

(927-1008)

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

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

Registrar: Robin Vincent

Date filed: 01 March 2004

THE PROSECUTOR**Against****ISSA HASSAN SESAY also known as ISSA SESAY****MORRIS KALLON also known as BILAI KARIM****And****AUGUSTINE GBAO also known as AUGUSTINE BAO**

CASE NO. SCSL-2004-15-PT

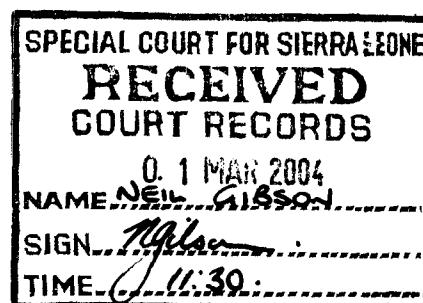
PROSECUTION'S PRE-TRIAL BRIEF**PURSUANT TO ORDER FOR FILING PRE-TRIAL BRIEFS****(UNDER RULES 54 and 73 *bis*) OF 13 FEBRUARY 2004**

Office of the Prosecutor:

Luc Côté
Robert Petit
Paul Flynn
Abdul Tejan-Cole
Boi Tia Stevens
Christopher Santora
Sharan Parmar
Sigall Horovitz

Defence Counsel:

Timothy Clayson
James Oury
Andreas O'Shea



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On 27 February the Prosecution filed an initial version of its Pre-Trial Brief pursuant to the “Order for filing Pre-Trial briefs (Under Rules 54 and 73bis) of 13 February 2004”. Due to an oversight on the part of the Prosecution this Pre-Trial Brief was not in conformity with the Article 9 of the “Practice Direction on filing documents before the Special Court for Sierra Leone”.

The Prosecution therefore files this Pre-Trial Brief in compliance with the said Article and requests that this document be now considered as its Pre-Trial Brief.

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A: Introduction

1. The Prosecutor respectfully submits this Pre-Trial Brief in compliance with ORDER FOR FILING PRE-TRIAL BRIEFS (UNDER RULES 54 and 73 *bis*) of 13 February 2004, to provide a preliminary indication as to the factual allegations and the points of law and legal issues pertinent to the case against all three accused persons.

General Factual Background

2. Sierra Leone became independent on 27 April 1961. In 1968, Siaka Stevens became head of state after having been previously prevented from taking power by a military coup. In 1985, General Joseph Momoh was elected President in a one party election.
3. The organized armed group that became known as the Revolutionary United Front, (RUF), led by Foday Sabayana Sankoh, was founded about 1988 or 1989 in Libya with support and direction from the government of Muammar Al-Qadhafi.
4. Another of Libya's beneficiaries was Charles Taylor. After successfully assisting Blaise Campaore in a coup in Burkina-Faso Charles Taylor became one of the original founders of the group called the National Patriotic Front of Liberia (the NPFL) whose aim, supported by the Libyan government, was to overthrow the regime of Liberian President Samuel Doe. On 24 December 1989, the NPFL attacked government positions in Liberia from positions in Cote d'Ivoire, starting the Liberian civil war.
5. Foday Sankoh, who had formed an alliance with Taylor in Libya, also came to Liberia and assisted Taylor and the NPFL. In turn Taylor supported Sankoh due to his desire to retaliate against Sierra Leone for its support of the West African led intervention force in Liberia, known as Economic Community of West African States Cease-fire Monitoring Group (ECOMOG), led by Nigeria and which had kept Taylor's National Patriotic Front of Liberia (NPFL) from succeeding in taking control of Liberia. Taylor also supported the RUF to acquire access to Sierra Leone's diamond mining areas, in addition to prevent the country from being used by his opponents in Liberia. In March 1991, a small armed RUF contingent of Sierra Leonians entered south-eastern Sierra Leone, accompanied by Liberian fighters and soldiers from Burkina Faso.
6. After RUF and NPFL forces made initial gains in Sierra Leone, the Sierra Leonean Army (SLA) was able to contain the RUF/NPFL forces in Kailahun and recapture large portions of Pujehun District.

7. On 29 April 1992, President Momoh was overthrown in a military coup by junior Sierra Leone Army officers. A new administration was established, the National Provisional Ruling Council (NPRC), headed by Captain Valentine Strasser.
8. By late 1992, RUF and NPFL forces successfully occupied Koidu town, Kono District, where a large share of Sierra Leone's diamond mining fields are located. Control of areas in Kono and Pujehun shifted between the RUF/NPFL and the SLA.
9. Despite massive recruitment, it became evident that fighting was not being undertaken by the Army with the RUF, indeed, evidence of rebels and soldier collaboration surfaced where both lived off of the country side, looting and abusing civilians. At this time, the term "sobel" surfaced, referring to "soldiers by day and rebels by night".
10. Local militias began operating as an auxiliary fighting force to the SLA shortly after the start of hostilities by the RUF. Such groups include Mendes (Kamajors), Temnes (Gbthis or Kapras), Korankos (Tamaboros) and Konos (Donsos). In 1993, the Kamajors first engaged the RUF in the Pujehun District. The Kamajors became the predominant group within the CDF.
11. By 1995, having continually lost ground to the RUF, the NPRC hired a private military company, Executive Outcomes, mainly comprised of former South African soldiers. With assistance from local civil militias, the Executive Outcomes regained control of much territory earlier lost by the SLA to the RUF by the end of 1995. These gains in turn pushed the RUF out of strategic areas of the country and turned the war against the RUF.
12. In January 1996, NPRC deputy Julius Maada-Bio overthrew Valentine Strasser. Nonetheless, international and local pressure enabled democratic elections to proceed. Prior thereto, the RUF issued threats to civilians that peace should come before elections. In turn, on election day, the RUF attacked Kenema and Magburaka towns. On 26 February 1996, Ahmed Tejan Kabbah, a former civil servant with the United Nations, with the Sierra Leone Peoples Party (SLPP) was elected to the Presidency.
13. Following the elections, the various civil militia forces defending local communities were united in a centralized force known as the "Civil Defence Forces" (CDF). The Kamajors came under the direction of Samuel Hinga Norman, who also became the National Coordinator of the CDF. At the time, Norman was the Deputy Minister of Defence within the newly elected SLPP government of Tejan Kabbah. By the end of 1996, CDF

forces controlled almost the entire southern and eastern provinces of Sierra Leone.

14. On 30 November 1996, President Tejan Kabbah and RUF leader Foday Sankoh signed a peace agreement in Abidjan, known as the Abidjan Peace Accord. Under the Abidjan Peace Accord, Kabbah was required to terminate the Sierra Leonean government's contract with Executive Outcomes by January 1997. This outcome critically tilted the military balance in Sierra Leone and hostilities recommenced shortly thereafter.
15. In March of 1997, while travelling, RUF leader Foday Sankoh was placed under house arrest in Nigeria for alleged arms smuggling. While under detention in Nigeria, Sankoh continued to communicate with RUF commanders from his hotel in Abuja.
16. During late 1996 and early 1997, tensions between the SLA and the CDF heightened due in part to the increased government use of the CDF. On 25 May 1997, elements of the SLA overthrew the elected government of Tejan Kabbah, who fled to Conakry in exile. The military coup resulted in the formation of the Armed Forces Revolutionary Council (AFRC), led by retired Major Johnny Paul Koroma (also known as "JPK").
17. Almost immediately after seizing power, Koroma invited the RUF to join in power in a coalition government. Upon this invitation, RUF leader Foday Sankoh, who was appointed Vice-Chairman of the AFRC, issued an order over the radio to RUF commanders and soldiers to 'come out of the bush' and join ex-SLA soldiers in Freetown. Koroma appointed a number of prominent RUF members to his administration, including Sam Bockarie, Issa Sesay, Morris Kallon, Gibril Massaquoi, Mike Lamin and Eldred Collins. The combined group of RUF and ex-SLA called themselves "the People's Army."
18. The CDF refused a call by the AFRC to demobilise and retreated to their community strongholds where there was previously no SLA, now AFRC, deployment. The AFRC/RUF formed a Supreme Council that was the sole executive and legislative authority within Sierra Leone during the junta period. The governing body included leaders of both the AFRC and RUF.
19. During junta period, AFRC/RUF forces engaged the Kamajors in battle in several locations throughout the south of Sierra Leone, attacking villages and civilians that were seen to be collaborating or sympathetic to the Kamajors. Similarly, the Kamajors attacked villages and often targeted civilians who were alleged to be collaborating with

the AFRC/RUF Junta forces in the southern provinces.

20. The AFRC regime was widely condemned by the international community and the Organization of African Unity (OAU) gave a mandate to ECOWAS to use whatever means necessary to restore the elected civilian government.
21. In July 1997, Charles Taylor was elected President of Liberia and he immediately but quietly established relations with the Junta regime in Freetown and assisted the AFRC/RUF with shipments of weapons and other supplies. RUF field commander Sam “Mosquito” Bockarie travelled to Liberia on several occasions with diamonds and returned with supplies for the AFRC/RUF.
22. In September 1997, the CDF successfully launched attacks on RUF/AFRC positions. At the end of 1997, the CDF then launched Operation “Black December” in order to cut off AFRC/RUF positions from their main forces based in Freetown.
23. On 12 February 1998 ECOMOG forces launched an offensive and drove the AFRC/RUF regime out of Freetown, in what became known as the “Intervention.” AFRC/RUF forces retreated from Freetown and the Western Area through the Districts of Bombali and Koinadugu, eventually regrouping in the Kono District.
24. Immediately after being ejected from Freetown, AFRC/RUF forces announced “Operation Pay Yourself” which was accompanied by wide-scale looting and attacks on the civilian populations in areas the AFRC/RUF passed through. On 10 March 1998, President Kabbah returned to Sierra Leone from Guinea and was reinstated into power.
25. Following the February 1998 intervention, AFRC/RUF forces primarily operated in the northern and eastern provinces. On or about late March or early April 1998, ECOMOG forces re-captured Koidu town, although AFRC/RUF rebels continued diamond mining operations in other areas of Kono District. During this time a bulk of AFRC/RUF forces operated in the north, north-east and north-western parts of Sierra Leone. In the north, AFRC/RUF groups operated in Koinadugu and Bombali Districts, however, many AFRC/RUF forces were concentrated in Kono and Kailahun Districts.
26. Sometime after ECOMOG attacks in Koidu, two major AFRC/RUF groups separately travelled north to connect with the AFRC/RUF group based in Koinadugu District. The first group proceeded from Koinadugu District to set up a base in the Bombali District, eventually to a location known as “Rosos”. The second group, however, remained to join

with the group based in Koinadugu for a good portion of 1998. Other AFRC/RUF forces remained concentrated in Kailahun District, where a major AFRC/RUF base was maintained in Beudu Town, located close to the Liberian border.

27. In July 1998, the United Nations (UN) established the United Nations Observer Mission in Sierra Leone (UNOMSIL).
28. In Freetown, the SLPP government began conducting treason trials against former leaders of the Junta regime. In August 1998, after the handover of Foday Sankoh by Nigerian authorities to the government in Freetown, RUF spokesman Eldred Collins announced over the BBC that the RUF would conduct "Operation Spare No Soul" if the government refused to release Sankoh. In October 1998, Foday Sankoh was sentenced to death after having been found guilty of treason. One week later, RUF commander Sam Bockarie publicly announced that the RUF would destroy "every living thing" should anything happen to their leader.
29. In December 1998, after a significant shipment of arms and supplies had arrived in Kailahun from Liberia, RUF/AFRC forces launched major attacks on towns and villages in several strategic areas of the country. In late December 1998, they recaptured Koidu Town, Kono District, and shortly thereafter they recaptured Makeni, the headquarter town for Bombali District. Thereafter, on 6 January 1999, AFRC/RUF forces entered Freetown and not driven out of eastern Freetown completely until approximately the end of January 1999. The AFRC/RUF continued to hold much of the country, including Lunsar and Makeni and most of the Kono and Kailahun Districts, after being driven out of Freetown by ECOMOG and CDF forces. In Kono District, AFRC/RUF diamond mining accelerated and substantial portions of diamonds were sent to Liberia through Kailahun in exchange for weapons and supplies in support of AFRC/RUF operations.
30. Coupled with lagging political will, ECOMOG forces appeared increasingly incapable of continued fighting in Sierra Leone. On 7 July 1999, President Tejan Kabbah and Foday Sankoh (acting on behalf of the AFRC/RUF) signed a peace agreement in Togo, known as the Lomé Peace Accord. Under the agreement, Sankoh was granted the chairmanship of the commission in charge of mineral resources and post-war reconstruction.
31. Pursuant to UN Security Council Resolution 1270, the United Nations Assistance Mission in Sierra Leone (UNAMSIL) was established in October 1999, initially with

some 6,000 troops, empowered under Chapter Seven of the UN Charter to “ensure the security of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under immediate threat of violence.

32. On 3 October 1999, RUF leader Sankoh and AFRC leader Johnny Paul Koroma together arrived in Freetown from Liberia and announced their intentions to work for peace.
33. In late 1999 and early 2000 there were numerous ceasefire violations, missed deadlines and failure by the RUF/AFRC to comply with several commitments including the release of all civilian abductees. There were also significant mixed signals coming from the RUF leadership. Sankoh was publicly committed to the disarmament, but the rebels showed no signs of disarming in the diamond-rich areas of the country. Diamond mining continued in exchange for arms from Liberia. In late 1999, after a public disagreement with Sankoh, Sam Bockarie left for Liberia and in January of 2000, Issa Sesay was promoted to the position of Battlefield Commander.
34. In May 2000, AFRC/RUF forces began attacks against and abductions of United Nations peacekeepers and humanitarian assistance workers. During ensuing months, throughout the country, over 500 United Nations peacekeepers and humanitarian assistance workers were reported as having been taken hostage, while AFRC/RUF attacks resulted in deaths, bodily harm, and looting and destruction of official and personal properties.
35. In response to the failure of AFRC/RUF forces to comply with the terms of the Lomé Accord, especially a cessation of hostilities, on 8 May 2000, civilians demonstrated in Freetown in front of Foday Sankoh’s residence. AFRC/RUF soldiers fired on the crowd of demonstrators killing about nineteen people. On 17 May 2000, Sankoh was arrested.
36. By July 2000 overall hostilities had begun to decline and in August of 2000, AFRC/RUF forces surrendered to United Nations peacekeeping forces in Kabala, headquarter town for Koinadugu District. However, AFRC/RUF forces remained heavily engaged in mining activities in Kono District, mainly from Koidu Town.
37. Despite the decline in hostilities in Sierra Leone, AFRC/RUF forces launched attacks in Guinea in late 2000 and early 2001. These attacks though were quickly and successfully repelled by the Guinean government, who inflicted heavy casualties on the AFRC/RUF.
38. By 30 March 2001, UNAMSIL had increased its forces to 17,500. On 18 January 2002, Sierra Leone’s civil war was declared over.

B: Overview of the Charges

The Crimes Charged

39. On the basis of various acts and omissions committed by each of the accused either alone or jointly with co-perpetrators or both as described in paragraphs 44 - 83 of the Consolidated Indictment, the Prosecutor charges all three individuals accused with the following Violations of Article 3 Common to the Geneva Conventions¹ and of Additional Protocol II,² punishable under Article 3 of the Statute: Acts of Terrorism; Collective Punishments; Violence to life, health and physical or mental well-being of persons, in particular murder of civilians, mutilation of civilians and murder of peacekeepers; Outrages upon personal dignity; Pillage; and, Taking of hostages [as described in the Consolidated Indictment in Counts 1, 2, 5, 8, 9, 13, 16, 17].
40. Furthermore, the Prosecutor charges all three individuals accused with the following Crimes Against Humanity, punishable under Article 2 of the Statute: Extermination; Murder of civilians; Rape; Sexual slavery and any other form of sexual violence; Other inhumane acts; Enslavement; and, Murder of peacekeepers [as described in the Consolidated Indictment in Counts 3, 4, 6, 7, 10, 12, 15].
41. In addition, the Prosecutor charges all three individuals accused with the following Other Serious Violations of International Humanitarian Law, punishable under Article 4 of the Statute: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities; and, Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission [as described in the Consolidated Indictment in Counts 11 and 14].

Cumulative Charges

42. The three individuals accused are charged cumulatively with all offences on the basis of

¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 ("Geneva Convention I"); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 ("Geneva Convention II"); Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 ("Geneva Convention III"); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3516; 75 U.N.T.S. 287 ("Geneva Convention IV"). (Collectively: "Geneva Conventions of 12 August 1949").

² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *adopted* June 8, 1977, 1125 U.N.T.S. 609 ("Additional Protocol II").

the same set of allegations/facts contained in paragraphs 5 to 18 of the Consolidated Indictment. Under international law, such cumulative charging approach is permissible provided the offences, as in the present case, contain different material elements.³

Cumulative charging is also allowed in cases where the provisions creating the offences protect different interests or where it is necessary to record a conviction for both offences in order to fully describe what the accused did.⁴

43. Moreover, the ICTY Appeals Chamber held that basing several charges on the same factual allegations is legitimate since prior to the presentation of all evidence, it is impossible to determine with certainty which of the charges brought against the accused will be proved.⁵ The ICTY Appeals Chamber concluded that a Trial Chamber “is better poised, after the parties’ presentation of evidence, to evaluate which of the charges may be retained upon the sufficiency of the evidence.”⁶
44. The international jurisprudence recognized three different types of cumulative charges on which an accused may be convicted: 1. where the accused is charged with different criminal acts comprising different elements extracted from the same factual allegations;⁷ 2. where the accused is charged with the same criminal act both as a war crime and as a crime against humanity;⁸ 3. where the accused is charged with the same crime both under Article 6(1) and under Article 6(3)⁹.

