, p. 37.

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

557. Witness TF2-086 provided further evidence of physical violence and mental suffering when she gave evidence that she was caught by a Kamajor called Abu Jakineh whilst in Bonthe. The witness was wounded on the wrist. She was also stabbed in the stomach with a stick and then she was struck on the neck with a machete.⁹⁴²

558. The Prosecution submits that there is evidence beyond reasonable doubt to demonstrate that Kondewa 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.

559. 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 Fofana and finally to Norman.⁹⁴³ Inferentially, the Kondewa was the first to be made au fait with situation reports from the Tongo frontline.

560. The Prosecution submits that abundant evidence has been presented which, if accepted, could prove the elements beyond reasonable doubt that show that Kondewa 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.⁹⁴⁴

Count 5: Looting and Burning

⁹⁴² TF2-086, Transcript 8 November 2004, pp. 93-96.

⁹⁴³ TF2-222, Transcript 17 February 2005, p. 122.

⁹⁴⁴ TF2-005, TF2-014, TF2-017, TF2-021, TF2-068, TF2-073, TF2-147.

561. The Prosecution submits that there is evidence that Kondewa is criminally responsible by way of planning, aiding and abetting, orders and expressed intention for looting and burning. The requisite elements for establishing the superior responsibility of Kondewa for the acts of the Kamajors have already been set out. It was not contested that there was a number of lootings and burnings in the evidence within the relevant period in the Indictment.

562. [REDACTED]
[REDACTED] For Example, TF2-073 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.⁹⁴⁵ 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, Kondewa, 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 Kondewa relaxing at the back being driven in witness' car with a mounted flag, and an inscription on the car-"King Kindo".⁹⁴⁶ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] These two pieces of evidence are glaringly composite acts of ordering, instigating and aiding and abetting as relevant modes of liability.

563. The Prosecution submits that there is further evidence of a direct nexus between the acts of Kondewa and the offences as charged. [REDACTED]
[REDACTED]

[REDACTED] At that time Norman authorized

⁹⁴⁵ TF2-073, Transcript 2 March 2005, pp. 30-33.

⁹⁴⁶ TF2-073, Transcript 2 March 2005, p. 45.

⁹⁴⁷ TF2-068, Transcript 17 November 2004, p. 92.

⁹⁴⁸ TF2-005, Transcript 17 February 2005, Closed Session, p. 110.

and ordered the commandeering of properties.⁹⁴⁹ Direct criminal responsibility for looting and burning for the Bo crime base were made manifest in the testimonies of several witnesses.⁹⁵⁰ In Talia, in one meeting held by Norman, again in the presence and with the support of Kondewa, he instructed commanders to burn houses except the mosque, Barri, and the school.⁹⁵¹

564. Norman gave direct orders to burn down houses and loot big shops and pharmacies in Bo.⁹⁵² At that meeting Kondewa was not only present but actively supported Norman's speech and even gave his own exhortation to the Kamajors.⁹⁵³ Witness TF2-190 stated that whilst Kondewa in presence of Hinga Norman and Moinina Fofana was giving his contribution he said that the Kamajors should never be afraid at the battle front as his spiritual power is with them.⁹⁵⁴

565. [REDACTED]

566. The Prosecution refers to the incident contained in the evidence of TF2-073 wherein his Mercedes Benz car was looted from his home in Sembehun by Kamajors, acting under the instructions of the Third Accused, Allieu Kondewa. The vehicle was brought to Base Zero and used by Kondewa himself until it was retrieved through the assistance of ECOMOG. The Prosecution submits that this was an incident well within the knowledge of the First and Second Accused, and it is further submitted they passively supported or condoned the act and ought properly to share responsibility as accessories.

⁹⁴⁹ TF2-014, Transcript 10 March 2005, p. 66, where the witness stated that "[w]e got the Honda from the Jياما Bongor Chieftdom from Africare. We commandeer it and took it from there, from the NGOs. That was done on an order."

⁹⁵⁰ TF2-198, Transcript 15 June 2004, pp. 37-38; TF2-157, Transcript 16 June 2004, pp. 20-22.

⁹⁵¹ TF2-008, Transcript 16 November 2004, p. 79.

⁹⁵² TF2-017, Transcript 19 November 2004, Closed Session, p. 94; TF2-014, Transcript 10 March 2005, pp. 70-71 where the First Accused told the Witness "[w]hen you go down to Bo the southern pharmacy should be looted and bring all the medicines to me."

⁹⁵³ TF2-190, Transcript 10 February 2005, p. 45.

⁹⁵⁴ TF2-190, Transcript 10 February 2005, p. 45.

⁹⁵⁵ TF2-223 – 28 September 2004, at page 100-101

567. There is evidence from Witness Borbor Tucker that he acted on instructions given by Hinga Norman to remove three cars, located in the Special Security Division Headquarters. The three cars, with knowledge of their source, were given to Moinina Fofana, the Third Accused and Prince Brima.⁹⁵⁶

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

Kondewa's 6.1 under Count 6 and 7

568. The Prosecution submits that the evidence indicates that Kondewa planned, instigated or otherwise aided and abetted in the planning, preparation, or execution of terrorizing and collectively punishing the civilian population. Evidence from insider witnesses such as TF2-005, TF2-008, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, and TF2-222 substantiated the Prosecution submission of individual criminal responsibility with regards to the offences as charged in the Indictment.

569. Evidence of physical acts of terrorizing the civilian population and collective punishment through means of violent threat of intimidation, physical violence, mental suffering and looting was presented through the testimony of witnesses TF2-014, TF2-022, TF2-033, TF2-039, TF2-040, TF2-041, TF2-079, TF2-151, TF2-154, TF2-159, and TF2-176.

570.

[REDACTED]

571. TF2-188 gave graphic evidence that Kondewa gave orders for her mother to be killed.⁹⁵⁸ The witness met her mother who told her the Kamajors were going to kill her. Her

⁹⁵⁶ TF2-190, February 10, 05, at p. 60-62

⁹⁵⁷ TF2-223, Transcript 28 September 2004, Closed Session, pp. 110-112.

⁹⁵⁸ TF2-188, Transcript 31 May 2005, p. 15.

mother told her that Kondewa 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.⁹⁵⁹ Under cross examination, the witness identified Kondewa as the person who ordered the death of her mother.⁹⁶⁰ No question of mistaken identity was alleged, and neither was the substantive act of the order to kill challenged under cross-examination.

572. The Prosecution presented evidence of Kondewa's effective participation in the military strategy and operations of the Kamajors. The fact that Kondewa is illiterate does not deprive him of the ability to order or instigate crimes.⁹⁶¹ TF2-222 gave evidence that at one instance Kondewa deployed Kamajors at Sumbuya and Koribundo.⁹⁶² Records of unlawful killings, physical violence and mental suffering and looting and burning were presented to the Trial Chamber, consequent to the Third Accused's deployment order.⁹⁶³
573. Exhibit 169, dated 19 June 2003, Defence Witness Joseph D. Murana narrated an episode in which Kondewa together with 60 of his Kamajors had attacked his house and threatened to kill him.⁹⁶⁴
574. The Prosecution submits that direct criminal liability was also manifest in the evidence of TF2-096 when she testified that one day she was collecting water from the well near Norman's house when she saw Kamajors singing. Kondewa was leading the group, in which two people were dancing. She saw Kondewa 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.⁹⁶⁵
575. Witness TF2-079 testified that Fofana introduced him Kondewa. 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 Kondewa

⁹⁵⁹ TF2-188, Transcript 31 May 2005, pp. 15-18.

⁹⁶⁰ TF2-188, Transcript 31 May 2005, p. 31.

⁹⁶¹ Kondewa Motion, para. 48.

⁹⁶² TF2-188, Transcript 31 May 2005, p. 93.

⁹⁶³ TF2-012, TF2-032, TF2-157, TF2-159, TF2-162 and TF2-190.

⁹⁶⁴ Exhibit P169, Investigator's Notes – Interview of Chief Joseph Murana to the Office of the Prosecutor Dated 19 June 2003.

⁹⁶⁵ TF2-096, Transcript 8 November 2004, pp. 24-27.

in the hierarchy of the Kamajors. Kondewa was third in command and privy to all inner core war planning meetings.⁹⁶⁶ [REDACTED]

[REDACTED] Thus, Kondewa had intimate and integral knowledge of the war machinery of the Kamajor militia.

576. Evidence of Kondewa'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 Norman that the Kamajors should now concentrate on taking Bo, and ignore Freetown. The planning and implementation was left in the hands Norman, Fofana and Kondewa.⁹⁶⁸ This piece of evidence taken in context with other facts in issue, such as the direct orders to loot and kill by Norman, in the presence of the Kondewa and his tacit support by endorsing the orders goes to show the substantial contribution of Kondewa to the commission of the crimes by Kamajors in the course of the Bo attack.

577. [REDACTED]
[REDACTED]
[REDACTED]

578. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

579. Witness TF2-187 presented evidence that the Kamajors prepared for Norman's visit by having Kondewa's boys capture pregnant women and take them to the court barri. The women were tied up standing. When they heard the sound of the plane, the Kamajors slit the stomach of the women and then the cut off the head of the fetus. The Kamajors put each of the head on a separate stick. The three women died. The three sticks with the heads were tied together; when that was done it was like a flag and was placed at the

⁹⁶⁶ TF2-005, TF2-011, TF2-008, TF2-014, TF2-190, TF2-201, TF2-222.

⁹⁶⁷ TF2-079, Transcript 26 May 2005, Closed Session, pp. 38-39.

⁹⁶⁸ TF2-008, Transcript 16 November 2004, pp. 93-94.

⁹⁶⁹ TF2-201, Transcript 4 November 2004, Closed Session, p. 107.

⁹⁷⁰ TF2-210, Transcript 4 November 2004, Closed Session, p.72.

⁹⁷¹ TF2-201, Transcript 5 November 2004, Closed Session, p.56.

junction. The junction was the junction to Mattru. When the women were killed at the barri, there were civilians present as well as Kamajors.⁹⁷²

580. 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 given by the witness to protect one Koroma and the Third Accused was present when the money (600,000 Leones) was handed over. Later Kondewa took Koroma away. The witness also paid money to protect others, including Chief Bureh Kalo.⁹⁷³
581. Witness TF2-071 gave evidence that Kondewa was in Bonthe before the final payment was made to release his father. Other payments had been made before then. The money was only paid, "because Kondewa had come and he had the only authority to release my father."⁹⁷⁴
582. Witness TF2-056 gave evidence that he saw a 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 and 10 bushels of rice for the release of the two men. The witness also paid for the release of another Limba man, a neighbor, who was arrested as junta. The man was beaten and forced 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 also paid for the release of a woman who had been the cook for Mosquito.⁹⁷⁵
583. 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.⁹⁷⁶
584. Finally, witness TF2-096 testified that by the time she arrived at Nyandehun her friend was in a cage. Kondewa and the Kamajors were present. People gathered to try and help

⁹⁷² TF2-187, Transcript 1 June 2005, pp. 17-21, 29-35.

⁹⁷³ TF2-147, Transcript 10 November 2004, pp. 54, 56, 60-63.

⁹⁷⁴ TF2-071, Transcript 12 November 2004, Closed Session, pp. 46-48.

⁹⁷⁵ TF2-056, Transcript 7 December 2004, pp. 67-82.

⁹⁷⁶ TF2-166, Transcript 8 March 2005, p. 69-70.

the girl. The witness's husband said that the Kondewa wanted 40,000 Leones to release the girl. The money was given by the husband to the Third Accused.⁹⁷⁷

585. The Prosecution led further evidence on collective punishment through the evidence of Witness TF2-079 who testified that, on the return of Kamajors from Gendema, Norman sent a message that "all those chiefs who are not in favour of the Kamajors should be killed." Norman also sent a message "that civilian collaborators, those who are sympathising with the AFRC/RUF rebel should also be killed. And the paramount chiefs who are not in favour of the Kamajors should also be killed."⁹⁷⁸ The witness said also, that paramount chief at Dama Chiefdom, Chief Dassama was killed by Kamajors following Norman's orders.⁹⁷⁹

586. The Prosecution submits that evidence beyond reasonable doubt has been presented that Kondewa planned, instigated, ordered, aided and abetted the crimes charged in the Indictment and that Kondewa had effective control over Kamajor subordinates.

Count 8: Use of Child Soldiers

Kondewa's 6.1 under Count 8

587. Child soldiers were sourced by the CDF by initiating or enlisting children under the age of 15 years into armed forces or groups and in addition, or in the alternative, using them to participate actively in hostilities. Nonetheless, the Prosecution witnesses TF2-004, TF2-021, TF2-140 gave unchallenged viva voce evidence of coercive recruitment and direct participation in active hostilities. Kondewa's modes of liability under this count include commission, aiding and abetting and instigation.

588. 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 Kondewa had a child soldier as a bodyguard at Base Zero.⁹⁸⁰

⁹⁷⁷ TF2-096, Transcript 8 November 2004, pp. 34-36.

⁹⁷⁸ TF2-079, Transcript 26 May 2005, p. 20.

⁹⁷⁹ TF2-079, Transcript 26 May 2005, p. 23.

⁹⁸⁰ TF2-079, Transcript 27 May 2005, pp. 12-13.

589. Witness TF2-014 gave unchallenged and uncontroversial evidence that at Base Zero, there were Kamajors as young as six years of age. Witness knew a Kamajor called Junior Spain, who was between twelve to fifteen years old. Kamajors would go to war at an early age, so long as they had been initiated into the Kamajor society.⁹⁸¹

590. 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. Witness was then initiated by Kondewa (Papay Konde).⁹⁸² The Kamajors looted and then burnt the houses. Boys carried the property to Kenema.⁹⁸³ At the Moa River, the Kamajors shot the three women. They were shot because they were the wives of rebels.⁹⁸⁴ The witness was initiated, and German gave him 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.⁹⁸⁵

591. 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. They then went into the town and looted it, taking things of value.⁹⁸⁶

592. [REDACTED]

⁹⁸¹ TF2-014, Transcript 11 March 2005, p. 15-16.

⁹⁸² TF2-021, Transcript 2 November 2004, p. 39.

⁹⁸³ TF2-021, Transcript 2 November 2004, p. 33.

⁹⁸⁴ TF2-021, Transcript 2 November 2004, p. 35.

⁹⁸⁵ TF2-021, Transcript 2 November 2004, pp. 43-44.

⁹⁸⁶ TF2-021, Transcript 2 November 2004, p. 45-46.

⁹⁸⁷ Exhibit 100: Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces, 4 May 2006.

⁹⁸⁸ TF2-EW2, Transcript, 16 June 2005, Closed Session, p. 68.

⁹⁸⁹ TF2-EW2, Transcript, 16 June 2005, Closed Session, p. 82.

⁹⁹⁰ TF2-EW2, Transcript, 16 June 2005, Closed Session, p. 91.

Kondewa's 6.3 under Counts 1-8

593. Turning to Kondewa's 6.3 command responsibility under this count there is overwhelming evidence to show that Kondewa exercised effective command and control over the Kamajors, and that he was one of the three pillars of leadership of the CDF. Kondewa 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.⁹⁹¹
594. In addition, it is submitted that Kondewa, as High Priest of the Kamajors bears responsibility for murder at Base Zero for his failure to prevent such murders or punish the perpetrators. Again, given Kondewa's extended stay in Talia, 1996 through 1998 and particularly his personal participation in or presence during acts of murder, the only reasonable inference is that Kondewa knew that civilians and collaborators were being killed by Kamajors. The trial record contains no evidence of disciplinary measures or other punishment of the Kamajors who participated in murder. Vanjawai after being investigated and found guilty of murder by the War Council,⁹⁹² continued to serve as a Kamajor and was even promoted and remained a commander until the end of the war. The repeated failure to prevent or punish unlawful killings only served to encourage and promote more killings by Kamajors.
595. The Prosecution presented evidence 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 evidence is supported by the testimony of witness TF2-008 when he testified that the Third Accused had to bless the Kamajors before they went to the war front, "so they have to go to him."⁹⁹³ 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.⁹⁹⁴
596. 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

⁹⁹¹ TF2-005, TF2-008, TF2-014, TF2-068, TF2-222.

⁹⁹² TF2-008, Transcript 17 November 2004, p. 36-37.

⁹⁹³ TF2-008, Transcript 23 November 2004, p. 58.

⁹⁹⁴ TF2-008, Transcript 23 November 2004, p. 59.

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.⁹⁹⁵ 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 Kondewa.⁹⁹⁶ Witness TF2-008 further gave evidence that the Kamajor Commanders only take instructions from Hinga Norman, Moinina Fofana and the Third Accused.⁹⁹⁷

597. Effective command over subordinates became evident in the testimony of witness TF2-071 who stated that the pleadings of the Reverend Father Garrick (TF2-147) and monies paid by way of ransom were unable to secure the release of his father from the hands of the Kamajors, who had sworn that only their boss would authorize his release. He stated that it was only the arrival of the Third Accused and a final payment of a sum of money that secured his father's release.⁹⁹⁸

598. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

599. The Prosecution submits that there is evidence beyond reasonable doubt to demonstrate that Kondewa 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.

600. Witness TF2-014 gave evidence that in the presence of Moinina Fofana and Kondewa; Hinga Norman permitted the Kamajors to kill the Junta Forces and their sympathizers, and burn and loot their properties.¹⁰⁰⁰ He gave evidence that that Hinga Norman always made decisions in consultation with Moinina Fofana and Kondewa.¹⁰⁰¹ Witness TF2-079 testified that Kondewa had requested for and provided logistics for commanders of fighting groups of his own choice. Those groups included the Vanjawai's group and the

⁹⁹⁵ TF2-008, Transcript 16 November 2004, pp. 49.

⁹⁹⁶ TF2-008, Transcript 16 November 2004, pp. 58-59.