C: Basic Factual Allegations

The Conflict

45. Following is a description of the crimes committed by the AFRC/RUF within each of the districts referred to in the Consolidated Indictment. The evidence will show that members

³ *Prosecutor v. Musema*, ICTR-96-13-A, Judgement, 16 Nov. 2001 (“*Musema* Appeal Judgement, 16 Nov. 2001”), para. 370; *Prosecutor v. Delalić et al.*, IT-96-21-A, Judgement, 20 Feb. 2001 (“*Čelebići* Appeal Judgement, 20 Feb. 2001”), para. 412. See also *Prosecutor v. Jelisić*, IT-95-10-A, Judgement, 5 July 2001, para. 78.

⁴ *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 2 Sept. 1998 (“*Akayesu* Trial Judgement, 2 Sept. 1998”), para. 468.

⁵ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 400. See also *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement, 7 June 2001 (“*Bagilishema* Trial Judgement, 7 June 2001”), para. 108.

⁶ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 400.

⁷ *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgement, 10 Dec. 1998 (“*Furundžija* Trial Judgement, 10 Dec. 1998”), paras. 264-275; *Prosecutor v. Musema*, ICTR-96-13-T, Judgement, 27 Jan. 2000 (“*Musema* Trial Judgement, 27 Jan. 2000”), paras. 891 and 903; *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/1-T, Judgement, 22 Feb. 2001 (“*Kunarac* Trial Judgement, 22 Feb. 2001”), para. 557.

⁸ *Musema* Trial Judgement, 27 Jan. 2000, para. 963; *Kunarac* Trial Judgement, 22 Feb. 2001, para. 556

⁹ *Musema* Trial Judgement, 27 Jan. 2000, paras. 891-895, 897-900, 903-906, 912-915, 917-920, 922-926, 951.

of the AFRC/RUF subordinate to and/or acting in concert with the individuals Accused carried out attacks in these districts as as part of a campaign to terrorize the civilian population in the Republic of Sierra Leone and to collectively punish the civilian population for failing to support the AFRC/RUF or for allegedly supporting the Kabbah government or pro-government forces.

Bo District-About 1 June 1997 to 30 June 1997

46. Bo was under control of the CDF/Kamajors for large portions of the conflict. However, after the Coup, in May 1997, there was significant fighting between the CDF/Kamajors and the AFRC/RUF forces in the district. Civilians were often targeted as being sympathetic or collaborating with either the CDF or the AFRC/RUF. There were several instances of AFRC/RUF forces executing civilians perceived to be working or sympathizing with the CDF in the district during the Junta period.
47. In the weeks following the coup, there was an offensive launched by the AFRC/RUF from Bo town against surrounding villages for their perceived sympathy or assistance to Kamajors in the region. Specifically, in approximately June of 1997, AFRC/RUF forces attacked five villages in the region. These villages were Sembahun, Tikonko, Mamboma, Gerihun, and Telu. Prior to the attack on Tikonko, the AFRC/RUF announced over the radio that they were going to attack Tikonko.
48. Prior to these attacks, many residents of these villages were warned and able to flee to the bush. In these attacks, the AFRC/RUF intentionally killed many civilians that were remaining in the villages. Victims were usually shot to death. In one particular instance, an entire family of 11 people was shot and killed in a house in Tikonko by AFRC/RUF forces. In the attack on Gerihun, the father of former Vice President Demby was killed by AFRC/RUF forces. Also, in most of the attacks the AFRC/RUF looted and burned houses in the villages.
49. After the Intervention in 1998, the AFRC/RUF was largely driven out of Bo and for the remainder of the conflict, the district was under the control of the CDF.

Bombali District-About 1 May 1998 to 30 November 1998

50. Immediately after the Intervention and the AFRC/RUF's retreat from Freetown, sizable portions of the AFRC/RUF, including many of the senior leaders, regrouped initially in Makeni town but only stayed for a period of a few days as ECOMOG jets were attacking

the group. The AFRC/RUF had announced “Operation Pay Yourself,” an order to carry out extensive looting of civilian property which resulted in attacks against the civilian population. “Operation Pay Yourself” continued as the main groups proceeded through Bombali and continued their retreat further north and east.

51. As the AFRC/RUF retreated from Makeni, they proceeded into Kono and Koinadugu. However, a large contingent of AFRC/RUF returned to the district in April or May 1998.
52. The evidence will show that this group established a base at Rosos where they engaged in the forced labour and military training of abducted civilians, including children. In particular, the AFRC/RUF group based in Rosos, attacked several villages in the area including Karina, Gbendembu, Bonyoyo (or Bornoya), Mayombo, Mafabu, Malama and Mandaha. This group constituted a part of the “Northern Jungle,” a reference to the AFRC/RUF groups operating in the north of the country throughout 1998. During this time, the commanders of the AFRC/RUF group based in Rosos were in communication and coordinating with commanders from the other AFRC/RUF groups in the country.
53. The evidence will show that AFRC/RUF forces engaged in wide spread atrocities against civilians during these and other attacks throughout the district including, intentional killing of civilians in Bonyoyo (or Bornoya), Karina Mafabu, Mataboi, Pendembu, Malama and Gbendembu, acts of sexual violence including rape, sexual slavery and other forms of sexual violence in locations throughout the district including Mandaha and Rosos, mutilations and amputations in several locations throughout the district including Lohondi, Malama, Mamaka, and Rosos and the burning of houses and looting of property in many locations throughout the district including Karina and Mateboi.
54. In late 1998, the large AFRC/RUF contingent based in Koinadugu split up, and a sizable number joined the group based in Rosos. This group eventually formed the primary group to initially invade Freetown.
55. Also in late 1998, another AFRC/RUF force, which had successfully retaken Koidu town from ECOMOG in December 1998, commenced a major assault on Makeni and successfully ejected ECOMOG around the end of December 1998. These AFRC/RUF forces in turn followed the initial AFRC/RUF forces earlier based in Rosos and Koinadugu toward Freetown eventually providing troop and ammunitions support in Freetown and Western Area.

56. From May 2000, AFRC/RUF forces attacked United Nations peacekeepers and humanitarian assistance personnel serving under the United Nations Assistance Mission in Sierra Leone (UNAMSIL) at locations in the Makeni/Magburaka area. These attacks included coordinated abductions, killings, beatings and ill treatment of peacekeepers and humanitarian assistance personnel in the presence of senior AFRC/RUF commanders. AFRC/RUF forces attacked camps belonging to UNAMSIL personnel and humanitarian assistance workers, in addition to looting and destroying official and personal property. Hostages were delivered to senior AFRC/RUF commanders in Kono and eventually released in Liberia.

Freetown and the Western Area- About 6 January 1999 to 28 February 1999

57. In February 1998, ECOMOG-led forces entered Freetown on three fronts and forced the retreat of the AFRC/RUF, including many of its leaders, from Freetown in mid February 1998. AFRC/RUF forces retreated to the Provinces. On 10 March 1998, President Kabbah returned to Freetown and was re-instated as the head of the government.
58. The AFRC/RUF forces were driven out of the western area for most of 1998. But in late December 1998, a large AFRC/RUF force attacked Waterloo. The force continued its advance and in early January 1999 overtook ECOMOG at Hastings and Allentown. On 6 January 1999, a large group of AFRC/RUF forces, as well as a significant number of civilians entered the city of Freetown, bypassing ECOMOG resistance. Immediately a group of AFRC/RUF forces broke into Pademba Road Prison and freed all the detainees, including SLA and RUF members who were detained after the Intervention.
59. The AFRC/RUF forces quickly advanced into central Freetown and reached it as far as the Congo Cross bridge. The AFRC/RUF forces gained control of the Statehouse where they announced that they had overthrown the government of Tejan Kabbah.
60. Throughout the invasion, AFRC/RUF commanders on the ground were in communication with AFRC/RUF commanders in other parts of Sierra Leone as the groups continued their country-wide offensive. For this whole offensive, the senior AFRC/RUF commanders in Kailahun, Koidu, Makeni and Freetown were in regular communication with each other.
61. During the invasion, the AFRC/RUF forces stayed in control of large portions of eastern Freetown until the end of January. At some point in early 1999, a large AFRC/RUF

group of reinforcements moved in the direction of Freetown. Some AFRC/RUF reinforcements reached Freetown as the initial force continued to hold sections of eastern Freetown, although a large contingent stayed at Waterloo and Hastings.

62. The invading AFRC/RUF forces were committing atrocities throughout the invasion. A large portion of these atrocities, including the amputation of civilians, started around 19 January 1999. At this point, ECOMOG had regrouped and taken back most of central Freetown. Top AFRC/RUF commanders in Freetown gave instructions to kill civilians, to amputate civilians and to burn buildings.
63. The bulk of the AFRC/RUF forces finally were pushed out of the city of Freetown by early February. At around this time, the AFRC/RUF regrouped at Waterloo. AFRC/RUF ground commanders again met together and coordinated subsequent attacks on Tumbu and Hastings before eventually being completely pushed out of the Western Area.
64. During the invasion of Freetown, and the subsequent retreat, AFRC/RUF forces killed approximately 3,000-5,000 civilians, including women and children. In some instances individuals were executed by the rebels on the street or in their houses. Some families were burned alive in their houses. In other instances large numbers of civilians were executed. In a mosque in Kissy, AFRC/RUF members shot and killed at least 70 people who were seeking refuge. Others died as a result of amputations being carried out indiscriminately against men, women and children. The frequency of intentional killings increased as the AFRC/RUF lost ground to ECOMOG forces throughout the city.
65. During the invasion, the retreat and for months afterwards, women and young girls were routinely subjected to widespread sexual violence, which was often marked by accompanying physical violence, abduction, sexual slavery and forced marriage. Women and young girls were raped during or after an attack, abducted and later forcibly married to AFRC/RUF members. Once "married", civilian women were expected to carry out conjugal duties in addition to other forced labour, such as carrying loads.
66. The evidence will demonstrate widespread physical violence carried out during attacks on the civilian population, including organized amputations of men, women and children. Typically, a victim was forced at gun point to line up with other civilians. Then the AFRC/RUF would proceed to amputate one or both of their arms or hands. Many of these amputee victims never survived. Sometimes the entire group would be amputated.

The victims were often told by the AFRC/RUF member that they should “go to Kabbah” for a new hand and that he was being punished for voting for Kabbah.

67. The evidence will also demonstrate that throughout their operations in Freetown, the AFRC/RUF used children under 15 years old in the hostilities.
68. The invasion of Freetown was marked by a massive abduction of civilians, abducted under the threat of death, and forced to carry loads of looted properties for the AFRC/RUF. The abductees often travelled with the retreating forces and were forced to stay with them for months afterwards and perform labour for the AFRC/RUF.
69. Throughout the invasion, the evidence demonstrates that looting of property and the burning of houses was widespread all over the city. When AFRC/RUF forces were forced to retreat, the magnitude of looting and burning increased. AFRC/RUF commanders in Freetown were ordered by the senior AFRC/RUF leadership in Sierra Leone to burn buildings in the city. Enormous sections of eastern Freetown were burned, in some neighbourhoods virtually every building was burned down. Major public buildings were targeted and burned.

Kailahun District- About 14 February to 30 September 1998

70. Kailahun is strategically positioned because of its shared border with Liberia, which permitted cross border activities between RUF (later AFRC/RUF) and NPFL forces. Moreover, Kailahun borders Kono district, which holds some of the country’s most diamond-rich mining areas. The evidence will demonstrate how control by the AFRC/RUF forces of both districts facilitated the procurement of arms, ammunitions and other logistics through transactions in natural resources, in particular, diamonds. The evidence will further show how Kailahun served as a main base for the AFRC/RUF, where senior AFRC/RUF commanders were regularly based, and through which significant support for AFRC/RUF operations was maintained by the forced labour and/or conscription of hundreds of captured men, women and children.
71. Civilians were killed by AFRC/RUF forces as part of their campaign of terror and collective punishment. Many civilians were deliberately killed on orders from senior AFRC/RUF commanders for their alleged membership or support for civil militia forces, the CDF/Kamajors, including a mass execution that was undertaken in Kailahun Town.
72. The evidence will show how during 1997-1999, hundreds of women were routinely

abducted from other parts of Sierra Leone and brought to Kailahun, where they were subjected to sexual violence and/or forced into “marrying” their rebel captors. These women were also forced to perform conjugal duties in their roles as “bush wives”.

73. Throughout 1997 and 1998, hundreds of captured men, women, children were routinely taken to various locations in Kailahun and used as forced labour, also known as “man power”, which included carrying loads, road work and farming on plantations, including farms belonging to senior AFRC/RUF commanders and/or their families.
74. The evidence demonstrates how Kailahun constituted a major training location where forcibly conscripted men, women and children were held and given military training. Bases were stationed at locations such as Beudu Town, a major base for the AFRC/RUF leadership, Pendembu, Kailahun Town, Bunumbu and Kangama. In addition to shipments of arms and natural resources, the evidence will show how captured civilians were taken across the border to engage in military training and fighting for the AFRC/RUF or in support of military forces under the leadership of Charles Taylor.
75. Throughout 1998, AFRC/RUF leaders communicated with commanders located in other districts from Kailahun. In December of 1998, Kailahun was the location for the planning of the major AFRC/RUF offensive that led to the subsequent takeover of much of the country including Koidu, Makeni and eventually the invasion of Freetown.
76. The evidence will demonstrate organized attacks against United Nations peacekeepers and humanitarian assistance personnel operating under the United Nations Assistance Mission in Sierra Leone (UNAMSIL) from May 2000. United Nations peacekeepers and humanitarian assistance personnel were abducted, subjected to threats, physical violence and ill treatment, including prevention by AFRC/RUF forces of the evacuation of casualties and sick. The evidence will demonstrate how, over ten weeks, AFRC/RUF attacks on UNAMSIL positions lead to the death and serious bodily injury of UNAMSIL personnel in addition to looting and destruction of official and personal properties.

Kenema District- About 25 May 1997 to 19 February 1998

77. The evidence will show that the AFRC/RUF forces carried out operations between about 25 May 1997 and about 19 February 1998, in order to gain and maintain control over the District, in particular, the Tongo diamond mining areas. Senior AFRC/RUF commanders maintained a presence in the District throughout these events.

78. Following the May 1997 Coup, AFRC/RUF forces secured offices in Kenema Town, including the AFRC Secretariat. AFRC/RUF forces engaged in sustained attacks throughout the District on positions held by local militias, namely the CDF or Kamajors. As part of the campaign of terror and collective punishment, the evidence will show how AFRC/RUF forces routinely targeted civilians for killings, detention, physical violence and ill-treatment for allegedly being sympathetic to, or collaborating with, the CDF/Kamajors. The evidence will also demonstrate the killings and forced labour of captured civilians, who were forced to mine in the Tongo diamond mining areas.
79. During the Junta period, the AFRC/RUF area leaders called a community meeting where locals were ordered to accept the AFRC/RUF government, including removing the CDF/Kamajors, and told that the AFRC/RUF government would “close the eyes forever” of anyone who did not cooperate. Following this meeting, the AFRC/RUF detained many community leaders at the AFRC Secretariat in Kenema Town, including a former Cabinet Minister and Town Council Chief, who were accused of supporting the CDF/Kamajors. Those detained were repeatedly beaten and subjected to ill treatment, some were beaten with strips of outer tire and pistols, other were tied-up tightly with pieces of rope. Individuals were released, only to be detained once again. Several of the detainees were then killed pursuant to orders of an AFRC/RUF leader.
80. Civilians were killed for being allegedly CDF/Kamajor supporters. One alleged CDF/Kamajor supporter was beaten to death with a rubber tire. Known CDF/Kamajors were shot on the spot. Civilians were also killed when AFRC/RUF forces fired indiscriminately on a main street in Kenema Town, in a retaliation of a previous CDF/Kamajor attack on an AFRC/RUF camp. In addition, four (4) civilians were executed extra-judicially at Kenema police station for allegedly participating in larcenies in the locality.
81. The evidence will demonstrate widespread forced labour of hundreds of captured civilians in the Tongo diamond fields. About the month of August 1997, AFRC/RUF forces took control of Tongo Town and began mining operations in the area, including “Cyborg Pit”. Mining operations were sustained through the forced labour of hundreds of captured civilians, who mined without pay, under threats of death and acts of physical violence by the AFRC/RUF. Many people died as a result of deliberate killings that were

undertaken by AFRC/RUF forces to terrorize and subordinate captured civilians. Small Boys Units, comprising of armed young child combatants, were employed to guard the abducted civilians. The evidence will further demonstrate how about the end of 1997 to around early 1998, AFRC/RUF leaders transported diamond mining proceeds out of Kenema to Kailahun District and eventually to bordering Liberia.