⁹⁹⁷ TF2-008, Transcript 17 November 2004, pp. 48.

⁹⁹⁸ TF2-071, Transcript 12 November 2004, Closed Session, pp. 46-48.

⁹⁹⁹ TF2-223, Transcript 28 September 2004, Closed Session, pp. 101-102.

¹⁰⁰⁰ TF2-014, Transcript 10 March 2005, pp. 37-39.

¹⁰⁰¹ TF2-014, Transcript 14 March 2005, p. 7.

Death Squad. Kondewa provided logistics to Vanjawai's group and the Death Squad.¹⁰⁰²

There were reports of crimes committed by the Death Squad reaching the War Council at Base Zero, and Kondewa was present at those sittings. Therefore, Kondewa cannot deny knowledge of the crimes.

601.

[REDACTED]

602. 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 them were related to Kondewa. The witness stated that he was not aware that Kamajors were punished by Kondewa after all the reports that were made to him.¹⁰⁰⁴

603. The Prosecution presented evidence that a Kamajor called Vanjawai, who was attached to Kondewa was never punished for committing murder.¹⁰⁰⁵

604.

[REDACTED]

605. 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.

¹⁰⁰² TF2-079, Transcript 26 May 2005, pp. 42.

¹⁰⁰³ TF2-017, 22 November 2004, Closed Session, p. 46.

¹⁰⁰⁴ TF2-147, Transcript 10 November 2004, pp. 49, 66.

¹⁰⁰⁵ TF2-014, Transcript 11 March 2005, pp. 14, 20.

¹⁰⁰⁶ TF2-005, Transcript 15 February 2005, Closed Session, pp. 95-100.

606. When all of the evidence is viewed as a whole, the only reasonable conclusion is that Kondewa's failure to act in stopping the killings and or to punish the perpetrators amounted to a failure to prevent or punish for the purposes of Article 6(3) of the Statute.

VI. Conclusion

607. The Prosecution submits that on the basis of all the evidence presented during its case, the Trial Chamber will be satisfied beyond reasonable doubt of the guilt of Kondewa under all counts of the Indictment. On the basis of the evidence, it is safe to conclude that Kondewa was a party to an orchestrated campaign extending systematically to diverse geographical crime bases. It is also safe to conclude that each of the jointly charged defendants participated in the campaign to the full extent alleged in the Indictment.

PART X

EVIDENTIARY CONSIDERATIONS OF GENERAL APPLICATION

Key Witnesses

608. Clearly, no single witness was in a position to describe all of the events described in the Indictment. Witnesses described events from their own vantage points, according to the level of their knowledge and understanding of the events. However, four witnesses in particular may assist the Court in understanding the workings of the CDF, from inside and outside the organization. The victims of the crimes gave compelling evidence of what befell them, but could not necessarily describe the organization in which the perpetrators served.

Nallo

609. The first witness for consideration is Albert Nallo who was a 51 year old male agricultural instructor and parish development field officer. The credibility of Nallo, for obvious reasons, was subject to close scrutiny by the defence. Nallo operated within the core of the CDF, from Base Zero, and could describe with clarity how the organization operated under the command of the three accused persons.

610. It is submitted that the testimony of Nallo was not adversely impacted upon by cross-examination by defence counsel. He remained a credible and reliable witness; indeed, his evidence across the broad range of his testimony is supported by many other witnesses as outlined below.
611. For example, evidence was led concerning the killings of two CDF combatants, Alpha Dauda Kanu and Mustapha Fallon. Nallo spoke about the death of those two men, as did other prosecution witnesses. Nallo said that Mustapha Fallon was killed at Base Zero; Dr Allieu Kondewa and Chief Hinga Norman and Moinina Fofana were there when he was killed. “They laid him and they cut off his throat.” The killing took place “In the Poro Bush when we were at Talia Yawbeko, known as Base Zero.” “Allieu Kondewa said that we needed human sacrifice so as to protect the fighters.” Fallon was a Kamajor.¹⁰⁰⁷
612. Nallo said Alpha Dauda Kanu, a Kapra, was killed in an oil palm plantation when going towards Mokusi. Kanu was killed by Dr Allieu Kondewa, Hinga Norman, and Moinina Fofana. “He was hacked to death, and we took off his skin.”¹⁰⁰⁸ The Prosecution submits that the defence witnesses who testified on that issue were not of such a nature that they impugned the overall credibility of Nallo.
613. The Prosecution maintains that those two men died in the manner described by Nallo and others. The Prosecution includes the *killings* of Alpha Dauda Kanu and Mustapha Fallon under Count 1 (murder as a crime against humanity) and Count 2 (violence to life, health and physical or mental well-being of persons, in particular murder. The murder of those two men also demonstrates the power and control each of the accused men had over the CDF; they could kill their own people without fear of reprisal or sanctions.
614. Returning to Nallo’s narrative he said that before the war, there were hunters all over Sierra Leone, controlled by the paramount chiefs. The Kamajor society was started in 1993 or 1994 by Dr Alpha Lavalie in Kenema.¹⁰⁰⁹
615. After the coup, Eddie Massalay put out an announcement through the BBC for Kamajors all over Sierra Leone, the Kapras, Gbethis, Tamaboros, Donsos and Donsoras to take up

¹⁰⁰⁷ TF2-014, Transcript 10 March 2005, p. 56.

¹⁰⁰⁸ TF2-014, Transcript 10 March 2005, p. 59.

¹⁰⁰⁹ TF2-014, Transcript 10 March 2005, p. 8.

arms against the AFRC and flush them out of the country. When Norman joined the Kamajors in Gendema, Eddie Massalay relinquished his position as chairman and had Hinga Norman as the National Coordinator.¹⁰¹⁰ Chief Norman appointed Moinina Fofana as Director of War.¹⁰¹¹

616. Kondewa was a Kamajor initiator. Kondewa created different groups and initiations within the Kamajor movement. Kondewa had one initiate's body sacrificially immolated at Sogbini. He used the initiates' ashes in a ritual to mark and "protect" newer initiates.¹⁰¹²
617. Nallo went to Base Zero and was appointed as the National Deputy Director of Operations and Regional Director of Operations Southern Region in charge of Bonthe, Moyamba and Pujehun -- Bo, Bonthe, Moyamba and Pujehun, by Hinga Norman.¹⁰¹³
618. Nallo's role as National Deputy Director of Operations was to take instructions from Hinga Norman, both general and specific and transmit the orders to the war front people. He collected reports from the front and submitted them to the National Coordinator, through the Director of War, Moinina Fofana. Nallo collected arms and ammunition and took them to the war front to the fighters. He frequently visited front lines to ascertain reports and the position of the troops and ensure they had logistics. Nallo sat with Moinina Fofana to plan strategies for the southern region.¹⁰¹⁴
619. Nallo stayed at Base Zero for six months. He used a Honda motorcycle to move around; he made reports both in writing and verbally. General orders came from Norman. "It's from him that all directives emanated." Those orders were distributed to the Kamajors -- Norman "would go to a training ground, that was the general order, and he would give the orders to the Kamajors. He would give some to me and I would take my bike and I would pass right round in order to tell the commanders, so that it would reach the people."¹⁰¹⁵

¹⁰¹⁰ TF2-014, Transcript 10 March 2005, p. 14.

¹⁰¹¹ TF2-014, Transcript 10 March 2005, p. 17.

¹⁰¹² TF2-014, Transcript 10 March 2005, p. 24.

¹⁰¹³ TF2-014, Transcript 10 March 2005, p. 32.

¹⁰¹⁴ TF2-014, Transcript 10 March 2005, p. 3.

¹⁰¹⁵ TF2-014, Transcript 10 March 2005, p. 35.

620. General orders described the Kamajors' enemies. Norman said, "All AFRC fighters were our enemies, and collaborators and sympathisers who were also enemies. " Norman also said that enemies included:

[s]ympathisers, collaborators, and those who refused deliberately to leave the AFRC and RUF zones, those were our enemies and that we should kill them, no problem. He said we should . . . not be sorry for them at all because Kamajors don't have food, not have house to keep these people. So the best way of getting rid of enemy is to exterminate him. He further sanctioned looting of their property and burning down of their houses.¹⁰¹⁶

Here Norman clearly directs Kamajors to believe that their "enemies" include civilians occupying AFRC/RUF stronghold areas. Norman also gives Kamajors a directive to exterminate people rather than keep any prisoners. The justification for this brutal policy: the CDF simply has no place to house prisoners.

150. Norman further approved the looting of property belonging to "sympathisers, the collaborators and those who are behind the AFRC line those [who] were not in our own operational area." When Norman gave those instructions the War Council was with Kondewa and Fofana. TF2-014 recalled five captured RUF soldiers being brought to Base Zero: "[w]hen they brought them to Base Zero, they handed them over to the Death Squad and they tortured them to death."¹⁰¹⁷

621. In a conflict involving thousands of combatants on each side it reasonable to suppose that prisoners were taken by the CDF. It is clear from the evidence that there were no facilities to keep prisoners; as Nallo says, and what he says is consistent with other evidence, prisoners were killed and that order came from Norman supported by Kondewa and Fofana. At the same time persons found to be sympathisers, the collaborators and those behind the AFRC line that were not in the operational area of the CDF, were not the subject of incarceration. The CDF upon capturing a person who fell under the very broad definition described above was killed; under the CDF command structure there was no other alternative.

¹⁰¹⁶ TF2-014, Transcript 10 March 2005, p. 37 (lines 7-14).

¹⁰¹⁷ TF2-014, Transcript 10 March 2005, p. 34.

622. The Death Squad was “a special group that was with Norman, who are only answerable to Hinga Norman, who was charged with responsibility of torturing people and killing them. They were not answerable to anybody except Hinga Norman.”¹⁰¹⁸
623. Nallo nominated the members of the War Council, which included PC Joe William Quee of Kowa Chiefdom, Moyamba District, and the chairman of the council. Nallo said he did not take orders from the War Council, “They did not have that power at all. Everything was directed to Hinga Norman. He had the last say. They used to recommend. They recommend to Chief Hinga Norman.”¹⁰¹⁹
624. Norman directed Nallo to kill people around Base Zero; Fofana was also present at the time of the direction in Norman’s house. Norman said, “Director of Operations has received information that someone saw rebels, sympathisers and collaborators, they’ve surrounded our base. That shouldn’t happen, it is dangerous.”¹⁰²⁰ Norman gave a command that Nallo should go on an operation to get rid of all the collaborators, rebels and sympathisers around the base. The witness went to Dodo village in Jong Chiefdom, Bonthe District with two persons Moinina Fofana sent with him who knew the terrain. The two men, Momoh Pemba and Billo Conteh, were to give TF2-014 an idea of the area’s terrain.¹⁰²¹
625. The defence called witnesses to testify that Nallo did not kill the person that he claimed to have killed. The persons called to testify were still loyal to the Kamajors movement. Nallo maintained that he killed people at the request of Norman; the Prosecution submits that Nallo did kill civilians and he displayed frankness to the Court in admitting to the atrocities he committed during the war. As an insider one can rely on his evidence, especially as his testimony in respect of the power and authority of the three accused men is supported by other witnesses, by Norman’s testimony and by certain exhibits.
626. At Dodo Nallo told the villagers that they were rebels and opened fire on them. “We killed over 15 of them. We burnt down their houses.”¹⁰²² Dodo is about 7 to 8 miles from where Base Zero was located.¹⁰²³ Nallo spoke about going to their villages; at

¹⁰¹⁸ TF2-014, Transcript 10 March 2005, p. 38.

¹⁰¹⁹ TF2-014, Transcript 10 March 2005, p. 42.

¹⁰²⁰ TF2-014, Transcript 10 March 2005, p. 42.

¹⁰²¹ TF2-014, Transcript 10 March 2005, p. 45.

¹⁰²² TF2-014, Transcript 10 March 2005, p. 45.

¹⁰²³ TF2-014, Transcript 10 March 2005, p. 46.

Sorgia village he tortured Joseph Lansana and killed that person's mother. Nallo also spoke about killing a Fullah man, at a road block going to the trade fair at Baoma.¹⁰²⁴

627. Moinina Fofana was also present in Norman's room when the orders were given. Hinga Norman said, "[w]hen you go down to Bo the southern pharmacy should be looted and bring all the medicines to me." Norman instructed Kamajors to kill PC Veronica Bagni, Joe Kpundoh Boima III, Paramount chief of Bo Kakua and other persons.¹⁰²⁵
628. Norman said the Police officers were to be killed because they continued to work for the juntas, so they are collaborators.¹⁰²⁶ Nallo carried out the orders, but not fully because he did not see those people. Nallo burned their houses and looted their properties.
629. With regard to Koribundo, Norman said, "Well, we have attacked Koribundo many times; we are not able to capture it. The cause of that acrimony was that the civilians in Koribundo had given their children to the juntas, in marriage. So they were spies and collaborators. So when I go down to Koribundo, let me see that nobody should be left, not even a farm. All houses should be burned." Petrol was given for that operation.¹⁰²⁷
630. Nallo's role was to be the Director of Operations for the attack on Koribundo. The Kamajors burnt the place. Nallo then was ordered to go to Bo. Nallo took over for his deputy. Borbor Tucker brought a surrendered soldier to him called John Hota. As Nallo said, "Norman had given instructions 'that we did not have food and house to keep surrendered soldiers, so we should kill them when we capture them.'"¹⁰²⁸ Tucker asked him not to kill Hota, so Nallo sent a message to Norman. Norman, in response, sent back four Kamajors from Base Zero, Death Squad, who killed the prisoner.
631. A week after the capture of Bo, Norman came there and spoke to Nallo. Norman said, "Have you forgotten the other order that I gave, which was a standing order?" He said, "I was the one that sent my boys, the Death Squad, so as to come and finish away with John Hota for whom you sent a particular message and the others and those that were in your custody."¹⁰²⁹ Fix these quotations for format and accuracy. Refer to transcript.

¹⁰²⁴ TF2-014, Transcript 10 March 2005, pp. 46-54.

¹⁰²⁵ TF2-014, Transcript 10 March 2005, pp. 71-72.

¹⁰²⁶ TF2-014, Transcript 10 March 2005, p. 76.

¹⁰²⁷ TF2-014, Transcript 10 March 2005, p. 78.

¹⁰²⁸ TF2-014, Transcript 10 March 2005, p. 85.

¹⁰²⁹ TF2-014, Transcript 10 March 2005, p. 88.

632. There was a meeting in Bo with Norman along with Kamajors and civilians. Norman said, "You complain that Kamajors have been killing, Kamajors had burnt houses." He said, "I like Kamajor. I love Kamajors more than my own children. You should love Kamajors also. If any Kamajor did anything to you should not grumble about it."¹⁰³⁰
633. Nallo said that at Base Zero, at the time of the Bo attack, there were approximately 15,000 Kamajors. Some went to Koribundo and some went to Bo.¹⁰³¹ There were Kamajors at Base Zero from 6 years to 8 years old; there were Kamajors who were 12 years.¹⁰³²
634. Moinina Fofana was the Director of War. There was a Deputy Director of War Musa Orinko. Then the next level was National Director of Operations Joseph Koroma. There was National Deputy Director of Operations Albert Nallo who was also Regional Director of Operations, Southern Region. Musa Junisa was the Director of Operations Eastern Region. Dr Mohamed Mansaray was the Director of Operations Northern Region. The Director of Operations Western Region was Pa Lungba. There were battalion commanders and company commanders. The CDF had another structure when they left the bush. There were also squad commanders and platoon commanders.¹⁰³³
635. Nallo first told investigators from the Special Court that he did not want speak about Kamajor activity during the war because he was afraid.¹⁰³⁴ Nallo was initially afraid of apprehension by the Office of the Prosecutor. He was also afraid of the Kamajor code, the oath taken before National Coordinator Sam Hinga Norman, High Priest Allieu Kondewa and Director of War Moinina Fofana. The code insists that anyone explaining the Kamajor society to the uninitiated will be killed and turned into ashes.¹⁰³⁵
636. Nallo said there were three persons between him and Norman, namely Joseph Koroma; Mohamed Musa Orinco; Moinina Fofana, with Koroma being inactive.¹⁰³⁶ Nallo said, "I was an ordinary civilian that took up arms to fight for my land, to liberate it from the rebels. The National Coordinator from whom I took orders from, Captain Samuel Hinga Norman, he was an army officer, an old army officer. Rather, ex-army officer who

¹⁰³⁰ TF2-014, Transcript 10 March 2005, p. 89.

¹⁰³¹ TF2-014, Transcript 11 March 2005, p. 2.

¹⁰³² TF2-014, Transcript 10 March 2005, p. 15.

¹⁰³³ TF2-014, Transcript 10 March 2005, pp. 24-29.

¹⁰³⁴ TF2-014, Transcript 10 March 2005, p. 29. Check if this is the right part of the transcript.

¹⁰³⁵ TF2-014, Transcript 10 March 2005, pp. 34-35.

¹⁰³⁶ p38, 10 March 2005

attended Sanders Military Academy. So we gave him that respect that he should have guided us for lawful and unlawful order. So whatever order he gave to us, we thought it was right, because we are lay people.”¹⁰³⁷

637. As Nallo said, “The head of the War Council was Chief Hinga Norman, the national coordinator, and the chairman was answerable to him. So, anything that was decided by the War Council -- Norman had no deputy; he had been using Moinina Fofana and Dr Allieu Kondewa. They would decide and give the final report, what the War Council recommended.” Norman made decisions in consultation with Fofana and Kondewa. At one time the lives of the War Council members were at risk.¹⁰³⁸ What does this mean?

638. The War Council did have one meeting in Kenema, after Base Zero but its recommendations were not followed.¹⁰³⁹ Nallo said that at first they were under chiefdoms. When Hinga Norman took over, all the instructions coming from Base Zero were the ones which he followed. Nallo issued orders and controlled matters through his commanders.