Koinadugu District- About 14 February to 30 September 1998

82. The evidence will demonstrate that from on or about 4 February 1998, after the AFRC/RUF were driven out of Freetown by the ECOMOG intervention force, successive attacks involved widespread killings, physical and sexual violence against civilian men, women and children, looting and destruction of property and the abduction and forced labour and/or conscription of men, women and children. Commission of these crimes in furtherance of a campaign of terror and collective punishments during AFRC/RUF troop movements and attacks on towns and villages throughout the entire District, including Fadugu, Heremakono, Kabala, Kamadugu, Katombo, Koinadugu Town, Kumalu, Kuronbola, Kurubonla, Moriya, Seraduya, Serekolia, Sokorola, and Yiffen.
83. Following the ECOMOG intervention in February 1998, groups belonging to the large number of junta forces retreating from Freetown to Kono District passed through Koinadugu District, including Koinadugu Town and Kurubonla, where AFRC/RUF forces eventually formed bases in 1998. ECOMOG forces were stationed at Kabala, which was attacked twice on or about late July 1998 and mid September 1998.
84. The group based in Kurubonla was later joined at Koinadugu Town by two major AFRC/RUF contingents after ECOMOG had dislodged the AFRC/RUF from Koidu town, Kono District, in April 1998. The first AFRC/RUF group proceeded from Kono District to Mansofinia, through Koinadugu District and on to Bombali District. The second AFRC/RUF group joined the original AFRC/RUF group based at Kurubonla. All of these combined forces became known as the "Northern Jungle", a reference to the AFRC/RUF groups operating in the northern areas of the country throughout 1998.
85. In October or November of 1998 a large AFRC/RUF force moved and joined the first AFRC/RUF force that had earlier moved to and stationed themselves in Bombali. Together these forces constituted the primary initial AFRC/RUF contingent to invade Freetown in January 1999, which repeated the above-described pattern of violations

- carried out during attacks on the civilian population during the advance to Freetown.
86. The evidence will demonstrate that attacks of towns and villages throughout Koinadugu District resulted in widespread killings of civilians, which would initially result from AFRC/RUF forces shooting indiscriminately upon entering such towns and villages. AFRC/RUF forces routinely killed civilians by placing them in burning houses. Other deaths occurred as a result of AFRC/RUF forces amputating the limbs of men, women and children, including their hands and arms as punishment for voting for President Kabbah. Pregnant women would die after having their bellies slit open by AFRC/RUF forces to settle bets on the sex of the fetus. Babies of abducted mothers would be killed since their crying was thought to reveal AFRC/RUF locations. Civilians accused of being CDF/Kamajors, supporters thereof, and members of the Sierra Leonean police would be killed on the spot. Terrified civilians fleeing attacks by the AFRC/RUF would travel to proceeding towns and villages to warn others of the AFRC/RUF onslaught.
 87. Throughout the AFRC/RUF operations, women and young girls were routinely subjected to widespread sexual violence that was carried out as part of the ongoing campaign to terrorize the civilian population and serve AFRC/RUF sexual and conjugal needs. First, rampant sexual violence by AFRC/RUF forces was often accompanied with physical violence, including amputations, stabbings, beatings, sticks or foreign objects being inserted into vaginas, and/or threats of death if victims attempted to resist or cry aloud. Pregnant women were raped until they miscarried, while suckling mothers, virgins and young girls were widely targeted. Young boys, forcibly conscripted, were ordered to carry out rapes, including the raping of older women. Raping by AFRC/RUF forces was carried out openly before senior AFRC/RUF commanders. Typically, women and young girls were raped during or after an attack, abducted and later forcibly “married” to AFRC/RUF members. Once “married”, civilian women became known as a “bush wives”, where they were expected to carry out domestic/conjugal duties in addition to other forced labour, such as carrying loads during troop movements.
 88. The evidence will also demonstrate how hundreds of men, women and children were abducted throughout the District by AFRC/RUF forces under the threat of death in support of AFRC/RUF operations. Captured civilians were forced to carry loads, including looted properties and ammunition, and taken AFRC/RUF bases where some

would be forcibly conscripted and forced to undergo organized military training. Others were forced to undertake “food finding missions”. Those who would manage to escape would sometimes return to their villages to relate their experiences to others.

89. Throughout the operations of the Northern Jungle, the evidence demonstrates routine abduction of young boys under the age of fifteen for use as child combatants. Hundreds of children underwent training at Koinadugu Town and Serekolia and were later used in active hostilities, including fighting and carrying loads of ammunition. Use of children in active hostilities occurred openly before senior AFRC/RUF commanders.
90. Widespread physical violence carried out during attacks, for which some were undertaken as part of terrorization and collective punishments of the civilian population. AFRC/RUF forces organized amputations of limbs of men, women and children, who were given letters and/or told to go to the President to ask for their limb back. Carvings of “AFRC”, “RUF” or both were also made on the bodies of abducted men and young boys to identify abductees and discourage their escape. Civilians were also beaten.
91. Throughout attacks on towns and villages and during troop movements, the evidence demonstrates widespread looting of civilian properties, including food items such as chickens, goats, palm oil and rice. The evidence will demonstrate widespread destruction of public buildings and private houses by burning. Entire villages were routinely burnt down by AFRC/RUF forces.

Kono District- About 14 February to December 1998

92. The evidence will demonstrate how widespread and systematic attacks were carried out by AFRC/RUF forces as part of a campaign of terror against the civilian population in order to gain control over the District, in particular the diamond mining areas. The main mining areas are to be found in the Tombodu area, Sandor, Nimikoro, Gbense and Tankoro Chiefdoms. Koidu Town, the District headquarter, is located in Gbense Chiefdom, which is roughly in the centre of the District. In addition to these strategic areas, the District is bordered on the Southeast by Kailahun District, where the AFRC/RUF maintained major bases for their operations.
93. After the Junta Coup in May 1997, the AFRC/RUF declared ownership over all mining areas. After the ECOMOG Intervention in February 1998, AFRC/RUF forces retreating from Freetown and Makeni regrouped and travelled through Bombali and Koinadugu

Districts to Kono District, specifically, Koidu Town. Following the capture of Koidu town, meetings were held in the District where senior AFRC/RUF commanders established a joint-command structure for AFRC/RUF operations. AFRC/RUF forces proceeded to spread over the entire District.

94. Upon arrival in Koidu Town, AFRC/RUF forces commenced widespread attacks throughout the District. The evidence will show a pattern of widespread killings, physical violence, abductions, forced labour and conscription of civilians and the widespread looting and destruction of civilian and public properties, which was undertaken by AFRC/RUF forces in Kono throughout 1998. Women and young girls were subjected to rampant sexual violence, abductions and forced “marriage” to their rebel captors. The evidence will further demonstrate how the AFRC/RUF terrorization of the civilian population enabled geographic control of the Kono area, particularly the diamond mining areas, where forced mining of civilians was being undertaken under the supervision of senior AFRC/RUF command. Movements of arms and ammunitions from the Kailahun District were in turn sent to Kono District.
95. The evidence will demonstrate widespread killings of civilians, which were frequently undertaken by AFRC/RUF forces as part of “Operation No Living Thing”, in towns and villages throughout the District, including Bumpeh, Farandu, Foendor, Kindea, Sawa, Somoya, and Wonedu. The evidence will also outline mass killings of civilians, which took place in Foendor, Koidu Town, Mortema and Tombodu town. Over one hundred people were massacred together in Koidu Town. Residents accused of voting for President Kabbah were also killed in Koidu Town on direct orders from senior AFRC/RUF commanders. Tombodu Town became known as a “killing zone”, where dead bodies were thrown into a hole known as “Savage Pit”. A group of civilians in Foendor were beheaded by AFRC/RUF forces. Civilians were forced in houses and massacred, sometimes by being burned alive, by AFRC/RUF forces in towns and villages throughout the District, including Koidu Town and Tombodu Town. Scores of civilians died as a result of deliberate amputations of limbs by AFRC/RUF forces.
96. Throughout the AFRC/RUF attacks in Kono during 1998, the evidence will show widespread acts of physical violence. Civilians were routinely beaten upon capture by AFRC/RUF forces. Abducted civilian men and young boys were given markings of

“AFRC”, “RUF” or both with razors, cutlasses and knives to identify captives as such and discourage their escape. Throughout the District, AFRC/RUF forces carried out organized amputations of limbs, including the chopping of hands of those accused of voting for President Kabbah. Civilians who were present at the scene were forced to laugh or clap during amputations, while victims were told to return to President Kabbah and request their limbs back. Scores of civilians died as a result, while those who survived managed to obtain medical attention in Freetown and relate these events.

97. The evidence will demonstrate widespread and systematic looting of civilian and public properties by AFRC/RUF forces throughout the Kono District. Often undertaken as part of “Operation Pay Yourself”, AFRC/RUF forces looted food items and personal properties, and destroyed public buildings and private homes by burning in the towns and villages of Baima, Biaya, Duwadu, Foindu, Tombodu, Sandu, Yardu and nearby villages. Widespread looting of food items entailed death by starvation of civilians in some areas.
98. Hundreds of people were abducted and forced into labour by AFRC/RUF forces from locations throughout the Kono District, including Baima, Duwadu, Foendor, Kaima, Koidu, Tomandu, Tombodu and Wonedu. The evidence will demonstrate how in an organized manner, captured civilians were taken to centralized AFRC/RUF camps and forced to provide support to AFRC/RUF operations, including carrying loads, finding food, cooking, cleaning, washing and mining for their AFRC/RUF captors. The evidence will show how mining operations overseen by senior AFRC/RUF commanders were particularly brutal: captives were routinely stripped naked and beaten, they were killed if ever tired, nor were they fed or paid for mining activities. Captives laboured under gunpoint by Small Boys Units, child combatants under the age of fifteen who were employed to guard the captured minors. Diamond proceeds were then sent through senior AFRC/RUF commanders to Kailahun and onwards to Liberia in exchange for arms, ammunition and supplies, such as food and blankets.
99. In addition to domestic chores, scores of abducted women and girls were routinely raped and paired with “rebel husbands” throughout the District. During captivity, many were also subjected to rapes from rebels other than their “bush husbands”. AFRC/RUF forces terrorized the local population by committing gross acts of sexual violence against women and young girls, often at gunpoint and under threat of death. Methods included

forcing women to strip naked and committing sexual abuses in the open, including forcing family members either to watch or participate, along with beatings, and/or raping with foreign objects such as sticks. Some women were beaten to death following these rapes. Recent mothers, young girls and virgins were also targeted for sexual violence. The evidence will further demonstrate how the pattern of routine abductions of women and girls from their families to camps, such as “Superman Camp”, for distribution amongst rebels was undertaken to serve the domestic and sexual needs of the AFRC/RUF forces, while undermining civilian morale and collectively punishing local communities.

100. The evidence will show routine abductions of men and young boys under the age of fifteen, who were later forcibly conscripted by the AFRC/RUF under threats of beatings and death. Captured civilians were taken to camps for military training where senior AFRC/RUF command were present. Child combatants were used in military operations throughout the District, with knowledge of superior AFRC/RUF commanders.

Port Loko District- Between about February and April 1999

101. While Port Loko saw periodic states of violence throughout the conflict starting in 1995, principally there was significant violence in the district following the January invasion of Freetown. The retreat of the AFRC/RUF from Freetown saw several large AFRC/RUF troop movements. Initially most of the AFRC/RUF troops proceeded to Masiaka.
102. From Masiaka, the AFRC/RUF groups split into several different areas but stayed in communication and coordination with each other.
103. On 4 August 1999, the “West Side Boys,” which was a group of ex-SLAs and some RUF that settled in the Occra Hills area, took 32 members of the United Nations Military Observer Force in Sierra Leone (UNOMSIL), ECOMOG officers, aid officials and journalists hostage. All were released by 10 August 1999.
104. The AFRC/RUF groups moving through Port Loko attacked many villages in early to mid-1999. A major AFRC/RUF group attacked Tendakum and Nonkoba before reaching the AFRC/RUF base at Lunsar and in the process intentionally killed civilians. In Tendakum, over 40 villagers were killed and buried in mass graves near the village. Many were killed by being hacked to death. In the attack on Manaarma, the AFRC/RUF burned 70 people alive in a house. In the course of these attacks, the AFRC/RUF forces also carried out amputations of civilians.

105. Acts of sexual violence against women and girls were particularly intense during this time period in Port Loko. Many of these girls were abducted from Freetown and subjected to repeated rapes, and forced into sexual slavery with the AFRC/RUF group that had abducted them. Often these girls were not released for months afterwards. Many were forced into marriages as “rebel” or “bush” wives. Many civilians abducted from Freetown were also forced into labour as the groups moved through Port Loko district. Also, during the attacks in early to mid 1999 by the AFRC/RUF, they continued to abduct civilians, using girls as sex slaves and using all abductees for forced labour.
106. From May 2000, AFRC/RUF forces attacked United Nations peacekeepers and humanitarian assistance personnel serving under the United Nations Assistance Mission in Sierra Leone (UNAMSIL) at locations in Port Loko District, including around or near Rogberi. Coordinated attacks against peacekeeping units resulted in death, serious bodily injury and abductions of peacekeepers. These attacks also resulted in looting and destruction of official and personal property. AFRC/RUF forces used civilians in such attacks as human shields.

The Individuals Accused

107. The Prosecutor charges the following individuals with the crimes described in paragraphs 44 - 83 of the Consolidated Indictment: (a) **ISSA HASSAN SESAY**; (b) **MORRIS KALLON**; (c) **AUGUSTINE GBAO**.
108. Paragraphs 20 through 33 of the Consolidated Indictment are incorporated by reference.

D: Summary of The Prosecution's Theory

109. **SESAY, BRIMA, KALLON, GBAO, KAMARA, KANU** and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
110. Since March 1991 and until the end of hostilities on 18 January 2002, RUF and Junta and/or AFRC/RUF forces (AFRC/RUF), conducted armed attacks throughout the territory of Sierra Leone, targeting the civilian population.
111. All offences alleged herein were committed within the territory of Sierra Leone after 30

November 1996.

112. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
113. All acts or omissions charged as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
114. The words civilian or civilian population used herein refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.
115. Between 25 May 1997 and 18 January 2002, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), subordinate to and/or acting in concert with **SESAY, BRIMA, KALLON, GBAO, KAMARA and KANU**, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including, but not limited, to Bo, Kono, Kenema, Koinadugu, Bombali, Kailahun and Port Loko Districts and the city of Freetown and the Western Area. Targets of the armed attacks included civilians and humanitarian assistance personnel and peacekeepers assigned to the United Nations Mission in Sierra Leone (UNAMSIL), which had been created by United Nations Security Council Resolution 1270 (1999).
116. The attacks referred to herein above were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.
117. As part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. Captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour. Some of these women and girls were held captive for years. Men and boys who were abducted were also used as forced labour; some of them were also held captive for years. Many abducted boys and girls were given combat training and used in active fighting.

- AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving “AFRC” and “RUF” on their bodies.
118. In their respective positions referred to above, **SESAY, BRIMA, KALLON, GBAO, KAMARA and KANU**, individually, or in concert with each other, JOHNNY PAUL KOROMA aka JPK, FODAY SAYBANA SANKOH, SAM BOCKARIE aka MOSQUITO aka MASKITA and/or other superiors in the AFRC, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the AFRC, Junta and AFRC/RUF forces.
 119. From 25 May 1997 to 18 January 2002, **SESAY, BRIMA, KALLON, GBAO, KAMARA and KANU**, through their association with the RUF, acted in concert with CHARLES GHANKAY TAYLOR aka CHARLES MACARTHUR DAPKPANA TAYLOR.
 120. The RUF, including **SESAY, KALLON and GBAO**, and the AFRC, including **BRIMA, KAMARA and KANU**, shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.
 121. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Pre Trial Brief, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.
 122. **SESAY, BRIMA, KALLON, GBAO, KAMARA and KANU**, by their acts or omissions, are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Pre Trial Brief, which crimes each of them planned, instigated, ordered, committed or in whose planning, preparation or execution each Accused otherwise aided and abetted, or which

crimes were within a joint criminal enterprise in which each Accused participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which each Accused participated.

123. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **SESAY, BRIMA, KALLON, GBAO, KAMARA and KANU**, while holding positions of superior responsibility and exercising effective control over their subordinates, are individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. Each Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and each Accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

E: Elements of Crimes Charged (Legal Analysis of Charges)

124. All three individuals accused in this case entered pleas of not guilty to all crimes which they are charged, thereby placing every element of the crime in issue. Below, the Prosecutor makes submissions on the elements of these crimes.

a. Crimes Against Humanity

125. Article 2 states that the Special Court shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population: (a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; (h) persecution on political, racial, ethnic or religious grounds; and (i) other inhumane acts.
126. In accordance with international jurisprudence, these categories are not exhaustive. “Any act which is inhumane in nature and character may constitute a crime against humanity, provided the other elements are met. This is evident in (i) which caters for all other inhumane acts not stipulated in (a) to (h) of Article 3”.¹⁰
127. The elements common to all crimes defined as Crimes Against Humanity under Article 2 of the Statute are the following: (a) the *actus reus* must be committed as part of a widespread or systematic attack; (b) the *actus reus* must be committed against the civilian

¹⁰ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 585 [Article 3 of the ICTR Statute is similar to Article 2 of the SCSL Statute].

population; (c) the *actus reus* must be inhumane in nature and character, causing great suffering or serious injury to the body or to mental or physical health.¹¹

128. The *actus reus* cannot be a random inhumane act, but rather is an act committed as part of an attack. The attack may be either widespread or systematic and need not be both.¹²
129. “Widespread”, as an element of crimes against humanity, may be defined as a “massive, frequent, large scale action, carried out collectively with considerable seriousness” and directed against multiple victims.¹³
130. “Systematic”, consists of organized action, following a regular pattern, on the basis of a common policy and involves substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.”¹⁴
131. “Attack”, may be defined as an unlawful act of the kind enumerated in Articles 3(a) to (i) of the Statute. An attack, “can be described as a course of conduct involving the commission of acts of violence”;¹⁵ or, alternatively, can be “non-violent in nature.”¹⁶
132. The *actus reus* for any of the enumerated acts in Article 2 of the Statute must be directed against the civilian population defined as predominately people who were “not taking any active part in the hostilities.”¹⁷

CRIMES AGAINST HUMANITY—Murder (Article 2(a)):

133. The elements of this offence are as follows: (a) the Accused committed an act or omission with respect to the victim that precipitated the following results: i) the victim is dead and ii) the death resulted from an unlawful act or omission of the Accused or a subordinate; and (b) at the time of the killing the Accused or a subordinate had the intention to kill or inflict grievous bodily harm or inflicted grievous bodily harm on the

¹¹ See for e.g.: *Musema Trial Judgement*, 27 Jan. 2000, para. 201.