639. Nallo said that Fofana would suggest strategies, but as he was illiterate Nallo would write them down and present the strategies to the War Council.¹⁰⁴⁰ Nallo said when they came from the bush Norman was appointed the National PRO. Allieu Kondewa was dropped. The War Council members had become inactive because Norman had threatened and intimidated them.¹⁰⁴¹

640. When they were in the bush the three accused were in control; they were making all major decisions.¹⁰⁴² Nallo agreed that Fofana was a member of the War Directorate Office; he was head whilst Nallo was a member.¹⁰⁴³ The Office was formed in 1999. Nallo agreed that Kondewa was not a fighter, he did not command troops; he had bodyguards.¹⁰⁴⁴

¹⁰³⁷ TF2-014, Transcript 10 March 2005, p. 93.

¹⁰³⁸ TF2-014, Transcript 14 March 2005, p. 7.

¹⁰³⁹ TF2-014, Transcript 14 March 2005, p. 15.

¹⁰⁴⁰ TF2-014, Transcript 14 March 2005, p. 56.

¹⁰⁴¹ TF2-014, Transcript 15 March 2005, p. 33.

¹⁰⁴² TF2-014, Transcript 15 March 2005, p. 35.

¹⁰⁴³ TF2-014, Transcript 15 March 2005, p. 43.

¹⁰⁴⁴ TF2-014, Transcript 15 March 2005, p. 46-47.

641. Nallo agreed that in Bo, "The police, the Friday that they entered, the Sunday after that, that's when the fighting was on. Apart from that, we captured them and whenever we captured any one of them, we'd kill them." "Anyone whom we captured, we'd kill."¹⁰⁴⁵
642. Nallo said, "The CDF had good intentions for this country. We all went to the CDF to fight for the restoration of the government of the day, to see to it that the government of the day returns. But during the cause, My Lord, we deviated from that through the directive of the National Coordinator of CDF, Chief Sam Hinga Norman, captain."¹⁰⁴⁶

TF2-068

643. [REDACTED]
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647. [REDACTED]
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¹⁰⁴⁵ TF2-014, Transcript 15 March 2005, p. 55-56.

¹⁰⁴⁶ TF2-014, Transcript 15 March 2005, p. 58.

¹⁰⁴⁷ TF2-068, Transcript 17 November 2004, p. 84.

¹⁰⁴⁸ TF2-068, Transcript 17 November 2004, p. 87.

¹⁰⁴⁹ TF2-068, Transcript 17 November 2004, p. 88.

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Colonel Iron

¹⁰⁵⁰ TF2-068, 17 Transcript November 2006, p. 90.

¹⁰⁵¹ TF2-068, 17 Transcript November 2006, p. 91.

¹⁰⁵² TF2-068, 17 Transcript November 2004, p. 92.

¹⁰⁵³ TF2-068, 17 Transcript November 2006, p. 93.

¹⁰⁵⁴ TF2-068, 17 Transcript November 2006, p. 95.

¹⁰⁵⁵ TF2-068, 17 Transcript November 2006, p. 97.

¹⁰⁵⁶ TF2-068, 17 Transcript November 2006, p. 100.

¹⁰⁵⁷ TF2-068, 17 Transcript November 2006, p. 109.

¹⁰⁵⁸ TF2-068, 18 Transcript November 2004, p. 18.

¹⁰⁵⁹ TF2-068, 18 Transcript November 2004, p. 18.

654. The next witness provides an expert assessment of the military structure of the Kamajors during the relevant period. Colonel Iron of the British Army tendered a report which sought to describe the extent to which the CDF was a military organization and the extent to which command was effective in the circumstances of the war.¹⁰⁶⁰
655. The expert, who had both extensive practical military experience and academic qualifications, was asked whether the CDF had a military hierarchy and structure. The second question was whether the CDF exhibited the characteristics of a military organisation. The third question was whether the organisation was coherent one. Lastly, it was asked whether the command was effective.
656. Colonel Iron's testimony is consistent with the witnesses that testified throughout the trial. Colonel Iron provided an expert overlay to assist the Court, but he also mirrored the testimony of other witnesses, while offering the Court the benefit of this rational objectivity. He described himself as "an impartial analyst".¹⁰⁶¹
657. The expert said that the CDF organisation evolved over time. Prior to the coup in 1997 the CDF was organised on what might be described as territorial grounds. They were distributed territorially, organised on a chiefdom basis and they operated in their own local areas.¹⁰⁶²
658. After the coup, the organisation changed. The CDF was expelled from many of its areas, and there was the beginning of a new structure. Headquarters was established in Talia, in Bonthe District, and for the first time, there was the creation of a large centralised body of CDF fighters in Talia. That force became an offensive force, or a counterattack force.¹⁰⁶³
659. The CDF became a hierarchal structure, commanded by Hinga Norman. As to control, the expert said that it was mixed, at the strategic and operational level, command was highly effective. At the tactical level, command tended to be less effective because of the inexperience and lack of training of many of the junior commanders.¹⁰⁶⁴
660. As Iron described, "After the coup, the Kamajors were driven from many of their traditional areas; the chiefdom structure of the CDF broke down; they were under attack

¹⁰⁶⁰ Exhibit P97:

¹⁰⁶¹ Colonel Richard Iron, Transcript 14 June 2005, p. 68.

¹⁰⁶² Colonel Richard Iron, Transcript 14 June 2005, p. 28.

¹⁰⁶³ Colonel Richard Iron, Transcript 14 June 2005, p. 29.

¹⁰⁶⁴ Colonel Richard Iron, Transcript 14 June 2005, p. 30.

from the AFRC and RUF, who, at this stage, were much stronger than the CDF. So the CDF leadership recognised that they must first preserve their organisation and then build up their strength so as then subsequently to counter-attack against junta forces. The establishment of a safe base, a safe haven, at Talia was a strategic decision that ensured the survival of the CDF. And the decision to mass recruit people directly into the CDF rather than through the chieftdom system allowed a significant recruitment, a significant enlargement of the CDF and the creation of an offensive force, an offensive capability at Base Zero in Talia.”¹⁰⁶⁵

661. As to military strength, the expert indicated that the number of combatants was difficult to assess accurately, but was 5,000 to 10,000 Kamajors around Talia with a similar number dispersed territorially.¹⁰⁶⁶

662. As to the communication system within the CDF the expert said that there were very few, if any, radios being used, so the communications had to be run by hand. Motorbikes and mopeds were also used. The expert noted that in the south and western area, the area under the direct control from Base Zero from Talia, including Bo and Koribundo operations, the flow of communications appears to have been good.¹⁰⁶⁷ Despite practical limitations, communications “throughout this period and throughout this region were good and the command, High Command, in Talia understood what was going on, on the ground, even if it was a few hours or maybe a few days later.”¹⁰⁶⁸

663. The expert was of the opinion the CDF had high morale. In addition, the process of initiation aided in the creation of cohesion within the CDF. This cohesion in a military organisation is very important, a sense of belonging. Initiation was an important part of building the morale component within the CDF. In addition, immunization was an important part of building the will to fight.¹⁰⁶⁹

664. The expert noted that there was a great deal of personal loyalty to Hinga Norman which helped to create cohesion. And the leadership's promotion of initiation and immunization was very important.¹⁰⁷⁰ Discipline was a very complex issue. Very strict

¹⁰⁶⁵ Colonel Richard Iron, Transcript 14 June 2005, p. 31.

¹⁰⁶⁶ Colonel Richard Iron, Transcript 14 June 2005, p. 32.

¹⁰⁶⁷ Colonel Richard Iron, Transcript 14 June 2005, p. 34.

¹⁰⁶⁸ Colonel Richard Iron, Transcript 14 June 2005, p. 35.

¹⁰⁶⁹ Colonel Richard Iron, Transcript 14 June 2005, p. 36.

¹⁰⁷⁰ Colonel Richard Iron, Transcript 14 June 2005, p. 36.

discipline was enforced in the obeying of orders, direct orders, and if a commander failed to obey, for example, one of Hinga Norman's orders, then he could expect to be punished. But there were other areas that in which discipline was lax where wrongdoings went uninvestigated and unpunished. This was particularly so in Base Zero. In the opinion of the expert, the environment, the culture, the ethos that was created in Base Zero transferred itself into the battle field. That is, if a Kamajor did something wrong it would not be investigated and punished¹⁰⁷¹ except if one did not follow Norman's orders.

665. Iron said there was a demonstrated level of coherence between the strategic, operational and tactical levels within the CDF, in particular at the higher, tactical levels.¹⁰⁷² Colonel Iron stated that there was definitely effective command, with the ultimate military power within the CDF belonging to Hinga Norman.¹⁰⁷³
666. The witness noted that there were two types of organisation within the CDF. There was the dispersed organisation and the focused organisation based at Talia. The expert focused mainly on the group operating in the southwest, mainly the Kamajors. The key to the CDF lay in its offensive capability in Talia.¹⁰⁷⁴
667. The witness said he had come across evidence which suggested that General Khobe did not assume personal responsibility for the organisation of the CDF after February 1998. It was the understanding of the witness that there was difficulty over command and the relationship between these two organisations.
668. The witness stated that the centralised command and control of most of the CDF had already been achieved before February 1998 with the creation of this major force at Talia. After the intervention and the recapture of much of Sierra Leone by ECOMOG and CDF, the CDF established its network of command to absorb the territorial forces that were in other regions, other than the south and west.¹⁰⁷⁵
669. The witness said that after February 1998, after the ECOMOG intervention, the CDF and ECOMOG tended to operate together. There were difficulties in command because it

¹⁰⁷¹ Colonel Richard Iron, Transcript 14 June 2005, p. 37.