¹² *Report of the International Law Commission on the Work of Its Forty-Eighth Session, Draft Code of Crimes Against the Peace and Security of Mankind*, U.N. GAOR, 51st Sess., Supp. No. 10, art. 6, at 34, U.N. Doc A/51/10 (1996) (“ILC Draft Code of Crimes Against the Peace and Security of Mankind”). Article 18 therein requires that the act be committed “in a systematic manner or on a large scale” and explicitly states that these are two alternative requirements; See for e.g.: *Akayesu Trial Judgement*, 2 Sept. 1998, para. 579;

¹³ *Akayesu Trial Judgement*, 2 Sept. 1998, para. 580; *Kunarac Trial Judgement*, 22 Feb. 2001, para. 431.

¹⁴ *Akayesu Trial Judgement*, 2 Sept. 1998, para. 580; *Prosecutor v. Tadić*, IT-94-1-T, Opinion and Judgment, 7 May 1997 (“*Tadić Trial Judgement*, 7 May 1997”), para. 648; *Kunarac Trial Judgement*, 22 Feb. 2001, para. 429.

¹⁵ See for e.g.: *Kunarac Trial Judgement*, 22 Feb. 2001, para. 415.

¹⁶ See for e.g.: *Musema Trial Judgement*, 27 Jan. 2000, para. 205.

¹⁷ See for e.g.: *Akayesu Trial Judgement*, 2 Sept. 1998, para. 582. *Akayesu Trial Judgement*, 2 Sept. 1998 para. 582. *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Judgment, 26 Feb. 2001 (“*Kordić and Čerkez Trial Judgement*, 26 Feb. 2001”), para. 180, citing from *Tadić Trial Judgement*, 7 May 1997, para. 638.

victim having known that such bodily harm is likely to cause the victim's death or is reckless as to whether or not death ensues."¹⁸

134. Extra-judicial killings, that is, "unlawful and deliberate killings carried out with the order of a Government or with its complicity or acquiescence",¹⁹ are included in this category.
135. Given the nature of the acts giving rise to a charge of Crimes Against Humanity, death may be proved either directly or circumstantially. The relevant standard is one of sufficiency of proof rather than a strict regimen by which death may be established. As long as the conduct of the accused was causative of death, it need not be a *sine qua non*.²⁰
136. The necessary *mens rea* for murder is wilfulness; i.e. direct intent to kill or recklessness that death may ensue as a foreseeable consequence of the conduct of the accused. According to the case law, this is demonstrated by "an intention on the part of the accused to kill or inflict serious injury in reckless disregard of human life".²¹

CRIMES AGAINST HUMANITY—Extermination (Article 2(b))

137. The elements of this offence are as follows: (a) the Accused or his subordinate participated through an act or omission or any cumulative acts or omissions in the killing of certain named or described persons including by inflicting conditions of life calculated to cause the destruction of part of a population; and (b) the act or omission or cumulative acts or omissions were unlawful and intentional, recklessness, or gross negligence.
138. Extermination is a form of killing accomplished through either direct or indirect methods, is directed against a group of individuals and requires an element of mass destruction.²²
139. Although as murder on a large scale extermination normally involves a number of victims, an Accused may also be guilty of extermination if he kills, or creates the conditions of life that kill, a single person providing the Accused is aware that his act(s) or omission(s) forms part of a mass killing event. Such an "event" is considered to exist where "the (mass) killings have close proximity in time and place."²³

¹⁸ See for e.g.: *Akayesu* Trial Judgement, 2 Sept. 1998, paras. 589 and 590.

¹⁹ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgement, 21 May 1999 ("*Kayishema and Ruzindana* Trial Judgement, 21 May 1999"), para. 140.

²⁰ *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement, 15 July 1999"), para. 199.

²¹ *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgement, 16 Nov. 1998 ("*Čelebići* Trial Judgement, 16 Nov. 1998"), para. 439.

²² Rome Statute of the International Criminal Court, adopted July 17, 1998, U.N. Doc. A/CONF.183/9 (entered into force July 1, 2002) ("ICC Statute"), Article 7(2)(b). See also *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 146; *Akayesu* Trial Judgement, 2 Sept. 1998, para. 591.

²³ *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 147.

140. The requisite *mens rea* is knowledge that an act or omission, directed against certain groups of individuals, causes mass destruction or forms part of an event that causes mass destruction.²⁴ In addition, an act or omission done with “recklessness or gross negligence” that causes mass destruction with respect to a certain group of individuals may also constitute extermination under Article 2(b) of the Statute.²⁵

CRIMES AGAINST HUMANITY—Enslavement (Article 2(c)):

141. The elements of this offence are as follows: (a) the Accused or his subordinate exercised, through acts or omissions, any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; and (b) the Accused knowingly and intentionally participated in such acts or omissions that demonstrated the exercise of rights attaching to ownership of one or more persons.
142. No single factor or combination of factors is decisive or necessary in determining whether or not enslavement exists. It is necessary to consider all the circumstances in deciding whether or not an accused is exercising “any or all of the powers attaching to the right of ownership”. The fundamental definitional feature is that the person enslaving the individual treats that individual as his own private property.
143. The *mens rea* is the intentional exercise of the powers attaching to the ownership over individual victims.²⁶

CRIMES AGAINST HUMANITY—Rape (Article 2(g))

144. The elements of this offence are as follows: (a) the Accused, himself or through official tolerance of sexual violence, knowingly caused the sexual penetration, however slight, (i) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (ii) of the mouth of the victim by the penis of the perpetrator; (b) the sexual penetration was inflicted by coercion or force or threat of force against the victim or a third person; and (c) the sexual penetration was committed with intent and knowledge that it occurs without the victim’s consent.

²⁴ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 592.

²⁵ *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 146.

²⁶ No international instrument defines the *mens rea* for the offence of enslavement. However, the *Kunarac* Trial Chamber has ruled that the *mens rea* of enslavement is the intentional exercise of the powers attaching to the ownership over individual victims. See *Kunarac* Trial Judgement, 22 Feb. 2001, para. 540. The Appeals Chamber in the same case confirmed this position. See *Prosecutor v. Kunarac et al.*, IT-96-23-A and IT-96-23/1-A, Judgement, 12 June 2002 (“*Kunarac* Appeal Judgement, 12 June 2002”), para. 122.

145. The coercive circumstances are not limited to evidence of physical force and “other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or [...] military presence”²⁷ may constitute coercion.
146. The *mens rea* of rape is “the intention to effect ... sexual penetration, and the knowledge that it occurs without the consent of the victim.”²⁸

CRIMES AGAINST HUMANITY— sexual slavery (Article 2(g))

147. The elements of this offence are: (a) the Accused or his subordinates exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; and (b) the Accused or his subordinates caused such person or persons to engage in one or more acts of a sexual nature.
148. The *actus reus* of the crime of sexual slavery is the exercise of any or all of the powers attaching to the right of ownership over a person by exercising sexual control over a person or depriving a person of sexual autonomy. Thus, control over a person’s sexuality or sexual autonomy may in and of itself demonstrate a presumptive right of ownership.²⁹
149. The *mens rea* of the offence is the intentional exercise of powers attaching to the right of ownership over a person.

CRIMES AGAINST HUMANITY - any other form of sexual violence (Article 2(g))

150. The elements of this offence are: (a) the Accused or his subordinates committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or person’s incapacity to genuinely consent; (b) such conduct was of a gravity comparable to other offences in Article 2(g) of the Statute; (c) the Accused was aware of the factual circumstances establishing the conduct’s gravity.
151. Sexual violence encompasses any act of a sexual nature committed on the person of another under circumstances which are coercive. Sexual violence is not limited to

²⁷ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 688.

²⁸ *Kunarac* Trial Judgement, 22 Feb. 2001, para. 542, *Kunarac* Appeals Judgement, 12 June 2002, para 148.

²⁹ *Kunarac* Trial Judgement, 22 Feb. 2001, para. 542.

physical invasion of the human body and may include acts which do not involve penetration or even physical contact. Sexual violence is broadly defined to capture an array of crimes of a sexual nature that are not specified in the statute of the Special Court.

CRIMES AGAINST HUMANITY—Other Inhumane Acts (Article 2(i)):

152. The elements of this offence are as follows: (a) the Accused or a subordinate inflicted through an act or omission or any series of acts or omissions serious mental or physical suffering or injury, or a serious attack on human dignity; and (b) the accused or a subordinate intended to inflict such suffering or to attack human dignity.
153. The sub-characterisation ‘other inhumane acts’ laid down in Article 2(i) of the Statute is a generic charge which encompasses a series of criminal activities not explicitly enumerated. “Other inhumane acts include those crimes against humanity that are not otherwise specified in Article 3 the Statute, but are of comparable seriousness.”³⁰
154. In addition, sexual violence falls within the scope of ‘other inhumane acts’ set forth in Article 2(i) of the Court’s Statute and ‘outrages upon personal dignity’, set forth in Article 3(e) of the Statute and can be prosecuted either alternatively or cumulatively.³¹
155. The elements of “other inhumane acts” under Article 2(i) are the same as those for the breach of the obligation to provide “humane treatment” contained in Common Article 3 of the Geneva Conventions.³²
156. The requisite *mens rea* is wilfulness; i.e. the accused must have intentionally or recklessly inflicted such suffering or attack upon human dignity.

b. Violations of Common Article 3 to the Geneva Conventions and of Additional Protocol II

157. Pursuant to Article 3 of the Statute, the Special Court has the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations include: (a) Violence to life, health and physical or mental well-being of persons in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b)

³⁰ *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 150. [Article 3 of the ICTR Statute is similar to Article 2 of the SCSL Statute].

³¹ See e.g. *Akayesu* Trial Judgement, 2 Sept. 1998, para 468 and para. 697, where acts of forced undressing of women held in the circumstances to be “inhumane acts” under ICTR Statute, Article 3(i).

³² *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement, 24 Mar. 2000 (“*Aleksovski* Appeal Judgement, 24 Mar. 2000”), para. 26; *Prosecutor v. Jelusic*, IT-95-10-T, Judgement, 14 Dec. 1999, para. 52; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 543; *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 151.

Collective punishments; (c) Taking of hostages; (d) Acts of terrorism; (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) Pillage; (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples; and (h) Threats to commit any of the foregoing acts.

158. The rules set forth in Common Article 3 reflect customary international law, and enunciate a set of minimum standards or “elementary considerations of humanity”, applicable in all armed conflicts.³³ Hence, the character of the conflict is irrelevant,” and all that is required is that the perpetrator was aware of the factual circumstances establishing the existence of an armed conflict.
159. The common requirements for the crimes contained in Common Article 3 may be defined as follows: (a) one of the enumerated acts or omissions listed in Common Article 3 of the Geneva Conventions was committed; (b) the victim was a person taking no active part in hostilities, which includes civilians, members of the armed forces who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause; (c) there is a nexus between the unlawful act or omission and the armed conflict.³⁴
160. Common Article 3 common extends its protection to all those taking no active part or no longer taking active part in the hostilities.³⁵
161. Determining whether a victim is taking an active part in hostilities is a matter for factual determination on the basis of specific circumstances surrounding the individual victims.³⁶
162. The offences alleged must be closely related to the armed conflict.

Elements Specific to Offences Charged under Article 3 of the Statute

Murder – Article 3(a)

163. The elements for this offence are as follows: (a) the Accused or a subordinate, killed one

³³ *Case concerning Military and Paramilitary Activities in and Against Nicaragua (Merits)* (1986) I.C.J. Reports, paras. 21, 172-190, 218-220; See also for e.g.: *Prosecutor v. Tadić*, IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct. 1995 (“*Tadić Appeals Chamber Jurisdiction Decision*, 2 Oct. 1995”), para. 102.

³⁴ *Tadić Appeals Chamber Jurisdiction Decision*, 2 Oct. 1995, paras. 94, 134 and 143; *Čelebići Appeal Judgement*, 20 Feb. 2001, paras. 150-152, 160-174.

³⁵ See Article 3(1) common to all four 1949 Geneva Conventions. Also see *Tadić Appeals Chamber Jurisdiction Decision*, 2 Oct. 1995, para. 69.

³⁶ *Tadić Trial Judgement*, 7 May 1997, para. 616.

or more persons; (b) the act or omission was intended to kill or to cause such bodily harm as might result in death.

Mutilation – Article 3(a)

164. The elements of this offence are as follows: (a) the Accused or a subordinate, by act or omission, caused serious mental or physical suffering or injury or constitutes a serious attack on the victim's human dignity; (b) the suffering or injury seriously disfigured the victim's body, seriously incapacitated or removed the victim's limb, appendage or organ or permanently disfigured the person or persons; (c) the condition was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person or person's interest; (d) the act or omission was intentional.³⁷

Collective Punishment – Article 3(b)

165. The elements of this offence are as follows: (a) the Accused or a subordinate inflicts punishment on a group of persons in the form of severe physical or mental pain or suffering or destroys property as a reprisal or deterrent; and (b) the act was intentional.

Taking Hostages – Article 3(c)

166. The elements of this offence are as follows: (a) the Accused or his subordinate seized, detained or otherwise held hostage one or more persons; (b) the Accused threatened to kill, injure or continue to detain such person or persons; (c) the Accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons; (d) the act was intentional.
167. The requisite mental state for taking hostages is wilfulness. In this regard, it is submitted that it is necessary to establish both that the conduct of the accused in detaining and threatening the victim was deliberate or intentional and that the detained civilians were wilfully used for the purpose of obtaining some concession or advantage.

Acts of Terrorism – Article 3 (d)

168. The elements of this offence are as follows: (a) the Accused or his subordinate directed acts or threats of violence against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the

³⁷ *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 265, referring to *Čelebići* Trial Judgement, 16 Nov. 1998 para. 550-552.

civilian population; (b) the Accused wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts; (c) the acts were committed with the primary purpose of spreading terror among the civilian population.³⁸

169. Both Additional Protocol I and Additional Protocol II to the Geneva Conventions, encompass “threats” as well as “acts” of violence.³⁹ The scope of the offence’s *actus reus* of unlawfully inflicting terror upon civilians is accordingly broad.
170. 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,⁴⁰ including the civilian population’s way of life during the period, and the short and long-term psychological impact.
171. The ICTY in *Galic* held that “[p]rimary purpose” signifies the mens rea of the crime of terror...the Prosecution is required to prove not only that the Accused accepted the likelihood that terror would result from the illegal acts – or, in other words, that he was aware of the possibility that terror would result – but that that was the result which he specifically intended. The crime of terror is a specific-intent crime.”⁴¹
172. The phrase “primary purpose” requires that the infliction of terror upon the civilian population was the predominant purpose served by the acts or threats of violence. It need not have been the sole or only motivation for the attack. Accordingly, the fact that other motivations may have co-existed simultaneously with the intent to terrorize the civilian population would not disprove this charge, provided that the intent to inflict terror was principal among the aims.

Outrages upon Personal Dignity - Article 3(e)

173. The elements of this offence are as: (a) the Accused or his subordinate by act or omission caused serious abuse upon the physical and/or moral integrity of the victim, inflicted by either acts or omissions, that is degrading, humiliating and/or otherwise violating the

³⁸ *Prosecutor v. Galic*, IT-98-29-T, Judgement and Opinion, 5 Dec. 2003 (“*Galic* Trial Judgement, 5 Dec. 2003”), para. 133.

³⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977, 1125 U.N.T.S. 3, Art. 51; Additional Protocol II, Article 13.

⁴⁰ W. Fenwick, ‘Attacking the Enemy Civilian as a Punishable Offence’, *Duke Journal of Comparative and International Law*, Vol. 7. 1997, 539 at 562.

⁴¹ *Galic* Trial Judgement, 5 Dec. 2003, para. 136.

victim's dignity;⁴² (b) the severity of the humiliation, degradation or other violation was of such degree as to be generally recognised as an outrage upon personal dignity; (c) the acts or omissions were committed wilfully.

174. The *mens rea* of "the offence of outrages upon personal dignity requires (i) that the accused intentionally committed or participated in an act or omission which would be generally considered to cause degrading, humiliating and/or otherwise violating the victim's dignity, and (ii) that he knew that the act or omission could have that effect."⁴³

Pillage – Article 3(f)

175. The elements of this offence are: (a) the Accused or his subordinate by act or omission unlawfully destroyed, took, or obtained any public or private property; (b) the destruction, taking, or obtaining by the accused of such property was committed with the intent to deprive the owner or any other person of the use or benefit of the property, or to appropriate the property for the use of any person other than the owner; (c) the destruction, taking, or obtaining was without the consent of the owner; (d) the act or omission was intentional.
176. There is no requirement that the destruction, taking or obtaining was done in a violent manner or was the result of violent action⁴⁴ and the offence should be understood to embrace all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as "pillage".
177. There is an additional requirement that the property pillaged be of sufficient monetary value that the pillage of the property would involve grave consequences for the victim.⁴⁵
178. The prohibition against unjustified appropriation of public and private enemy property is general in scope, and extends both to acts of looting committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory.

⁴² Such abuse may comprise specific physical attacks upon the body of the victim, including attacks of a sexual nature, or a series of acts or omissions imposed directly on the victim or by means of coercion, threat of force or intimidation.

⁴³ *Kunarac* Trial Judgement, 22 Feb. 2001, para. 514.

⁴⁴ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 591.

⁴⁵ *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para 352.

c. Other Serious Violations of International Humanitarian Law

179. Pursuant to Article 4 of the Statute, the Special Court has the power to prosecute persons who committed the following serious violations of international humanitarian law: (a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (b) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (c) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.

Attacking Personnel involved in humanitarian assistance or peacekeeping mission (Art. (b))

180. The elements of this offence are as follows: (a) the Accused or his subordinate directed an attack; (b) the object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; (c) the Accused intended such personnel, installations, material, units or vehicles so involved to be the object of the attack; (d) such personnel, installations, material, units or vehicles were entitled to protection given to civilians or civilian objects under international humanitarian law; (e) the Accused knew of the factual circumstances that established that protection; (f) the conduct took place in the context of and was associated with an armed conflict; (g) the Accused was fully aware of the circumstances that established the existence of an armed conflict.

Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Article 4(c))

181. The elements of this offence are as follows: (a) the Accused conscripted or enlisted one or more person into an armed force or group or used one or more persons to participate actively in hostilities; (b) such person or persons were under the age of 15 years; (c) the Accused knew or should have known that such person or persons were under the age of 15 years; (c) the conduct took place in the context of and was associated with an armed conflict not of an international character; (d) the Accused was aware of the factual circumstances that established the existence of an armed conflict.
182. The terms “conscript” and “enlist” presented in the alternative clearly shows they are two

different activities. “Conscript” implies some form of forced participation. It contemplates the formal call-up of children, the process of training them as soldiers or subjecting them to military discipline - or all three of these activities. The common element in the targeted practices, however, which vary from official acts of conscription, to press-ganging, to abduction, is simply making under-age persons members of an armed force against their will.

183. By contrast, “enlist” would suggest a child’s voluntary enrolment, an interpretation that is borne out by Article 51 of the Fourth Geneva Convention (which forbids any pressure or propaganda aimed at securing “voluntary enlistment”). The criminal act would presumably be similar to that contemplated in the crime of conscription, with one difference: that any volition on the part of a child would not be permitted to function as a justification or defence.
184. Conscription and enlistment are supplemented by a third offence: using children to “participate actively in hostilities”. This offence is more general than the other two. Unlike the previous crimes, using children to participate in hostilities suggests the absence of any formal induction into a military unit. It would be unnecessary to prove that a child was put into uniform, subjected to military discipline, made to bear arms or subjected to any of the traditional means of marking an individual as a soldier rather than a civilian. The criminal act would therefore be employing a child in hostilities regardless of what tasks the child had to perform.
185. The consent of the child is not a defence under this offence. It submits that all under-age children must be deemed incapable of forming a proper consent. This is the case in most systems of municipal law which refuse children the capacity to give valid consent to legal transactions without their guardians’ approval.
186. The offence does not refer to an “armed conflict” - which was the phrase used in the Geneva Conventions and Protocol I – but instead refers to “hostilities” used in art 4(3) of Geneva Protocol II. The use of “hostilities” clearly denotes the actual state of fighting.
187. The Child’s participation in the conflict must be active. This entails actually arming a child and sending him or her into battle, or sending the child to transport munitions, gather information or guard bases.

F: Criminal Responsibility Under Articles 6(1) and 6(3)

Concurrent Application of Articles 6(1) and 6(3)

188. The Consolidated Indictment charges all three individuals accused with criminal responsibility under both Article 6(1) and Article 6(3) of the Statute.
189. International law allows charging with, and convicting for, alternative forms of responsibility, as long as the factual allegations are sufficiently precise to permit the accused to prepare his defence on either or both alternatives.⁴⁶
190. The Prosecutor submits that it is in the interest of justice that the Trial Chamber considers both forms of criminal responsibility in order to fully reflect the criminal culpability of the three accused persons. However, should the Chamber choose to convict only under Article 6(1), it is submitted that the position of the accused as superior should be considered as an aggravating element.⁴⁷

Direct Criminal Responsibility Under Articles 6(1)

191. Under Article 6(1), not only those who directly commit a crime described in the Statute are accountable for its perpetration, but also those who plan, order, instigate, or aid and abet its perpetration.⁴⁸ Such persons are also responsible for any act “that naturally results” from the crime in which they participated.⁴⁹
192. Article 6(1) should be interpreted purposively to achieve its object.⁵⁰

PARTICIPATION THROUGH OMISSION

193. International law recognizes that the *actus reus* of a crime may be performed either by positive action or through omission.⁵¹ This principle is applicable to the forms of participation stipulated in Article 6(1).

⁴⁶ *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 210; *Prosecutor v. Blaškić*, IT-95-14-PT, Decision on the Defence Motion to Dismiss the Indictment Based Upon Defects in the Indictment (Vagueness/Lack of Adequate Notice of Charges), 4 April 1997, para. 32; *Čelebići* Trial Judgement, 16 Nov. 1998, paras. 1221-1223.

⁴⁷ *Galić* Trial Judgement, 5 Dec. 2003, para. 177; *Prosecutor v. Stakić*, IT-97-24-T, Judgement, 31 July 2003 (“*Stakić* Trial Judgement, 31 July 2003”), para. 463-6. *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement, 15 Mar. 2002 (“*Krnojelac* Trial Judgement, 15 Mar. 2002”), paras. 173 and 496.

⁴⁸ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 319.

⁴⁹ *Tadić* Trial Judgement, 7 May 1997, para. 692.

⁵⁰ Hence, membership in a joint criminal enterprise is considered as implicitly included in Article 6(1). See *Tadić* Appeal Judgement, 15 July 1999, para. 190; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgement, 7 June 2001 (“*Bagilishema* Trial Judgement, 7 June 2001”), para. 27.

⁵¹ *Tadić* Appeal Judgement, 15 July 1999, para. 188.

MODES OF PARTICIPATION EXPLAINED

a. Planning, Instigating and Ordering

194. “Planning” is the contemplation of a crime and the undertaking of steps to prepare and arrange for its execution.⁵² “Instigating” is “prompting another to commit an offence”.⁵³ “Ordering” a crime entails responsibility as long as the accused has “authority to order”, even absent a formal superior-subordinate relationship.⁵⁴
195. To establish that the accused planned, instigated or ordered a crime, it must be proved that: (i) the crime was physically performed by a person other than the accused; (ii) the conduct of that person was in furtherance of the plan, instigation or order of the accused; (iii) the accused was aware that the crime could materialize consequent to his acts (i.e. *mens rea* of intent or recklessness).⁵⁵
196. Circumstantial evidence may be used to prove the *mens rea*.⁵⁶ Circumstantial evidence may also be used to establish the existence of a plan or order.⁵⁷
197. An “instigation” could be express or implied, or achieved through an omission.⁵⁸
198. An “order” need not be formal and may be oral, implicit, or indirect.⁵⁹
199. The Prosecution submits that an accused may be found guilty of “planning” or “ordering” even if the planned or ordered crime was not executed.⁶⁰
200. In the case of “instigating”, the crime must be completed in order to hold the instigator accountable.⁶¹ However, the Prosecution submits that it is sufficient to prove that the instigation contributed, rather than constituted a *sine qua non* condition, to the perpetration of the crime.⁶²

⁵² *Akayesu* Trial Judgement, 2 Sept. 1998, para. 480.

⁵³ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 482; *Prosecutor v. Blaškić*, IT-95-14-T, Judgement, 3 Mar. 2000 (“*Blaškić* Trial Judgement, 3 Mar. 2000”), para. 280.

⁵⁴ *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 388.

⁵⁵ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 278. If an order is general (e.g. to abuse civilians), the *mens rea* of recklessness or gross negligence is sufficient. See A. Cassese, *International Criminal Law* (N.Y., Oxford University Press, 2003), 194.

⁵⁶ *Tadić* Trial Judgement, 7 May 1997, para. 676; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 326-8.

⁵⁷ *Blaškić* Trial Judgement, 3 Mar. 2000, paras. 279 and 281.

⁵⁸ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 280.

⁵⁹ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 281-2.

⁶⁰ Regarding “ordering”, see discussion in A. Cassese, *International Criminal Law* (N.Y., Oxford University Press, 2003), 194. Regarding “planning”, see *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 386 and *contra Akayesu* Trial Judgement, 2 Sept. 1998, para. 473.

⁶¹ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 482; *Blaškić* Trial Judgement, 3 Mar. 2000, para. 278.

⁶² *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 387

b. Committing

201. “Committing” refers to physically participating in a crime, directly or indirectly, or failing to act when such a duty exists, coupled with the requisite knowledge.⁶³

c. Aiding and Abetting

202. The aider and abettor is an accessory to a crime perpetrated by another person (the ‘principal’).⁶⁴ His acts assist or facilitate the crime, and must have a “substantial effect” on its perpetration.⁶⁵ It not required, however, that his acts have a causal effect on the act of the principal;⁶⁶ nor that he have an agreement with the principal (the latter may not even know about the accomplice’s contribution).⁶⁷
203. The relationship between the accused and the perpetrator should be considered in determining whether the conduct of the former assisted or facilitated the crime.⁶⁸
204. The *actus reus* may take place geographically and temporally removed from the crime.⁶⁹ It may be performed through an omission which “had a decisive effect on the commission of the crime and ... was coupled with the requisite *mens rea*.”⁷⁰
205. The required *mens rea* is knowledge that the acts of the accused assist in perpetrating the crime, coupled with his intention to assist or at least his awareness that assistance may be a foreseeable consequence of his acts.⁷¹ The accused must also be aware of the basic characteristics of the crime, including its requisite *mens rea*.⁷² The Prosecution submits that the aider and abettor need not know the *precise* crime to be committed, but rather that one of a number of crimes would probably be committed, including the one which was in fact committed.⁷³

⁶³ *Tadić* Appeal Judgement, 15 July 1999, para. 188; *Prosecutor v. Simic et al.*, IT-95-9-T, Judgement, 17 Oct. 2003 (“*Simic* Trial Judgement, 17 Oct. 2003”), para. 137.

⁶⁴ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 484, *Contra Furundžija* Trial Judgement, 10 Dec. 1998, para. 249.

⁶⁵ *Furundžija* Trial Judgement, 10 Dec. 1998, para. 249; *Blaškić* Trial Judgement, 3 Mar. 2000, para. 283.

⁶⁶ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 284; *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 201.

⁶⁷ *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 399.

⁶⁸ See *Akayesu* Trial Judgement, 2 Sept. 1998, para. 693.

⁶⁹ *Simic* Trial Judgement, 17 Oct. 2003, para. 162; *Akayesu* Trial Judgement, 2 Sept. 1998, para. 484.

⁷⁰ See *Simic* Trial Judgement, 17 Oct. 2003, para. 165.

⁷¹ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 286.

⁷² *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 162.

⁷³ See *Furundžija* Trial Judgement, 10 Dec. 1998, para. 246 (repeated in *Kvočka* Trial Judgement, 2 Nov. 2001, para. 255; *Blaškić* Trial Judgement, 3 Mar. 2000, para. 287). *Contra Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 399. See also *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 162; *Prosecutor v. Milutinovic et al.*, IT-99-37-AR72, Decision on Dragoljub Ojdanic’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003 (*Ojdanic* Appeal Decision on JCE, 21 May 2003”), Separate Opinion of Judge David Hunt, para. 29.

206. Circumstantial evidence may be used to prove the *mens rea*.⁷⁴

d. “Aiding and Abetting” vs. “Joint Criminal Enterprise”

207. Aiding and abetting differs from membership in a joint criminal enterprise:⁷⁵

- (a) *Common Plan Requirement* - the existence of a common plan between the accused and the actual perpetrator of the crime is not required in the case of aiding and abetting, as opposed to cases of joint criminal enterprises.
- (b) *Effects of Acts on Perpetration of Crime* – While the acts of an aider and abettor must have a *substantial effect* upon the crime’s perpetration, acts of members in a joint criminal enterprise must simply *further* the common plan or purpose.
- (c) *State of mind* – While an aider and abettor need only be *aware* of the crime’s requisite *mens rea*, a joint criminal enterprise member must generally *possess* it.⁷⁶

JOINT CRIMINAL ENTERPRISE

208. International crimes are often committed by a multitude of persons who all participate in the furtherance of a large-scale criminal scheme, or a “joint criminal enterprise”. Under international law, a member of such a criminal enterprise is regarded as having “committed” the crimes resulting from it, as long as he contributed to their perpetration and intended either that they be committed or that the criminal enterprise be furthered while foreseeing that these crimes were likely to be committed.⁷⁷ Accordingly, membership in a joint criminal enterprise is regarded as implicitly included in Article 6(1).⁷⁸ Accountability in these cases is not for mere membership in the joint criminal enterprise, but rather for *participation* in the crime resulting from the enterprise.⁷⁹

a. Joint Criminal Enterprise - Categories:

209. Three different categories of joint criminal enterprise have been recognised:⁸⁰

- a. *Same criminal intention* - cases where each enterprise member voluntarily participates in

⁷⁴ *Tadić* Trial Judgement, 7 May 1997, para. 676; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 326-8.

⁷⁵ *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement, 17 Sept. 2003 (“*Krnojelac* Appeal Judgement, 17 Sept. 2003”), para. 33, *Ojdanic* Appeal Decision on JCE, 21 May 2003, Separate Opinion of Judge David Hunt, para. 29.

⁷⁶ *Simić* Trial Judgement, 17 Oct. 2003, para. 160

⁷⁷ *Ojdanic* Appeal Decision on JCE, 21 May 2003, para. 20; *Tadić* Appeal Judgement, 15 July 1999, para. 188; *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 29; *Simić* Trial Judgement, 17 Oct. 2003, para. 138.

⁷⁸ *Tadić* Appeal Judgement, 15 July 1999, para. 190; *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 203-204; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 328.

⁷⁹ *Ojdanic* Appeal Decision on JCE, 21 May 2003, para. 44; *Stakić* Trial Judgement, 31 July 2003, para. 433; *Simić* Trial Judgement, 17 Oct. 2003, para. 158.

⁸⁰ *Tadić* Appeal Judgement, 15 July 1999, para. 220; *Stakić* Trial Judgement, 31 July 2003, para. 426.

one aspect of the common design and intends the resulting crimes.⁸¹

- b. *Acting pursuant to concerted plan* – cases where there exists an organized system to commit the alleged crimes and where the accused actively participates in its enforcement; is aware of its nature; and, intends to further its purpose.⁸² This *mens rea* may be “inferred from the position of authority” of the accused within the system.⁸³ Existence of a formal or informal agreement between the members is not required;⁸⁴ nor is their presence at the time or place of the crime.⁸⁵
- c. *Foreseeable conduct outside the common design* – cases involving a common criminal plan where one of the participants commits a crime which is outside the common plan, but nevertheless a natural and foreseeable consequence of its execution.⁸⁶ Such a non-envisaged crime is considered ‘foreseeable’ when the participants, although not intending this result, were “able to predict” it and regardless continued to participate in the plan.⁸⁷

b. Joint Criminal Enterprise - Elements:

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

- a. *A plurality of persons* (not necessarily organized in a military manner);⁸⁸
- b. *The existence of a common plan, design or purpose* which involves the commission of a crime provided for in the Statute. It is not necessary for this plan, design or purpose to have been pre-arranged, and it may “materialize extemporaneously and be inferred from that fact that a plurality of persons acts in unison to put in effect a joint criminal enterprise”, or from other circumstances.⁸⁹
- c. *Participation of the accused in the common plan, design or purpose* which amounts to taking actions in its furtherance.⁹⁰ The accused does not have to commit the specific

⁸¹ *Simić* Trial Judgement, 17 Oct. 2003, para. 157; *Tadić* Appeal Judgement, 15 July 1999, paras. 196 and 200.

⁸² *Tadić* Appeal Judgement, 15 July 1999, paras. 202-203.

⁸³ *Tadić* Appeal Judgement, 15 July 1999, para. 203.

⁸⁴ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 96; *Simić* Trial Judgement, 17 Oct. 2003, para. 158.

⁸⁵ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 81; *Simić* Trial Judgement, 17 Oct. 2003, para. 158.

⁸⁶ *Tadić* Appeal Judgement, 15 July 1999, para. 206.