¹⁰⁷² Colonel Richard Iron, Transcript 14 June 2005, p. 39.

¹⁰⁷³ Colonel Richard Iron, Transcript 14 June 2005, p. 40.

¹⁰⁷⁴ Colonel Richard Iron, Transcript 14 June 2005, p. 43.

¹⁰⁷⁵ Colonel Richard Iron, Transcript 14 June 2005, p. 47.

appears that ECOMOG attempted to take CDF forces under command. This was resisted by CDF commanders, including Hinga Norman.¹⁰⁷⁶

670. As to ECOMOG being in command, the expert said, the issue of command was about, not titular command, but effective command. In order to exercise effective command, one needs to have the responsibility to make decisions; be able to exercise leadership and be able to exercise control. *The person who exercised all three of these for the CDF was Hinga Norman.*¹⁰⁷⁷ The witness said prior to February 1998, ECOMOG forces did not operate in conjunction with the CDF in Sierra Leone. CDF operations were mounted by themselves prior to the ECOMOG intervention.¹⁰⁷⁸

671. Colonel Iron agreed that there was no established rank system within the CDF but each person knew his place, and everybody knew how the organisation worked. The expert doubted that government exiled in Guinea was able to either exert leadership or make decisions, or control what went on, on the ground with the CDF.¹⁰⁷⁹

672. The expert was of the opinion that as Talia was deep in the Kamajor area, so it fell to the Mende tribe and the Kamajors, essentially, to form the body of this capability that the CDF was able to create in 1997 and 1998.¹⁰⁸⁰ Colonel Iron classified the CDF as an unconventional army.¹⁰⁸¹

TF2-EW2

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¹⁰⁷⁶ Colonel Richard Iron, Transcript 14 June 2005, p. 49.

¹⁰⁷⁷ Colonel Richard Iron, Transcript 14 June 2005, p. 50 (emphasis added).

¹⁰⁷⁸ Colonel Richard Iron, Transcript 14 June 2005, p. 51.

¹⁰⁷⁹ Colonel Richard Iron, Transcript 14 June 2005, p. 70.

¹⁰⁸⁰ Colonel Richard Iron, Transcript 14 June 2005, p. 73.

¹⁰⁸¹ Colonel Richard Iron, Transcript 14 June 2005, p. 79.

¹⁰⁸² TF2-EW2, Transcript 14 June 2004, p. 11.

¹⁰⁸³ TF2-EW2, Transcript 14 June 2004, p. 13.

674.

[REDACTED]

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[REDACTED]

676. TF2-140 was a child soldier who traveled with Norman as his “personal son.” He spoke about traveling to Guinea with Norman. He stated, “shortly after we left Guinea, Chief Norman had a decision to say that all small boys were exempted from the war and, as such, he was trying to re-organise us in our numbers so that he could hand us over to programmes.”¹⁰⁸⁷ This testimony reveals that Norman was aware of the use of child soldiers and the need to stop using such children, especially upon the entry of international organizations into Sierra Leone.

677.

[REDACTED]

¹⁰⁸⁴ TF2-EW2, Transcript 16 June 2005, p. 17.

¹⁰⁸⁵ TF2-EW2, Transcript 16 June 2005, p. 18.

¹⁰⁸⁶ TF2-EW2, Transcript 16 June 2005, p. 19.

¹⁰⁸⁷ TF2-140, Transcript 14 September 2004, pp. 100 (lines 7-11).

¹⁰⁸⁸ TF2-EW2, Transcript 16 June 2005, p. 21.

678.

679.

General Observations in Relation to the Defence Evidence

680. It is appropriate that consideration be given to the matters raised by defence counsel on behalf of their respective clients, through witnesses and exhibits. It is the Prosecution's submission that the Defence, individually or as a whole, did not raise any reasonable doubts as to the criminal liability of the three accused persons.

681. The opening statements of defence counsel are not evidence; however, such pronouncements can assist in understanding the evidence brought by the respective defence teams. Admissions can be made through defence counsel and some issues were addressed in that form during the trial. For example Fofana, through his counsel, did not deny his membership of the CDF.

682. The Prosecution makes the following comments as to the nature of the defence case. In doing so, the Prosecution relies upon the application by the Trial Chamber of its combined knowledge and experience in arriving at the facts, before applying those findings to the legal framework. A number of issues can be resolved at the level of common sense, while others require the drawing of inferences after a careful review of the facts.

¹⁰⁸⁹ TF2-EW2, Transcript 16 June 2005, p. 24.

¹⁰⁹⁰ TF2-EW2, Transcript 16 June 2005, p. 25.

¹⁰⁹¹ TF2-EW2, Transcript 16 June 2005, p. 31.

683. It can be said that, generally, each of the accused has presented a similar defence. It cannot be suggested, or at least it would appear not to have been raised, that the Accused did not know each other, did not operate together in some capacity or that over the relevant time there was a divergence between them. The three Accused relied upon common witnesses in order to attempt to raise a reasonable doubt as to their respective guilt. The separate witnesses called by the respective defence teams dealt with matters that tended only to impact on one particular accused, rather than seek to distance themselves from the activities of the other accused men. That is, overall, the defence sought to raise a unilateral defence, namely that the Accused were not criminally responsible for the unlawful activities of the CDF.

684. In considering generally the defence, it is submitted a number of propositions arise out of the manner in which witnesses and exhibits were approached. These matters are raised so that when the Trial Chamber comes to consider the evidence presented against each of the Accused it can be seen that no effective defence has been raised by any of them. The Defence have provided a number of theories as to how the criminal acts were committed by the CDF. The following are issues upon which the Defence apparently rely:

No one was in charge – the CDF was an anarchical organisation

685. A significant proportion of the Defence case is based on the assumption that no one was actually in charge of the Kamajors or the CDF. There is an underlying Defence theme that the Kamajors or the CDF were without a central executive body, in that it was the combatants at the front who made all the decisions, without reference to the headquarters based at Talia. However, as the evidence elucidates, the CDF attacked in a co-ordinated manner; it was not the case that they were an amorphous group of random combatants without any central control. Any objective observer would appreciate they were following orders in order to achieve considered outcomes; it was not a random coincidence, for example, that different groups of Kamajors joined together to attack a town at the same time.

686. It is accepted that at the 'general staff level' the CDF were not an extensive organisation as noted by Colonel Irons, but in the type of war being fought the command structure was both appropriate and effective. Power was concentrated in the hands of a few

people; many combatants were called ‘commanders’ but only the three accused men had actual, effective power.

The CDF was Controlled by Chiefs Through the War Council

687. The evidence established that over time the power of the chiefs, as they came together in Talia, diminished. At an earlier time, the chiefs recommended persons to become Kamajors but as the war progressed recruits went directly to Base Zero for incorporation into the new Kamajors, by way of the secret ceremonies created by Kondewa.
688. The War Council was not in existence for a long period of time and, at the most, provided advice to Norman which Norman could accept or reject. It was created in the anticipation that the chiefs, as was their traditional role, would have a part to play in the war but the nature of the war was such that the chiefs could not and did not contribute in any significant manner; other than one meeting in Kenema there was not even formal notes kept of their meeting. The War Council controlled no one; at its peak it provided advice to Norman who could choose to accept or reject such advice.

‘Bad Elements’

689. The ‘rogue element’ defence arises as the Defence suggest that any offences committed by the Kamajors came about through persons acting outside the ambit of their authority or acting in a manner not consistent with their orders. This defence assumes that the CDF was an ordered body but some elements acted in an undisciplined manner.
690. The charges laid against the accused came about because the Kamajors or the CDF followed the orders of the three Accused. The killing of policemen at Kenema, for example, was not the actions of rogue elements; as the evidence transpires Norman gave orders to kill Police and they were killed.¹⁰⁹² At times, Norman gave orders, such as to kill all the civilians in Koribundo¹⁰⁹³ and those orders were not followed – hardly the basis for a claim of rogue elements committing offences. If there were rogue elements in the Kamajors or the CDF, they were persons not following orders to kill anyone who was a ‘rebel’.

¹⁰⁹² Evidence of TF2- 033, TF2-039, TF2-040, TF2-042

¹⁰⁹³ Evidence of TF2-008, TF2-014, TF2-082

691. On some occasions it was suggested that rebels dressed in 'ronko'; however, in the crime bases such as Koribundo, Kenema, Bo and so on there is no doubt the persons committing the offences were Kamajors as testified by the witnesses and indeed Kamajors themselves.