⁸⁷ *Tadić* Appeal Judgement, 15 July 1999, paras. 220 and 228; *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 398; *Prosecutor v. Brdjanin (or Brđjanin) and Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 30; *Prosecutor v. Krstić*, IT-98-33-T, Judgement, 2 Aug. 2001 (“*Krstić* Trial Judgement, 2 Aug. 2001”), para. 613.

⁸⁸ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 366; *Tadić* Appeal Judgement, 15 July 1999, paras. 227-228; *Simić* Trial Judgement, 17 Oct. 2003, para. 156.

⁸⁹ *Tadić* Appeal Judgement, 15 July 1999, para. 227; *Simić* Trial Judgement, 17 Oct. 2003, para. 158 (esp. footnote 288). *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement, 21 July 2000, para. 119.

⁹⁰ *Ojdanić* Appeal Decision on JCE, 21 May 2003, para. 23; *Simić* Trial Judgement, 17 Oct. 2003, para. 158, fn. 292.

crime, but rather may act to assist in, or contribute to, the execution of the joint criminal enterprise.⁹¹ The degree of participation required must be “significant”, as to render the enterprise “efficient or effective”.⁹²

- d. *Shared intent of the participants to further the common plan, design or purpose.*⁹³
- e. *The accused intended the resulting crime or was at least aware of its likelihood while* regardless continuing his participation in the common plan (see discussion above).

Criminal Responsibility As A Superior Under Article 6(3)

- 211. The Prosecutor charges all three accused persons under Article 6(3) of the Statute with all charges in the Consolidated Indictment for the criminal acts of their subordinates.
- 212. Article 6(3) imputes individual criminal responsibility to a superior for crimes perpetrated by his subordinates, when the superior knew or had reason to know that his subordinates committed or are about to commit crimes and yet failed to prevent the crimes or punish the perpetrators.⁹⁴
- 213. To establish superior responsibility under Article 6(3), the following must be proved:
 - (a) the existence of a *superior-subordinate relationship* between perpetrator and accused;
 - (b) that the superior *knew or had reason to know* that the crime was committed or about to be committed by the subordinate;
 - (c) the superior failed to take the *necessary and reasonable measures* to prevent the crime or to punish the perpetrator thereof.⁹⁵

SUPERIOR-SUBORDINATE RELATIONSHIP

a. Effective Control Test

- 214. The ICTY Appeals Chamber in *Čelebići* held that a superior-subordinate relationship

⁹¹ *Tadić* Appeal Judgement, 15 July 1999, para. 227.

⁹² *Kvočka* Trial Judgement, 2 Nov. 2001, paras. 309 and 311; *Simić* Trial Judgement, 17 Oct. 2003, para. 159.

⁹³ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 100 (participants need not be enthusiastic about furthering the plan); *Simić* Trial Judgement, 17 Oct. 2003, para. 157.

⁹⁴ *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 76; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 346; *Bagilishema* Trial Judgement, 7 June 2001, para. 37; *Kayishema and Ruzindana* Trial Judgement, 21 May 1999, para. 217.

⁹⁵ *Aleksovski* Appeal Judgement, 24 Mar. 2000, para. 76; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 346; *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 189-198, 225-226, 238-239, 256, 263. (The Appeal Chamber confirmed the Trial Chamber’s conclusions as to the first two elements.) Also see: *Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgement, 25 June 1999 (“*Aleksovski* Trial Judgement, 25 June 1999”), para. 69; *Blaškić* Trial Judgement, 3 Mar. 2000, para. 294; *Kordić and Čerkez* Trial Judgement, 26 Feb. 2001, para. 401; *Kunarac* Trial Judgement, 22 Feb. 2001, para. 395; *Krstić* Trial Judgement, 2 Aug. 2001, para. 604; *Kvočka* Trial Judgement, 2 Nov. 2001, para. 314; *Prosecutor v. Brđjanin (or Brđanin)*, IT-99-36-T, Decision on Motion for Acquittal Pursuant to Rule 98 Bis, 28 Nov. 2003, para. 39; *Galić* Trial Judgement, 5 Dec. 2003, para. 173.

exists when there is a hierarchical relationship between the accused and the perpetrator, in which the former has ‘effective control’ over the latter.⁹⁶

215. The accused need not have a *formal* position in relation to the perpetrator, but rather that he has the ‘material ability’ to punish the perpetrator or to prevent the crime.⁹⁷
216. Hence, a superior-subordinate relationship may be consequential to the superior’s *de jure* or *de facto* position of authority over the subordinate.⁹⁸ However, since there may be cases where the accused has *de jure* authority over the perpetrator but lacks effective control, the ICTY held that the existence of *de jure* authority alone merely creates a presumption that effective control exists.⁹⁹
217. In ascertaining whether the required ‘effective control’ standard is met, various factors may be taken into consideration. The ICTR in *Musema*, for example, considered the influence a superior has on his subordinates due to psychological pressure, to be indicative of effective control.¹⁰⁰

b. Relationship May be of Indirect Nature

218. The ICTY Appeals Chamber held that subordinate need not be directly under the command of the superior.¹⁰¹ 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.¹⁰²

MENS REA: THE SUPERIOR KNEW OR HAD REASON TO KNOW

219. Regarding the required *mens rea* for command responsibility, the ICTR in *Akayesu* held that “where the objective is to ascertain the individual criminal responsibility of a person Accused of crimes falling within the jurisdiction of the Chamber...it is certainly proper to ensure that there has been malicious intent, or, at least, ensure that negligence was so

⁹⁶ *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 197, 255, 256 and 303. Also see *Stakić* Trial Judgement, 31 July 2003, para. 421; *Galić* Trial Judgement, 5 Dec. 2003, para. 173.

⁹⁷ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 197, 256, 266 and 303. See also *Stakić* Trial Judgement, 31 July 2003, para. 421 and *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgement (Reasons), 1 June 2001, (“*Kayishema and Ruzindana* Appeal Judgement, 1 June 2001”), para. 302.

⁹⁸ *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 192-3; repeated and endorsed in *Galić* Trial Judgement, 5 Dec. 2003, para. 173. See also *Stakić* Trial Judgement, 31 July 2003, para. 421.

⁹⁹ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 197; *Galić* Trial Judgement, 5 Dec. 2003, para. 173.

¹⁰⁰ *Musema* Trial Judgement, 27 Jan. 2000, para. 140.

¹⁰¹ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 252. *Stakić* Trial Judgement, 31 July 2003, para. 421.

¹⁰² 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).

serious as to be tantamount to acquiescence or even malicious intent.”¹⁰³

a. The Superior Knew

220. The ICTY in *Čelebići* and in *Galic* held that, in the absence of direct evidence, circumstantial evidence may be used to establish the superior’s actual knowledge of the offences committed, or about to be committed, by his subordinates.¹⁰⁴ For instance, the fact that crimes were committed frequently and notoriously by subordinates of the accused, indicates that the superior had knowledge of the crimes.¹⁰⁵ In addition, the ICTY held in *Aleksovski* that “an individual’s superior position *per se* is a significant indicium that he had knowledge of the crimes committed by his subordinates”.¹⁰⁶
221. Generally, circumstantial evidence may include details such as the number and type of illegal acts as well as their scope and wide spread occurrence; the time during which the illegal acts occurred and their geographical location; the *modus operandi* of similar illegal acts; the logistics and tactical tempo of operations involved; the number and type of troops, officers and staff involved; the location of the commander at the time.¹⁰⁷

b. The Superior Had Reason to Know

222. The ICTY Appeals Chamber in *Čelebići* held that the standard ‘had reason to know’ is met when *general* information regarding the crime was available to the superior; i.e. the superior need not have possessed knowledge of the *specific* details of the crime.¹⁰⁸
223. The Appeals Chamber in *Krnjelac* concurred with *Čelebići* that ‘general knowledge’ suffices to fulfil the required *mens rea* of ‘had reason to know’.¹⁰⁹ At the same time it added, however, that this ‘general knowledge’ must pertain to the specific crime committed (or intended to be committed).¹¹⁰ If the general knowledge concerns a crime that is different than the one actually committed, and the latter contains all the elements of the former in addition to other elements, then the required *mens rea* standard is met

¹⁰³ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 489. This view was also repeated in *Musema* Trial Judgement, 27 Jan. 2000, para. 131.

¹⁰⁴ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 386. *Galic* Trial Judgement, 5 Dec. 2003, para. 174.

¹⁰⁵ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 770.

¹⁰⁶ *Aleksovski* Trial Judgement, 25 June 1999, para. 80. See also *Blaškić* Trial Judgement, 3 Mar. 2000, para. 308.

¹⁰⁷ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 386, quoting the U.N. Commission of Experts, *Final Report*, S/1994/627, 27 May 1994 (“U.N. Commission of Experts Report”), p. 17.

¹⁰⁸ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 238; *Galic* Trial Judgement, 5 Dec. 2003, para. 175.

¹⁰⁹ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 155.

¹¹⁰ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 155.

- only with respect to the 'lesser' crime.¹¹¹ Inferring otherwise, the Tribunal held, "is not admissible with regard to the principles governing individual criminal responsibility."¹¹²
224. In *Čelebići*, 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."¹¹³ Hence, the superior need not be *personally* familiar with the information, as long as it was *available* to him.
225. In *Bagilishema*, the ICTR held that in cases where the accused had no actual knowledge of the crime, the required *mens rea* is still fulfilled in one of two cases. The first case is when the superior "...had information which put him or her on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such offences were about to be committed, were being committed, or had been committed, by subordinates."¹¹⁴ The second case is when "...the absence of knowledge [of the accused] is the result of negligence in the discharge of the superior's duties; that is, where the superior failed to exercise the means available to him or her to learn of the offences, and under the circumstances he or she *should* have known."¹¹⁵
226. In addition, the ICTY Appeals Chamber stressed that there are no formal requirements pertaining to the information available to the accused; it could be in writing or in oral form, and may even be implicit.¹¹⁶ Such knowledge, for example, may concern a subordinate who has an unstable character, a violent past behaviour or even that is drunk while on a mission.¹¹⁷

c. Standard of Proof

227. In accordance with the ICTY Appeals Chamber decision in *Čelebići*, the standard of proof necessary to establish the existence of the required *mens rea* varies according to the circumstances of each case.¹¹⁸ In *Galic* the ICTY held that when an accused exercises

¹¹¹ *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 153.

¹¹² *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 155.

¹¹³ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 226. This is also repeated in *Stakić* Trial Judgement, 31 July 2003, para. 422.

¹¹⁴ *Bagilishema* Trial Judgement, 7 June 2001, para. 46. Also see *Čelebići* Appeal Judgement, 20 Feb. 2001, paras. 390-393.

¹¹⁵ *Bagilishema* Trial Judgement, 7 June 2001, para. 46. Also see *Blaškić* Trial Judgement, 3 Mar. 2000, paras. 314-332; *Aleksovski* Trial Judgement, 25 June 1999, para. 80.

¹¹⁶ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 238.

¹¹⁷ *Galic* Trial Judgement, 5 Dec. 2003, para. 175; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 238.

¹¹⁸ *Čelebići* Appeal Judgement, 20 Feb. 2001, para. 239; *Krnojelac* Appeal Judgement, 17 Sept. 2003, para. 156.

informal authority over the perpetrator, the standard of proof (with respect to the knowledge element) is higher than that which applies to an accused who holds an official position of command and serves within a formal and structured system or organization.¹¹⁹ As mentioned above, the evidence must indicate that the accused had general information of all the elements of the crime which was, or is about to be, perpetrated. Evidence demonstrating that the information available to the accused related to only *some* of the elements of the crime, will not suffice.¹²⁰ The evidence may be circumstantial.¹²¹

NECESSARY AND REASONABLE MEASURES

228. The ICTY in *Galic* stressed that it must be decided on an *ad hoc* basis whether the superior has taken the 'necessary and reasonable measures' to prevent the crime or to punish the subordinate who perpetrated it.¹²² It also concurred with its decision in *Čelebići*, that the superior should not be held accountable for failure to take measures he was realistically unable to employ.¹²³
229. Nonetheless, the ICTY in *Krnjelac* and in *Stakić* held that the superior must take all available measures under the circumstances, and will be held criminally responsible for the crimes committed by his subordinates in the event he fails to do so.¹²⁴ Such 'available' measures have been held to include measures which are beyond the legal authority of the superior, if their undertaking is materially possible.¹²⁵ For instance, reporting crimes to competent authorities may, under certain circumstances, amount to taking 'necessary and reasonable measures'.¹²⁶ 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.¹²⁷

G: Admissibility and Assessment of Evidence

230. The rules of evidence applicable to this case are stipulated in Rules 89-98. The basic

¹¹⁹ *Galic* Trial Judgement, 5 Dec. 2003, para. 174

¹²⁰ *Krnjelac* Appeal Judgement, 17 Sept. 2003, para. 155.

¹²¹ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 386, quoting the U.N. Commission of Experts Report, p. 17.

¹²² *Galic* Trial Judgement, 5 Dec. 2003, para. 176.

¹²³ *Galic* Trial Judgement, 5 Dec. 2003, para. 176, citing from *Čelebići* Trial Judgement, 16 Nov. 1998, para. 395.

¹²⁴ *Krnjelac* Trial Judgement, 15 Mar. 2002, para. 95; *Stakić* Trial Judgement, 31 July 2003, para. 423; *Čelebići* Trial Judgement, 16 Nov. 1998, para. 770.

¹²⁵ *Čelebići* Trial Judgement, 16 Nov. 1998, para. 395. *Stakić* Trial Judgement, 31 July 2003, para. 461

¹²⁶ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 335. *Stakić* Trial Judgement, 31 July 2003, para. 461

¹²⁷ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 336. *Stakić* Trial Judgement, 31 July 2003, para. 461.

- principle, stipulated in Rule 89(C), is that any relevant evidence is admissible. In deciding which evidence is “relevant”, wide discretion is granted to the Trial Chamber.¹²⁸
231. International jurisprudence embodies the principle of “extensive admissibility of evidence”.¹²⁹ Underlying this principle is the competence of the professional judges to hear evidence and to subsequently evaluate it according to its contents, credibility, the manner in which it was obtained, and in light of all other evidence.¹³⁰
232. Hence hearsay, “self-serving” and unauthenticated documentary evidence have all been held to be admissible, although the nature of such evidence may bear on the weight it is accorded.¹³¹ Additionally, Rules 71 and 85(D) provide for admission of depositions and introduction of evidence via communications media (e.g. video, closed-circuit television).
233. Under Rule 92 *bis*, “information in lieu of oral testimony” may be admitted as evidence “if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.” Since the language of the parallel ICTY and ICTR Rule is significantly different, the jurisprudence of those Tribunals is inapplicable as such. Nonetheless, the fact that the SCSL Rule differs from the Rule on which it is based, is a teaching factor in understanding its scope.
234. Considering the object and purpose of the Special Court and in light of its limited temporal existence and resources, it was necessary to promulgate rules which effectuate expedited proceedings to ascertain the truth, while at the same time safeguard the rights of the accused. Hence, at the first Plenary, the Special Court judges exercised their authority to amend the Rules and discarded the elaborate ICTR Rule (which was applicable at the time) in favour of a simplified version that widens the scope of written material which may be admitted as evidence instead of oral testimony.¹³²

¹²⁸ *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 Sept. 2003 (“*Bagosora* Trial Chamber Evidence Decision, 18 Sept. 2003”), para. 18.

¹²⁹ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 34; see also Rule 95.

¹³⁰ *Blaškić* Trial Judgement, 3 Mar. 2000, para. 35; *Prosecutor v. Delalić et al.*, IT-96-21-T, Decision on the Motion of the Prosecutor for the Admissibility of Evidence, 19 Jan. 1998 (“*Čelebići* Evidence Decision, 19 Jan. 1998”), para. 20.

¹³¹ *Prosecutor v. Rutaganda*, ICTR-96-3-A, Judgement, 26 May 2003 (“*Rutaganda* Appeal Judgement, 26 May 2003”), paras. 148 and 184; *Musema* Trial Judgement, 27 Jan. 2000, para. 61-62. *Prosecutor v. Blaškić*, IT-95-14-T, Decision on the Defence Motion for Reconsideration of the Ruling to Exclude from Evidence Authentic and Exculpatory Documentary Evidence, 30 Jan. 1998, para. 10.

¹³² See Judge Robertson’s comment regarding the parallel ICTR Rule: “this proposed Rule, while well-intentioned, will in practice prove counterproductive” (Minutes of First Plenary, SCSL Registry). The ICTY and ICTR adopted their parallel Rule also with the intention to facilitate speedy trials (see ICTR Press Release ICTR/INFO-9-13-22.EN

235. Rule 94 also expedites proceedings, by allowing the court to take judicial notice of certain facts,¹³³ thus establishing “a well-founded presumption” for their accuracy”.¹³⁴
236. Under Rule 94(A) the Chamber *must* take judicial notice of ‘facts of common knowledge’. These include “...those facts which are not subject to reasonable dispute...such as general facts of history, generally known geographical facts and the laws of nature.”¹³⁵ It is emphasised that “there is no requirement that a matter be universally accepted in order to qualify for judicial notice.”¹³⁶ In addition, historical facts qualify as facts of common knowledge, if they are “...susceptible to determination by reference to readily obtainable and authoritative source...”.¹³⁷ Accordingly, judicial notice of various United Nations documents was taken by the ICTR.¹³⁸
237. Rule 94(B) grants the Court *discretion* to take judicial notice of “adjudicated facts”.¹³⁹ Facts not within the scope of Rule 94(A), may be judicially noticed under Rule 94(B) “if they are indeed adjudicated facts and relate to the present proceedings.”¹⁴⁰
238. Under Rule 94(B), judicial notice may also be taken of “documentary evidence from other proceedings of the Special Court”. This stipulation was interpreted by the ICTY Appeals Chamber to relate to “discrete items of evidence such as the testimony of a witness or a trial exhibit, not an entire judgement.”¹⁴¹
239. Under SCSL Rule 93 “[e]vidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the

of 8 July 2002, p. 3), following several decisions where written material was admitted as evidence instead of oral testimony. See e.g. *Blaškić* Trial Judgement, 3 Mar. 2000, para. 36.

¹³³ *Prosecutor v. Simić et al.*, IT-95-9-PT, Decision on the Pre-trial Motion by the Prosecution Requesting the Trial Chamber to take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, 25 Mar. 1999, para. 17; *Prosecutor v. Sikirica et al.*, IT-95-8-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 27 Sept. 2000.

¹³⁴ *Prosecutor v. Milošević*, IT-02-54-AR73.5, Decision on the Prosecution’s Interlocutory Appeal against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 Oct. 2003, para. 14.

¹³⁵ *Prosecutor v. Semanza*, ICTR-97-20-T, Decision on the Prosecutor’s Motion for Judicial Notice and presumption of Facts Pursuant to Rules 94 and 54, 3 Nov. 2000 (“*Semanza* Decision on Judicial Notice, 3 Nov. 2000”), para. 23; *Prosecutor v. Nyiramasuhuko and Ntahobali* (ICTR-97-21-T), *Prosecutor v. Nsabimana and Nteziryayo* (ICTR-97-29A and B-T), *Prosecutor v. Kanyabashi* (ICTR-96-15-T), *Prosecutor v. Ndayambaje* (ICTR-96-8-T), 98-42-T, Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence, 15 May 2002 (“*Nyiramasuhuko* Decision on Judicial Notice, 15 May 2002”), para. 38.

¹³⁶ *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 31.

¹³⁷ *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 25-26.

¹³⁸ *Semanza* Decision on Judicial Notice, 3 Nov. 2000, para. 29.

¹³⁹ This provision was added to the ICTY Rules in July 1998 and to the ICTR Rules in Nov. 2000.

¹⁴⁰ *Nyiramasuhuko* Decision on Judicial Notice, 15 May 2002, para. 92.

¹⁴¹ *Prosecutor v. Kupreškić et al.*, IT-95-16-A, 8 May 2001, para. 6.

- interests of justice.”¹⁴² It is emphasised that Rule 93 relates to evidence proving a consistent practice, and *not* to evidence establishing the good character of the accused.¹⁴³
240. Accordingly, pursuant to Rule 93, it is possible to introduce evidence of instances not necessarily covered by the Consolidated Indictment, which demonstrates ‘a consistent pattern of conduct’ in order to prove elements such the intent, motive, knowledge, identity, opportunity, preparation, plans, mode of operation, position of authority, etc.¹⁴⁴
241. The *burden* of proof relating to the admissibility of documentary evidence lies on the party seeking to rely on the document; the *standard* of proof generally required is a “balance of probabilities” standard.¹⁴⁵
242. The reliability and credibility of evidence usually affect the weight it is given, as opposed to bearing on its admissibility.¹⁴⁶
243. Once evidence is admitted, it is assessed and given weight by the Trial Chamber.¹⁴⁷ In assessing evidence, the Trial Chamber may adopt any approach it deems suitable.¹⁴⁸
244. According to international jurisprudence, inconsistencies in statements made by the same witness need not render the evidence unreliable, as they are often explained by the time that passed between taking the statements or the impact of trauma on the witnesses.¹⁴⁹
245. Moreover, social and cultural factors may affect the content of evidence.¹⁵⁰ Such factors often explain the difficulties witnesses have in identifying exhibits such as photographs and maps, or in testifying as to dates, times, distances, colours and motor vehicles.¹⁵¹
246. Similarly, language barriers and translations may lead to unclear statements or

¹⁴² *Prosecutor v. Bagosora et al.*, ICTR-98-41-AR93 & ICTR-98-41-AR93.2, Decision on Prosecutor’s Interlocutory Appeals Regarding Exclusion of Evidence, 19 Dec. 2003 (“*Bagosora Appeals Chamber Evidence Decision*, 19 Dec. 2003”), para. 13.

¹⁴³ Judge Cassese in ICTY Transcripts, 15 Feb. 1999, *Prosecutor v. Kupreškić et al.*, IT-95-16-T, p. 6889, lines 5-15. See also *Bagosora Appeals Chamber Evidence Decision*, 19 Dec. 2003, para. 14.

¹⁴⁴ *Kayishema and Ruzindana Appeal Judgement*, 1 June 2001, para. 159; *Bagilishema Trial Judgement*, 7 June 2001, paras. 50 and 63.

¹⁴⁵ *Musema Trial Judgement*, 27 Jan. 2000, paras. 55, 56 and 58; *Prosecutor v. Delalić et al.*, IT-96-21-T, Decision on Zdravko Mucic’s Motion for the Exclusion of Evidence, 2 Sept. 1997, para. 42.

¹⁴⁶ *Čelebići Evidence Decision*, 19 Jan. 1998, para. 20; *Musema Trial Judgement*, 27 Jan. 2000, para. 57.

¹⁴⁷ *Musema Appeal Judgement*, 16 Nov. 2001, para. 18; *Rutaganda Appeal Judgement*, 26 May 2003, para. 207.

¹⁴⁸ *Kayishema and Ruzindana Appeal Judgement*, 1 June 2001, para. 119; See *Prosecutor v. Kamuhanda*, ICTR-99-54A-T, Judgment, 22 Jan. 2004 (“*Kamuhanda Trial Judgement*, 22 Jan. 2004”), para. 33; *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, 26 Jan. 1998, para. 5.

¹⁴⁹ *Čelebići Appeal Judgment*, 20 Feb. 2001, para. 496; *Musema Appeal Judgement*, 16 Nov. 2001, para. 63; *Rutaganda Appeal Judgement*, 26 May 2003, para. 215; *Kamuhanda Trial Judgement*, 22 Jan. 2004, para. 34-37.

¹⁵⁰ *Musema Trial Judgement*, 27 Jan. 2000, para. 103; *Akayesu Trial Judgement*, 2 Sept. 1998, para. 155-156.

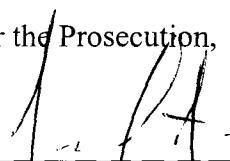
¹⁵¹ *Rutaganda Appeal Judgement*, 26 May 2003, para. 222; *Musema Trial Judgement*, 27 Jan. 2000, para. 104.

testimonies.¹⁵² Hence, inconsistencies against prior statements and internal contradictions should be considered with caution when an interpreter is involved.¹⁵³

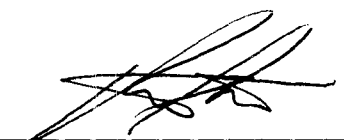
247. Regarding evidence deriving from different witnesses, “inconsistencies may, in certain circumstances, indicate truthfulness and the absence of interference with witnesses.”¹⁵⁴
248. Other factors bearing on the weight given to evidence include the fact that testimony is given by a former co-Accused,¹⁵⁵ and the indirect nature of hearsay (discussed above).
249. Corroboration of evidence is not a requirement in international law.¹⁵⁶ The ICTR Appeals Chamber held that the specification in the ICTR Rules that in cases of sexual offences corroboration of the victim’s testimony is not required *does not* indicate that corroboration of evidence *is* required in proving other offences.¹⁵⁷ The ICTR Appeals Chamber concurred with this view.¹⁵⁸ While the SCSL Rules do not address the issue of corroboration, the Prosecution submits that the principle adopted by the ICTY and ICTR, that corroboration is not required, applies to proceedings before the Special Court.¹⁵⁹

Done in Freetown, on this 1th day of March 2004.

For the Prosecution,



Luc Côté, Chief of Prosecution



Robert Petit, Senior Trial Counsel

¹⁵² See *Rutaganda* Appeal Judgement, 26 May 2003, para. 222; *Musema* Trial Judgement, 27 Jan. 2000, para. 102.

¹⁵³ *Akayesu* Trial Judgement, 2 Sept. 1998, para. 137; *Rutaganda* Appeal Judgement, 26 May 2003, para. 222-225.

¹⁵⁴ *Furundžija* Trial Judgement, 10 Dec. 1998, para. 113.

¹⁵⁵ *Simic* Trial Judgement, 17 Oct. 2003, para. 21.

¹⁵⁶ *Tadić* Trial Judgement, 7 May 1997, paras. 256, 535-539. *Akayesu* Trial Judgement, 2 Sept. 1998, para. 135.

¹⁵⁷ *Rutaganda* Appeal Judgement, 26 May 2003, para. 184, referring to the *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence, 6 Dec. 1999 (“*Rutaganda* Trial Judgement, 6 Dec. 1999”), para. 18.

¹⁵⁸ *Rutaganda* Appeal Judgement, 26 May 2003, para. 184, citing *Rutaganda* Trial Judgement, 6 Dec. 1999, para. 18.

¹⁵⁹ There are, obviously, instances when corroboration will be required. See *Bagilishema* Trial Judgement, 7 June 2001, para. 532. *Bagilishema* Appeal Judgement, 3 July 2002, para. 73.

H: Annexes

1. List of Authorities

2. Consolidated Indictment

Annex 1: LIST OF AUTHORITIES

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Prosecutor v. Galic, IT-98-29-T, Judgement and Opinion, 5 Dec. 2003 (“*Galic* Trial Judgement, 5 Dec. 2003”)

Prosecutor v. Jelusic, IT-95-10-A, Judgement, 5 July 2001

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Prosecutor v. Krnojelac, IT-97-25-T, Judgement, 15 Mar. 2002 (“*Krnojelac* Trial Judgement, 15 Mar. 2002”)

Prosecutor v. Krstic, IT-98-33-T, Judgement, 2 Aug. 2001 (“*Krstic* Trial Judgement, 2 Aug. 2001”)

Prosecutor v. Kunarac et al., IT-96-23-A and IT-96-23/1-A, Judgement, 12 June 2002 (“*Kunarac* Appeal Judgement, 12 June 2002”)

Prosecutor v. Kunarac et al., IT-96-23-T and IT-96-23/1-T, Judgement, 22 Feb. 2001 (“*Kunarac* Trial Judgement, 22 Feb. 2001”),

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Prosecutor v. Milosevic, IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal against the Trial Chamber's 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 Oct. 2003

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Prosecutor v. Musema, ICTR-96-13-A, Judgement, 16 Nov. 2001 (“*Musema* Appeal Judgement, 16 Nov. 2001”)

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Rome Statute of the International Criminal Court, *adopted* July 17, 1998, U.N. Doc. A/CONF.183/9 (entered into force July 1, 2002) (“ICC Statute”)

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MISCELLANEOUS:

Minutes of First plenary, SCSL Registry

ICTR Press Release ICTR/INFO-9-13-22.EN dated 8 July 2002

Annex 2: CONSOLIDATED INDICTMENT

005

SCSL-2004-15-PT
(153 - 173)

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THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL – 2004-15-PT

THE PROSECUTOR

Against

ISSA HASSAN SESAY also known as ISSA SESAY

MORRIS KALLON also known as BILAI KARIM

And

AUGUSTINE GBAO also known as AUGUSTINE BAO

INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

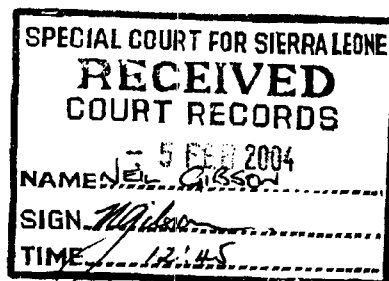
ISSA HASSAN SESAY also known as (aka) ISSA SESAY

MORRIS KALLON aka BILAI KARIM

and

AUGUSTINE GBAO aka AUGUSTINE BAO

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**, in violation of Articles 2, 3 and 4 of the Statute as set forth below:



THE ACCUSED

1. **ISSA HASSAN SESAY aka ISSA SESAY** was born 27 June 1970 at Freetown, Western Area, Republic of Sierra Leone.
2. **MORRIS KALLON aka BILAI KARIM** was born 1 January 1964 at Bo, Bo District, Republic of Sierra Leone.
3. **AUGUSTINE GBAO aka AUGUSTINE BAO** was born 13 August 1948, at Blama, Kenema District, Republic of Sierra Leone.
4. He was a member of the Sierra Leone Police force from 1981 until 1986.

GENERAL ALLEGATIONS

5. At all times relevant to this Indictment, a state of armed conflict existed within Sierra Leone. For the purposes of this Indictment, organized armed factions involved in this conflict included the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC).
6. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
7. The organized armed group that became known as the RUF, led by FODAY SAYBANA SANKOH aka POPAY aka PAPA aka PA, was founded about 1988 or 1989 in Libya. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991. During the ensuing armed conflict, the RUF forces were also referred to as "RUF", "rebels" and "People's Army".

8. The CDF was comprised of Sierra Leonean traditional hunters, including the Kamajors, Gbethis, Kapras, Tamaboros and Donsos. The CDF fought against the RUF and AFRC.
9. On 30 November 1996, in Abidjan, Ivory Coast, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement which brought a temporary cessation to active hostilities. Thereafter, the active hostilities recommenced.
10. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of the Republic of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership. On that date JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC. The AFRC forces were also referred to as "Junta", "soldiers", "SLA", and "ex-SLA".
11. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, leader of the RUF, the RUF joined with the AFRC. The AFRC and RUF acted jointly thereafter. The AFRC/RUF Junta forces (Junta) were also referred to as "Junta", "rebels", "soldiers", "SLA", "ex-SLA" and "People's Army".
12. After the 25 May 1997 coup d'état, a governing body, the Supreme Council, was created within the Junta. The Supreme Council was the sole executive and legislative authority within Sierra Leone during the junta. The governing body included leaders of both the AFRC and RUF.
13. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah's government returned in March 1998. After the Junta was removed from power the AFRC/RUF alliance continued.

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14. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement. However, active hostilities continued.
 15. **ISSA HASSAN SESAY, MORRIS KALLON, AUGUSTINE GBAO** and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
 16. All offences alleged herein were committed within the territory of Sierra Leone after 30 November 1996.
 17. All acts and omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
 18. The words civilian or civilian population used in this Indictment refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.

INDIVIDUAL CRIMINAL RESPONSIBILITY

19. Paragraphs 1 through 18 are incorporated by reference.
20. At all times relevant to this Indictment, **ISSA HASSAN SESAY** was a senior officer and commander in the RUF, Junta and AFRC/RUF forces.
21. Between early 1993 and early 1997, **ISSA HASSAN SESAY** occupied the position of RUF Area Commander. Between about April 1997 and December 1999, **ISSA HASSAN SESAY** held the position of the Battle Group Commander of the RUF, subordinate only to the RUF Battle Field Commander, SAM

BOCKARIE aka MOSQUITO aka MASKITA, the leader of the RUF, FODAY SAYBANA SANKOH and the leader of the AFRC, JOHNNY PAUL KOROMA.

22. During the Junta regime, **ISSA HASSAN SESAY** was a member of the Junta governing body. From early 2000 to about August 2000, **ISSA HASSAN SESAY** served as the Battle Field Commander of the RUF, subordinate only to the leader of the RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.
23. FODAY SAYBANA SANKOH has been incarcerated in the Republic of Sierra Leone from about May 2000 until the present. During this period, by order of FODAY SAYBANA SANKOH, **ISSA HASSAN SESAY** directed all RUF activities in the Republic of Sierra Leone.
24. At all times relevant to this Indictment, **MORRIS KALLON** was a senior officer and commander in the RUF, Junta and AFRC/RUF forces.
25. Between about May 1996 and about April 1998, **MORRIS KALLON** was a Deputy Area Commander. Between about April 1998 and about December 1999, **MORRIS KALLON** was Battle Field Inspector within the RUF, in which position he was subordinate only to the RUF Battle Group Commander, the RUF Battlefield Commander, the leader of the RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.
26. During the Junta regime, **MORRIS KALLON** was a member of the Junta governing body.
27. In early 2000, **MORRIS KALLON** became the Battle Group Commander in the RUF, subordinate only to the RUF Battle Field Commander, **ISSA HASSAN SESAY**, the leader of the RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.
28. About June 2001, **MORRIS KALLON** became RUF Battle Field Commander, subordinate only to the leader of the RUF, FODAY SAYBANA SANKOH, **ISSA**

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HASSAN SESAY, to whom FODAY SAYBANA SANKOH had given direct control over all RUF operations, and to the leader of the AFRC, JOHNNY PAUL KOROMA.