The Lack of understanding of witnesses as particular level in organisation

692. Witnesses were called by the Defence who testified that they did not know who was in charge of the organisation or said that they never received any orders directly from one of the Accused. That position, of course, may well be correct in that the witness was of such a level within the organisation that it was highly unlikely that they would ever receive a direct order from an Accused or even be in a position to receive such an order.
693. The titles according to members of the CDF of Kamajors did not tend to have a great deal of significance at the ground level; often the term 'commander' did not bring with it an understanding or appreciation of the manner in which the organisation operated. Consequently, a witness could truthfully testify that he was unaware of the command structure of the CDF yet, at the same time, acknowledge that he did receive orders; he simply did not know the source of the orders.
694. Such witnesses did establish that there was a command structure in the CDF; however (as to be expected in any organisation) many persons did not know the source of the particular orders. The ignorance of some members of the CDF cannot found a valid defence, in the light of the evidence.
695. Another category of witnesses called by the defence were those who simply did not know anything about the events under consideration by the Court. Such witnesses will not assist the Trial Chamber in its final determination. M.T.Collier from Talia, for example ultimately said that all he knew about the Kamajors was that they ate rice and left.

President Kabbah was in Command of the CDF

696. The Defence has sought to raise this issue on a number of levels, including under the heading of 'persons bearing the greatest responsibility.' President Kabbah was the commander-in-chief of the armed forces at the relevant times; however, his role

significantly diminished due to his exile in Guinea. President Kabbah was not involved in directing the war in any practical sense; he was the figurehead for a government which had been forced into exile.

697. No witnesses, including Norman, testified that President Kabbah issued any military orders. He did provide materials to assist the armed resistance, including the CDF, but he did not have any actual control over the conduct of the war.

ECOMOG was in Command

698. A central defence proposition was that, during the relevant times, ECOMOG was in charge of the Kamajors. As the evidence demonstrates, ECOMOG, for example, was not present when Tongo was recovered by the Kamajors, nor when Koribundo was taken, nor was ECOMOG in Kenema when that town was successfully attacked. ECOMOG troops were present at some places, such as Bo, some days after the Kamajors had taken that city.
699. General Khobe was promoted to control over the Sierra Leone Army at the end of the war. However, at the time of the coup, Colonel (as he then was) Khobe was in charge of the small Nigerian contingent based at Lungi and nearby areas; he was not in charge of ECOMOG whilst at Lungi. Again, one must be careful when assessing the evidence to ensure that the time line are not blurred, otherwise, for example, one may draw the incorrect conclusion that General Khobe was in charge of ECOMOG troops from the time he was at Lungi.
700. ECOMOG in theory may have had control over the CDF but they were not present when the Kamajors committed the offences as outlined in the Indictment. It took some time before ECOMOG was in a position to control the activities of the Kamajors.

Albert Nallo

701. Albert Nallo was an 'insider' who was an important person within the hierarchy of the CDF. It is not in dispute that Nallo bore some responsibility for the offences listed in the Indictment.
702. As Nallo was an insider witness he was entitled to certain protections which were extended to him by the Court. At the same time, his evidence should be subject to

attitudinal scrutiny because of the position he held in the CDF and his willingness to testify in the trial of the three accused men. When the testimony of Nallo is reviewed it can be observed that, overall, his statements to the Court were corroborated by other witnesses especially in respect of the role of the War Council, the position of the three Accused and the conduct of the war.

703. A number of defence witnesses were called to testify, for example, that Nallo did not kill the people he said he killed and suggestions were made about his dishonest dealing in rice. The Prosecution maintains that the credibility of Nallo has not been impugned and that is underlined by other witnesses who testified in similar areas.

Kamajor laws

704. The nature and content of the Kamajor laws were frequently cited, purportedly as a barrier which prevented the Kamajors from committing offences. Laws, as the Court would know, do not provide an absolute barrier to the commission of offences. Kondewa was the chief priest who controlled the laws of the Kamajors, as promulgated under his regime. He was the person who sent the Kamajors to war, under his blessing, and his control was such that he determined whether a Kama or retained the most important of gifts, that of being bullet-proof.

705. The evidence of the victims before the Court established that the rules were not a barrier to the Kamajors committing offences.

The timing of the charges in the Indictment

706. The Trial Chamber will be conscious of the timeline in which these events occurred, with the majority of the offences taking place from late 1997 through to the early months of 1997; that is, when the Kamajors were in control from Base Zero, as they shifted from a defensive strategy to an offensive strategy.

707. A significant amount of the evidence adduced dealt with the time period before the coup and after the return of President Kabbah. One has to be careful when considering the evidence, especially when extrapolating backwards that the evidence properly reflects the conditions during the period of the Indictment. For example, the fact that some time after the return of the President, Norman lost his pre-eminence in the CDF and Kondewa

lost his position does not mean that they never held their respective positions, or exercised control over the CDF. There was a changing political landscape over time, which is to be expected as a country went from a war-time footing to the previously exiled government regaining control over the country.

708. An example of confusion in time is the suggestion that the National Coordination Committee (NCC) had a role to play in controlling the Kamajors at the time the offences were committed. The NCC was created after the time when most of the offences had been committed and was only an administrative body.
709. The defence have sought to blur the timeline of events. Events that occurred after war's end are used to justify actions of the Three Accused during the period of indictment. It must be noted that most offences occurred between 1 November 1997 and 30 April 1998, although it is acknowledged that the indictment time frame is extended until December 1999.
710. Norman Defence exhibit 120 dated 29 January 1999 attempts to obscure the timeline of events.¹⁰⁹⁴ The Prosecution submits this exhibit has no exculpatory value for the Defence case. Exhibit D120 indicates some effort to set up a committee in January 1999, well outside the effective dates of commission of crimes charged in the Indictment.
711. Likewise, the Norman Defence tendered exhibit 123, a paper titled "Organogram of the Civil Defence Forces in Sierra Leone." This exhibit has little or no exculpatory value as its source and date are unknown as is the period that the hierarchy existed, if it all.
712. The Norman Defence also tendered exhibit 127, which shows a CDF structure which is significantly different from that previously tendered under 123, thereby placing doubt on both documents.¹⁰⁹⁵ Furthermore, there is no date on the document to give an indication of a time frame within which this structure existed.
713. The vagueness in the Norman Defence case, in respect of time frames, is a matter that impacts upon the reliability of the evidence. At the same time, the Norman Defence case, in respect of the majority of the documents tendered, deal with late 1999.

Analysis of Forensic Evidence

¹⁰⁹⁴ Exhibit P120:

¹⁰⁹⁵ Exhibit P127; Exhibit P123

714. The Prosecution presented expert forensic evidence before the Court to substantiate the charges of unlawful killings and physical violence for the Bo Crime base.¹⁰⁹⁶ In his evidence, Bill Haglund, a recognized expert in forensic pathology detailed his findings in a Report¹⁰⁹⁷ resulting from his forensic investigation and examination of the remains removed from graves in the Mahiboima District, City of Bo.
715. Forensic analyses were conducted of three victims (MHB-C-01, MHB-C-02, MHB-C-03) from one grave and one victim (MHB-B-01) from another grave. The cause of death of all four victims was a sharp and blunt force causing injuries to the face and head. The manner of death was homicide.¹⁰⁹⁸
716. The Prosecution submits that these findings are consistent with the evidence adduced before the Court relating to the unlawful killings and physical violence and mental suffering charges for the Bo Crime base. TF2-156 gave evidence that one evening whilst at his aunt's house he saw a man called Sorie being chased by Kamajors. The Kamajors then came into their house and captured him and his brothers. They were taken out into the street. The Kamajors told him that "anyone found in Bo town should be shot." The Kamajors then started chopping the witness, his brothers and others. His two brothers were killed at the scene, by Kamajors using cutlasses.¹⁰⁹⁹ The witness demonstrated to the Court scars of injuries to his neck, stomach, chest and right side of his face.¹¹⁰⁰ Later, the witness was present when persons from the Special Court exhumed the bodies of his brothers.
717. Exhibit 101 demonstrates that TF2-156 had numerous scars to his right orbital area and cheek, right and left lower legs. In the medical opinion of Haglund, TF2-156 received at least five blows (chops) with instruments such as a machete to the right side of his face, three blows to his chest and at least two blows to his right leg. These injuries were life threatening and, without the assistance of medical care, the wounds would most likely have proven fatal.¹¹⁰¹

¹⁰⁹⁶ Bill Hugland, Transcript 20 June 2005.

¹⁰⁹⁷ Exhibit P101(4): Pathologist's Review, Cause and Manner of Death, 24 February 2004, p. 48 (7680).

¹⁰⁹⁸ Exhibit P101(1-6): Exhibits of Prosecution Expert Bill Hugland, 4-10 November 2003.

¹⁰⁹⁹ TF2-156, Transcript 25 November 2004, p. 42.

¹¹⁰⁰ TF2-156, Transcript 25 November 2004, pp. 42.

¹¹⁰¹ Ibid., pp. 44-45.