29. At all times relevant to this Indictment, **AUGUSTINE GBAO** was a senior officer and commander in the RUF and AFRC/RUF forces.
30. **AUGUSTINE GBAO** joined the RUF in 1991 in Liberia. Prior to the coup, **AUGUSTINE GBAO** was Commander of the RUF Internal Defence Unit, in which position he was in command of all RUF Security units.
31. Between about November 1996 until about mid 1998, **AUGUSTINE GBAO** was a senior RUF Commander in control of the area of Kailahun Town, Kailahun District. In this position, between about November 1996 and about April 1997, **AUGUSTINE GBAO** was subordinate only to the RUF Battle Group Commander, the RUF Battle Field Commander and the leader of the RUF, FODAY SAYBANA SANKOH. In this position, from about April 1997 and about mid 1998, **AUGUSTINE GBAO** was subordinate only to the RUF Battle Field Commander, the leader of the RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.
32. Between about mid 1998 and about January 2002, **AUGUSTINE GBAO** was Overall Security Commander in the AFRC/RUF forces, in which position he was in command of all Intelligence and Security units within the AFRC/RUF forces. In this position, **AUGUSTINE GBAO** was subordinate only to the leader of the RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.
33. Between about March 1999 until about January 2002, **AUGUSTINE GBAO** was also the joint Commander of AFRC/RUF forces in the Makeni area, Bombali District. As commander of AFRC/RUF forces in the Makeni area, **AUGUSTINE GBAO** was subordinate only to the RUF Battle Field Commander, the leader of

the RUF, FODAY SAYBANA SANKOH, and the leader of the AFRC, JOHNNY PAUL KOROMA.

34. In their respective positions referred to above, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, individually, or in concert with each other, JOHNNY PAUL KOROMA aka JPK, FODAY SAYBANA SANKOH, SAM BOCKARIE aka MOSQUITO aka MASKITA, ALEX TAMBA BRIMA aka TAMBA ALEX BRIMA aka GULLIT, BRIMA BAZZY KAMARA aka IBRAHIM BAZZY KAMARA aka ALHAJI IBRAHIM KAMARA, SANTIGIE BORBOR KANU aka 55 aka FIVE-FIVE aka SANTIGIE KHANU aka S. B. KHANU aka S.B. KANU aka SANTIGIE BOBSON KANU aka BORBOR SANTIGIE KANU and/or other superiors in the RUF, Junta and AFRC/RUF forces, exercised authority, command and control over all subordinate members of the RUF, Junta and AFRC/RUF forces.
35. At all times relevant to this Indictment and in relation to all acts and omissions charged herein, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, through their association with the RUF, acted in concert with CHARLES GHANKAY TAYLOR aka CHARLES MACARTHUR DAPKPANA TAYLOR.
36. The RUF, including **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, and the AFRC, including ALEX TAMBA BRIMA, BRIMA BAZZY KAMARA and SANTIGIE BORBOR KANU, shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.
37. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their

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geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.

38. **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, by their acts or omissions, are individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes each of them planned, instigated, ordered, committed or in whose planning, preparation or execution each Accused otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which each Accused participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which each Accused participated.

39. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, while holding positions of superior responsibility and exercising effective control over their subordinates, are individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. Each Accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and each Accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

CHARGES

40. Paragraphs 19 through 39 are incorporated by reference.

41. At all times relevant to this Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), subordinate to and/or acting in concert with **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**,

conducted armed attacks throughout the territory of the Republic of Sierra Leone, including Bo, Kono, Kenema, Koinadugu, Bombali and Kailahun and Port Loko Districts and the city of Freetown and the Western Area. Targets of the armed attacks included civilians and humanitarian assistance personnel and peacekeepers assigned to the United Nations Mission in Sierra Leone (UNAMSIL), which had been created by United Nations Security Council Resolution 1270 (1999).

42. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.
43. As part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. Captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour. Some of these women and girls were held captive for years. Men and boys who were abducted were also used as forced labour; some of them were also held captive for years. Many abducted boys and girls were given combat training and used in active fighting. AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving “AFRC” and “RUF” on their bodies.

**COUNTS 1 – 2: TERRORIZING THE CIVILIAN POPULATION AND
COLLECTIVE PUNISHMENTS**

44. Members of the AFRC/RUF subordinate to and/or acting in concert with **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO** committed

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the crimes set forth below in paragraphs 45 through 82 and charged in Counts 3 through 13, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.

By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 1: Acts of Terrorism, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.d. of the Statute;

And:

Count 2: Collective Punishments, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.b. of the Statute.

COUNTS 3 – 5: UNLAWFUL KILLINGS

45. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included the following:

Bo District

46. Between 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembahun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians;

Kenema District

47. Between about 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Kono District

48. About mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya;

Kailahun District

49. Between about 14 February 1998 and 30 June 1998, in locations including Kailahun town, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Koinadugu District

50. Between about 14 February 1998 and 30 September 1998, in several locations including Heremakono, Kabala, Kumalu (or Kamalu), Kurubonla, Katombo, Koinadugu, Fadugu and Kamadugu, members of the AFRC/RUF unlawfully killed an unknown number of civilians;

Bombali District

51. Between about 1 May 1998 and 30 November 1998, in several locations in Bombali District, including Bonyoyo, Karina, Mafabu, Mateboi and Gbendubu, members of the AFRC/RUF unlawfully killed an unknown number of civilians;

Freetown and the Western Area

52. Between 6 January 1999 and 28 February 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown and the Western Area. These attacks included large scale unlawful killings of civilian men, women and children at

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locations throughout the city and the Western Area, including Kissy, Wellington, and Calaba Town;

Port Loko

53. About the month of February 1999, members of the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between about February 1999 and April 1999, members of AFRC/RUF unlawfully killed an unknown number of civilians in various locations in Port Loko District, including Manaama, Tendakum and Nonkoba;

By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 3: Extermination, a **CRIME AGAINST HUMANITY**, punishable under Article 2.b. of the Statute;

In addition, or in the alternative:

Count 4: Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

Count 5: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

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COUNTS 6 – 8: SEXUAL VIOLENCE

54. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists. Acts of sexual violence included the following:

Kono District

55. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF raped hundreds of women and girls at various locations throughout the District, including Koidu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomendeh, Fokoiya, Wonedu and AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissi Town) camp. An unknown number of women and girls were abducted from various locations within the District and used as sex slaves;

Koinadugu District

56. Between about 14 February 1998 and 30 September 1998, members of AFRC/RUF raped an unknown number of women and girls in locations in Koinadugu District, such as Kabala, Koinadugu, Heremakono and Fadugu. In addition, an unknown number of women and girls were abducted and used as sex slaves and subjected to other forms of sexual violence;

Bombali District

57. Between about 1 May 1998 and 31 November 1998, members of the AFRC/RUF raped an unknown number of women and girls in locations in Bombali District, including Mandaha and Rosos. In addition, an unknown number of abducted women and girls were used as sex slaves and subjected to other forms of sexual violence;

Kailahun District

58. At all times relevant to this Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District, and used as sex slaves;

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Freetown and the Western Area

59. Between 6 January 1999 and 28 February 1999, members of AFRC/RUF raped hundreds of women and girls throughout the city of Freetown and the Western Area, and abducted hundreds of women and girls and used them as sex slaves and subjected to other forms of sexual violence;

Port Loko District

60. About the month of February 1999, AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between February 1999 and April 1999, an unknown number of women and girls in various locations in the District were subjected to other forms of sexual violence by members of the AFRC/RUF;

By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 6: Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

Count 7: Sexual slavery and any other form of sexual violence, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

Count 8: Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

COUNTS 9 – 10: PHYSICAL VIOLENCE

61. Widespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out. These acts of physical violence included the following:

Kono District

62. Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu. The mutilations included cutting off limbs and carving “AFRC” and “RUF” on the bodies of the civilians;

Kenema District

63. Between about 25 May 1997 and about 19 February 1998, in locations in Kenema District, including Kenema town, members of AFRC/RUF carried out beatings and ill-treatment of a number of civilians who were in custody;

Koinadugu District

64. Between about 14 February 1998 and 30 September 1998, members of the AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Kabala and Konkoba (or Kontoba). The mutilations included cutting off limbs and carving “AFRC” on the chests and foreheads of the civilians;

Bombali District

65. Between about 1 May 1998 and 31 November 1998 members of the AFRC/RUF mutilated an unknown number of civilians in various locations in Bombali District, including Lohondi, Malama, Mamaka, Rosos. The mutilations included cutting off limbs;

Freetown and the Western Area

66. Between 6 January 1999 and 28 February 1999, members of the AFRC/RUF mutilated an unknown number of civilian men, women and children in various

areas of Freetown, and the Western Area, including Kissy, Wellington and Calaba Town. The mutilations included cutting off limbs;

Port Loko

67. About the month of February 1999, the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Between February 1999 and April 1999 members of the AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including, cutting off limbs;

By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 9: Violence to life, health and physical or mental well-being of persons, in particular mutilation, **a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 10: Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute.

COUNT 11: USE OF CHILD SOLDIERS

68. At all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.

By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 11: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

COUNT 12: ABDUCTIONS AND FORCED LABOUR

69. At all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use as diamond miners. The abductions and forced labour included the following:

Kenema District

70. Between about 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field;

Kono District

71. Between about 14 February 1998 and 30 June 1998, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wonedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area;

Koinadugu District

72. Between about 14 February 1998 and 30 September 1998, at various locations including Heremakono, Kabala, Kumala (or Kamalu), Koinadugu, Kamadugu and Fadugu, members of the AFRC/RUF abducted an unknown number of men, women and children and used them as forced labour;

Bombali District

73. Between about 1 May 1998 and 31 November 1998, in Bombali District, members of the AFRC/RUF abducted an unknown number of civilians and used them as forced labour;

Kailahun District

74. At all times relevant to this Indictment, captured civilian men, women and children were brought to various locations within the District and used as forced labour;

Freetown and the Western Area

75. Between 6 January 1999 and 28 February 1999, in particular as the AFRC/RUF were being driven out of Freetown and the Western Area, members of the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas in Freetown and the Western Area, including Peacock Farm, Kissy, and Calaba Town. These abducted civilians were used as forced labour;

Port Loko

76. About the month of February 1999, the AFRC/RUF fled from Freetown to various locations in the Port Loko District. Members of the AFRC/RUF used civilians, including those that had been abducted from Freetown and the Western Area, as forced labour in various locations throughout the Port Loko District including Port Loko, Lunsar and Masiaka. AFRC/RUF forces also abducted and used as forced labour civilians from various locations the Port Loko District, including Tendakum and Nonkoba;

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By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 12: Enslavement, a **CRIME AGAINST HUMANITY**, punishable under Article 2.c. of the Statute.

COUNT 13: LOOTING AND BURNING

77. At all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful taking and destruction by burning of civilian property. This looting and burning included the following:

Bo District

78. Between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned an unknown number of civilian houses in Telu, Sembehun, Mamboma and Tikonko;

Koinadugu District

79. Between about 14 February 1998 and 30 September 1998, AFRC/RUF forces engaged in widespread looting and burning of civilian homes in various locations in the District, including Heremakono, Kabala, Kamadugu and Fadugu;

Kono District

80. Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned;

Bombali District

81. Between about 1 March 1998 and 31 November 1998, AFRC/RUF forces burnt an unknown number of civilian buildings in locations in Bombali District, such as Karina and Mateboi;

Freetown and the Western Area

82. Between 6 January 1999 and 28 February 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown and the Western Area. The majority of houses that were destroyed were in the areas of Kissy, Wellington and Calaba town; other locations included the Fourah Bay, Upgun, State House and Pademba Road areas of the city;

By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

Count 13: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f. of the Statute.

COUNTS 14 – 17: ATTACKS ON UNAMSIL PERSONNEL

83. Between about 15 April 2000 and about 15 September 2000, AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers and humanitarian assistance workers within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts. These attacks included unlawful killing of UNAMSIL peacekeepers, and abducting hundreds of peacekeepers and humanitarian assistance workers who were then held hostage.

By their acts or omissions in relation to these events, **ISSA HASSAN SESAY, MORRIS KALLON and AUGUSTINE GBAO**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, are individually criminally responsible for the crimes alleged below:

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Count 14: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.b. of the Statute;

In addition, or in the alternative:

Count 15: For the unlawful killings, Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

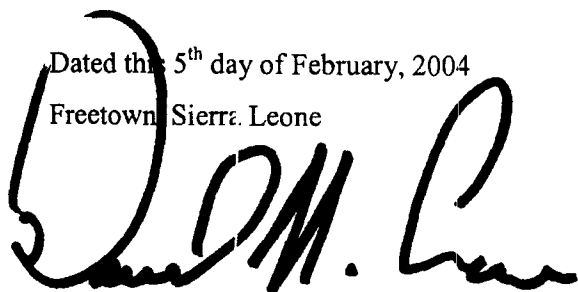
In addition, or in the alternative:

Count 16: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 17: For the abductions and holding as hostage, taking of hostages, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.c. of the Statute.

Dated this 5th day of February, 2004
Freetown Sierra Leone



David M. Crane
Prosecutor

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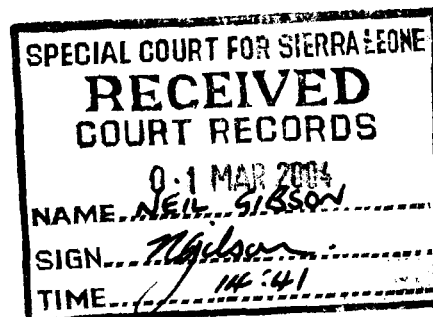
SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

IN THE APPEALS CHAMBER

Before: Judge Robertson, President
Judge King, Vice President
Judge Ayoola
Judge Winter
Judge [Unknown at time of filing]

Registrar: Mr Robin Vincent

Date filed: 1 March 2004



THE PROSECUTOR

Against

ISSA HASSAN SESAY

CASE NO. SCSL – 2004 – 15 – PT

PROSECUTION RESPONSE TO THE DEFENCE
“MOTION SEEKING DISQUALIFICATION OF JUDGE ROBERTSON
FROM THE APPEALS CHAMBER”

Office of the Prosecutor:

David M. Crane, The Prosecutor
Desmond de Silva, QC, Deputy Prosecutor
Luc Côté, Chief of Prosecutions

Defence Counsel:

Tim Clayson
Wayne Jordash
Serry Kamal
Sareta Ashraph

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE

THE PROSECUTOR

Against

ISSA HASSAN SESAY

CASE NO. SCSL – 2004 – 15 – PT

**PROSECUTION RESPONSE TO THE DEFENCE
“MOTION SEEKING DISQUALIFICATION OF JUDGE
ROBERTSON FROM THE APPEALS CHAMBER”**

I. INTRODUCTION

1. The Prosecution files this response to the Defence motion entitled “DEFENSE MOTION SEEKING THE DISQUALIFICATION OF JUDGE ROBERTSON FROM THE APPEALS CHAMBER” (the “**Motion**”), filed on behalf of Issa Hassan Sesay (the “**Accused**”) on 27 February 2004.¹ In its Application, the Defence:
 - a) Argues that Judge Robertson, the President of the Appeals Chamber, is biased and has prejudged many of the critical issues central to the dispute in the cases before this Court as evidenced by numerous quotations from his book entitled “Crimes Against Humanity”;
 - b) Argues that there can be no doubt that the quoted material from Judge Robertson’s book gives the appearance of bias;

¹ Registry Case Number following the joinder: SCSL-2004-15-PT. Pages 416 to 673.

c) Argues that Judge Robertson being the sole author of the book entitled “Crimes Against Humanity” has a financial and/or proprietary interest related to issues raised in cases pending before this Court;


d) Requests that Judge Robertson immediately withdraw permanently and forthwith from the Appeal Chamber pursuant to Rule 15(A);

e) Requests that, alternatively, in the event that the President does not so withdraw, the remaining members of the chamber disqualify the President pursuant to Rule 15(B).

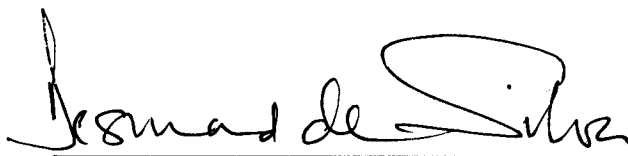
II. ARGUMENT

2. Noting the Defence Motion delineated above and having carefully reviewed the facts as alleged by the Defence and elsewhere, to include a careful reading of the book in question, the Prosecution concedes that there could be a valid argument that there is an appearance of bias on the part of Judge Robertson. The material could lead a reasonable observer, properly informed, to apprehend bias.
3. The Prosecution makes no comment as to the remedy as that is entirely up to the Appellate Chamber to consider.
4. It must be clearly pointed out that this motion and whatever resulting decision by the President and/or the Appellate Chamber will ultimately reflect upon the credibility of the Special Court for Sierra Leone and the integrity of its proceedings.
5. The Prosecution strongly urges the President and/or the Appellate Chamber to act on this motion immediately and expeditiously. It is the opinion of the Prosecution that prior to the delivery of any appellate rulings pending before the Appellate Chamber that this matter be dealt with first and foremost.

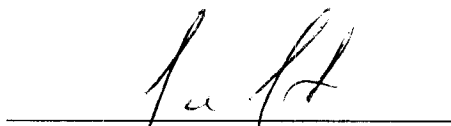
Freetown, 1 March 2004
For the Prosecution,

A large, stylized handwritten signature in black ink, appearing to read 'D. M. Crane', written over a horizontal line.

David M. Crane
The Prosecutor

A handwritten signature in black ink, appearing to read 'Desmond de Silva', written over a horizontal line.

Desmond de Silva, QC
Deputy Prosecutor

A handwritten signature in black ink, appearing to read 'Luc Côté', written over a horizontal line.

Luc Côté
Chief of Prosecutions