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CONCLUSION

718. It is submitted that the Court can be satisfied beyond a reasonable doubt that all the offences charged in the Indictment occurred as charged. As a consequence of the Rule 98 procedure, the crime bases which were not supported by evidence were identified and have been withdrawn. As an aid to the Court, a chart identifying the relevant witnesses by count and crime base is annexed to this brief as Annex I.
719. The Defence case, and to a significant degree it is a common Defence case, involved the calling of witnesses who appeared unable, or unwilling, to contribute meaningfully to the body of evidence. Such witnesses did not, and should not, impact on the evidence called throughout the Prosecution case. At times, as noted, the defence witnesses even bolstered the Prosecution case.
720. Norman, while giving evidence on his own behalf, was equally unhelpful. He said that Fofana was one of those elders at Talia, and that all elders around that place assisted in various ways. When probed under cross-examination, he could not be specific how Fofana assisted at Talia.¹¹⁰² When asked whether Fofana had any other role besides being an elder, Norman replied that he never assigned him a role nor does he know of the assignment of a role either by the War Council or anybody.¹¹⁰³ Evidence was led to the contrary by the Fofana Defence team through the tendering of Exhibit 59, Fofana's Letter of Appointment to the position of National Director of War. It is interesting to note that that the letter was signed by no other person than Norman himself. Therefore, it is reasonable to conclude that it is not true when Norman claimed not to be aware of any form of assignment for Fofana.
721. It should be noted that the victims of the crimes were compelling and forthright in their testimony; their evidence forms the basis of the Prosecution case. The Defence sought to impugn the credit of Nallo, who is an important witness, but Nallo does not stand alone in telling the story of the words and acts of the three Accused during the relevant time period. To assist the Court by putting faces to the names or pseudonyms of witnesses, the Prosecution attaches, as Annex II, photographs of Prosecution factual witnesses. This Annex is to be handled with the strictest confidence.

¹¹⁰² Accused Sam Hinga Norman, Transcript 6 February 2006 at p. 30

¹¹⁰³ *id*

722. The Prosecution submits that all the evidence points to one inescapable conclusion – the three Accused exercised absolute control over the CDF; the CDF, especially the Kamajors, followed the orders of the three Accused. Embedded in those orders was the fundamental command, expressed in a number of ways to the combatants, to win the war ‘at all costs’; consequently the CDF combatants (including the many child soldiers) implemented those orders across the field of war against anyone, and any property, that fell under the broad, fatal, definition of being a ‘rebel’, collaborator or sympathiser. Any failure to follow those orders was due to tactical considerations, it was not due to the intervention of any of the Accused men.
723. The Prosecution submits that on the basis of all the evidence presented during its case, the Trial Chamber can be satisfied, beyond reasonable doubt, of the guilt of each the Accused under all counts of the Indictment.
724. It is the Prosecution’s view that the three Accused can be found liable under various modes of liability set out in Article 6 (1), as well as under Article 6(3) in respect of a single count. The Prosecution submits that this Trial Chamber should make findings on *all* modes of liability in respect of which evidence has been led for each count, even if more than one mode of liability describes the extent of an Accused participation under a particular count. For example, an accused may be found to have instigated a series of crimes falling under one count, and also to have committed some of those crimes. Similarly, an Accused may be found liable as a superior as well as directly responsible under Article 6(1). Findings of multiple modes of liability will be taken into account at the sentencing stage. For example, if an accused is found liable under both Articles 6(1) and 6(3) in respect of the same act, the superior responsibility should be considered as an aggravating factor.¹¹⁰⁴

¹¹⁰⁴ As is well known, when more than one form of individual criminal responsibility is found to have been proven by the Prosecutor, the Trial Chamber will weigh these various forms and the other relevant factors to decide on the appropriate sentencing. See for example *Prosecutor v. Dragan Obrenovic*, IT-02-60/2-S, Sentencing Judgment, 10 December 2003, para. 88 and 90: “Weighing Dragan Obrenovic’s different forms of individual criminal responsibility, the Trial Chamber finds that Dragan Obrenovic’s liability stems primarily from his responsibilities as a commander. (...) Considering these facts the Trial Chamber finds a sentence in the range of 20 years to 40 years imprisonment to be appropriate based on the gravity of the crime committed by Dragan Obrenovic, and particularly his role and participation in the commission of that crime, and having taken into consideration the sentencing practices in the former Yugoslavia as well as the sentencing practices of this Tribunal.” (Emphasis added)

725. The Prosecution submits that multiple convictions must be entered when they are admissible. Indeed, “[m]ultiple convictions serve to describe the full culpability of a particular accused or provide a complete picture of his criminal conduct.”¹¹⁰⁵ The Prosecution submits that the intention of the lawmakers of the Statute was indeed to allow that convictions for the same conduct constituting distinct offences under several of the Articles of the Statute be entered, as it was the case for the Security Council regarding the ICTY and ICTR Statutes.¹¹⁰⁶
726. Multiple criminal convictions entered under different statutory provisions but based on the same conduct are permissible if each statutory provision involved has a materially distinct element not contained in the other.¹¹⁰⁷ An element is materially distinct from another if it requires proof of a fact not required by the other.¹¹⁰⁸ Where this test is not met, the Chamber “must decide in relation to which offence it will enter a conviction. This should be done on the basis of the principle that the conviction under the more specific provision should be upheld.”¹¹⁰⁹
727. Multiple convictions entered under an offence set out in Article 2 (crime against humanity) and a crime set out in Articles 3 or 4 (violations of Common Article 3 to the Geneva Conventions and Additional Protocol II, and Other Serious Violations of International Humanitarian Law) are permissible. Indeed, the jurisprudence has settled that Articles 3 or 4 require a close link between the acts of the accused and the armed conflict, while this element is not required by the Article 2.¹¹¹⁰ On the other hand, Article 2 requires proof that the act occurred as part of a widespread or systematic attack against a civilian population; that element is not required by Articles 3 or 4. Thus, Article 2 and Article 3 or 4 have an element requiring proof of a fact not required by the other. As a result, cumulative convictions under both Article 2 and 3 or 4 are

¹¹⁰⁵ *Prosecutor v. Kunarac et al.*, *Judgement*, IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 169 (footnote omitted).

¹¹⁰⁶ *Prosecutor v. Kunarac et al.*, *Judgement*, IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 178.

¹¹⁰⁷ *Prosecutor v. Kunarac et al.*, *Judgement*, Case No. IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 196.

¹¹⁰⁸ *Prosecutor v. Kunarac et al.*, *Judgement*, Case No. IT-96-23, IT-96-23/1-A, App. Ch., 12 June 2002, para. 196.

¹¹⁰⁹ *Prosecutor v. Delalić et al. (Čelebići case)*, *Judgement*, Case No. IT-96-21-A, App. Ch., 20 February 2001, paras. 412-413 (see also para. 421). See also the Separate and Dissenting Opinion of Judge Hunt and Judge Bennouna, paras. 13-23.

¹¹¹⁰ *Prosecutor v. Jelisić*, *Judgement*, IT-95-10-A, App. Ch., 7 July 2001, para. 82

permissible. War crimes contained under Articles 3 or 4 do not constitute 'lesser included offences' of crimes against humanity.¹¹¹¹


728. Similarly, the jurisprudence has now settled that cumulative convictions on the basis of the same acts under one Article of the Statute (for example under more than one paragraph of Article 3 when conduct violates at the same time the prohibition of Pillage, Acts of Terrorism and Collective Punishment) are permissible provided that the test above is met.¹¹¹²

729. The Prosecution submits that there must be a finding on the Indictment that each Accused is either guilty or not guilty of the count.¹¹¹³ Where an Accused is found not guilty for the sole reason that to find otherwise would produce an impermissible cumulative conviction, the disposition should be in terms such as "Not guilty on the basis that a conviction on this charge would be impermissibly cumulative."¹¹¹⁴

730. The consequence of concurrence should be dealt with at the sentencing stage, by sentencing the accused concurrently for cumulative charges.

Filed in Freetown, 22 November 2006

For the Prosecution,

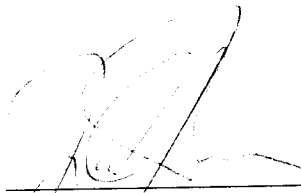


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¹¹¹¹ *Prosecutor v. Jelisić*, Judgement, IT-95-10-A, App. Ch., 7 July 2001, para. 82

¹¹¹² *Prosecutor v. Kordić & Čerkez*, Judgement, IT-95-14/2-A, App. Ch., 17 December 2004, para. 1039-40.

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¹¹¹³ *Prosecutor v. Delalić et al. (Čelebići case)*, Judgement, Separate and Dissenting Opinion of Judge Hunt and Judge Bennouna, Case No. IT-96-21-A, App. Ch., 20 February 2001, para. 59.

¹¹¹⁴ *Prosecutor v. Delalić et al. (Čelebići case)*, Judgement, Separate and Dissenting Opinion of Judge Hunt and Judge Bennouna, Case No. IT-96-21-A, App. Ch., 20 February 2001, para. 59.

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